



Han Kun Newsletter

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Legal Updates

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1. New Opportunities for Innovative SMEs — A First Look at the BSE¹

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On September 2, 2021, General Secretary Xi Jinping announced in his speech at the Global Trade in Services Summit of the 2021 China International Fair for Trade in Services, that China would continue to support the innovative development of small and medium-sized enterprises, deepen the reform of the NEEQ (as defined below), establish the Beijing Stock Exchange, and build a main position to serve innovative small and medium-sized enterprises. The inception of the Beijing Stock Exchange (the “**BSE**”) has become a hot topic in the market.

Following General Secretary Xi’s speech, the China Securities Regulatory Commission (the “**CSRC**”) issued *Answers to Journalists by Heads of the CSRC on Deepening the Reform of the National Equities Exchange and Quotations and Establishing the Beijing Stock Exchange*, and then issued an article elaborating the main ideas for establishing the BSE titled *Adhering to Dislocation Development and Highlighting Characteristics to Better Serve the Beijing Stock Exchange’s Development of Innovative Small and Medium-sized Enterprises*. On the next day, the CSRC held a press conference to answer questions from the journalists with respect to matters concerning the BSE and released drafts for comments of several rules, such as the *Measures for Administration of Stock Registration and Public Offerings to Unspecified Qualified Investors on the Beijing Stock Exchange (for Trial Implementation)*, *Measures for Administration of Issuing and Registering Securities by Listed Companies on the Beijing Stock Exchange (for Trial Implementation)*, *Measures for Continuous Supervision of Listed Companies on the Beijing Stock Exchange (for Trial Implementation)* and a revised *Measures for Administration of Stock Exchanges*.

In just two days, although all the specific rules of the BSE have not debuted, we can catch a glimpse of the general framework of the BSE’s origin, positioning and characteristics from General Secretary Xi’s speech, relevant articles posted by the CSRC, contents of press conferences and drafts for comments of the BSE’s basic systems, and arrangements issued by the CSRC.

Origin and location

I Origin from the NEEQ Select

The BSE was established based on the select tier (the “**NEEQ Select**”) of the National Equities Exchange and Quotations system (the “**NEEQ**”, commonly known as the “**New Third Board**”). The NEEQ Select started from the *Measures for Tier-based Administration of the National Equities Exchange and Quotation System* issued by the NEEQ on December 27, 2019, and the NEEQ Select market opened for trading on July 27, 2020. According to data published on NEEQ’s official website, as of September 3, 2021, there are 66 companies quoted on the NEEQ Select. Although the number and total share capital of these companies are far smaller than those in the base tier (the “**NEEQ Base**”) and the innovation tier (the “**NEEQ Innovation**”), the liquidity of the shares of the companies on the

¹ The Chinese version of this article was published on September 4, 2021.

NEEQ Select is significantly higher than those of the companies in other NEEQ tiers. The specific data are as follows:

| Classification | Number of quoted companies | Total share capital (100 million shares) | Outstanding share capital (100 million shares) | Number of closing shares (10,000 shares) | Trading volume (RMB10,000) |
|-----------------|----------------------------|--|--|--|----------------------------|
| Select tier | 66 | 108.44 | 50.54 | 18,004.60 | 262,726.83 |
| Innovation tier | 1,250 | 1,295.66 | 766.48 | 12,292.94 | 73,314.33 |
| Base tier | 5,983 | 3,446.06 | 2,146.27 | 5,950.50 | 19,237.58 |

As relevant officials stated at the CSRC’s press conference on September 3, 2021, the NEEQ Select, after a year of practice, has gained the preliminary public market function of serving small and medium-sized enterprises (“**SMEs**”). This is the starting point for the story of the BSE in its transformation from the NEEQ Select into a stock exchange, and to convert non-listed public companies quoted on the NEEQ Select into exchange listed companies.

II The “1, 2, 3” principle

In response to the orientation of the BSE, the CSRC, in its article *Adhering to Dislocation Development and Highlighting Characteristics to Better Serve the Beijing Stock Exchange’s Development of Innovative Small and Medium-sized Enterprises*, explicitly states that the CSRC will focus on the following principles in implementing the BSE:

- Adhering to “One Orientation”. The BSE will firmly adhere to the market orientation of serving innovative SMEs, respect the development pattern and growth step of innovative SMEs, and enhance the inclusiveness and accuracy of the BSE systems.
- Properly handling “Two Relationships”. Firstly, the BSE, the Shanghai Stock Exchange (the “**SSE**”), the Shenzhen Stock Exchange (the “**SZSE**”) and regional equity markets will adhere to dislocation development and interconnection, and the BSE will play the role of transferring companies to list on other markets. Secondly, the BSE and the NEEQ Innovation and the NEEQ Base will adhere to overall planning, coordination and system linkage, and maintain the balance of the market structure.
- Achieving “Three Objectives”. Firstly, a set of basic institutional arrangements covering listing, trading, delisting, continuous regulation, investor suitability, etc. that fit the characteristics of innovative SMEs will be established to make up for the weakness of the multi-tiered capital markets in developing inclusive finance. Secondly, the role of the BSE as a link in the multi-tiered capital markets will be unblocked, and a growth path of direct financing by the SMEs will be mutually supplemented and promoted. Thirdly, a number of “**Zhuan Jing Te Xin**” SMEs will be cultivated, and a positive market ecology will be formed, in which there is high enthusiasm for innovation and entrepreneurship, qualified investors actively participate, and intermediaries are responsible.

Based on the above principles, the BSE positions itself to serve innovative SMEs, identical to the two

existing registration pilot projects, namely the STAR Market and ChiNext, which both emphasize innovation; however, compared to the STAR Market and ChiNext, the BSE serves more innovative **SMEs**, and compared with the SSE and the SZSE, the enterprises it serves are “**earlier, smaller, and newer**”. Based on the above orientation and characteristics, the BSE is required to adopt a system different from that of the SSE and the SZSE in terms of listing conditions, refinancing mechanisms, continuous regulation requirements, and investor suitability, etc., so as to promote the dislocated development between the SSE and the SZSE, and improve the multi-tiered capital market system with Chinese characteristics.

System characteristics and issues of interest

As mentioned above, the BSE will adopt a system different from that of the SSE and the SZSE based on its orientation and objectives. Here, we analyze the system characteristics and issues of interest as to the BSE as a “main position to serve innovative SMEs” based on the content of the CSRC’s press conference and the published series of draft rules.

III Conditions and procedures for issuing and listing on the BSE

1. Conditions for issuing and listing

Companies listing on the BSE will be from two sources—currently quoted companies and new companies. The currently quoted companies are those that have already been quoted on the NEEQ Select (currently 66 companies and there might be more before the BSE commences operating), which will move from the NEEQ Select to the BSE for listing; and the new companies are companies listed on the NEEQ Innovation that have been listed in that tier for over 12 months. That is to say, the new companies are those companies that are qualified from among the 1,250 companies which are quoted on the NEEQ Innovation and companies that subsequently enter the NEEQ Innovation.

With respect to the conditions for issuance of shares on the BSE, Chapter II “Conditions for Issuance” of the *Measures for Administration of Stock Registration and Public Offerings to Unspecified Qualified Investors on the Beijing Stock Exchange (for Trial Implementation)*, promulgated by the CSRC, generally regulates the basic conditions for applications for public offerings of shares on the BSE. Such conditions are basically consistent with the conditions for public offerings to unspecified qualified investors under the *Measures for Supervision and Administration of Non-listed Public Companies (2019 Revision)* applicable to companies quoted on the NEEQ. The specific conditions are as follows:

| # | Conditions for issuance on the BSE | Conditions for public offering of shares on the NEEQ |
|------------------|--|---|
| Basic conditions | Has an organization that is sound and in good standing. | Has an organization that is sound and in good standing. |
| | Has the ability to operate as a going concern and is in good financial standing. | Has the ability to make profits as a going concern and is in good financial standing. |

| # | Conditions for issuance on the BSE | Conditions for public offering of shares on the NEEQ |
|---------------------|---|---|
| | In the last three years, no false records have been made in the financial and accounting reports and the audit reports have been issued with unqualified opinions . | In the last three years, no false records have been made in the financial and accounting reports. |
| | Operates properly in accordance with the law. | Operates properly in accordance with the law. |
| Negative conditions | Where an issuer or its controlling shareholder or actual controller falls under any of the following circumstances, the issuer shall not make a public offering: | |
| | Criminal offenses of corruption, bribery, embezzlement or misappropriation of property or disruption of the socialist market economic order in the last three years. | Criminal offenses of corruption, bribery, embezzlement or misappropriation of property or disruption of the socialist market economic order in the last three years. |
| | In the last three years, there are any serious illegal acts in fraudulent offerings, serious illegal acts in disclosure of information or any other serious illegal acts involving fields such as national security, public security, ecological security, work safety, and public health safety. | In the last three years, there are any serious illegal acts in fraudulent offerings, serious illegal acts in disclosure of information or any other serious illegal acts involving fields such as national security, public security, ecological security, work safety, and public health safety. |
| | Any administrative penalties imposed by the CSRC within the last year. | Any administrative penalties imposed by the CSRC within the last 12 months. |

As for the BSE’s listing conditions, while the listing rules and other supporting rules have yet to be issued, we understand that it is likely that there will be no additional substantive conditions than those for companies to be quoted on the NEEQ Select, given that the BSE will generally transition the NEEQ Select’s basic systems. If we take the NEEQ Select quoting conditions as a reference for listing on the BSE, the financial requirements and negative conditions are substantially as set forth in the table below; these are in addition to the 12-month NEEQ quoting requirement (also that companies will need to have previously satisfied the conditions to be quoted on the NEEQ Innovation). From these conditions, we observe the required minimum market capitalization is lower than that of the STAR Market and ChiNext and non-profitable companies have an opportunity to list on the BSE. However, the BSE has a higher requirement for companies’ net assets at the end of the last year.

| # | Conditions | Content |
|------------------------|---|---|
| Financial requirements | The company must satisfy one of the conditions shown on the right | Market capitalization ² is not less than RMB200 million, net profits in the last two years are not less than RMB15 million and the weighted average return on net assets is not less than 8%, or the net profits in the last year are not less than RMB25 million and the weighted average return on net assets is not less than 8%. |
| | | Market capitalization is not less than RMB400 million, operating income in the last two years is not less than RMB100 million, the growth rate of operating income in the last year is not less than 30%, and the net cash flow from operating activities in the last year is positive. |
| | | Market capitalization is not less than RMB800 million, operating income in the last year is not less than RMB200 million, and total R&D investment in the last two years is not less than 8% of total operating income. |
| | | Market capitalization is not less than RMB1.5 billion, and the total R&D investment in the last two years is not less than RMB50 million. |
| | In addition to the above conditions, all conditions shown on the right must be satisfied | Net assets at the end of the last year are not less than RMB50 million . |
| | | The number of shares publicly issued is not fewer than 1 million, and the number of subscribers for the issuance is not less than 100. |
| | | After the public offering, the total share capital of the company is not less than RMB30 million. |
| | | After the public offering, the number of shareholders of the company is not be less than 200, and the shareholding percentage of public shareholders ³ is not less than 25% of the total share capital of the company; where the total share capital of the company exceeds RMB400 million, the shareholding percentage of public shareholders is not less than 10% of the total share capital of the company. |
| | | Other criteria stipulated by the CSRC and the NEEQ. |
| | | |
| Negative | Where a quoted company or any other relevant entity falls under any of the | |

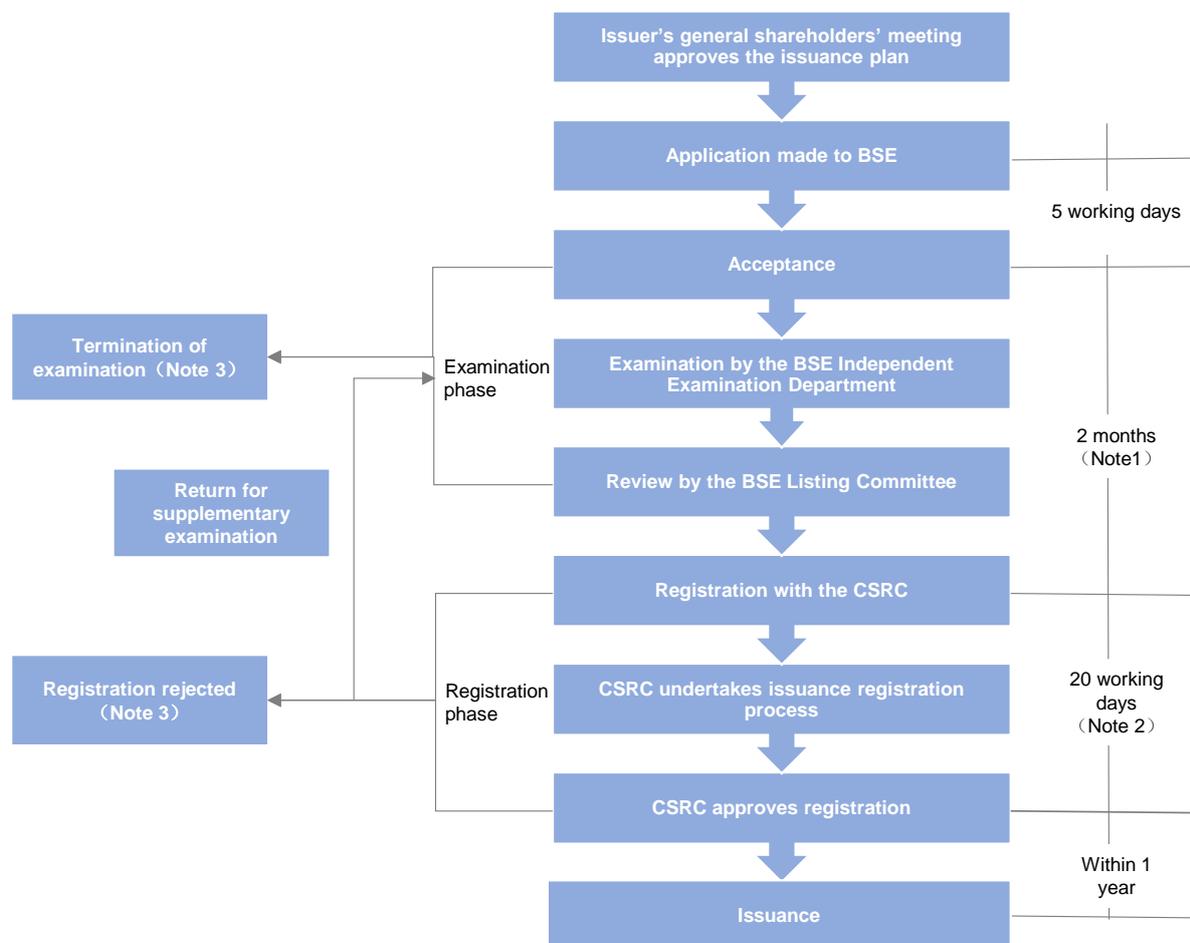
² “Market capitalization” refers to the market value of the quoted company’s shares based on the public issuance price offered to the unspecified qualified investors.

³ “Public shareholders” refer to shareholders of the quoted company on the NEEQ other than the following shareholders: (1) shareholders who hold 10% or more of the company’s shares and other shareholders who are acting in concert with them; and (2) directors, supervisors and senior management personnel of the company and their family members who have a close relationship with them; legal entities or organizations directly or indirectly controlled by directors, supervisors and senior management personnel of the company. Family members who have a close relationship with them include spouse, children and their spouse, parents and parents-in-law, siblings and their spouse, spouse’s siblings, and children’s parents-in-law.

| # | Conditions | Content |
|------------|------------|---|
| conditions | | <p>following circumstances, the quoted company may not enter the NEEQ Select:</p> <p>(1) the quoted company or its controlling shareholder(s) or actual controller has committed any act stipulated in the aforesaid Negative Conditions in the NEEQ public offering criteria within the last three years;</p> <p>(2) the quoted company or its controlling shareholder(s), actual controller, directors, supervisors or senior management personnel has/have been subject to administrative penalties imposed by the CSRC or its branches during the past 12 months; or been subject to public condemnation by the NEEQ or other self-governance regulatory authorities for illegal acts or irregularities in the securities markets;</p> <p>(3) the quoted company or its controlling shareholder(s), actual controller, directors, supervisors or senior management personnel is/are subject to investigation by the judicial authorities for an alleged criminal offense or subject to investigation by the CSRC or its branches for an alleged violation, and a specific conclusion is pending; the quoted company or its controlling shareholder(s) or actual controller is/are placed on a list of dishonest civil debtors, and the circumstances are yet to be resolved; the annual report is not formulated and disclosed within four months following the end of each accounting year pursuant to the provisions of the NEEQ, or a half-year report is not formulated and disclosed within two months following the end of the first half year of each accounting year;</p> <p>(4) an accounting firm has issued an audit report with qualified opinions for the financial accounting reports in the last three years;</p> <p>(5) circumstances that would have a significant adverse impact on the quoted company's operating stability, directly influence its ability to engage in market-oriented independent and sustainable operations, or other situations such as damage to the interests of the quoted company, as stipulated by the CSRC and the NEEQ.</p> |

2. BSE issuance and listing procedures

As for issuance and listing procedures, the BSE will launch a pilot securities issuance and registration system, continuing the principle of launching pilot registration systems on the STAR Market and ChiNext. The pilot system will center around information disclosure and the SMEs actual circumstances so as to strengthen its pertinence, accuracy and inclusiveness, solidify the responsibilities of all parties, increase the cost of illegal acts, and strengthen investor protections. In accordance with the provisions of Chapter III "Registration Procedures" of the *Measures for Administration of Stock Registration and Public Offerings to Unspecified Qualified Investors on the Beijing Stock Exchange (for Trial Implementation)*, the registration procedures for public offerings and listings at the BSE can be summarized as follows:



Note1: This 2-month period does not include time the issuer may take to supplement or amend its application documents following on-site examination and special verification of relevant matters.

Note 2: This 20-working day period does not include time the issuer may take to supplement or amend application documents as required by the CSRC; this process may involve CSRC requesting the BSE to make further inquiries, requiring the sponsors, securities service institutions and others to verify relevant matters, and conducting on-site examinations of the issuer.

Note 3: The issuer may again file an application for public listing after six months from the date of a rejection decision.

3. “Zhuan Jing Te Xin” enterprises

Among the BSE’s “Three Objectives” mentioned by the CSRC, “cultivating a number of ‘Zhuan Jing Te Xin’ SMEs” has attracted particular attention. This description is usually interpreted as “specialized, refined, distinguished, and novel”. It has been used in national and local policy documents and important speeches for the past decade, and “developing ‘Zhuan Jing Te Xin’ SMEs” was mentioned at the meetings of the Political Bureau of the CPC Central Committee on July 30, 2021. The BSE’s system design and policy implementation are likely to give priority support to this type of enterprise.

4. Can red-chip enterprises list on the BSE?

According to the current drafts for comment, the BSE will allow companies to list with differentiated voting rights arrangements. But another interesting question is — can red-chip enterprises that conform to the characteristics of innovative SMEs list on the BSE in the future, just as is allowed in

other registered pilot markets (namely the STAR Market and ChiNext)? Based on the current rules, the answer is still no, because BSE listed companies will be from companies quoted on the NEEQ Innovation or the NEEQ Select, and the NEEQ currently has no rules or precedents for red-chip enterprises to be quoted. Therefore, relevant rules must first be introduced for red-chip enterprises to be quoted on the NEEQ before they may list on the BSE.

IV Refinancing policies

The BSE will implement a “small, fast, flexible, and diversified” refinancing policy for its listed companies, highlight the market characteristics of the BSE on the basis of absorbing and learning from the mature practices of the SSE and the SZSE, meet the needs of innovative SMEs, and set up a targeted risk prevention and control mechanism to strengthen the protection of the legitimate rights and interests of investors.

Among them, **the types of financing** will include common stocks, preferred stocks, convertible bonds and other equity financing instruments, which will further meet the actual needs of SMEs. **Issuance methods** will include multiple financing methods such as public issuance to unspecified qualified investors and issuance to specified entities, as well as flexible issuance mechanisms such as authorized issuance, shelf issuance and self-initiated issuance, so as to reduce the financing costs of SMEs. In terms of **the pricing mechanism**, it is required to adhere to the market-oriented orientation, promote full play between old and new shareholders, “take bidding as the principle and pricing as the exception”, make no administrative interventions in issuance prices, scale, etc., strengthen the protection of the rights and interests of investors, further improve pricing efficiency, and regulate orderly issuances.

V Continued post-listing supervision of companies

In terms of continued supervision of companies following listing, the BSE will learn sufficiently from the existing supervision experience of listed companies on the SSE and the SZSE, form a differentiated policy in line with the characteristics of SMEs, take into full consideration the characteristics that the listed companies are SMEs and the overall scale is smaller than that of the SSE and the SZSE, pay attention to balancing the standardized costs of enterprises, and give play to the role of market constraint mechanisms and corporate autonomy. Among them, it is worth noting that:

- In terms of **reduction of shareholdings**, given that the listed companies on the BSE are generated from the open market and there is limited room for arbitrage through reduction of shareholdings, compared with the listed companies on the SSE and SZSE, the restrictions on the time and number of reduction of shareholdings by major shareholders, actual controllers, directors, supervisors and senior management personnel are relaxed and replaced by pre-disclosure requirements: where the total number of shares to be reduced by the aforesaid shareholders through centralized bidding transactions at the BSE within 3 months exceeds 1% of the total number of shares of the company, the aforesaid shareholders shall disclose the shareholding reduction plan 30 trading days before the initial sale (while the requirements of the SSE and the SZSE are that the total number of shares reduced by major shareholders of a listed company through centralized bidding transactions at any consecutive 90 days shall not exceed 1% of the total number of shares of the listed company);

- In terms of **lock-up periods**, the lock-up period for shares of unprofitable enterprises will be appropriately extended (specific rules are to be further promulgated by the BSE);
- In terms of **equity incentives**, the experience of the STAR Market and ChiNext will be used for reference in the design of the equity incentive policy: shareholders holding more than 5% of shares or actual controllers and their spouses, parents and children, as well as directors, senior management personnel, core technicians or core business personnel, may fall into the scope of persons to be incented. Existing provisions of the NEEQ will be followed in terms of equity incentive price and proportion: relevant provisions of the BSE must be observed where a listed company grants persons restricted shares priced lower than 50% of the market reference price or the exercise price of stock options is lower than the market reference price, such pricing basis and pricing method must be explained; the total amount of equity incentives must not exceed 30% of the company's total share capital and, at the same time, the amount of equity incentives to any individual must not exceed 1% of the total share capital;
- In terms of **material asset restructurings**, the criteria for determining a major asset restructuring will be adjusted in light of the characteristics of SMEs. The criteria will be based on Article 12⁴ of the *Measures for Administration of the Material Asset Restructurings of Listed Companies*. Originally, the requirement was that the operating income from the purchased or sold assets in the last fiscal year accounted for 50% or more of the company's operating income as specified in its audited consolidated financial statements for the same period. Now, this specified operating income must also be more than RMB50 million.

Meanwhile, the BSE will further formulate detailed implementing rules for corporate governance, ongoing information disclosure, reduction of shareholdings, equity incentives, employee stock ownership plans, material asset restructurings, delisting, etc.

VI Trading policies and investor suitability

1. With respect to trading policies

The BSE will adopt continuous auction trading, and no price limit will be imposed on the first day when new shares are listed, while the price limit will be 30% from the next day. On other boards, for companies not marked as ST, on the main board, a 44% price limit is imposed on new shares on the first day of trading, and the price limit is 10% thereafter. No price limit is imposed on the STAR Market

⁴ Article 12 of Measures for Administration of the Material Asset Restructurings of Listed Companies: Where a purchase or sale of assets by a listed company or any company held or controlled by it reaches any of the following criteria, it constitutes a material asset restructuring: (1) The total assets purchased or sold account for 50% or more of the ending total assets as specified in the listed company's audited consolidated financial statements for the last fiscal year; (2) The operating income from the purchased or sold assets in the last fiscal year accounts for 50% or more of the operating income as specified in the listed company's audited consolidated financial statements for the same period.; or (3) The net assets purchased or sold account for 50% or more of the ending net assets as specified in the public company's audited consolidated financial statements for the last fiscal year, and exceed RMB 50 million. Where the assets purchased or sold do not attain the standards stipulated in the preceding paragraph, but the CSRC discovers any significant issue which may harm the legitimate rights and interests of the listed company or investors, the CSRC may, pursuant to the prudential regulatory principle, order the listed company to make supplementary disclosure of the relevant information pursuant to the provisions of these Measures, suspend trading, and engage an independent financial consultant or any other securities service organization to make supplementary examination and disclose its professional opinion.

and ChiNext for new shares five trading days following listing, and the price limit is 20% thereafter. Comparatively, the BSE will apply a greater pricing range for listed companies' shares.

2. As for investor suitability

According to the *Measures for Administration of Stock Registration and Public Offerings to Unspecified Qualified Investors on the Beijing Stock Exchange (for Trial Implementation)*, qualified investors on the BSE must comply with the investor suitability-related provisions of the CSRC and the BSE; however, no specific requirements have been specified thus far. According to the Q&A at the press conference of the CSRC on September 3, 2021, the structural investment preferences and behavioral characteristics of qualified investors on the BSE will be significantly different from those of general individual investors on the SSE and SZSE. These preferences and behavioral characteristics will match the risk characteristics of innovative SMEs and will form a long-term and rational investment culture. It is expected that the overall market operation will be relatively stable, transactions will be of relatively low frequency and rational, and shareholding periods will be relatively long. More attention will be paid to medium and long-term returns brought about by the growth of enterprises. Based on the above, hereinafter we take a look at the requirements for qualified investors on the NEEQ, especially those on the NEEQ Select – to complement the tier-based market policy, the NEEQ currently implements differentiated investor access conditions. The requirements for legal entities, partnership-type investors, and individual investors are as follows (individual investors also need to meet certain specific investment and work experience criteria):

| Types of qualified investors | Legal entity/partnership investor threshold requirements (Paid-in capital/Total paid-in capital) | Threshold requirements for individual investors (daily average securities assets in the 10 trading days prior to applying for authorization) | Scope of authorized transactions |
|-------------------------------------|--|---|---|
| Type I qualified investor | RMB2,000,000 | RMB2,000,000 | Any NEEQ tier |
| Type II qualified investor | RMB1,500,000 | RMB1,500,000 | Select tier, innovation tier |
| Type III qualified investor | RMB1,000,000 | RMB1,000,000 | Select tier |

Based on the above discussion, it is not difficult to observe that the NEEQ Select has higher thresholds for investors compared with the STAR Market and ChiNext, which matches the characteristics of the companies on the NEEQ Select with large fluctuations in performance and high operational risk. According to the CSRC press conference on September 3, 2021, we understand that the BSE may continue to follow the investor suitability-related requirements of the NEEQ Select for a certain period in the future. However, the requirements may be reconsidered and adjusted in the future based on the trading status of the listed companies on the BSE and market needs.

One issue related to investor suitability is that, given the NEEQ Select is being upgraded to the BSE,

the BSE may allow public funds to invest in order to obtain more potential investors and funds. Public funds may be granted the same freedom to invest in BSE-listed companies as in companies listed on the SSE and the SZSE, without the need to undertake relevant legal procedures and to comply with requirements and restrictions under the *Guidelines for Investment in Stocks Listed on the National Equities Exchange and Quotations by Publicly Offered Securities Investment Funds*, published by the CSRC. This issue is yet to be clarified in rules and verified in practice.

VII Relationship among the BSE, the SSE, the SZSE, and the NEEQ

In terms of the relationship with the SSE and the SZSE, in order to promote the formation of a multi-tiered capital market system with Chinese characteristics with distinct emphasis and mutual complementation, the BSE will adhere to the original intention and mission to serve innovative SMEs, adhere to the differentiated institutional arrangements, highlight the market characteristics, and properly deal with the relationship among the BSE and the SSE, the SZSE in terms of dislocation development and interconnection. The BSE will mainly focus on innovative SMEs and, compared with the SSE and the SZSE, it will serve enterprises that are “earlier, smaller, and newer”. At the same time, the BSE will also adhere to the mechanism of transferring to other markets, and the mature listed companies on the BSE may also choose to transfer to the SSE and the SZSE for listing in the future to continue to seek development in the capital markets.

In terms of the relationship with the NEEQ, the existing NEEQ Innovation and NEEQ Base and the BSE will achieve overall coordination and system linkage. On the one hand, a progressive market structure will be established, starting from the NEEQ Base, the NEEQ Innovation, and to the BSE. Enterprises cultivated and developed on the NEEQ Base and the NEEQ Innovation may choose to further list on the BSE. Companies delisted from the BSE that meet the relevant conditions may continue to trade on the NEEQ Innovation or the NEEQ Base. Finally, they may directly exit the capital markets if they are involved in any major violation of laws and regulations. On the other hand, in terms of organizational structure, the BSE will be funded and established by the National Equities Exchange and Quotations Corporation Limited (the “**NEEQ Co., Ltd.**”). That is, the BSE, as a corporate stock exchange, will be a subsidiary of the NEEQ Co., Ltd.; and the NEEQ will coordinate the construction and development of the NEEQ Base, the NEEQ Innovation, and the BSE, and implement “integrated management and independent operation”.

Conclusion

The establishment of the BSE is a landmark event for further deepening the reform of the NEEQ and further improving the construction of the multi-tiered capital markets. Also, the BSE is another experimental field for piloting the securities issuance registration system. When we first came to see the BSE, we observed its orientation and institutional characteristics based on serving innovative SMEs. Looking to the future we expect the BSE to be more inclusive as to its listing conditions and examination processes of prospective listed companies, to liberalize investor suitability, as well as strictly implement the delisting system. As a result, more high-quality enterprises may have the opportunity to list on the BSE and more investors may have the opportunity to invest, so that the BSE can show its vitality and energy as a stock exchange. Further, we expect that the BSE will bring new opportunities to the capital

market for innovative SMEs. With the help of the capital market system established by the BSE, enterprises, especially innovative SMEs, can choose a suitable market that is appropriate to their own circumstances in a timely manner, and may transfer to other markets for listing based on the interconnection of relevant markets. Thus, with the help of the capital markets, enterprises can achieve faster and better development.

2. SPACs March into Hong Kong – Interpreting a New Journey for SPACs from the Perspective of PRC Company Cross-border Finance (III)

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On September 17, 2021, the Stock Exchange of Hong Kong Limited (“**HKEX**”) published a consultation paper (the “**Consultation Paper**”) to publicly seek market opinions on draft amendments to the Rules Governing the Listing of Securities on the Exchange (the “**Listing Rules**”). The amendments aim to promote and implement a listing regime for special purpose acquisition companies (“**SPACs**”) in Hong Kong. The consultation period is 45 days, ending on October 31, 2021.

The Consultation Paper, consisting of five chapters, specifies the background for introducing SPACs in Hong Kong, the basic mechanisms for SPACs, and the main benefits and potential risks that SPACs present to the market and to investors. It further introduces various regulatory and safeguard measures HKEX has proposed to limit relevant investment risks.

Notably, the Consultation Paper sets out a comprehensive comparison of the SPAC listing rules among other jurisdictions, specifically the United States, United Kingdom, and Singapore. The comparison facilitates the understanding of HKEX’s rationale behind its proposed SPAC listing regime (namely, to expand the market), and how HKEX plans to provide comprehensive protections to investors. For each specific issue, the Consultation Paper solicits opinions on the proposed listing regime followed by raising questions and collecting feedback. Schedule D of the Consultation Paper lists HKEX’s proposed amendments to the Listing Rules for SPAC listings.

In order to help our clients and friends quickly grasp the key issues discussed in HKEX’s SPAC Consultation Paper, we have summarized the key issues of the Consultation Paper regarding Hong Kong SPAC listings in the following table:

| Subject | HKEX's Key Proposals | Han Kun Remarks |
|-------------------------------------|---|---|
| Prior to De-SPAC Transaction | | |
| Investor suitability | <ul style="list-style-type: none"> ■ The subscription and trading of SPAC shares and SPAC warrants will be restricted to Professional Investors⁵ only; ■ SPAC shares and SPAC warrants must be distributed to at least 75 Professional Investors, of which 30 must be Institutional Professional Investors; ■ According to the definition of “Professional Investors”, in principle, SPAC securities can only be purchased by (1) an individual having a portfolio of no less than HK\$8 million, (2) a trust corporation with total assets of no less than HK\$40 million; or (3) a corporation or partnership which has a portfolio of no less than HK\$8 million or total assets of no less than HK\$40 million; ■ The shares of the listed company after the completion of a De-SPAC Transaction⁶ (the “Successor Company”) are not subject to the same restrictions, i.e., they are allowed to be traded by other investors. | <p>As opposed to the flexible system in place for investors in the United States, the United Kingdom, and Singapore, the Consultation Paper would restrict Hong Kong SPAC investors to “Professional Investors” as set out in the Hong Kong Securities and Futures Ordinance, which follows the long-standing threshold of Hong Kong markets and excludes retail investors. This limitation must be thoroughly assessed from a long-term and system-building perspective. Risk control for SPACs is a prevalent concern for capital markets in all major jurisdictions. To an extent, we understand the rationale behind HKEX’s proposed adoption of this restriction. However, whether to establish a more flexible conversion or transition mechanism that guides the active foundation of the Hong Kong SPAC market as much as possible is a system-related discussion that calls for comprehensive research and judgment.</p> |
| Trading arrangement | <ul style="list-style-type: none"> ■ SPAC shares and SPAC warrants will be traded separately after the initial offering; ■ Measures will be implemented to mitigate the risks associated with the volatility of trading SPAC warrants (including automatically putting the Volatility Control Mechanism (VCM) in effect when trading SPAC warrants and only allowing manual trading of SPAC warrants). | <p>The practice of allowing SPAC shares and SPAC warrants to be traded separately is common in major active capital markets. However, this practice does, to an extent, create a risk of price volatility in SPAC securities, especially in SPAC warrants. We believe that it is necessary to provide different types of SPAC securities with the flexibility to trade separately. The safeguard measures proposed in the Consultation Paper are expected to</p> |

⁵ Defined hereunder.

⁶ A business combination between a SPAC and a De-SPAC target that results in the listing of a Successor Company.

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| | | effectively reduce volatility risk. |
| Dilution cap | <ul style="list-style-type: none"> ■ The number of Promoter shares must be no more than 30% of the total number of outstanding shares on the initial offering date; ■ Likewise, the shareholding ratio after the exercise of warrants must be no more than 30% of the total number of outstanding shares. | <p>The policy adopted in the Consultation Paper shows an inclination toward the logic behind Singapore's SPAC regime. The overall balance between the interests of SPAC Promoters⁷ and the original shareholders of the De-SPAC target company is a delicate issue. SPAC Promoters are motivated by the value of their reward, which is, logically, the market basis underpinning the existence of SPACs. However, with regard to how to balance these interests, we suggest exploring the guiding role of institutional regulations for a certain period of time, and then to let the market form demonstrative rules through commercial practice.</p> |
| Eligibility restrictions for SPAC promoters | <ul style="list-style-type: none"> ■ SPAC Promoters must meet suitability and eligibility requirements; ■ At least one SPAC Promoter must be a SFC Type 6 or 9 licensed company and hold at least 10% of the Promoter shares; ■ Any material change in SPAC Promoters requires approval by a special resolution of shareholders (excluding the SPAC Promoters and their close associates). Shareholders who vote against such material change must be entitled to redemption rights. | <p>Looking back at SPAC projects with PRC backgrounds over the past few years, the development of SPACs has not been a smooth journey. One of the practical issues is the lack of enthusiasm of leading professional service institutions, such as accounting firms, to participate in SPAC projects. Their concern is risk control, which reflects complex market attitudes toward SPACs.</p> <p>We agree that a threshold for the eligibility of SPAC Promoters should be set. This should have a positive effect in building a solid foundation for the development of the Hong Kong SPAC market.</p> <p>In addition, serious attention should be paid to PRC regulatory issues triggered by the participation of PRC-funded institutions as SPAC Promoters.</p> |
| Fund raising size | <ul style="list-style-type: none"> ■ The expected funds to be raised from the initial offering must be at least HK\$1 billion. | <p>This fund-raising size requirement is largely in line with the requirements of the United Kingdom and Singapore, and is higher</p> |

⁷ A professional manager, usually with private equity, corporate finance and/or industry experience, who establish and manage a SPAC. Also known as a "SPAC sponsor" in the US.

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| | | than the threshold for SPAC listings in the United States. Considering the enthusiasm of the capital markets in Greater China, this fund-raising size is consistent with our expectations and is relatively reasonable. |
| Issue price | <ul style="list-style-type: none"> ■ The subscription price for each SPAC share unit must be no less than HK\$ 10. | Setting a threshold for the subscription price is conducive to further prevent and control the risk of price fluctuations. This is also in line with the practices of other capital markets such as those of the United States and Singapore. |
| SPAC board of directors | <ul style="list-style-type: none"> ■ The majority of directors on the board of a SPAC must be officers of the SPAC Promoter. SPAC Promoters have fiduciary duties to SPAC shareholders and the SPAC itself. | We support a clarification of the fiduciary duties and responsibilities of SPAC Promoters. We also support the requirement of majority directors being officers of the SPAC Promoters, which is consistent with mainstream capital market practice and is conducive to the order, stability and risk control of the SPAC transaction market. |
| Use of proceeds | <ul style="list-style-type: none"> ■ All proceeds raised in a SPAC's initial offering must be deposited in a trust account and can only be released under the following circumstances: (1) the completion of a De-SPAC Transaction; (2) the qualified share redemption; or (3) the return of funds to SPAC shareholders. | The security of funds raised in a SPAC IPO is of vital importance. Certainly, we understand that opinions from more perspectives are needed to decide whether it is necessary to deposit 100% of the proceeds raised into the trust account, so as to improve market enthusiasm and efficiency while ensuring security. |
| De-SPAC Transaction | | |
| Application of new listing requirements | <ul style="list-style-type: none"> ■ A Successor Company must meet all new listing requirements (including engaging an IPO sponsor to conduct due diligence, satisfying minimum market capitalization requirements and financial eligibility tests). | This requirement in the Consultation Paper appears similar to the SPAC requirements of other jurisdictions. However, from the perspective of protecting efficient market development, setting a relatively stringent threshold for De-SPAC Transactions would definitely impose certain impacts on transaction efficiency, which may become a key factor in deciding whether the Hong Kong SPAC market can develop rapidly and healthily. |

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| <p>Investment ratio of independent third parties</p> | <p>Third-party PIPE investment (private placement) is mandatory to verify the valuation of the Successor Company, specifically:</p> <ul style="list-style-type: none"> ■ independent third party investments must constitute at least 25% of the expected market capitalization of the Successor Company (or at least 15%, if the Successor Company's expected market capitalization is over HK\$1.5 billion); and ■ at least one asset management firm or fund with the size of over HK\$1 billion must beneficially own at least 5% of the issued shares of the Successor Company as at the date of listing. | <p>We fully understand the value judgment for the importance of independent third-party investment in the Consultation Paper. However, in the institutional framework system for the healthy development of the capital markets, it remains to be seen whether "independence" is sufficient to effectively offset and manage transaction risks in the context of De-SPAC Transactions. We still need to consider the market reactions brought about by institutional interventions.</p> |
| <p>Vote of shareholders' meetings</p> | <ul style="list-style-type: none"> ■ De-SPAC Transactions must be approved by the shareholders' meeting, and SPAC Promoters and their close associates and other shareholders with a material interest must abstain from voting; ■ If the De-SPAC Transaction results in a change of control, any original controlling shareholders of the SPAC and their close associates must not vote in favor of the De-SPAC Transaction; ■ SPAC shareholders will only be able to redeem SPAC shares where they voted against the De-SPAC Transaction. | <p>The potential affiliated transactions that may be involved in De-SPAC Transactions are technical points that are prone to bring systemic problems in the SPAC regimes of different jurisdictions. We understand that the keys to resolving this issue are formulating predictable and transparent information disclosure standards, constant market integrity supervision rules, and necessary disciplinary mechanisms.</p> |
| <p>Share redemptions</p> | <p>A SPAC must provide a redemption option for shareholders before the occurrence of the following circumstances:</p> <ul style="list-style-type: none"> ■ A De-SPAC Transaction; ■ A change in the SPAC Promoters, or ■ The reaching and announcement of De-SPAC Transaction terms or the completion of the extending of De-SPAC | <p>Unlike the U.S. rules, the Consultation Paper does not provide for any restrictions for SPAC shareholders with respect to the number, proportion, price, and other aspects of the shares to be redeemed. This mechanism reasonably balances regulatory protections more favorably for investors, which in effect increases transaction risks and restrictions for SPAC Promoters.</p> |

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| | Transaction deadline. | |
| Forward-looking information | <ul style="list-style-type: none"> ■ The existing requirements for any forward-looking statements in the Listing Rules must apply to De-SPAC Transaction listing documents to the same standard as that required for a normal IPO, including the requirement for reports from the reporting accountant and IPO Sponsor on such forward-looking statements. | <p>Considering the characteristics of SPACs, a primary focus of investors is the forward-looking statements in the listing documents, especially statements on future financial expectations. In the U.S. SPAC rules, whether to grant a “safe harbor” exemption for the accuracy of SPAC forward-looking statements has continuously been under discussion. The Consultation Paper specifies that HKEX will not lower the responsibility requirements for the accuracy of forward-looking statements in SPAC listing documents, which is also in line with the recent general trend of countries strengthening the supervision of SPAC transactions.</p> |
| Open market in successor company shares | <ul style="list-style-type: none"> ■ The shares of a Successor Company must be held by at least 100 shareholders. | <p>Compared with the requirement that normally at least 300 shareholders are required for listed companies to ensure liquidity, we understand that HKEX would lower the requirement for the number of shareholders in order to reduce the stock price fluctuation of SPAC companies. Considering the particularity of SPAC companies, we believe this proposal is reasonable.</p> |
| Post De-SPAC Transaction | | |
| Lock-up period | <ul style="list-style-type: none"> ■ SPAC Promoters must not transfer or dispose of their shares in the Successor Company in the 12 months after the completion of the De-SPAC Transaction; ■ The lock-up period requirements for controlling shareholders in a normal listing company apply to that in a De-SPAC Transaction (a controlling shareholder cannot sell its shares in the first 6 months upon listing, and cannot dispose of its shares in a way that would result in it ceasing to be a controlling shareholder within 7 to 12 months upon listing); | <p>Compared with the major capital market systems in Asia, the lock-up period requirements of Hong Kong’s capital markets have been more market-oriented, especially compared with the current lock-up system in the A-share market. We agree with the requirements proposed by HKEX with regard to the lock-up period, so much so that this arrangement is worthy of technical consultation and reference for the A-share market.</p> |

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| Liquidation and De-Listing | | |
| Return of funds to shareholders | <ul style="list-style-type: none"> ■ If a SPAC fails to announce a De-SPAC Transaction within 24 months, or fails to complete a De-SPAC Transaction within 36 months, the SPAC must liquidate and return to its shareholders 100% of the funds it raised plus accrued interest. HKEX will thereafter de-list the SPAC. | <p>We support setting an appropriately accommodative time limit mechanism for completing de-SPACing, especially for transactions with target companies in China, which will naturally involve regional characteristics such as the cross-border restructuring of the target and uncertainty in obtaining regulatory approvals. It is indeed necessary to provide a certain flexible mechanism for the transaction schedule, which will create an appropriately accommodative trading system environment for various participants in the de-SPACing market.</p> |

The Consultation Paper conveys the determination of HKEX to open up new channels, actively attract capital from all parties to invest in Hong Kong and further enhance its status as an international financial center. The various threshold restrictions and safeguard measures proposed in the Consultation Paper reflect the position of HKEX to encourage SPAC Promoters with ample strength and solid background aiming to promote high-quality SPACs to list and complete transactions in Hong Kong, so as to maintain the order of Hong Kong's capital markets and the stable confidence of investors.

Nonetheless, certain proposals in the Consultation Paper, especially the restrictions on the subscription of SPAC securities to Professional Investors only, the requirements for the eligibility and license of SPAC Promoters as well as the requirements on the investment ratio of independent third-party investment (i.e., 25%), all reflect the concept of a more stringent system compared with the SPAC listing rules in the United States and other markets. It is not easy to meet all the above requirements at the same time. Therefore, to some extent, market participants will inevitably face pressure. We reasonably expect that the industry will offer positive adjustment suggestions and opinions on the practicability of certain proposed rules. We will provide our professional opinions and feedback to HKEX as soon as possible by taking into account key market concerns. We also look forward to discussing with our clients and friends and to contributing our professional strengths to the improvement of Hong Kong's SPAC listing regime.

Important Announcement

This Newsletter has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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