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# AMENDMENTS TO THE GEM LISTING RULES

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## Chapter 10

### EQUITY SECURITIES

#### METHODS OF LISTING

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#### Placing

10.11 A placing is the obtaining of subscriptions for or the sale of securities by an issuer or intermediary primarily from or to persons selected or approved by the issuer or intermediary.

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10.13 Placings of securities by a listed issuer will be allowed only in the following circumstances:—

- (1) where ~~such the~~ placing falls within any general mandate given to the directors of the ~~applicant~~ listed issuer by the shareholders in accordance with rule 17.41(2); or
- (2) where the placing is specifically authorised by the shareholders of the ~~applicant~~ listed issuer in general meeting (“specific mandate placing”).

10.14 Placings by a listed issuer made in either of the circumstances set out in rule 10.13 are required to comply with the requirements of rule 10.12 (excluding sub-paragraphs (2), (6) and (7) in the case of a placing of securities of a class already listed). Specific mandate placings are also required to comply with rule 10.44A.

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#### Rights issue

10.23 A rights issue is an offer by way of rights to existing holders of securities which enables those holders to subscribe securities in proportion to their existing holdings. Rights issue need not be underwritten.

10.24 A rights issue must be made conditional on shareholders’ approval in the circumstances set out in rules ~~10.29 and 10.31(2)~~.

*Note: See rule 10.44A for the additional requirements relating to rights issues, open offers and specific mandate placings.*

10.24A Where rights issues are underwritten, normally the underwriters must satisfy the following requirements:

- (1) the underwriters are persons licensed or registered under the Securities and Futures Ordinance for Type 1 regulated activity and their ordinary course of business includes underwriting of securities, and they are not connected persons of the issuers concerned; or

~~(2) the underwriters are the controlling or substantial shareholders of the issuers.~~

The rights issue announcement, listing document and circular (if any) must contain a statement confirming whether the underwriter(s) comply with rule 10.24A(1) or (2).

10.25 If a rights issue is not fully underwritten the listing document must contain full disclosure of the fact that ...

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10.31 (1) In every rights issue, the issuer ~~must~~ may make arrangements to:—

- (a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renounees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or
- (b) dispose of securities not subscribed by allottees under provisional letters of allotment or their renounees by offering the securities to independent placees in the market, if possible, for the benefit of the persons to whom they were offered by way of rights.

The arrangements described in rule 10.31(1)(a) or (b) must be fully disclosed in the rights issue announcement, listing document and any circular.

~~(2) Where any of the issuer's controlling or substantial shareholders acts as an underwriter or sub-underwriter of the rights issue, the issuer must make the arrangements described in rule 10.31(1)(b).~~

~~(3) Where arrangements described in rule 10.31(1)(a) are made:~~

~~(a) The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular; and-~~

~~(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the rights issue minus the number of securities taken up by the relevant shareholders under their assured entitlements.~~

~~(2) If no arrangements or arrangements other than those described in rule 10.31(1) are made for the disposal of securities not subscribed by the allottees under provisional letters of allotment or their renounees and the rights issue is wholly or partly underwritten or subunderwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and / or sub-underwriting. The issuer must disclose the information required under rule 2.28 in the circular to shareholders.~~

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### Open offer

10.34 An open offer is an offer to existing holders of securities to subscribe securities, whether or not in proportion to their existing holdings, which are not allotted to them on renounceable documents. An open offer may be combined with a placing to become an open offer with a claw back mechanism, in which a placement is made subject to the rights of existing holders of securities to subscribe part or all of the placed securities in proportion to their existing holdings. Open offers need not be underwritten.

10.35 An open offer must be made conditional on shareholders' approval in the circumstances set out in rules 10.39, 10.41 and 10.42(2).

*Note: See rule 10.44A for the additional requirements relating to rights issues, open offers and specific mandate placings.*

10.36 ~~In relation to underwriting of open offers, the requirements under rules 10.24A, 10.25, 10.26 and 10.28 apply in their entirety to open offers with the term "rights issue" replaced by open offers. If an open offer is not fully underwritten the listing document must contain full disclosure of the fact that it is not fully underwritten and all other relevant circumstances and a statement of the minimum amount, if any, which must be raised in order for the issue to proceed. Such disclosure must appear on the front cover of the listing document and in a prominent position at the front of the document and be in a form approved by the Exchange.~~

~~In addition, the listing document must contain a statement of the intended application of the net proceeds of the issue according to the level of subscriptions and a statement in respect of each substantial shareholder as to whether or not that substantial shareholder has undertaken to take up his or its entitlement in full or in part and if so on what conditions, if any.~~

10.37 ~~[Repealed 3 July 2018]If an open offer is not fully underwritten:—~~

~~(1) the issuer must comply with any applicable statutory requirements regarding minimum subscription levels; and~~

~~(2) a shareholder who applies to take up his or its full entitlement may unwittingly incur an obligation to make a general offer under the Takeovers Code, unless a waiver from the Executive (as defined in the Takeovers Code) has been obtained.~~

~~Note: In the circumstances set out above in rule 10.37(2), an issuer may provide for shareholders to apply on the basis that, if the issue is not fully taken up, their application can be "scaled" down to a level which does not trigger an obligation to make a general offer.~~

10.38 ~~[Repealed 3 July 2018]If an open offer is underwritten (whether in whole or in part) by a person or persons whose ordinary business does not include underwriting, the listing document must contain full disclosure of that fact.~~

10.39 A proposed open offer must be made conditional on minority shareholders' approval in the manner set out in paragraphs (1) and (2) below, unless the securities will be issued by the listed issuer under the authority of a general mandate granted to them by shareholders in accordance with rules 17.41(2) and 17.42B. If the proposed open offer would increase either the number of issued shares or the market capitalisation of the

~~issuer by more than 50% (on its own or when aggregated with any other open offers or rights issues announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed open offer or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers):—~~

- (1) the open offer must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour. The issuer must disclose the information required under rule 2.28 in the circular to shareholders; and
- (2) the issuer shall set out in the circular to shareholders the purpose of the proposed open offer, together with the total funds expected to be raised and a detailed breakdown and description of the proposed use of the proceeds. The issuer shall also include the total funds raised and a detailed breakdown and description of the funds raised on any issue of equity securities in the 12 months immediately preceding the announcement of the proposed open offer, the use of such proceeds, the intended use of any amount not yet utilised and how the issuer has dealt with such amount.

10.39A Where shareholders' approval is required under rule 10.39, the Exchange reserves the right to require the following parties to abstain from voting in favour of the relevant resolution at the general meeting:

- (1) any parties who were controlling shareholders of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their associates; or
- (2) where there were no such controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer at the time the decision for the transaction or arrangement involving the open offer was made or approved by the board, and their respective associates.

The issuer must disclose the information required under rule 2.28 in the circular to shareholders.

10.39B Where shareholders' approval is required under rule 10.39, the issuer must comply with the requirements under rules 17.47(6) and 17.47(7) and rules 17.47A, 17.47B and 17.47C.

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10.41 ~~[Repealed 3 July 2018]If the securities are not offered to existing holders in proportion to their existing holdings then, unless the securities are to be allotted by the directors under the authority of a general mandate granted in accordance with rule 17.41(2), an open offer requires the prior approval of the shareholders in general meeting.~~

10.42 (1) In every open offer the issuer ~~must~~ may make arrangements to:-  
(a) ~~dispose of securities not validly applied for by shareholders under in excess of their assured allotments by means of excess application forms,~~

~~in which case such securities and the basis of allocation of the securities available for excess applications must be available for subscription by all shareholders and allocated on a fair basis; or~~

~~(b) dispose of securities not validly applied for by shareholders under their assured allotments by offering the securities to independent places for the benefit of those shareholders.~~

~~The arrangements described in rule 10.42(1)(a) or (b) must be fully disclosed in the open offer announcement, listing document and any circular.~~

~~(2) Where any of the issuer's controlling or substantial shareholders acts as an underwriter or sub-underwriter of the open offer, the issuer must make the arrangements described in rule 10.42(1)(b).~~

~~(3) Where arrangements described in rule 10.42(1)(a) are made:~~

~~(a) The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the open offer announcement, listing document and any circular; and-~~

~~(b) the issuer should take steps to identify the excess applications made by any controlling shareholder and its associates (together, the "relevant shareholders"), whether in their own names or through nominees. The issuer should disregard their excess applications to the extent the total number of excess securities they have applied for exceeds a maximum number equivalent to the total number of securities offered under the open offer minus the number of securities taken up by the relevant shareholders under their assured entitlements.~~

~~(2) If no arrangements or arrangements other than those described in rule 10.42(1) are made for the disposal of securities not validly applied for and the open offer is wholly or partly underwritten or sub-underwritten by a director, chief executive or substantial shareholder of the issuer (or an associate of any of them), then the absence of such arrangements or the making of such other arrangements must be specifically approved by shareholders. Those persons who have a material interest in such other arrangements must abstain from voting on the matter at the meeting and the circular to shareholders must contain full details of the terms and conditions of that underwriting and/or sub-underwriting. The issuer must disclose the information required under rule 2.28 in the circular to shareholders.~~

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## **Restrictions on rights issues, open offers and specific mandate placings**

10.44A A listed issuer may not undertake a rights issue, open offer or specific mandate placing that would result in a theoretical dilution effect of 25% or more (on its own or when aggregated with any other rights issues, open offers, and/or specific mandate placings announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues, open offers and/or specific mandate placings), unless the issuer can satisfy the Exchange that there are exceptional circumstances (for example, the issuer is in financial difficulties and the proposed issue forms part of the rescue proposal).

Notes: 1. Theoretical dilution effect of an issue refers to the discount of the “theoretical diluted price” to the “benchmarked price” of shares.

(a) The “theoretical diluted price” means the sum of (i) the issuer’s total market capitalization (by reference to the “benchmarked price” and the number of issued shares immediately before the issue) and (ii) the total funds raised and to be raised from the issue, divided by the total number of shares as enlarged by the issue.

(b) The “benchmarked price” means the higher of:

(i) the closing price on the date of the agreement involving the issue;  
and

(ii) the average closing price in the 5 trading days immediately prior to the earlier of:

(1) the date of announcement of the issue;

(2) the date of the agreement involving the issue; and

(3) the date on which the issue price is fixed.

(c) Where aggregation of a series of rights issues, open offers and/or specific mandate placings is required, the theoretical dilution effect would be calculated as if the relevant rights issues, open offers and/or specific mandate placings were all made at the same time as the first issue of the series.

For the purpose of determining the theoretical diluted price in paragraph (a) above, the total funds raised and to be raised from the issues would be calculated by reference to (i) the total number of new shares issued and to be issued and (ii) the weighted average of the price discounts of the issues (each price discount is measured by comparing the issue price against the benchmarked price at the time of that issue).

2. Issuers should consult the Exchange before they announce rights issues, open offers or specific mandate placings that may trigger the 25% threshold set out in rule 10.44A.

10.44B. The Exchange may exercise its discretion to withhold approval for, or impose additional requirements on, any rights issue, open offer or specific mandate placing that does not fall into rule 10.44A if in the opinion of the Exchange, such issue is inconsistent with the general principles of listing set out in rule 2.06, having regard to its terms (for example, a very large issue size or price discount).

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## Chapter 17

### EQUITY SECURITIES

#### CONTINUING OBLIGATIONS

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#### *Pre-emptive rights*

17.39 Except in the circumstances mentioned in rule 17.41, the directors of an issuer (other than a PRC issuer, to which the provisions of rule 25.23 apply) shall obtain the consent of shareholders in general meeting prior to allotting, issuing or granting:—

- (1) shares;
- (2) securities convertible into shares; or
- (3) options, warrants or similar rights to subscribe for any shares or such convertible securities.

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17.41 No such consent as is referred to in rule 17.39 shall be required:—

- (1) for the allotment, issue or grant of such securities pursuant to an offer made to the shareholders of the issuer which excludes for that purpose any shareholder that is resident in a place outside Hong Kong provided the directors of the issuer consider such exclusion to be necessary or expedient on account either of the legal restrictions under the laws of the relevant place or the requirements of the relevant regulatory body or stock exchange in that place and, where appropriate, to holders of other equity securities of the issuer entitled to be offered them, pro rata (apart from fractional entitlements) to their existing holdings but subject to rule 10.29; or

Notes: 1 ...

2 ...

3 The exemption for the shareholders' approval requirement under rule 17.41(1) does not apply to the allotment, issue or grant of securities under an open offer.

- (2) if, but only to the extent that, the existing shareholders of the issuer have by ordinary resolution in general meeting given a general mandate to the directors of the issuer, ....

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17.42B In the case of a placing or open offer of securities for cash consideration, an issuer may not issue any securities pursuant to a general mandate given under rule 17.41(2) if the relevant price represents a discount of 20% or more to the benchmarked price of the securities, such benchmarked price being the higher of:

- (1) the closing price on the date of the relevant placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
- (2) the average closing price in the 5 trading days immediately prior to the earlier of:
- (a) the date of announcement of the placing or the proposed transaction or arrangement involving the proposed issue of securities under the general mandate;
  - (b) the date of the placing agreement or other agreement involving the proposed issue of securities under the general mandate; and
  - (c) the date on which the placing or subscription price is fixed,

unless the issuer can satisfy the Exchange that it is in a serious financial position and that the only way it can be saved is by an urgent rescue operation which involves the issue of new securities at a price representing a discount of 20% or more to the benchmarked price of the securities or that there are other exceptional circumstances. The issuer shall provide the Exchange with detailed information on the allottees to be issued with securities under the general mandate.

17.42C The issuer may not issue securities convertible into new shares of the issuer for cash consideration pursuant to a general mandate given under rule 17.41(2), unless the initial conversion price is not lower than the benchmarked price (as defined in rule 17.42B) of the shares at the time of the placing.

17.42D The issuer may not issue warrants, options or similar rights to subscribe for (a) any new shares of the issuer or (b) any securities convertible into new shares of the issuer, for cash consideration pursuant to a general mandate given under rule 17.41(2).

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#### *Trading limits*

17.76 Where the market price of the securities of the issuer approaches the extremities of HK\$0.01 or HK\$9,995.00, the Exchange reserves the right to require the issuer either to change the trading method or to proceed with a consolidation or splitting of its securities.

17.76A The issuer must not undertake a subdivision or bonus issue of shares if its share price adjusted for the subdivision or bonus issue is less than HK\$1 based on the lowest daily closing price of the shares during the six-month period before the announcement of the subdivision or bonus issue.

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**Chapter 18**  
**EQUITY SECURITIES**  
**FINANCIAL INFORMATION**

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**Annual reports**

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*Information to accompany directors' report and annual financial statements*

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18.32 ~~In the case of any issue for cash of equity securities (including securities convertible into equity securities) made otherwise than to the listed issuer's shareholders in proportion to their shareholdings and which has not been specifically authorized by the listed issuer's shareholders:—~~

(1) ...

...

~~(8) the use of the proceeds.~~

(8) the total funds raised from the issue and details of the use of proceeds including:

(a) a detailed breakdown and description of the proceeds for each issue and the purposes for which they are used during the financial year;

(b) if there is any amount not yet utilized, a detailed breakdown and description of the intended use of the proceeds for each issue and the purposes for which they are used and the expected timeline; and

(c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reasons for any material change or delay in the use of proceeds.

*Note: Issuers are recommended to present the above information in tabular format to show separately the amounts used and the purposes for which they are used, and compare each of the actual or intended uses against the intention and expected timeframe previously disclosed by the issuer.*

18.32A To the extent that there are proceeds brought forward from any issue of equity securities (including securities convertible into equity securities) made in previous financial year(s), the listed issuer shall disclose the amount of proceeds brought forward and details of the use of such proceeds as set out in rule 18.32.

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18.55A. A listed issuer shall include in its interim report the information in relation to any issue for cash of equity securities (including securities convertible into equity securities) during the interim period as set out in rule 18.32, and where applicable, the information required under rule 18.32A.

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## Chapter 20

### EQUITY SECURITIES

#### CONNECTED TRANSACTIONS

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##### What are connected transactions

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20.22 “Transactions” include both capital and revenue nature transactions, whether or not conducted in the ordinary and usual course of business of the listed issuer’s group. This includes the following types of transactions:

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- (6) issuing new securities of the listed issuer or its subsidiaries, including underwriting or sub-underwriting an issue of securities;

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##### Issues of new securities by the listed issuer or its subsidiary

20.90 An issue of new securities by a listed issuer or its subsidiary to a connected person is fully exempt if:

- (1) the connected person receives a pro rata entitlement to the issue as a shareholder;
- (2) the connected person subscribes for the securities in a rights issue or open offer:
  - (a) through excess application (see rule 10.31(1) or 10.42(1)); or
  - (b) ~~[Repealed 3 July 2018] in his or its capacity as an underwriter or sub-underwriter of the rights issue or open offer, and rule 10.31 or 10.42 (arrangements to dispose of any excess securities) has been complied with. In this case, the listing document must contain the terms and conditions of the underwriting arrangement;~~

*~~Note: Any commission and fees payable by the listed issuer’s group to the connected person for the underwriting arrangement are not exempt under this exemption.~~*

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