

## **Hong Kong Exchanges and Clearing Limited**

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Submitted via the HKEX's online questionnaire.

## **Re: Our response to the HKEX's consultation paper on "Listing Regime for Overseas Issuers"**

### **Background**

On 31 March 2021, the Stock Exchange of Hong Kong Limited (the Exchange) – a wholly-owned subsidiary of the Hong Kong Exchanges and Clearing Limited (HKEX) – issued a consultation paper, and requested public feedback, on the proposed reforms to enhance and streamline its "Listing Regime for Overseas Issuers."<sup>1,2</sup>

Key proposals in the consultation include:<sup>3</sup>

- Streamlining requirements for overseas issuers, while continuing to ensure robust shareholder protection standards remain
- Expanding its secondary listing regime to welcome overseas-listed Greater China companies in traditional sectors to its markets
- Allowing eligible issues to dual-primary list while keeping their existing weighted voting right structures and variables interest entity structures

### **Executive Summary**

BlackRock Investment Stewardship (BIS) submitted our response to the consultation electronically. We agree with most of the proposed reforms to enhance and streamline the "Listing Regime for Overseas Issuers" as in our view these are essential to protect shareholders' long-term economic interests.

As we highlight in our responses under "Chapter 2 – Core Shareholder Protection Standards" (Core Standards), we have certain reservations about whether the proposed reforms are sufficient for protecting the interests of minority shareholders. Given the prevalence of controlled companies in Asia Pacific, the interests of minority shareholders are often overridden in respect of related-party transactions (RPTs) or connected transactions. The current exemption from Listing Rules Chapter 14A for secondary listings presents a loophole as regulations governing RPTs at overseas exchanges are much weaker. The potential conflict between controlling shareholders and minority shareholders is a key corporate governance concern that warrants more attention from the Exchange, but appears to be left unaddressed in the proposed Core Standards. We recommend that the Exchange include in the Core Standards that votes of interested parties must not be counted when approving RPTs so as to fill the regulatory gap.

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<sup>1</sup> HKEX. "[Exchange Seeks Views on Reforms to Enhance Listing Regime for Overseas Issuers](#)," 31 March 2021.

<sup>2</sup> HKEX. "[Consultation Paper – Listing Regime for Overseas Issuers](#)," March 2021.

<sup>3</sup> See footnote #1.

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Regarding the proposed waivers to dual primary listed issuers and to secondary listed issuers considered under “Chapter 3 – Dual Primary Listing” and “Chapter 4 – Secondary Listing” respectively, we are, in principle, against granting waivers to dual primary listed issuers. Should an Overseas Issuer apply for and be granted waivers, or be allowed exceptional treatments, the rationale for the Exchange to waive strict compliance with its Listing Rules should be disclosed in the issuer’s public circulars, for example, in the Company Information Sheet.

Furthermore, we believe that the Exchange should consider a more robust approach to convert secondary listings to dual primary listings. With secondary listed companies accounting for a growing share of trading activity in Hong Kong, we are concerned that shareholder protections in the overall market may have a decaying trend as a growing part of the market becomes subject to lower regulatory standards. Instead of relying on current Trading Migration Requirement, which is highly unlikely to be triggered, we suggest that the Exchange require secondary listed issuers of a significant market capitalization and with a significant trading volume in Hong Kong to become dual primary listed after a certain period of time, for example two years, of their secondary listing.

We did not respond to the questions under “Chapter 5 – Codification of Other Requirements,” as these are beyond BlackRock’s scope to respond.

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BIS submitted the following public comments in response to the public consultation on HKEX’s proposed amendments to enhance and streamline the “Listing Regime for Overseas Issuers.”

## **Chapter 2: Core Shareholder Protection Standards**

**Question 1. Do you agree that the Equivalence Requirement and the concept of “Recognised Jurisdictions” and “Acceptable Jurisdictions” should be replaced with one common set of Core Standards for all issuers? Please give reasons for your views.**

Yes. Having one common set of Core Standards would allow simplification and avoidance of confusion.

**Question 2. If your answer to Question 1 is “Yes”, do you agree: (a) with the proposed Core Standards set out in paragraphs 79 to 137; and (b) that the existing shareholder protection standards set out in Schedule C should be repealed? Please give reasons for your views.**

No. While we agree most of the proposed Core Standards are essential to shareholder protection, we do have reservations about whether they are sufficient for protecting the interests of minority shareholders. Given the prevalence of controlled companies in Asia Pacific, the interests of minority shareholders are often overridden in respect of related-party transactions (RPTs), or connected transactions, and this has been a major source of conflict between controlling shareholders and minority shareholders. It is a key corporate governance concern that warrants more attention from the Exchange but appears to be left unaddressed in the proposed Core Standards.

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In response to **question 2(a)**, we would like to highlight the lack of clarity regarding the application of existing connected transaction provisions in the Listing Rules to overseas issuers. The proposed Core Standard in paragraph 100 of the Consultation Paper, which is currently included in Appendix 3 of the Listing Rules, helps reconcile the Listing Rules with certain overseas regulations which may not permit restriction of a shareholder's right to vote, by stating that votes cast shall not be counted in the relevant circumstances – “where any shareholder is required under these Exchange Listing Rules to abstain from voting on any particular resolution or restricted to voting only for or only against any particular resolution”. The Core Standard would only apply when the relevant requirements of the Listing Rules apply to the shareholder. However, in the current listing regime, overseas issuers that are secondary listed on the Exchange, whether through the Chapter 19C route or the Joint Policy Statement (JPS) route, would be exempted from abiding by Chapter 14A of the Listing Rules, which governs connected transactions. In effect, the proposed Core Standard would only apply to other resolutions such as those about voluntary withdrawal of listing and refreshment of general mandate, and would have no restriction on affiliated parties from voting on RPTs and therefore fall short of protecting minority shareholders' interests.

We are of the view that minority shareholders' interests are best protected when connected transactions require approval by an issuers' independent shareholders. Ideally, Chapter 14 and Chapter 14A of the Listing Rules should apply to all issuers listed on the Exchange. While paragraph 43 of the JPS and note 1 to Listing Rule 19C.07(6) suggest that an example that requires voting abstention is when “a member has a material interest in the transaction or arrangement being voted upon”, there is no clear requirement for interested parties to abstain from voting in such circumstances. If the Exchange were to continue to exempt certain overseas issuers from strict compliance with Chapter 14 and Chapter 14A of the Listing Rules in their entirety, the Exchange should consider clearly stipulating that the votes of interested parties must not be counted when approving connected transactions.

In the context of this consultation, we strongly urge the Exchange to incorporate into the Core Standards the requirement for parties with material interest, as defined in Chapter 2 of the Listing Rules, to abstain from voting on connected transactions, and not making this requirement contingent upon the application of or exemption from Chapter 14 and/or 14A to such parties in the first place (which is currently how Paragraph 100 of the consultation paper reads). Where foreign laws prohibit a company from restraining or restricting its shareholders from voting on any particular resolution including shareholders with a material interest in the transaction or arrangement being voted upon, votes of these shareholders should be excluded. Overseas exchanges, such as the ones in the United States, do not currently have as strong protection mechanisms for minority shareholders when it comes to connected transactions as does Hong Kong for its primary listings, partly because of the availability of post-event methods of redress, namely through a class action regime. Absent such methods, it is crucial for the Exchange to provide relevant safeguards to fill the regulatory gap in order to provide “the same protection for investors of all issuers, irrespective of the place of incorporation”.

The recent privatization of Jardine Strategic by Jardine Matheson is a case in point. As a standard listing on London Stock Exchange and a secondary listing on Singapore's Exchange, the privatization proposal was exempted from Singapore's related party

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transaction rules or that of the Premier Listings for the LSE. Under Bermuda law, Jardine Matheson was allowed to vote on its proposal to acquire the remaining 15% of Jardine Strategic's issued share capital, despite being the acquirer, and a connected party, with a controlling 85% stake.

Jardine Strategic's minority shareholders did not agree with the proposal: among the independent shareholders who voted at the transaction, 76.9% submitted their votes against, representing 51.8% of all independent shareholders. BlackRock's view was that it was a questionable time to do the privatization as Jardine Strategic stock was only just rebounding from a 10-year low and the circular to shareholders made no reference to underlying Net Asset Value which by the company's own estimates (in its separate announcement for FY2020 preliminary results) was 76.4% higher than the privatization price. However, because Jardine Matheson was allowed to vote its 85% holdings, the opposition of the minorities was overridden and the privatization eventually went through on the terms determined by the group, despite the majority of independent shareholders voting against. (BlackRock published a Vote Bulletin to explain in greater detail our views on this transaction: <https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-jardine-strategic-apr-2021.pdf>) This unfavorable outcome would not have occurred had there been a mechanism that requires interested parties to abstain. As such, BlackRock strongly believes the HKEX should strengthen the oversight of related party transactions even for secondary listings.

Separately, we question the differential treatments for certain categories of issuers to satisfy the threshold of a "super-majority". According to the paragraphs 105 and 110 of the Consultation Paper (on variation of class rights), PRC issuers and existing issuers currently subject to the JPS Key Shareholder Protection Standard (existing JPS issuers) will only need a two-thirds majority to satisfy a super-majority vote requirement, but the remaining issuers will need a three-fourths majority. The same applies to paragraphs 112 and 119 (on amendment of constitutional documents), and paragraphs 131 and 136 (on voluntary winding up). This differential treatment is inconsistent with the Exchange's stated aim to standardise the Listing Rules for all overseas issuers. In the case of PRC issuers, applying a higher threshold of "three-fourths majority" would not be inconsistent with the "two-thirds majority" requirement in the Mandatory Provisions that the Exchange quotes, since meeting the "three-fourths majority" requirement would necessarily imply meeting the "two-thirds majority" requirement. As such, the Exchange should consider applying the same standard – "three-fourths majority" as satisfying the super majority threshold – across all issuers instead, and thus we suggest the Exchange to refrain from granting concessions to any particular group of issuers.

Lastly, we would like to point out that the core standards proposed in paragraphs 79 (on removal of directors) and 82 (casual vacancy appointment) suggest that there are still circumstances where these core standards may not apply, and the Exchange "will consider the applicability of (these) requirements on a case-by-case basis based on the circumstances of each individual case." We would recommend avoiding ambiguity in what is meant to be core standards. Rather than leaving room for exemption from these two core standards for certain WVR issuers where judgement is made "case-by-case", we suggest that the Exchange clarify the treatment of voting arrangements for removal of directors and casual vacancy appointment for those issuers. We also request that the Exchange enhance transparency by providing in the public domain the reasons for

not applying any of the Core Standards to certain issuers when it has made such a decision.

In response to **question 2(b)**:

No. We would recommend that the Exchange remove items 12 and 13 of Schedule C from being repealed. We note that some of the overlapping requirements of these standards are waived for secondary listed issuers but not for other issuers; a repeal of these standards would effectively grant waivers to some issuers who are not currently exempted. Among these, items 12 and 13 of Schedule C, which cover the restriction of loans made to directors and their close associates, and the requirement to declare material interest before the board approves any contracts, are of particular concern. The overlapping requirements in Chapter 14A and Rule 13.44 are waived for secondary listed issuers, but Non-Grandfathered Greater China Issuers currently do not have such waivers from Appendix 13. As a result, repealing these standards in Appendix 13 will exempt the Non-Grandfathered Greater China Issuers from these requirements.

Although Appendix 3 paragraph 4(1) is currently waived for secondary listed issuers thus a repeal of that would have no impact on them, we believe it is important for protection of all shareholders' interest to restrict directors from voting on board resolutions in which they or their close associates have a material interest. We recommend that the Exchange include the overlapping requirement (i.e. Rule 13.44) as part of the Core Standards and apply it to all issuers, including secondary listed issuers.

**Question 3. Do you agree to codify the current practice that all issuers must conform their constitutional documents to the Core Standards or else demonstrate, as necessary for each standard, how the domestic laws, rules and regulations to which the issuer is subject and its constitutional documents, in combination, provide the relevant shareholder protection under the Core Standards? Please give reasons for your views.**

Yes. Codification ensures a uniform status across the Core Standards, which would be an improvement from when certain requirements, for example those under the JPS, only have a status of guidance.

**Question 4. Do you believe any other standards or Listing Rules requirements, other than those set out in paragraphs 79 to 137 or Schedule C, should be added or repealed? Please provide these other standards with reasons for your views.**

Yes. As suggested in our response to Question 2, we find there to be a lack of shareholder protection standards in relation to RPTs in the proposed Core Standards. We note the Exchange's rationale for exempting secondary listed issuers from strict compliance of Chapter 14A, that reliance is placed on the laws and regulations applicable to the issuer in its jurisdiction of primary listing to regulate connected transactions. However given the prevalence of controlled companies and a higher risk to minority shareholders through abusive RPTs in this region compared to that in other markets such as the United States, we believe there should be a clear requirement for connected transactions to be approved by independent parties. Where foreign laws prohibit a company from restraining or restricting its shareholders from voting on any particular resolution including shareholders with a material interest in the transaction

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or arrangement being voted upon, votes of the shareholders with material interest should not be counted.

We strongly recommend that the Exchange include an explicit requirement for parties with material interest to abstain from voting on, or to have their votes not counted at, connected transactions in the Core Standards. The current exemption from Listing Rules Chapter 14A for secondary listings presents a loophole as regulations governing RPTs at their overseas exchange of primary listing are much weaker. Ideally, secondary listings should not be exempted from Chapter 14A; should the Exchange allow the exemption from full application of Chapter 14A for secondary listings, we believe the basic principle that connected parties should not be voting at connected transactions should be clearly written into the Core Standards. By ensuring that connected parties' votes would not count toward the approval of certain connected transactions, the Core Standards would fill a regulatory gap and more effectively provide the same protection for investors of all issuers, irrespective of the jurisdiction of incorporation and market of primary listing.

We also recommend that the Exchange incorporate into the Core Standards the restriction of directors from voting on board resolutions in which they or their close associates have material interest. While the proposed repeal of paragraph 4(1) in Appendix 3 does not give additional waivers to secondary listings, our view is that secondary listings should not be exempted from Rule 13.44 and Appendix 3 paragraph 4(1) in the first place. We believe the Exchange should include Listing Rule 13.44 as part of the Core Standards and apply it to all issuers, including the secondary listed issuers.

Regarding the case-by-case decisions on voting arrangements for removal of directors or casual vacancy appointments at WVR companies, we request that the Exchange clarify the reason for the need for a case-by-case approach, and that the Exchange provide the reasons in the public domain if any of the Core Standards are waived for certain issuers if it makes such a decision, as we mentioned in our response to Question 2.

We should like to reiterate that the secondary listing regime, with all the waivers granted to these issuers, poses major challenges in regard to shareholder protection. We suggest that the Exchange examine the feasibility of introducing a more effective sunset mechanism for secondary listings. With secondary listed companies accounting for a growing share of trading activity in Hong Kong, we are concerned that shareholder protections in the overall market may have a decaying trend as a growing part of the market becomes subject to lower regulatory standards. Instead of relying on the current Trading Migration Requirement which is highly unlikely to be triggered given markets especially in the United States will structurally have greater trading volume, the Exchange could consider a more robust approach to encourage companies to seek dual primary listing in Hong Kong instead to ensure that relevant regulations for issuers in this region, for instance minority shareholder protection on related party transactions, are observed. The Exchange should not, we believe, encourage indefinite secondary listing status for sizeable companies that become a significant segment of trading volume in Hong Kong. We would thus recommend that secondary listed issuers that are of a significant market capitalisation and with significant trading volume in

Hong Kong be required to become dual primary listed after a certain period of time, for example two years, of their secondary listing.

**Question 5. Do you agree that existing listed issuers should be required to comply with the Core Standards? Please give reasons for your views.**

Yes. The proposed Core Standards still allow certain exemptions. For example, the definition for “super majority” is different for PRC issuers versus other issues, and there is a case-by-case approach to handling WVR companies’ voting arrangements on removal of directors and casual vacancy appointments. We recommend a uniform “super majority” definition for all listed issuers, and, where alternative voting arrangements may be allowed for WVR companies, that the Exchange should provide the reasons in the public domain for allowing certain issuers to not follow the Core Standards.

**Question 6. If your answer to Question 5 is “Yes”, do you agree that: (a) existing listed issuers should have until their second annual general meeting following the implementation of our proposals to make any necessary amendments to their constitutional documents to conform with the Core Standards; and (b) the application of the Core Standards will not cause existing listed issuers undue burden? Please give reasons for your views.**

To Questions 6(a):

Yes. Ideally, we would prefer that issuers be able to amend their constitutional documents to conform with the Core Standards at the time of listing on HKEX.

To Question 6(b).

Yes. The second annual general meeting could mean as many as 24 months between the implementation of HKEX’s proposal and the finalization of amended constitutional documents. This should be more than sufficient for amending constitutional documents. we believe it would not cause undue burden to existing listed issuers.

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**Question 7. Do you agree with the principles set out in paragraph 155 for use when considering waiver applications from Overseas Issuers applying for a dual primary listing in Hong Kong? Please give reasons for your views.**

No. BlackRock is in principle against granting waivers to dual primary listed issuers.

Should an Overseas Issuer apply for and be granted waivers, the rationale for the Exchange to waive strict compliance with its Listing Rules should be disclosed in the issuer's public circulars, for example in the Company Information Sheet.

**Question 8. Do you agree to codify certain Common Waivers and the prescribed conditions as described in paragraph 158? Please give reasons for your views.**

No. BlackRock is in principle against granting waivers to dual primary listed issuers.

Should the Exchange proceed to preserve the Common Waivers, there should be a high level of transparency and clarity regarding the conditions allowing such.

We note there remains a list of Common Waivers in the JPS that would not be codified, including but not limited to Listing Rule 10.04 (restriction on existing shareholders and new issue shares) and 10.07(1) (restriction on disposal of shares by a controlling shareholder after a new listing). We request clarification from the Exchange on how these uncodified Common Waivers would be treated in the new listing regime.

**Question 9. Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers with Non-compliant WVR and/ or VIE Structures should be able to apply for dual primary listing directly on the Exchange as long as they can meet the relevant suitability and eligibility requirements under Chapter 19C of the Listing Rules for Qualifying Issuers with a WVR structure? Please give reasons for your views.**

No. We do not believe that the issues relating to WVR and VIE companies should be conflated. These are two different structures that pose different risks to investors and shareholders, and we believe the Exchange should consider the treatment of WVR structures and of VIE structures separately. Specifically, on allowing issuers with Non-compliant WVR Structures to apply for direct dual primary listing, our response would be a No.

BlackRock is an advocate of the "One-Share One-Vote" (OSOV) principle as the foundation for protecting the rights of all shareholders on an equitable basis, and we remain generally opposed to allowing companies to issue shares with WVRs. The belief in the OSOV principle is based on two fundamental premises: 1) shareholders, as the residual claimants of economic value, have the strongest interest in maximizing firm value, and 2) voting power should match economic exposure or risk. Allowing WVRs violates the fundamental corporate governance principle of proportionality. Certain WVR structures such as the Partnership Structure may lead to further departure from the principle and introduce additional misalignment risks. We disagree with WVR regimes and the proposed concessions to Grandfathered Greater China Issuers and

Non-Greater China Issuers which allow them to maintain their Non-compliant WVR structures as they apply for dual primary listing on the Exchange.

Currently, all the exceptions to Listing Rules set out in rule 19C.11 would cease to apply to a Greater China issuer when the majority of trading in its shares migrate to Hong Kong on a permanent basis and the issuer is considered as having a dual primary listing. In the same spirit, dual primary listed issuers should be subject to the full set of the Listing Rules, including the WVR requirements in Chapter 8A. The proposal set out in this question represents a significant deviation from this expectation.

The two-step route, as outlined in paragraph 152 of the consultation paper, essentially constructs an alternative route to have a dual primary listing with Non-compliant WVR structures. The Exchange has not provided a rationale for allowing this two-step route but states that the current proposal for direct dual primary listing with non-compliant WVR structures would not result in an expansion of concessions as it is already allowed in the current form of Listing Rules, given that rule 19C.12 would not cease to apply upon trading migration. Our view is that the two-step route should not have been granted in the first place.

We would query the justification for such exceptional treatment to waivers. Given the materiality of WVR structures in relation to shareholder protection, it is unreasonable to exempt dual primary listed issuers from rules in Chapter 8A. We suggest that the Exchange consider incorporating exceptions to rules in Chapter 8A into Listing Rule 19C.13, such that the exceptions would cease to apply to dual primary listed issuers. In other words, Non-compliant WVR structures should not be allowed for dual primary issuers.

While the legal status of VIE structures is somewhat ambiguous, currently we have no over-riding objections against issuers with Non-compliant VIE Structures to apply and obtain dual primary listing on the Exchange.

**Question 10. Do you agree that Grandfathered Greater China Issuers and Non-Greater China Issuers referred to in Question 9 above be allowed to retain their Non-compliant WVR and/ or VIE Structures (subsisting at the time of their dual primary listing in Hong Kong) even if, after their listing in Hong Kong, they are delisted from the Qualifying Exchange on which they are primary listed? Please give reasons for your views.**

No. As mentioned in our response Question 9, we believe that WVR and VIE issuers should be treated separately. Specifically, on allowing issuers with Non-compliant WVR Structures to retain these structures if they are delisted from the Qualifying Exchange where they are primary listed, our answer would be a No.

BlackRock is generally opposed to allowing companies to issue shares with WVRs. Thus, we disagree with the proposal by the Exchange to allow Grandfathered Greater China Issuers and Non-Greater China Issuers to retain their Non-compliant WVR Structures when they are de-listed from the Qualifying Exchange. There are three major concerns:

1. Allowing issuers to retain their Non-compliant WVR Structures when they are de-listed from the Qualifying Exchange will create inconsistency. Currently, a secondary listed issuer would be required to comply with all Listing Rules applicable to a primary listed issuer on the Exchange immediately upon its de-listing from its overseas exchange of primary listing, unless the Exchange grants waivers and/or grace periods. Given Chapter 8A of the Listing Rules includes compliance requirements regarding WVR structures, it would be inconsistent if relevant requirements did not apply to the issuer in the same manner. It is for the same reason that we disagree with the proposal to allow direct application or existing two-step route for dual primary listing with Non-compliant WVR Structures.
2. Allowing issuers to retain their Non-compliant WVR Structures after de-listing would expose non-WVR investors to greater risks of abuse by WVR beneficiaries as the issuers will cease to be subject to the listing rules of its overseas exchange of primary listing. As an example, before de-listing, investors in the primary market of the US can bring class action lawsuits on a contingent fee basis if they are treated unfairly. Although investors in Hong Kong can neither initiate a class action nor participate in class action lawsuits initiated by investors in the US, the potential for class action lawsuits in the US would serve to deter abuse of non-WVR shareholders. With the de-listing, investors in Hong Kong as well as the Exchange will no longer be able to rely on the regulation and private avenues for recourse of the overseas regime. This puts investors in a more vulnerable position.
3. Allowing issuers to retain their Non-compliant WVR Structures when they are de-listed from the Qualifying Exchange is a slippery slope which creates the possibility for issuers to have a primary listing with Non-compliant WVR Structures. Since a dual primary listed issuer would be considered primary listed on the Exchange upon de-listing from the Qualifying Exchange, in effect, the proposal would create a route for getting primary listed on the Exchange with Non-compliant WVR Structures. In the same manner as direct application for a dual primary listing with Non-compliant WVR Structures is being justified on the grounds of an existing “alternative route”, primary listing with Non-compliant WVR Structures could be similarly justified in the future if the proposal was implemented. Should this be deemed not permissible, an “alternative route” that would permit the same should also not be allowed.

The concessions that allow Grandfathered Greater China Issuers and Non-Greater China Issuers to maintain their non-compliant WVR structures would also create an unlevel playing field among issuers which have Hong Kong investors as the majority of their investors. The Exchange should, we believe, apply the same rules across all overseas issuers rather than grant concessions to a particular group of issuers.

Despite the legal ambiguity of VIE structures, we have no over-riding objections against allowing issuers to retain their Non-compliant VIE Structures if they are delisted from the Qualifying Exchange where they are primary listed.

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**Question 11. Do you agree with our proposal to codify requirements (with the amendments set out in this paper) relating to secondary listings in Chapter 19C of the Listing Rules and re-purpose Chapter 19 of the Listing Rules as one dedicated to primary listings only? Please give reasons for your views.**

Yes. Codification enhances clarity.

**Question 12. Do you agree that the Exchange should implement the quantitative eligibility criteria as proposed in paragraphs 199 and 201 for all Overseas Issuers without a WVR structure (including those with a centre of gravity in Greater China) seeking to secondary list on the Exchange? Please give reasons for your views.**

Yes. The proposed quantitative eligibility criteria would allow for more equal treatment of issuers and remove certain unclear requirements such as the “innovative company” requirement.

**Question 13. Do you agree that an exemption from the listing compliance record requirement be introduced, similar to the current JPS exemption, to cater for secondary listing applicants without a WVR structure that are well-established and have an expected market capitalisation at listing that is significantly larger than HK\$10 billion? Please give reasons for your views.**

No. The proposal involves quite subjective criteria such as “well-established” and “significantly larger”. It would defeat the purpose of setting criteria if exemptions based on such subjective criteria are allowed.

**Question 14. Do you agree that new secondary listing applicants without a WVR structure (including those that have a centre of gravity in Greater China) should not have to demonstrate to the Exchange that they are an “Innovative Company”? Please give reasons for your views.**

Yes. The definition of an “innovative company” could change rapidly given the fast-evolving business environment and thus could be subjective. Removing this requirement would remove potentially unjustified discrimination against perceived “non-innovative” companies.

**Question 15. Do you agree that a Rule should be introduced to make it clear that the Exchange retains the discretion to reject an application for secondary listing if it believes the listing constitutes an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.**

Yes. The Exchange should make every effort to ensure that listing applicants are not circumventing the Listing Rules as they seek access to investors in this market. The Exchange has a key role as gatekeeper to ensure the quality of issuers that list in Hong Kong.

**Question 16. Do you agree that the Exchange should apply the test for a reverse takeover, as described in paragraph 210, if the Exchange suspects that an issuer’s**

**secondary listing application is an attempt to avoid the Listing Rules that apply to primary listing? Please give reasons for your views.**

Yes. The Exchange should make every effort to ensure that listing applicants are not circumventing the Listing Rules as they seek access to investors of the Hong Kong Market. Apart from the test for a reverse takeover, the Exchange may consider other information and data where appropriate.

**Question 17. Do you agree that the scope of the Trading Migration Requirement should be extended to cover all issuers with a secondary listing? Please give reasons for your views.**

Yes. The universal application of the Trading Migration Requirement to all secondary listed issuers would facilitate consistency. The standardized treatment would also reduce potential confusion among investors in such issuers.

That said, as mentioned in our response to Question 4, we suggest that the Exchange examine the feasibility of introducing a more effective sunset mechanism for secondary listings. The current Trading Migration Requirement is highly unlikely to be triggered given markets especially in the United States will structurally have greater trading volume. We recommend that secondary listed issuers that are of a significant market capitalisation and with significant trading volume in Hong Kong be required to become dual primary listed after a certain period of time, for example two years, of their secondary listing. Such a standard should be applied to all secondary listed issuers.

**Question 18. In your opinion, will the extension of the Trading Migration Requirement to all secondary listed issuers be unduly burdensome for those that are not currently subject to this requirement? Please give reasons for your views.**

No. All secondary listed issuers should be subject to the Trading Migration Requirement, regardless of whether they are Greater China issuers or not. We do not believe this would create undue burden for other secondary listed issuers.

As mentioned in previous responses, we suggest that the Exchange examine the feasibility of introducing a more effective sunset mechanism as the current Trading Migration Requirement is highly unlikely to be triggered.

**Question 19 Do you agree with the codification of the principles set out in paragraph 215 on which exemptions/ waivers are granted to secondary listed issuers? Please give reasons for your views.**

No. BlackRock is in principle against granting waivers to secondary listed issuers.

Should the Exchange proceed with allowing exceptional treatment for secondary listed issuers, the reasons for granting exemptions and waivers to secondary listed issuers should be clearly disclosed.

**Question 20 Do you agree to codify the Automatic Waivers and conditional Common Waivers in the Listing Rules for all issuers with, or seeking, a secondary listing? Please give reasons for your views.**

No. BlackRock is in principle against granting waivers to secondary listed issuers.

Should the Exchange proceed with providing such waivers, the reasons for granting waivers should be clearly disclosed.

**Question 21. Do you agree with the removal of the current condition for granting a waiver from the shareholders' consent requirement relating to further issues of share capital for secondary listed issuers as described in paragraphs 218 and 219? Please give reasons for your views.**

Yes. This removal allows clarity and simplicity.

**Question 22. Do you agree that secondary listed issuers should comply with the requirements for a diversity policy and for such policy to be disclosed in their annual reports (for the reasons set out in paragraph 223)? Please give reasons for your views.**

Yes. Requiring disclosure of a diversity policy would encourage boards to recognise the importance of diversity in enhancing decision making and board oversight.

**Question 23. Do you have any comments on the content of the Guidance Letter in relation to trading migration and de-listing of secondary listed issuers from their overseas exchanges of primary listing set out in Schedule E of this paper? Please give reasons for your views.**

Yes. We disagree with allowing issuers to retain their Non-compliant WVR Structures when most of their trading has migrated to Hong Kong or when they are de-listed from their overseas exchanges (paragraph 3.15 and 3.32 of the draft Guidance Letter in Schedule E). Please refer to our response to Question 10 for more details.

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## Chapter 5: Codification of Other Requirements

[Beyond BlackRockscope to respond]

**Question 24** Do you agree that the Exchange should codify the Regulatory Co-operation Requirement (with modification as described in paragraph 242) into Chapter 8 of the Listing Rules for all issuers? Please give reasons for your views.

**Question 25** Do you agree that the Exchange should retain as guidance the alternative auditing standards listed in paragraph 249 that can be used to audit the financial statements of Overseas Issuers? Please give reasons for your views.

**Question 26** Do you agree to codify the JPS requirement that the suitability of a body of alternative financial reporting standards depends on whether there is any significant difference between that body of standards and IFRS, and whether there is any concrete proposal to converge or substantially converge the standards with IFRS? Please give

reasons for your views.

**Question 27** Do you agree to retain, as guidance, the list of acceptable alternative financial reporting standards that can be used to prepare the financial statements of Overseas Issuers subject to the current limitations on their use as set out in Table 7 (see Schedule E)? Please give reasons for your views.

**Question 28** Do you agree to codify the JPS requirement that a dual primary or secondary listed issuer that adopts a body of alternative financial reporting standards for its financial statements (other than issuers incorporated in an EU member state which adopted EU-IFRS) must adopt HKFRS or IFRS if it de-lists from the jurisdiction of the alternative standards? Please give reasons for your views.

**Question 29** Do you agree that issuers that de-list from a jurisdiction of an alternative financial reporting standard should: (a) be given an automatic grace period (i.e. an application to the Exchange is not required) within which to adopt IFRS or HKFRS; and (b) that this grace period should end on the issuer's first anniversary of its de-listing? Please give reasons for your views.

**Question 30** Do you agree that, for the sake of consistency of approach, an issuer must demonstrate a reason for adopting US GAAP for the preparation of its financial statements (including annual 70 financial statements and the financial statements included in its accountants' reports) and adopt IFRS or HKFRS if the circumstances underpinning those reasons change (e.g. it delists from a US exchange)? Please give reasons for your views.

**Question 31** Do you agree that any issuer that wishes to adopt US GAAP for the preparation of its annual financial statements must include a reconciliation statement showing the financial effect of any material differences between its financial statements and financial statements prepared using HKFRS or IFRS? Please give reasons for your views.

**Question 32** Do you agree to codify the amendment to the FRCO that established the PIE Engagement regime into the Listing Rules? Please give reasons for your views.

**Question 33** Do you agree to amend the Listing Rules to codify the requirement that an issuer normally appoint a firm of practicing accountants that is qualified under the PAO and is a Registered PIE Auditor under the FRCO to prepare an accountants' report that constitutes a PIE Engagement under the FRCO? Please give reasons for your views.

**Question 34** Do you agree to amend the Listing Rules to allow Overseas Issuers to appoint an audit firm that is not qualified under the PAO (but it is a Recognised PIE Auditor of that issuer under the FRCO) for PIE Engagements to prepare an accountants' report for a reverse takeover or a very substantial acquisition 159 Only PRC issuers are permitted to appoint Mainland auditors or reporting accountants (see section 20ZT of FRCO, Rules 19A.08 and 19A.31). 160 Paragraph 59 under Section 3 of the JPS circular relating to the acquisition of an overseas company? Please give reasons for your views.

**Question 35** Do you agree to amend the Listing Rules to codify the JPS requirement that, in relation to the PIE Engagements and notifiable transactions, overseas audit firms must normally fulfil the characteristics described in paragraph 271? Please give reasons for your views.

**Question 36** Do you agree to amend the Listing Rules to codify the amendments to the FRCO on the collection of levies by the Exchange on behalf of the FRC as described in paragraphs 280 and 281? Please give reasons for your views.

**Question 37** Do you agree to codify the JPS requirement for Company Information Sheets as described in paragraphs 283 to 288? Please give reasons for your views.

**Question 38** Do you agree that the Company Information Sheet requirement should be applied to: (a) secondary listed issuers; and (b) any other Overseas Issuer, at the Exchange's discretion, where it believes the publication of a Company Information Sheet would be useful to Hong Kong investors? Please give reasons for your views.

**Question 39** Do you agree to amalgamate the guidance described in paragraphs 289 and 290 into one combined guidance letter for Overseas Issuers (see Schedule E)? Please give reasons for your views.