SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Guidance Note for Issuers on Participating in the Uncertificated Securities Market Regime

發行人參與無紙證券市場制度的指引

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Glossary

In this Guidance Note, unless the context otherwise requires, the following terms bear the following meanings.

approved securities registrar / ASR	a person approved by the SFC under section 101AAG of the SFO to provide one or more securities registrar services (see also section 1 of Part 1 of Schedule 1 to the SFO (as amended by the USM Amendment Ordinance))
ASR Code	The SFC's *Code of Conduct for Approved Securities Registrars*, as amended from time to time
ASR Rules	the Securities and Futures (Approved Securities Registrars) Rules (Cap 571AT), as amended from time to time
authenticated message	an electronic message that meets the criteria set out in rule 15 of the USM Rules (see also rule 2(1) of the USM Rules)
authorized CIS	a collective investment scheme (as defined in section 1 of Part 1 of Schedule 1 to the SFO) that is authorized by the SFC under section 104 of the SFO
CCASS	the Central Clearing and Settlement System operated by HKSCC
certificated form	prescribed securities are in certificated form if they are not in uncertificated form (see also section 1AB of Part 1 of Schedule 1 to the SFO (as added by the USM Amendment Ordinance))
CO	the Companies Ordinance (Cap 622), as amended from time to time
dematerialize / dematerialization	in relation to any prescribed securities, their conversion from certificated form to uncertificated form (see also rule 2(1) of the USM Rules)
first listed	in relation to any prescribed securities, when the securities are listed and available for trading on the SEHK for the first time (eg, pursuant to an IPO or a listing by way of introduction), and *not* when new units of the same securities are issued and listed subsequently (eg, as bonus securities, securities issued pursuant to rights under a rights issue, etc)
HKEX	Hong Kong Exchanges and Clearing Limited, a recognized exchange controller (as defined in section 1 of Part 1 of Schedule 1 to the SFO)

HKSCC	Hong Kong Securities Clearing Company Limited, a recognized clearing house (as defined in section 1 of Part 1 of Schedule 1 to the SFO) and wholly owned subsidiary of HKEX
listing date	in relation to any prescribed securities, the date on which they are first listed and available for trading on the SEHK
listing documents	in relation to any prescribed securities, documents issued in connection with their listing on the SEHK, including any public offer documents such as prospectuses as well as any related subscription or application documents
Listing Rules	the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited, as amended from time to time, (and unless the context otherwise requires, includes the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited)
participation date	in relation to any prescribed securities, the date from which those securities become participating securities
participating securities	prescribed securities that have completed all relevant processes for participating in the USM regime, and have so participated in accordance with rule 4 of the USM Rules
prescribed securities	the following six classes and descriptions of securities that are listed, or approved for listing, on the SEHK: (a) shares (other than shares that constitute interests in an authorized CIS) (b) depositary receipts (c) stapled securities (d) interests in an authorized CIS that can be withdrawn from CCASS (e) subscription warrants that entitle the holder to subscribe for any of the securities described in paragraphs (a) to (d) above (f) rights under a rights issue that entitle the holder to subscribe for any of the securities described in paragraphs (a) to (d) above (see also Schedule 3A to the SFO (as added by the USM Amendment Ordinance))
provisional system-member	in relation to an ASR's UNSRT system, a person who has *not* completed the procedures for using that system, and is therefore only permitted to use that system for evidencing, but not transferring or otherwise managing participating securities that the person holds (see also rule 2(1) of the USM Rules)
register of holders	in relation to any prescribed securities, the register of holders of those securities, and includes the register of members in the case of prescribed securities that are shares

rematerialize / rematerialization	in relation to any prescribed securities, their conversion from uncertificated form to certificated form (see also rule 2(1) of the USM Rules)
rights under a rights issue	rights under a rights issue that entitle the holder to subscribe for prescribed securities that are shares, depositary receipts, stapled securities or interests in an authorized CIS that may be withdrawn from CCASS
Schedule 1 Model Articles	the *Model Articles for Public Companies Limited by Shares* in Schedule 1 to the Companies (Model Articles) Notice (Cap 622H)
SDO	the Stamp Duty Ordinance (Cap 117), as amended from time to time
securities registrar services	in relation to any prescribed securities, any of the following: (a) the maintenance in Hong Kong of a register of holders of those securities (b) the provision and operation of a UNSRT system in respect of those securities (c) any service in connection with a public offer of those securities, where the service is provided: (i) by the securities registrar for those securities; and (ii) to the issuer of those securities or to another person as agent of the issuer (d) any service in connection with a corporate action in respect of those securities, where the service is provided: (i) by the securities registrar for those securities; and (ii) to the issuer of those securities or to another person as agent of the issuer (see also section 1 of Part 1 of Schedule 1 to the SFO (as added by the USM Amendment Ordinance) and rule 3 of the ASR Rules)
SEHK	the Stock Exchange of Hong Kong Limited, a recognized exchange company (as defined in section 1 of Part 1 of Schedule 1 to the SFO) and wholly owned subsidiary of HKEX
sequencing arrangement	the arrangement for queuing prescribed securities to participate in the USM regime, as described in paragraph 1.3 of this Guidance Note
SFC	the Securities and Futures Commission
SFO	the Securities and Futures Ordinance (Cap 571), as amended from time to time
SML Rules	the Securities and Futures (Stock Market Listing) Rules (Cap 571V), as amended from time to time
specified date	in relation to any prescribed securities that are first listed on or before the USM implementation date, the deadline by when those securities must become participating securities (see also rule 28(10) of the USM Rules)

specified jurisdictions	Bermuda, the Cayman Islands, the Chinese Mainland and Hong Kong (see also rule 28(10) and the Schedule to the USM Rules)
specified request	a request to register the transfer of prescribed securities submitted electronically in accordance with the USM Rules (see also rule 2(1) of the USM Rules)
system-member	in relation to an ASR's UNSRT system, a person who has completed the procedures for using that system, and is therefore permitted to use that system for evidencing, transferring and otherwise managing participating securities that the person holds (see also rule 2(1) of the USM Rules)
subscription warrants	subscription warrants issued for capital fund raising purposes that entitle the holder to subscribe for prescribed securities that are shares, depositary receipts, stapled securities or interests in an authorized CIS that may be withdrawn from CCASS
terms of issue	in relation to any prescribed securities, the terms on which those securities are issued, and include the terms on which legal title to those securities may be held, evidenced and transferred
title instrument	in relation to any prescribed securities, the paper certificate or other instrument issued as evidence of title to those securities (see also rule 2(1) of the USM Rules)
uncertificated form	prescribed securities are in uncertificated form if they are recorded in the register of holders of those securities as being in uncertificated form (see also section 1AB of Part 1 of Schedule 1 to the SFO (as added by the USM Amendment Ordinance), and rules 3(1) and 5(3) of the USM Rules)
UNSRT system	a computer-based system, together with procedures and other facilities, that enables title to prescribed securities to be evidenced and transferred without an instrument, and facilitates supplementary and incidental matters (see also section 101AAB of the SFO (as added by the USM Amendment Ordinance))
USM	uncertificated securities market
USM Guide	the SEHK's *Guide on Uncertificated Securities Market*
USM implementation date	the date on which the USM regime comes into effect, being the date on which Part IIIAA of the SFO comes into effect
USM Amendment Ordinance	the Securities and Futures and Companies Legislation (Amendment) Ordinance 2021 (Ord No 17 of 2021) as amended by the Stamp Duty Legislation (Miscellaneous Amendments) Ordinance 2024 (Ord No 33 of 2024)

USM Rules	the Securities and Futures (Uncertificated Securities Market) Rules (Cap 571AS), as amended from time to time

1. Introduction

1.1 **The USM regime**: Hong Kong is scheduled to implement an uncertificated securities market (**USM**) regime on 16 November 2026. The key aspects of the regime are set out in the following.

(a) Part IIIAA of the Securities and Futures Ordinance (Cap 571, **SFO**) — this sets out the broad framework for implementing USM.

(b) The Securities and Futures (Uncertificated Securities Market) Rules (Cap 571AS, **USM Rules**) — this provides for various operational and technical matters under the USM environment (eg, matters relating to the evidencing and transfer of "**prescribed securities**"[1] without paper instruments, the keeping of related registers of holders, the conversion of securities from paper to paperless form (**dematerialization**), etc).

(c) The Securities and Futures (Approved Securities Registrars) Rules (Cap 571AT, **ASR Rules**) and the Code of Conduct for Approved Securities Registrars (**ASR Code**) — these, collectively provide for the regulation of "approved securities registrars"[2] (**ASRs**).

(d) Part 4 of the Securities and Futures (Stock Market Listing) Rules (Cap 571V, **SML Rules**) — this requires every issuer of prescribed securities to have appointed an ASR at all times to maintain in Hong Kong its register of holders, and provides for the consequences of failing to do so.

1.2 **Issuers' key obligations**: The USM regime seeks to enable investors to hold and transfer legal title to prescribed securities in their own names and without paper documents. To achieve this, issuers of prescribed securities that are constituted under the laws of certain key jurisdictions[3] must:

(a) take all necessary steps to ensure that their securities become "**participating securities**"[4] by a certain date, namely:

(i) for securities that are already listed when the USM regime takes effect — by the date specified in respect of those securities (**specified date**); and

(ii) for securities that are first listed[5] after the USM regime takes effect — from the date of their listing; and

(b) from the date that their securities become participating securities (**participation date**), comply with various obligations and limitations.

(See paragraph 3.4 below for more details about the difference and inter-connection between the above dates.)

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[1] The term "prescribed securities" refers to securities that may participate in the USM regime. See the Glossary for a more detailed definition.

[2] The term "approved securities registrars" refers to persons approved by the SFC under the USM regime to provide certain services as agents of listed issuers, including the maintenance of the issuers' register of holders. See the Glossary for a more detailed definition.

[3] See paragraph 1.5 below for details of the jurisdictions concerned.

[4] The term "participating securities" refers to securities that have participated in the USM regime. See the Glossary for a more detailed definition.

[5] By "first listed", we mean when the securities in question are listed and available for trading for the first time on the SEHK. It therefore includes units of those securities that are the subject of an IPO or a listing by way of introduction. However, it does not include units of those securities that are issued and listed subsequently, eg, as bonus securities, securities issued pursuant to rights under a rights issue, etc.

1.3 **Sequencing arrangement**: To ensure issuers transition to the USM regime in an orderly manner, a "**sequencing arrangement**" is needed under which the specified dates and participation dates of different prescribed securities are carefully coordinated and queued so that they:

(a) follow a sequence that is transparent to the market and operationally manageable; yet also

(b) allow a degree of flexibility to make adjustments that may be needed to cater for unforeseen or evolving circumstances.

1.4 **Parties determining sequencing arrangement**: The sequencing arrangement, including any adjustments to it, must be agreed among ASRs, Hong Kong Securities Clearing Company Limited (**HKSCC**) and the Stock Exchange of Hong Kong Limited (**SEHK**) as they are the key parties involved in the logistical and operational aspects of the arrangement.[6]

1.5 **Four key jurisdictions**: Prescribed securities currently listed on the SEHK are constituted under the laws of over ten jurisdictions. However, the overwhelming majority of prescribed securities (ie, just over 98% by number, and almost 93% by market cap as at the end of December 2025) are constituted under the laws of four jurisdictions, ie, Bermuda, the Cayman Islands, the Chinese Mainland and Hong Kong (**specified jurisdictions**). The initial focus is therefore on transitioning these securities to the USM environment, and to complete this process within five years from the date the USM regime is implemented (**USM implementation date**).

1.6 **Purpose of Guidance Note**: This Guidance Note is issued to assist issuers in understanding their obligations under the USM regime. It covers the following key areas:

(a) the obligation for issuers of prescribed securities to appoint an ASR;

(b) the obligation for prescribed securities to become participating securities;

(c) the preparatory steps for prescribed securities to become participating securities;

(d) the sequencing arrangements for issuers' orderly participation;

(e) the obligations and limitations after prescribed securities become participating securities; and

(f) some key areas to be considered when amending the constitutional documents and other terms of issue (as applicable) relating to the prescribed securities (collectively, **terms of issue**).

1.7 **Guidance Note not exhaustive**: This Guidance Note is not exhaustive and should not be viewed as constituting a complete list of all matters that issuers need to consider in respect of their participation in and obligations under the USM regime. Issuers are strongly advised to seek their own independent advice if they are unsure of their rights and obligations under the USM regime. Issuers should also refer to the SEHK's *Guide on Uncertificated Securities Market* (**USM Guide**) in respect of their obligations under the Listing Rules.

[6] This is reflected in rule 28(4) of the USM Rules.

2. Obligation for issuers to have an ASR at all times

Appointing an ASR

2.1 **Obligation to appoint an ASR**: All issuers of prescribed securities must appoint an ASR to maintain the register of holders of those securities. Moreover, an ASR must be appointed:

(a) from the time the securities are first listed, or from the USM implementation date, whichever is the later; and

(b) until the time that the securities cease to be listed.

2.2 **Obligation applies to *all* issuers**: The obligation described in paragraph 2.1 applies to *all* issuers of prescribed securities, ie, irrespective of:

(a) whether or not the securities are constituted under the laws of any of the specified jurisdictions; and

(b) whether or not the securities have become participating securities.

2.3 **Consequences of breach**: Failure to appoint an ASR as mentioned above will:

(a) in the case of prescribed securities that are sought to be listed on the SEHK, result in the rejection of the listing application; and

(b) in the case of prescribed securities that are already listed, result in the suspension of trading in the securities.[7]

Change of ASRs

2.4 **Obligation to notify any change in ASR**: Where an issuer intends to change its ASR, it must notify the SFC[8] and the SEHK[9] in writing.[10] **Appendix 1** sets out the details that should be provided when notifying the SFC. In the case of issuers of prescribed securities that are first listed after the USM implementation date, notification to the SFC will be regarded as having been sent on the day it submits the relevant information to the SEHK, provided it has previously authorised the SEHK in writing to file its listing application and all related information and documents with the SFC on its behalf.[11]

2.5 **When must notification be given**: Notification regarding a change of the issuer's ASR must be given:

(a) at least three months before the change takes effect; or

(b) as soon as reasonably practicable after the issuer becomes aware of the change,

whichever is the later.

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[7] The obligation to appoint and have an ASR at all times is reflected in sections 13 and 14 of the SML Rules.

[8] The notice should be sent to the Supervision of Markets Division of the SFC.

[9] The notice should be sent to the Listing Division of the SEHK – see paragraph 3.3 of the SEHK's USM Guide.

[10] The obligation to notify the SFC and the SEHK is reflected in section 15 of the SML Rules.

[11] An issuer's authorization to the SEHK to file its listing application and all related information and documents with the SFC must be made in accordance with section 5 of the SML Rules.

2.6 **Consequences of breach**: The obligations to notify the SFC and the SEHK of any change in an issuer's ASR, and to do so within the time described above, are statutory obligations. Failure to comply (without reasonable excuse) is an offence punishable by fines.[12]

3. Obligation for prescribed securities to become participating securities

Timeline for participation

3.1 **Factors determining timeline**: Under the USM regime, all prescribed securities (other than subscription warrants and rights under a rights issue) will have to become participating securities. The timeline for this will depend on the laws under which the securities are constituted, and when the securities are first listed on the SEHK.

3.2 **Prescribed securities constituted under laws of a specified jurisdiction**: For prescribed securities (other than subscription warrants and rights) constituted under the laws of a specified jurisdiction:

(a) if they are first listed *on or before* the USM implementation date – they must become participating securities by their respective specified date, and that date will fall within five years from the date USM is implemented[13]; and

(b) if they are first listed *after* the USM implementation date – they must be participating securities from the date they are first listed and available for trading on the SEHK (**listing date**).

For prescribed securities that are subscription warrants or rights under a rights issue, and constituted under the laws of a specified jurisdiction, their participation will depend on whether and when their underlying securities[14] become participating securities.[15]

3.3 **Prescribed securities constituted under laws of other jurisdictions**: For prescribed securities constituted under the laws of a jurisdiction other than a specified jurisdiction, the timeline and arrangements for their becoming participating securities will be determined at a later stage. In the meantime, issuers of such securities that wish for their securities to become participating securities may do so voluntarily. However, they must first ensure that their relevant home laws and regulations are compatible with the USM regime. An independent legal advice to that effect will need to be obtained.[16]

Timeline vs actual participation

3.4 **Specified date/listing date vs participation date**: The deadline for participation (ie, the specified date and listing date as described in paragraph 3.2 above) is different from the participation date.

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[12] The penalty for this offence is a level 5 fine (ie, $50,000) – see section 15(6) of the SML Rules.

[13] The five-year period for prescribed securities established under these jurisdictions is reflected in rule 28 of the USM Rules.

[14] By "underlying securities", we mean the prescribed securities that may be acquired upon the exercise of the warrants or rights concerned.

[15] This is explained in more detail in paragraph 5.5 below.

[16] This is discussed in more detail in paragraph 4.7 below.

(a) The specified date/listing date for any particular prescribed securities refers to the *statutory deadline* by when those securities must become participating securities.

(b) The participation date for any particular prescribed securities refers to the *actual date* on which those securities become participating securities.

That said, it is expected that, in practice, the two dates will be the same, ie, the date by which any particular prescribed securities *must become* participating securities will also be the date on which those securities *actually become* participating securities. This will be simpler and also less confusing for issuers and the market.

3.5 **Notification to issuers**: Issuers will be informed of their respective specified dates and expected participation dates by notice in writing. Paragraph 5.7 below discusses in more detail the process for determining specified dates and expected participation dates, how much advance notice issuers will have, and the extent to which issuers may have a say in the matter.

Consequences of breach

3.6 **Penalties**: The obligation to ensure that prescribed securities become participating securities by the applicable deadline (ie, their specified date or listing date) is a statutory obligation. Failure to comply (without reasonable excuse) is an offence punishable by fines[17] and may also call into question the suitability of the securities concerned to be or remain (as applicable) listed[18].

3.7 **Deferral or exemption in exceptional circumstances**: In exceptional cases, where the issuer faces genuine difficulty in meeting the applicable deadline for participation due to circumstances beyond its control, it may apply to defer such deadline or seek an exemption from the SFC. This is discussed in more detail in paragraphs 5.9 to 5.18 below.

3.8 **Issuers should reach out to ASRs**: Issuers are urged to reach out to their respective share registrars/ASRs as soon as possible to better understand their rights and responsibilities around the obligation discussed in this section 3.

4. Preparatory steps for prescribed securities to become participating securities

4.1 **Key preparatory steps**: The following are some of the key preparatory steps that an issuer of prescribed securities must take in order for the securities to become participating securities:

(a) amend the terms of issue in respect of those securities to ensure they are consistent with the USM regime and with issuers' obligations under the regime — see paragraphs 4.3 to 4.7 below for more details;

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[17] The penalty for this offence is a level 4 fine (ie, $25,000) and a daily fine of $700 for each day that the offence continues — see rule 28(9) of the USM Rules.

[18] The SEHK's *Guidance on Listed Issuer's Suitability for Continued Listing* (HKEX-GL96-18) requires listed issuers to comply with applicable laws and regulation at all times, and notes that intentional, systemic and/or repeated breaches of laws and regulation may affect their suitability for listing. Where concerns about suitability arise, the SEHK may suspend trading in the securities and eventually cancel their listing. Similarly, Chapter 1.2D of the SEHK's *Guide for New Listing Applicants* notes that material non-compliance may affect an applicant's suitability for listing.

(b) appoint an ASR to: (i) maintain the register of holders of those securities; and (ii) provide a "**UNSRT system**"[19] for evidencing and transferring legal title to those securities without paper instruments — see paragraph 4.8 below for more details;

(c) obtain the appointed ASR's confirmation that everything necessary for legal title to those securities to be evidenced and transferred through its UNSRT system without paper instruments has been completed, and of the date from which such evidencing and transferring through its UNSRT system may begin — see paragraph 4.9 below for more details; and

(d) ensure appropriate announcements/disclosures are made in accordance with the Listing Rules[20] and the SEHK's USM Guide — see paragraphs 4.10 to 4.11 below for more details.

4.2 **Commence preparatory steps ASAP**: Sufficient time will be allowed to enable issuers to complete all necessary preparatory steps. However, this is on the basis that issuers start the process as soon as possible rather than waiting until *after* receiving notice of their specified date or expected participation date. In particular, issuers should start the process of reviewing and amending their terms of issue as soon as possible. Issuers are also encouraged to reach out to their respective share registrars/ASRs as soon as possible for guidance on how best to proceed in this regard.

Amending the terms of issue

4.3 **Terms of issue**: The terms of issue refer to documents that govern the terms on which the prescribed securities are issued and on which they may be held, evidenced and transferred. The terms of issue are:

(a) in the case of shares in a company — the articles/bye-laws of the company; and

(b) in the case of all other prescribed securities[21] — the principal documents governing the creation of the securities and the terms on which they may be held, evidenced and transferred (including any related trust deed, articles/bye-laws and other material agreements).

4.4 **Some key areas of focus**: The terms of issue of any prescribed securities should be consistent with the USM regime (including issuers' obligations under the regime). In particular, the terms should allow for the following as envisaged under the USM regime:

(a) the holding, evidencing and transfer of legal title to the securities without paper instruments and through a UNSRT system operated by an ASR in Hong Kong;

(b) the dematerialization of the securities in accordance with the USM Rules, including dematerialization at the issuer's initiative or at the securities holder's request;

(c) a prohibition on the issuing of certificates or other documents of title (**title instruments**) in respect of the securities;

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[19] A "UNSRT system" refers to the computer system, procedures and facilities that enable title to prescribed securities to be evidenced and transferred without paper instruments. See the Glossary for a more detailed definition.

[20] The relevant announcement/disclosure requirements are set out in Appendix G1 to the Main Board Listing Rules and Appendix F1 to the GEM Listing Rules.

[21] Such other prescribed securities are: (a) depositary receipts; (b) stapled securities; (c) interests in an authorized CIS that are withdrawable from CCASS; (d) subscription warrants; and (e) rights under a rights issue.

(d) the keeping, maintaining, inspection, copying and closure of the register of holders of the securities in accordance with the USM Rules;[22]

(e) the sending of written confirmations to holders of the securities in respect of any change made to entries in the register of holders that relate to them or their holdings; and

(f) the use of "authenticated messages" (as defined in rule 2(1) of the USM Rules) for communications between the issuer and holders of the securities, including for: (i) corporate communications from the issuer (whether generic or personalised); (ii) corporate action instructions from holders; and (iii) proxy appointments and revocations.

4.5 **Inconsistencies and conflicts to be amended**: If there are any inconsistencies or conflicts between the terms of issue and any requirements under the USM regime, the terms of issue will have to be amended to remove the inconsistencies or conflicts. Similarly, if the terms of issue are silent in respect of matters provided for under the USM regime, it may be useful to amend the terms of issue to provide for such matters so as to avoid any doubt or ambiguity. Issuers will have until the later of: (i) the first anniversary of the USM implementation date (ie, 16 November 2027); and (ii) the date of their first annual general meeting after the USM implementation date, to complete such amendment exercise.[23] As this process may take some time, issuers are urged to start reviewing their terms of issue as soon as possible and arrange for necessary approval of any amendments at the earliest opportunity.

4.5A **Timing of amending terms of issue**: As to whether amendments to the terms of issue of any prescribed securities must be in place *before* those securities may become participating securities, this will depend on whether the securities can benefit from the override provided under section 101AAD of the SFO.[24] In general, securities constituted under the laws of Hong Kong may benefit from this override and hence participate without amending their terms of issue. However, even where such override applies, issuers are strongly advised to amend the terms of issue *before* their securities become participating securities, and if this is not feasible, then at the earliest thereafter. The longer the gap between participation and amendment of the terms of issue, the greater the risk of potential doubt and dispute as to how the terms are to be interpreted and understood[25]. Such a result is not in the interest of either the issuer or the holders of the securities.

4.6 **Information and sample provisions to assist issuers**: To assist issuers in this regard, **Appendix 2** expands on the key areas of focus when reviewing the terms of issue, and sets out some sample

[22] These matters are covered in Part 2 of the USM Rules.

[23] See paragraph 14.5 of the SEHK's USM Guide.

[24] Section 101AAD of the SFO provides that where there is any conflict or inconsistency between the terms of issue of an issuer's prescribed securities and requirements under the USM regime, the latter will prevail to the extent of such conflict or inconsistency. Prescribed securities constituted under the laws of Hong Kong will be able to rely on this provision. However, for prescribed securities constituted under the laws of a place outside Hong Kong, the ability to rely on section 101AAD will depend on the laws of such place – see section 101AAE of the SFO.

[25] For example, following participation, it will no longer be possible to issue certificates, and transfers may have to be effected electronically. Dematerialization will also be possible, but only under certain circumstances and subject to certain requirements. There may also be operational aspects that need to be accommodated for electronic transfers and dematerialization, which do not feature specifically in the USM related laws and regulations. However, the existing terms of issue may still envisage the securities being in paper form only, and may not provide any details as to how transfers are to be effected electronically or how securities may be dematerialized and in what circumstances.

provisions for consideration and inclusion in the terms as appropriate.[26] Issuers should note that the contents of Appendix 2, including the sample provisions, are intended for reference only and should not be viewed as constituting a complete list of all matters that issuers need to consider when reviewing and amending their terms of issue, particularly as the terms of issue are often customised and may differ significantly from case-to-case. Also, the sample provisions are based on model articles under the Hong Kong Companies Ordinance (Cap 622, **CO**). Issuers of prescribed securities constituted under the laws of a place other than Hong Kong should take this into account when drawing reference to the sample provisions. Given the importance of the terms of issue, and of the impact of any amendment to them, issuers are strongly advised to seek independent advice on how best to amend them.

4.7 **Securities constituted outside Hong Kong**: In the case of prescribed securities constituted under the laws of a place outside Hong Kong, the issuer must also check if the laws and regulations of such place conflict with, or are inconsistent with the USM regime, particularly in respect of the matters listed under paragraph 4.4 above. In this regard:

(a) The SFC understands that requirements under the USM regime are not prohibited under the laws and regulations of Bermuda, the Cayman Islands and the Chinese Mainland, but it is essential that the relevant terms of issue are also consistent with the USM regime and incorporate sufficient reference to the USM regime.

(b) For securities constituted under the laws of other places outside Hong Kong, as mentioned in paragraph 3.3 above, participation is currently not mandatory. However, if issuers of such securities nevertheless wish for their securities to become participating securities, they will need to ensure that their home laws and regulations are compatible with the USM regime. In this regard, the SEHK requires such issuers to obtain a letter from their legal advisers confirming the compatibility of the laws and regulations of the issuer's home jurisdiction with the USM regime, which they should submit to the Exchange. The letter should also attach a copy of the legal advice obtained. [27] **Appendix 3** highlights the key areas that any such legal advice should, at a minimum, cover.

Appointing an ASR and obtaining relevant confirmation

4.8 **Obligation to ensure ASR can provide and operate a UNSRT system**: Issuers should note that not all ASRs may be approved to provide and operate a UNSRT system. Accordingly, before an issuer's prescribed securities can become participating securities, the issuer must ensure that:

(a) its appointed ASR is approved by the SFC to provide and operate a UNSRT system;

(b) all relevant processes, procedures and formalities have been completed for "onboarding" the securities onto the ASR's UNSRT system; and

(c) the issuer knows the date from which the UNSRT system may be used to evidence and effect transfers of legal title to the securities without paper instruments.

For completeness and avoidance of doubt, we clarify that the obligation to have an ASR that is approved to provide and operate a UNSRT system only applies to issuers whose prescribed securities have become, or are in the process of becoming, participating securities. It follows that issuers who

[26] Given the technical nature of the sample provisions, only an English version of Appendix 2 is available.

[27] See paragraph 10.2 of the SEHK's USM Guide.

have yet to start such process may retain an existing ASR even if it is not approved to provide and operate a UNSRT system.

4.9 **Obligation to obtain confirmation of readiness from the ASR**: The matters described in paragraphs 4.8(b) and 4.8(c) above entail various technical or operational arrangements at the ASR's end. The issuer should therefore obtain a written confirmation from its ASR regarding:

(a) the readiness of the ASR and its UNSRT system to facilitate the issuer's prescribed securities becoming participating securities; and

(b) the date from which the UNSRT system may be used for evidencing and transferring legal title to the securities without paper instruments.

Announcements/Disclosures to be made by issuers/listing applicants

4.10 **Obligation to announce/disclose certain matters**: To ensure sufficient transparency to investors, intermediaries and other market participants, issuers (including listing applicants) will need to make various announcements/disclosures — both prior to their prescribed securities becoming participating securities, and subsequently.

4.11 **Details in the Listing Rules and the SEHK's USM Guide**: The specific announcements/disclosures required, and the matters they should cover, are set out in the Listing Rules and the SEHK's USM Guide. These include:

(a) announcements/disclosures of the specified date and participation date;[28]

(b) announcements/disclosures of any change to the specified date and participation date;[29] and

(c) announcements/disclosures relating to corporate action events that occur after the participation date.[30]

Moratorium on corporate action events

4.12 **Activities in the run up to participation**: Prior to an issuer's prescribed securities becoming participating securities, there will be much coordination work among the issuer's ASR, the HKSCC and the SEHK, and certain announcements/disclosures will also have to be issued as discussed in paragraphs 4.10 to 4.11 above.

4.13 **Activities immediately following participation**: Additionally, upon the securities becoming participating securities, any units of those securities that are already held within the Central Clearing and Settlement System (**CCASS**) will have to be dematerialized within six months.[31] In practice, it is expected that the units will be dematerialized much more quickly and, as far as possible, within a few

[28] For more details, see paragraphs 7, 8 and 10 of Appendix G1 to the Main Board Listing Rules and Appendix F1 to the GEM Listing Rules and paragraphs 6.4 to 6.7 of the SEHK's USM Guide.

[29] For more details, see paragraph 9 of Appendix G1 to the Main Board Listing Rules and Appendix F1 to the GEM Listing Rules and paragraphs 5.7 to 5.9, 11.7 and 11.8 of the SEHK's USM Guide.

[30] For more details, see paragraph 13 of Appendix G1 to the Main Board Listing Rules and Appendix F1 to the GEM Listing Rules and paragraph 13.3 of the SEHK's USM Guide.

[31] This is required by rule 31 of the USM Rules.

weeks. It is also expected that investors already holding such securities in their own names in certificated form may request to dematerialize their securities during the same period.

4.14 **Moratorium on corporate actions**: Accordingly, to minimise confusion to the market and ensure that:

(a) the process of prescribed securities becoming participating securities; and

(b) the process for dematerializing any units of the securities held in CCASS,

proceed as smoothly as possible, issuers are strongly advised to avoid conducting corporate action activities in the 13 business days immediately preceding, and the 10 business days immediately following, the participation date. Where this is unavoidable, issuers should at least ensure that certain key dates relating to the corporate action do not fall within this period. For further details about the moratorium, see section 15 of the SEHK's USM Guide.

5. Sequencing arrangement for orderly participation

5.1 **End 2025 statistics**: As at the end of 2025, there were:

(a) over 2,600 issuers whose prescribed securities were constituted under the laws of one of the four specified jurisdictions; and

(b) over 14.63 million title instruments in circulation in respect of such securities, of which about 5 million represented holdings in CCASS.

5.2 **Overarching 5-year timeline**: In view of the volume of prescribed securities and title instruments involved, an overarching 5-year period, commencing on the USM implementation date, has been set within which all of these securities must become participating securities.[32]

5.3 **Detailed timetable**: Additionally, to facilitate the orderly transitioning of these securities to the USM regime, a more detailed timetable must be agreed among ASRs, the HKSCC and the SEHK regarding the queueing of these securities to become participating securities within the overarching 5-year period, and any subsequent adjustments to such timetable.[33] The sequencing arrangement refers to this detailed timetable and all related logistical and operational arrangements, including the dematerialization of all units of prescribed securities held in CCASS.

Factors relevant to determining specified dates and participation dates

5.4 **Factors to be considered**: All relevant factors will be taken into account in determining how best to queue prescribed securities for becoming participating securities, including in respect of each of the prescribed securities:

(a) the total number of title instruments that are in circulation, and the number that represents securities held in CCASS;

(b) the number of registered holders involved;

[32] The 5-year timeline is reflected in rule 28 of the USM Rules — see subrules (1) and (2) and the definition of "participation deadline" in subrule (10).

[33] The requirement for ASRs, the HKSCC and the SEHK to agree the queueing of prescribed securities for participation is reflected in rule 28 of the USM Rules — see subrule (4) and the definition of "specified date" in subrule (10).

(c) any upcoming or planned corporate action events relating to the securities; and

(d) any legitimate views or concerns that the issuer of the securities has expressed, and the extent to which these can reasonably be accommodated taking into account all other factors and circumstances.

5.5 **Subscription warrants and rights**: In the case of prescribed securities that are subscription warrants or rights under a rights issue, their participation will be determined differently given their short-dated nature, and their interconnectedness with the underlying securities which will also have to become participating securities. Specifically:

(a) if the warrants or rights are issued *before* the underlying securities become participating securities — they do not have to become participating securities at all; but

(b) if the warrants or rights are issued *after* the underlying securities become participating securities — they must be participating securities from the time they are listed.

To avoid confusion to the market, and consistent with the moratorium discussed in paragraph 4.14 above, issuers are strongly advised not to list subscription warrants or rights under a rights issue on the same day as the day on which their underlying securities become participating securities.

Issuers' views and concerns about their specified dates or participation dates

5.6 **Opportunity to provide input**: While the sequencing agreement will be agreed among the issuer's ASR, the HKSCC and the SEHK, the issuer may also express views and concerns via its ASR, although it may not always be possible to accommodate these.

5.7 **Process for determining specified dates and participation dates**: In general, it is expected that specified dates and participation dates will be determined as follows.

(a) ASRs, the HKSCC and the SEHK will develop a draft timetable incorporating the specified dates and expected participation dates of all prescribed securities constituted under the laws of any of the four specified jurisdictions.

(b) Each ASR will then approach its issuer-clients and provide an indication of the approximate period (eg, the quarter or half-year) within which the specified date and expected participation date for that issuer's prescribed securities is expected to fall. The issuer will be able to indicate any views or concerns it may have.

(c) ASRs, the HKSCC and the SEHK will endeavour to accommodate issuers' views and concerns to the extent possible taking into account: (i) the nature and criticality of the views and concerns raised; (ii) the overarching 5-year timeline within which all prescribed securities will have to become participating securities; and (iii) the facts and circumstances specific to each issuer and its securities (eg, number of title instruments in circulation and registered holders involved, any upcoming corporate actions, etc). It follows that it may not always be possible to accommodate issuers' views and concerns, or to accommodate them fully.

(d) Issuers of prescribed securities will be notified in writing of the specified date and expected participation date for their securities, and such notice will be given at least 3 months before the specified date.

5.8 **Issuers to reach out to ASRs**: In view of the above, issuers are urged to reach out to their share registrars/ASRs as soon as possible if they have any particular views or concerns about the timing of their prescribed securities becoming participating securities. While this does not ensure that their views or concerns can be accommodated, it may allow for more options to be considered.

Deferral for securities first listed after the USM implementation date

5.9 **Obligation to participate from the time of listing**: Following implementation of the USM regime, all prescribed securities constituted under the laws of one of the four specified jurisdictions and first listed after the USM implementation date, must be participating securities from their listing date, and be in uncertificated form from that time.

5.10 **SEHK's power to permit deferral**: The SEHK has power to allow prescribed securities to become participating securities from a later date, ie, from a date after their listing date.[34] However:

(a) such power to defer can only be exercised in the first 12 months after the USM implementation date, and in exceptional circumstances, eg, where the issuer was expecting to list its securities *before* the USM implementation date but was eventually unable to do so, and it would unreasonably delay the listing schedule if the securities are required to be in uncertificated form from the time of listing; and

(b) any deferral cannot be to a date that is later than 5 years after the USM implementation date.

5.11 **Process for applying to the SEHK for deferral**: A listing applicant that needs to apply for deferral as described above should apply in writing to the SEHK's Listing Division. The application should include the reasons for the deferral, a proposed deferred date, and confirmation that no further deferral is anticipated. Further details about the requirements and process for deferral are set out in section 5 of the SEHK's USM Guide.

Deferral for securities listed on or before the USM implementation date

5.12 **Obligation to participate by the specified date**: Following implementation of the USM regime, all prescribed securities constituted under the laws of one of the four specified jurisdictions and listed on or before the USM implementation date, must become participating securities by their respective specified dates.[35]

5.13 **Deferral of specified date**: Once a specified date is formally notified to the issuer of the prescribed securities concerned, it will not be changed save in exceptional circumstances beyond the issuer's or its ASR's control. Issuers should note that the following will *not* be regarded as sufficient justification for a deferral:

(a) the issuer's failure to take prompt action in amending its terms of issue;

(b) inability of the issuer's ASR to provide and operate a UNSRT system by the specified date;

(c) change of an issuer's ASR (otherwise than for reasons beyond the issuer's control), and the inability of the new ASR to complete all necessary processes in time to meet the specified date.

5.14 **Process for deferral**: A deferral may be initiated by the issuer, its ASR, the HKSCC or the SEHK. However, irrespective of who initiates it, the deferral must be agreed to by the issuer's ASR, the HKSCC

[34] The SEHK's power is reflected in rule 28 of the USM Rules – see subrules (5), (6) and (8).

[35] This is reflected in rule 28 of the USM Rules – see subrules (1) and (10).

and the SEHK, and they must also agree on the deferred specified date. If they cannot reach agreement, the matter will be decided by the SFC.[36] An issuer who needs to apply for deferral of its specified date should reach out to its ASR in the first instance, and thereafter apply to its ASR, the HKSCC, and the SEHK in writing. The application should be submitted by no later than 30 business days before the specified date, and include the reasons for the deferral, a proposed deferred date, and confirmation that no further deferral is anticipated. Further details about the requirements and process for deferral (including details to be provided in the application) are set out in section 11 of the SEHK's USM Guide.

5.15 **Changes to participation date**: As noted in paragraph 3.4 above, it is expected that, in practice, the specified date and participation date for any particular prescribed securities will be the same. Similar to the specified date, it will generally not be open to an issuer to change its participation date. However:

(a) If there are strong justifications for bringing forward or deferring an issuer's participation date, the issuer's ASR, the HKSCC and the SEHK may agree to do so if they are satisfied that they are able to accommodate such change without adversely affecting the timetable and arrangements for other prescribed securities to become participating securities.

(b) In terms of the process for changing the participation date, the issuer should approach its ASR as soon as possible, and in general by no later than 30 business days before the proposed participation date, to discuss the matter. The ASR will then follow up on the matter with the HKSCC and the SEHK, as necessary, and respond to the issuer.

(c) In the case of a deferral, the specified date will also have to be deferred, and an application submitted to the issuer's ASR, the HKSCC and the SEHK (as described in paragraph 5.14 above). This is because the participation date cannot be later than the specified date.

SFC's power to exempt

5.16 **The power to exempt**: The SFC has power to exempt compliance with Part 7 of the USM Rules[37], including therefore compliance with the obligation for prescribed securities to be participating securities:

(a) from their listing date — in the case of prescribed securities that are newly listed; or

(b) by their specified date — in the case of prescribed securities that are already listed.

5.17 **Factors relevant to considering exemption**: Issuers who are not satisfied with any decision on deferral as discussed in paragraphs 5.9 to 5.15 above may apply to the SFC for exemption. Issuers should note however that the SFC intends to exercise the exemption power with restraint and only in exceptional circumstances. Additionally, before making any decision on exemption, the SFC will take into account all relevant facts and circumstances. It will also:

(a) seek views from the issuer's ASR, the HKSCC and the SEHK; and

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[36] The power to defer any specified date is reflected in rule 28 of the USM Rules – see subrules (4) and (8).

[37] The SFC's power to exempt compliance is reflected in rule 32 of the USM Rules.

(b) consider whether granting an exemption may adversely affect the smooth implementation of the USM regime, or otherwise prejudice the interest of the investing public or the public interest.

5.18 **Process for seeking exemption**: An issuer who intends to seek exemption should approach the SFC's Supervision of Markets Division for an initial discussion as soon as reasonably practicable upon becoming aware that an exemption may be needed. Thereafter, if the issuer wishes to pursue an application for exemption, it should apply in writing to the SFC as soon as possible, and in any event by no later than two weeks before its scheduled listing date or specified date (as applicable). The application should explain in detail the reasons for seeking an exemption, and include:

(a) details of the exemption sought;

(b) full particulars of the reasons for seeking the exemption, and why the issuer considers that these form exceptional circumstances;

(c) why the issuer considers that the granting of such exemption would not prejudice the interest of the investing public or the public interest; and

(d) whether an application to defer (as described in paragraph 5.11 or 5.14 above) has been made, and: (i) if yes, the results of that application; and (ii) if no, why not.

Publication of specified dates and participation dates

5.19 **Lists to be published**: It is important that the market is kept informed of the scheduled participation dates of different prescribed securities, and any changes to those dates. Accordingly:

(a) Hong Kong Exchanges and Clearing Limited (**HKEX**) will publish on its website a list of: (i) the prescribed securities that are to become participating securities in the upcoming 3 months; and (ii) their respective specified dates and participation dates. This list will be updated on a quarterly basis.

(b) HKEX will also maintain on its website a list of: (i) all prescribed securities that have already become participating securities; (ii) when they became participating securities; (iii) when they ceased to be participating securities (if applicable); and (iv) the ASR involved in each case. This list will also be updated on a quarterly basis.

5.20 **Lists to reflect any deferrals**: Any change of a specified date or participation date will be promptly updated and incorporated in the lists described in paragraph 5.19 above.

6. Obligations and limitations after securities become participating securities

Restrictions on the form of new units of participating securities

6.1 **New units cannot be in certificated form**: Once any prescribed securities become participating securities, any new units of those securities issued on or after their participation date may only be in uncertificated form.[38] This includes any units issued as bonus securities, scrip dividends or pursuant to the exercise of subscription warrants or rights under a rights issue.

6.2 **Pre-requisites to issuing new units in uncertificated form**: When issuing any new units of prescribed securities in uncertificated form, the issuer must ensure that:

(a) the securities are recorded in the register of holders of those securities as being held in uncertificated form;

(b) no title instrument is issued in respect of them; and

(c) the holder of the securities is a system-member or provisional system-member of the issuer's ASR's UNSRT system.[39]

6.3 **Consequences of breach**: Any breach of the obligations described in paragraphs 6.1, 6.2(a) and 6.2(b) above (without reasonable excuse) constitutes an offence punishable by fines[40] and may also call into question the suitability of the securities concerned to be or remain (as applicable) listed[41]. As discussed under paragraphs 5.16 to 5.18 above, the SFC has power to exempt the application of the obligation described in paragraph 6.1 above, but exemptions will be granted with restraint and in exceptional circumstances only.

Restrictions on the issue of new title instruments

6.4 **New title instruments cannot be issued**: Similarly, once any prescribed securities become participating securities, no new title instruments may be issued in respect of them.[42] Any pre-existing title instruments (ie, title instruments issued before participation) will however remain valid until cancelled. That said, issuers are able to dematerialize any existing units of the securities if they have received a pre-existing title instrument in respect of them, and even if no dematerialization request has been submitted[43]. To facilitate the market's early transition to dematerialization, issuers are encouraged to exercise this ability as far as possible. The following are some examples of where this could be done.

(a) Where the issuer has received a valid title instrument and a request to dematerialize only some but not all of the units covered by that instrument, the issuer could dematerialize all units covered by that instrument, ie, both the portion requested to be dematerialized and the portion not covered by such request.

(b) Where the issuer has received a valid title instrument in connection with the transfer of any units of the securities, the issuer could dematerialize all units covered by that instrument, ie,

[38] This is reflected in rule 29 of the USM Rules.

[39] This is reflected in rule 26 of the USM Rules.

[40] The penalty for these offences is, in each case, a fine at level 4 (ie, $25,000) and a daily fine of $700 for each day that the offence continues – see rules 29(2) and 26(4) of the USM Rules.

[41] See footnote 18.

[42] This is reflected in rule 30 of the USM Rules.

[43] This is reflected in rule 25 of the USM Rules.

the units to be transferred and any additional units covered by the instrument but not intended to be transferred. This includes situations involving partial offers[44].

(c) Where the issuer has received a valid title instrument and a request to replace it (eg, following a share sub-division or consolidation exercise, or because the issuer's name or the registered holder's name or any particulars stated on the instrument have changed, or because the instrument is damaged), the issuer could dematerialize the units covered by the instrument.

(d) Where the issuer has received a request to replace a lost title instrument, and is satisfied that the instrument is lost (eg, all relevant procedures and formalities have been completed to the issuer's satisfaction), the issuer could dematerialize the units covered by the lost instrument.

6.5 **Pre-requisites to dematerializing at the issuer's initiative**: Where any units of prescribed securities are to be dematerialized at the issuer's initiative, ie, without a dematerialization request, the issuer must ensure that:

(a) a valid title instrument that was previously issued in respect of the securities has been received or the issuer is satisfied that such instrument is lost;

(b) the title instrument is cancelled, and the cancellation is recorded in the register of holders of those securities;

(c) the securities are recorded in the register of holders of those securities as being held in uncertificated form; and

(d) the holder of the securities is a system-member or provisional system-member of the issuer's ASR's UNSRT system.[45]

6.6 **Dematerialization fee may still be charged**: The issuer's ASR may still charge the registered holder (or other person entitled to the securities concerned) a dematerialization fee for any units of the securities dematerialized at the issuer's initiative and without a dematerialization request, and may refuse instructions or requests in respect of them (eg, requests to register a transfer of the securities) until such fee is paid.[46]

6.7 **Consequences of breach**: Any issue of a new title instrument in respect of participating securities or a breach of the obligations described in paragraphs 6.5(b) or 6.5(c) above (without reasonable excuse) constitutes an offence punishable by fines[47] and may also call into question the suitability of the securities concerned to remain listed[48]. As discussed under paragraphs 5.16 to 5.18 above, the SFC has power to exempt the application of the obligation not to issue new title instruments in respect of participating securities, but exemption will be granted with restraint and in exceptional circumstances only.

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[44] A partial offer is an offer to holders to buy a specified number (but not all) of the issued shares of an issuer. See [Practice Note (PN1) – Partial offers dated 29 September 2023].

[45] This is reflected in rule 25 of the USM Rules.

[46] See also discussion under paragraph 6.5 of Appendix 2.

[47] The penalty for these offences is, in each case, a fine at level 4 (ie, $25,000) and a daily fine of $700 for each day that the offence continues – see rules 30(2) and 25(6) of the USM Rules.

[48] See footnote 18.

Dematerialization where no title instrument was previously issued

6.8 **Securities still need to be dematerialized**: Issuers of prescribed securities should note that even if no title instruments were previously issued in respect of those securities (eg, because the terms of issue do not require title instruments to be issued), steps will still have to be taken to convert the securities into uncertificated form. This is because the terms "certificated form" and "uncertificated form" have a specific meaning under the USM regime[49], ie, prescribed securities are:

(a) in "uncertificated form" only if they are recorded in the register of holders of those securities as being held in uncertificated form; and

(b) in "certificated form" if they are not so recorded.

It follows that the form of the securities is not determined solely by whether or not a title instrument has been issued in respect of them.

6.9 **Process for dematerialization**: Dematerialization in such circumstances will not require the submission of any title instruments for cancellation (since there are none). The issuer can therefore proceed to dematerialize such prescribed securities as soon as practicable after they become participating securities. Issuers are encouraged to instruct their ASRs to proceed with dematerialization in such cases unless there are specific reasons for not doing so. Dematerialization in such circumstances means:

(a) recording the securities in the register of holders as being held in uncertificated form; and

(b) ensuring that each holder of such securities is a system-member or provisional system-member of the issuer's ASR's UNSRT system.

Obligations relating to the register of holders

6.10 **Entries relating to uncertificated holdings and notification of changes**: Once any prescribed securities become participating securities, the issuer must ensure the following in respect of the register of holders of those securities.

(a) If any of the securities are held in uncertificated form, the register must state specifically that those securities are held in uncertificated form.[50]

(b) If: (i) any holder's securities are held in uncertificated form; and (ii) any entry in the register relating to the particulars of that holder or to the holder's uncertificated holdings has been changed, a written confirmation must be sent to the holder regarding that change.[51]

6.11 **Consequences of breach**: Any breach of the obligations in paragraphs 6.10(a) or 6.10(b) above constitutes an offence punishable by fines[52], and may also call into question the suitability of the securities concerned to remain listed[53].

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[49] This is reflected in section 1AB of Part 1 of Schedule 1 to the SFO and rule 5(3) of the USM Rules.

[50] This obligation is reflected in rule 5 of the USM Rules — see subrules (3) and (5).

[51] This obligation is reflected in rule 6 of the USM Rules.

[52] The penalty for these offences is, in each case, a fine at level 4 (ie, $25,000) and a daily fine of $700 for each day that the offence continues – see rules 5(8) and 6(5) of the USM Rules.

[53] See footnote 18.

6.12 **Limitations on book closure**: Once any prescribed securities become participating securities, there will be limitations on the period for which the register of holders of those securities may be closed.[54] Specifically, it will no longer be possible for the register to be closed for:

(a) more than two consecutive business days at a time; or

(b) any longer period during which trading of the securities on the SEHK is suspended.

Subject to the above, there is no limit on the maximum number of days per year that the register may be closed, although such a limit may exist under other legislation (eg, companies legislation[55]).

6.13 **Inspection and copying of the register**: Upon implementation of the USM regime, and irrespective of whether or not an issuer's prescribed securities: (i) are constituted under the laws of any of the specified jurisdictions; or (ii) have become participating securities, the issuer must:

(a) permit an existing or past registered holder of those securities to inspect and make copies of any entries in the register relating to *that* holder; and

(b) provide to such registered holder of those securities a copy of any entry in the register (including any previous entry and any entry that has been subsequently amended or removed) that relates to *that* holder, and that the holder has requested and paid for.[56]

6.14 **Consequences of breach**: A breach of the obligations to permit inspection and provide copies as described in paragraph 6.13 above (without reasonable excuse) constitutes an offence punishable by fines[57], and may also call into question the suitability of the securities concerned to remain listed[58].

Restrictions on rematerialization except in contemplation of delisting

6.15 **Limitation on rematerialization**: In general, once any participating securities have been dematerialized, they should not be rematerialized unless:

(a) the securities are to be delisted from the SEHK — see paragraph 6.16 below for more details; or

(b) the SFC has exempted the securities from the restriction on issuing new units in certificated form, and the restriction on issuing new title instruments — see paragraph 6.18 below for more details.

6.16 **Rematerialization on delisting**: Where any participating securities are to be delisted, the issuer must, in respect of any units of those securities then held in uncertificated form:

(a) remove from the register of holders all entries stating that those units are held in uncertificated form;

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[54] This limitation on book closure is reflected in rule 9 of the USM Rules. For the background to this limitation, please see paragraphs 102 to 106 of the SFC's *July 2024 Consultation Conclusions on proposed subsidiary legislation, code and guidelines for implementing an uncertificated securities market in Hong Kong*.

[55] For example, section 632 of the CO prohibits the closure of the register of members of a Hong Kong incorporated company for more than 30 days per year, while rule 70 of the Securities and Futures (Open-ended Fund Companies) Rules (Cap 571AQ) imposes a similar restriction in respect of open-ended fund companies. The laws of other jurisdictions may also impose similar restrictions, eg, section 66 of the Bermuda Companies Act.

[56] The obligations to permit inspection and provide copies are reflected in rules 7 and 8 of the USM Rules.

[57] The penalty for these offences is, in each case, a fine at level 4 (ie, $25,000) — see rules 7(5) and 8(4) of the USM Rules.

[58] See footnote 18.

(b) if the terms of issue so require, issue to the registered holders of those securities as soon as reasonably practicable one or more title instruments in respect of those securities;

(c) if such registered holder is HKSCC Nominees Limited, issue to it such number of title instruments and in such denomination as HKSCC Nominees Limited may specify; and

(d) send a written confirmation to the registered holder concerned regarding the removal of the entry from the register, and noting whether, when and how any title instrument may be obtained.[59]

6.17 **Consequences of breach**: A breach of the obligations described in paragraph 6.16 above (without reasonable excuse) constitutes an offence punishable by fines[60].

6.18 **Rematerialization on basis of SFC exemptions**: As mentioned in paragraphs 6.3 and 6.7 above, the SFC has power to exempt any prescribed securities from the obligation not to issue new units of the securities in certificated form, and the obligation not to issue new title instruments. These exemption powers are expected to be exercised with restraint and in exceptional circumstances only. However, if necessary, the SFC may use these powers to permit rematerialization if the circumstances so justify, eg, where the issuer is unable to appoint a third party as its ASR for reasons wholly beyond its control and despite its best endeavours to do so. In such circumstances, the issuer may need to take up the role of ASR itself, but may not be in a position to provide and operate a UNSRT system and hence the rematerialization of its securities (with or without the need to issue title instruments) may be unavoidable.

[59] These obligations are reflected in rule 27(2), (3) and (4) of the USM Rules.

[60] The penalty for these offences is, in each case, a fine at level 4 (ie, $25,000) and a daily fine of $700 for each day that the offence continues — see rule 27(5) of the USM Rules.

Appendix 1 — Information to be submitted when notifying the SFC of a change of ASR

Section 1: Details of the Issuer

- Name of the issuer of the prescribed securities (English)
- Name of the issuer of the prescribed securities (Chinese)

Section 2: Details of the change

(a) Prescribed securities involved*

- Name of the prescribed securities involved
- Stock code of the prescribed securities involved
- Effective date of change (DD/MM/YYYY)

(b) Outgoing securities registrar

- Name of outgoing securities registrar
- Address of outgoing securities registrar

(c) Incoming securities registrar

- Name of incoming securities registrar (if any)
- Address of incoming securities registrar (if any)

(d) Other / further relevant information**

** Where an issuer has more than one category of prescribed securities (eg, shares, outstanding rights under a rights issue or subscription warrants), the notice should set out all the categories of securities for which the outgoing ASR will cease to act and the incoming ASR will start to act. However, no notification is necessary where the outgoing ASR will cease to act for rights or warrants upon their lapsing or expiry.*

*** Any further information relevant to the change which the SFC may reasonably expect the issuer to provide if not provided above.*

Section 3: Contact information for this notification

- Name of the contact person
- Title/position of the contact person
- Email address of the contact person
- Telephone number of the contact person
- Name of any additional contact person
- Title/position of the additional contact person
- Email address of the additional contact person
- Telephone number of the additional contact person

Appendix 2 — Key areas of focus and Sample provisions

This Appendix expands on the key areas that issuers should focus on when reviewing their terms of issue. It also sets out some sample provisions for consideration and inclusion as appropriate. Issuers should note that **the contents of Appendix 2, including the sample provisions, are intended for reference only and should not be viewed as constituting a complete list of all matters that issuers need to consider when reviewing and amending their terms of issue**, particularly as the terms of issue are often customised and may differ significantly from case-to-case. **The SFC makes no representations and gives no assurance as to the suitability or adequacy of the sample provisions, or any part thereof, in any particular case.** Given the importance of the terms of issue, and of the impact of any amendment to them, **issuers are strongly advised to seek independent advice on how best to amend them.**

1. General

1.1 **Inconsistencies and conflicts with home laws and existing terms of issue**: Issuers should review relevant home laws[61], as well as the terms of issue of their prescribed securities[62], to see if these are consistent with requirements under the USM regime. Where any conflict, inconsistency or gap is identified, issuers should ascertain whether these can be addressed by amending the terms of issue. If they can, amendments should be made to address such conflict, inconsistency or gap.

1.2 **Provide expressly for key matters**: For better clarity, and the avoidance of doubt and dispute, amendments to the terms of issue should, as far as possible, seek to deal expressly with the matters discussed in this Appendix, rather than stay silent on the same.

1.3 **Sample provisions for shares**: The sample provisions set out in this Appendix are generally cast by reference to prescribed securities that are shares in a company, and hence designed for inclusion in articles of association or bye-laws. Issuers of other prescribed securities (eg, interests in authorized CIS, stapled securities and depositary receipts) should take this into account when considering whether, and how best, to incorporate the sample provisions into their terms of issue. In the case of subscription warrants and rights under a rights issue, because some aspects of the USM regime apply slightly differently to these securities, we have included a specific section on these securities and some key aspects that should be covered in their terms of issue — see section 10 of this Appendix.

1.4 **Reference to model articles under the CO**: For better understanding and context, the sample provisions in this Appendix are based on the *Model Articles for Public Companies Limited by Shares* in Schedule 1 to the Companies (Model Articles) Notice (Cap 622H) (**Schedule 1 Model Articles**). Issuers should take this into account when considering whether, and how best, to incorporate the sample provisions into their own terms of issue given that these may vary significantly from the Schedule 1 Model Articles. Moreover, issuers whose prescribed securities are constituted under the laws of a

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[61] The reference to "relevant home laws" here refers to laws of the place where the prescribed securities in question are constituted, and which may therefore govern key matters relating to such securities, such as how legal title to them may be evidenced and transferred. For example, in the case of shares in a company, "relevant home laws" would refer to the laws of the place where the company was incorporated.

[62] As mentioned in paragraph 4.3 of the main body of this Guidance Note, the "terms of issue" refer to documents that govern the terms on which the prescribed securities are issued and on which they may be held, evidenced and transferred. For example, in the case of shares in a company, this would include the articles/bye-laws of the company.

place other than Hong Kong (eg, non-Hong Kong companies whose shares are listed on the SEHK) should be mindful that the Schedule 1 Model Articles are cast by reference to the CO and thus primarily designed for Hong Kong incorporated companies. More specific modifications may therefore be needed when considering whether and how best to incorporate the sample provisions in the case of non-Hong Kong companies, eg, to take into account provisions that are customary or required under the laws of their home jurisdictions.

1.5 **Scope of sample provisions**: The sample provisions focus on key aspects of the USM regime, including in particular those listed under paragraph 4.4 of the main body of this Guidance Note.

1.6 **Sample provisions for reference only**: The discussion and sample provisions in this Appendix are intended for reference only. The key areas covered should not be viewed as constituting a full and exhaustive list of all matters that issuers need to consider. It should also not be assumed that the sample provisions will be suitable and adequate in all cases, or that they may be adopted without modification. Ultimately, the terms of issue may differ significantly from case-to-case. **It remains the issuer's responsibility to determine whether, and to what extent, any of the sample provisions (or any part of them) are suitable for inclusion. Given the importance of such terms and documents, and of the impact of any amendment to them, issuers are strongly advised to seek independent advice on how best to amend them.**

1.7 **Use of square brackets in the sample provisions**: In the sample provisions below, certain terms or phrases are in square brackets. The suitability of these terms and phrases depends on whether the same terms and phrases are used elsewhere in the terms of issue (and/or other document(s)), or whether alternative terms and phrases are used. For example:

(a) some terms of issue may use "article" to refer to a provision of the document while others may use "bye-law" or "paragraph";

(b) some terms of issue may refer to the issuer as "the company" while others may refer to the issuer by name;

(c) some terms of issue may refer to the register of holders of the prescribed securities as the "register of members" while others may refer to it as the "register of holders";

(d) in the case of companies that maintain more than one register of members or whose register of members comprises more than one component[63], references to "register of members" may need to be more specific so as to identify which register or component is being referred to (eg, "branch register in Hong Kong");

(e) in the case of companies that have more than one class or type of shares, it may be clearer to specify the class or type of shares concerned (eg, "Class A shares" or, in the case of shares of a company incorporated in the Chinese Mainland, "H-shares") instead of just "shares", particularly if not all classes/types of shares will become participating securities; and

(f) in the case of some companies, certain matters may be left for decision by "the directors", while for other companies, they may be left for decision by some other person or body.

[63] For example, a non-Hong Kong company may maintain a principal register of members outside Hong Kong, and a branch register of members in Hong Kong.

Issuers should ensure internal consistency within their documents to avoid doubt, confusion and misunderstanding.

1.8 **Footnotes in the sample provisions**: Footnotes have been added to some of the sample provisions. These are intended to help issuers better understand how the sample provisions have been cast, and to highlight particular points that issuers may need to pay attention to when considering whether and how best to incorporate such provisions. The footnotes are not intended to be part of the sample provisions themselves, and hence not expected to be incorporated into the terms of issue (and/or other document(s)).

1.9 **Dual listed securities**: Issuers whose shares or other prescribed securities are listed on both the SEHK and another exchange should pay particular attention when considering the sample provisions. In particular, such issuers should consider whether the *same* securities are listed and traded on both markets (eg, whether they are of the same class and can be moved freely from the principal register of holders to the branch register (or its equivalent), and vice versa). If yes, more specific modifications may be necessary to avoid any unintended consequences[64]. If in doubt, issuers should seek independent advice as necessary.

2. Definitions

2.1 **Sample definitions**: Some of the terms used in the sample provisions below bear specific meanings, and will therefore have to be defined if adopted. Below are sample definitions for issuers' consideration and reference.

SAMPLE DEFINITIONS
<u>Suggested amendment</u>: *Consider adding the following terms and definitions to the interpretation/definitions provision of the articles/bye-laws, to the extent that such terms are adopted.*
In these [articles], unless the context otherwise requires—
(a) the following terms bear the meanings given, or descriptions set out, under the SFO—
▪ **ASR / approved securities registrar** — see section 1 of Part 1 of Schedule 1 to the SFO
▪ **certificated form** — see section 1AB of Part 1 of Schedule 1 to the SFO
▪ **prescribed securities** — see section 101AA of the SFO[65]
▪ **uncertificated form** — see section 1AB of Part 1 of Schedule 1 to the SFO
▪ **UNSRT system** — see section 101AAB of the SFO

[64] For example, the terms "prescribed securities" and "participating securities", as used in the sample provisions, may need modification if the restrictions and requirements under the sample provisions are not intended to apply in respect of securities that are for the time being: (i) registered on the *non*-Hong Kong register; and (ii) listed and traded on an exchange outside Hong Kong.

[65] In the case of prescribed securities that are listed on *both* the SEHK and another market outside Hong Kong, the definition of "prescribed securities" may need to be cast more specifically (eg, so that it refers only to those securities that fall within the definition under section 101AA of the SFO *and* are registered in the Hong Kong register of members) — see paragraph 1.9 of this Appendix, and footnote 64.

(b) the following terms bear the meanings given under the USM Rules—

- **dematerialization request** — see rule 2(1) of the USM Rules
- **in the process of delisting** — see rule 2(2) of the USM Rules
- **participating securities** — see rule 2(1) of the USM Rules[66]
- **specified request** — see rule 2(1) of the USM Rules
- **system-member** — see rule 2(1) of the USM Rules

(c) **ASR Code** means the *Code of Conduct for Approved Securities Registrars* issued by the Securities and Futures Commission, as amended from time to time

(d) **ASR Rules** mean the Securities and Futures (Approved Securities Registrars) Rules, Cap 571AT, as amended from time to time

(e) **dematerialization** means conversion from certificated form to uncertificated form (and **dematerialize** is to be construed accordingly)

(f) **HKSCC** means Hong Kong Securities Clearing Company Limited

(g) **operating rules of [the company's] ASR** mean such ASR's operating rules (by whatever name called) for using any facilities provided by it, including in particular any facilities for evidencing and transferring legal title to [shares] in [the company] or for sending and receiving authenticated messages

(h) [**register of [members]** means the [branch] register of [members] holding [shares] in [the company] that is kept in Hong Kong]][67]

(i) **rematerialization** means conversion from uncertificated form to certificated form (**rematerialize** shall be construed accordingly)

(j) **SEHK** means the Stock Exchange of Hong Kong Limited

(k) **SFO** means the Securities and Futures Ordinance, Cap 571, as amended from time to time

(l) **USM Rules** mean the Securities and Futures (Uncertificated Securities Market) Rules, Cap 571AS, as amended from time to time

3. Form of shares

3.1 **Possible existing provisions**: The articles/bye-laws may include provisions that require the company to issue share certificates in certain circumstances (eg, following the allotment or transfer of shares, or

[66] In the case of participating securities that are listed on *both* the SEHK and another market outside Hong Kong, the definition of "participating securities" may need to be cast more specifically (eg, so that it refers only to those securities that fall within the definition under rule 2(1) of the USM Rules *and* are registered in the Hong Kong register of members) — see paragraph 1.9 of this Appendix, and footnote 64.

[67] This definition is only needed in respect of companies that maintain more than one register of members or whose register of members contains more than one component (eg, non-Hong Kong companies that maintain a principal register of members in their home jurisdiction and a branch register of members in Hong Kong) — see paragraph 1.7(d) of this Appendix and footnote 63. The precise language of this definition will depend on how the register in Hong Kong is described under the company's home laws and existing terms of issue.

on request to combine or divide existing certificates[68]). The articles/bye-laws may also include provisions that stipulate that shares issued by the company will be in a particular form (eg, in the form of share certificates).

3.2 **Amendments needed**: Such provisions will need to be suitably amended or qualified for consistency with the USM regime. In particular, issuers should consider clarifying that share certificates will no longer be issued:

(a) so long as their shares remain participating securities; and

(b) save as otherwise permitted or required under the USM Rules (eg, by virtue an exemption from rule 30 granted under rule 32 of those rules).

For better clarity, it may be useful to also expand on some instances where this will be the case, eg, following an allotment, transfer, etc. Additionally, in respect of existing certificates that are still in circulation and have not been cancelled, issuers should consider clarifying that these will continue to be valid.

SAMPLE PROVISIONS ON FORM OF SHARES / ISSUES AND ALLOTMENTS (Based on articles 64 and 66 of the Schedule 1 Model Articles)
Suggested amendment: Consider adding the following qualification at the end of article 64[69] (or any equivalent article(s)/bye-law(s) that requires the issue of share certificates in certain circumstances, eg, following an allotment, transfer, etc). **64. Certificates to be issued except in certain cases** … This [article] applies subject to [articles 66A and 67E[70]].
Suggested amendment: Consider adding the following qualification at the end of article 66[71] (or any equivalent article(s)/bye-law(s) that deals with the consolidation or division of existing share certificates). **66. Consolidated share certificates** … This [article] applies subject to [article 66A].

[68] See, for example, articles 64 and 66 of the Schedule 1 Model Articles.

[69] One option would be to add the qualification as a new paragraph (4) under article 64.

[70] Sample article 67E (on page 42) is also referred to here to deal with the need to issue certificates following a rematerialization of the shares. Rematerialization will be necessary if the shares are delisted from the SEHK. However, whether certificates must also be issued is a matter for the company. (See discussion under section 6 of this Appendix (on dematerialization and rematerialization), and in particular paragraph 6.3.)

[71] One option would be to add the qualification as a new paragraph (4) under article 66.

Suggested amendment: Consider adding the following new article after article 66 (or at the end of the section in the articles/bye-laws that deals with the issue of share certificates for whatever reason or, if there is no such section, then in a suitable place in the articles/bye-laws).

[66A]. No obligation to issue certificates in respect of participating securities

(1) This [article] applies—
  (a) to [shares][72] in [the company] for so long as[73] they are participating securities and not in the process of delisting; and
  (b) save as otherwise permitted or required under the USM Rules.

(2) With effect from (and including) the day on which [shares] in [the company] become participating securities (**participation date**) no [certificate] will be issued in respect of any such [shares].

(3) For the avoidance of doubt, paragraph (2) applies (without limitation) in the following circumstances—
  (a) following any issue, allotment, transfer, transmission, consolidation or subdivision of [shares] in [the company], if the issue, allotment, transfer, transmission, consolidation or subdivision is registered in the [register of members] on or after the participation date; or
  (b) where, for whatever reason[74], the holder of a [share] requests to replace an existing [certificate] for the [share], and the replacement [certificate] is not issued before the participation date.

(4) Nothing in this [article] affects the validity of any [certificate] issued by [the company] in respect of a [share] prior to the participation date, and not cancelled.[75]

3.3 **Listing documents**: Apart from amending the articles/bye-laws, where any shares in a company are to be participating securities from the time they are first listed, issuers should also consider clarifying in the relevant "**listing documents**"[76]: (i) that the shares to be listed will be participating securities from the day they are issued and first listed on the SEHK; and (ii) the implications of this. For more information on what the listing documents should include, please see Appendix 2 of the SEHK's USM Guide.

[72] The suggested reference here to "*shares*" assumes that the company has issued only one class or type of shares, and all shares of that class or type are prescribed securities that will become participating securities. If the company has issued more than one class or type of shares, and not all classes or types will become participating securities, then the description here will need to more specifically describe the particular class or type of shares that *will* become participating securities (eg, *"Class A shares"*). In the case of companies incorporated in the Chinese Mainland, a simple option may be to refer to *"H-shares"* instead of just *"shares"*.

[73] The reference here to *"for so long as"* is to limit the application of this sample article 66A so that it does not apply during any period when the shares: (i) have not yet become participating securities; or (ii) have ceased to be participating securities. As a result, any existing provisions in the articles/bye-laws that *do* provide for the issue of certificates can automatically apply during such periods, ie, without the need for the articles/bye-laws to be amended further.

[74] Such reasons may include: (i) the holder wanting to replace one certificate with two (or vice versa); (ii) the holder having changed his name and requesting a replacement certificate with his new name, etc.

[75] This paragraph (4) seeks to safeguard the validity of existing share certificates.

[76] The term "listing documents" refers to documents issued in connection with the listing of prescribed securities on the SEHK, including any public offer documents such as prospectuses as well any related subscription or application documents.

3.4 **Shares to be first listed close to the USM implementation date**: Issuers who are looking to list shares close to the USM implementation date will need to pay particular attention when preparing their listing documents. Specifically, these documents may need to cater for the possibility that it is uncertain whether the shares will be listed before or after the USM implementation date, and that the shares may therefore have to be non-participating securities (and issued in certificated form) or participating securities (and issued in uncertificated form) on listing. In other words, such issuers may need to cater for the shares having to switch, at a very late stage, from *not* being participating securities to *being* participating securities (or vice versa) from their listing date. Issuers should seek assistance from their share registrars and the SEHK as necessary.

4. Transfer and transmission

4.1 **Possible existing provisions**: The articles/bye-laws may include detailed provisions on the transfer and transmission of shares.[77] In particular, these may:

(a) set out specific requirements for effecting transfers and transmissions (eg, use of an instrument of transfer in a prescribed form, return of any existing share certificates covering the shares to be transferred or transmitted, etc);

(b) specify the grounds on which a transfer may be refused (eg, if a proper and duly signed instrument of transfer is not lodged, or the existing share certificate is not returned, etc);

(c) impose obligations on the company (or its directors) if a transfer is refused (eg, to send a notice of refusal, provide a statement of reasons if requested, etc); and

(d) require (or prohibit) the payment of a fee.

4.2 **Amendments needed**: Such provisions will need to be suitably amended or qualified for consistency with the USM regime. In particular, issuers should consider clarifying that: (i) so long as their shares remain participating securities; and (ii) save as otherwise permitted or required under the USM Rules:

(a) transfers may be effected using either an instrument of transfer or a specified request, with some clarification as to which is generally expected to be used, and when; and

(b) no share certificate will be issued following the transfer[78].

Issuers should also ensure that any provision relating to the payment of a fee for handling or registering any transfer of their shares does not allow for the payment of a fee that exceeds any applicable limits prescribed under the ASR Code[79]. This applies to all shares that are prescribed securities, ie, irrespective of whether they are participating securities or not.

[77] See, for example, articles 80 to 86 of the Schedule 1 Model Articles.

[78] Depending on how the articles/bye-laws are cast, this point may need to be addressed in the provisions dealing with transfers, or the provisions dealing with share certificates, or both. In the context of the Schedule 1 Model Articles, the removal of the need to issue share certificates is covered under the provisions dealing with share certificates and hence the necessary amendments are dealt with there (see sample article 66A above, and related sample amendment to article 64) rather than in the sample provisions on transfer.

[79] See Schedule 1 to the ASR Code which stipulates upper limits for certain fees charged by ASRs, including fees for processing requests to register transfers of prescribed securities.

SAMPLE PROVISIONS ON TRANSFERS (Based on articles 80 and 81 of the Schedule 1 Model Articles)
<u>Suggested amendment</u>: Consider adding the following qualification at the end of article 80[80] (or any equivalent article(s)/bye-law(s) that sets out specific requirements for effecting transfers and/or the payment of a fee for registering transfers). **80. Transfer of shares** … This [article] applies subject to [article 80A[81]].
<u>Suggested amendment</u>: Consider adding the following new article after article 80 (or after any equivalent article/bye-law that sets out specific requirements for effecting transfers). **[80A.] Transfer of prescribed securities** (1) This [article] applies— (a) to [shares] in [the company] for so long as[82] they are prescribed securities[83] and not in the process of delisting; and (b) save as otherwise permitted or required under the USM Rules. (2) With effect from (and including) the day on which [shares] in [the company] become participating securities, they may be transferred as follows[84]— (a) if the [shares] are held by the transferor in certificated form — by means of an instrument of transfer that complies with [article 80(1)[85]] and the USM Rules[86]; and

[80] One option would be to add the qualification as a new paragraph (5) under article 80.

[81] If the original provision on transfers of shares includes a requirement to issue certificates following a transfer, then the proviso added here will need to include a reference to sample article 66A as well. (In the context of the Schedule 1 Model Articles, since article 80(1) does not include such a requirement, the proviso only refers to sample article 80A and does not refer to sample article 66A as well.)

[82] Similar to footnote 73 above, the reference here to *"for so long as"* is to limit the application of this sample article 80A so that it does not apply during any period when the shares are not prescribed securities, and any existing provisions in the articles/bye-laws dealing with the transfer process can apply instead without the need for further amendment.

[83] The reference here is to "prescribed securities" rather than "participating securities" because the sample provision also deals with the matter of any transfer fee that may be payable (see paragraph (4) of sample article 80A), and such fee is expected to be the same irrespective of whether the shares are participating securities or not. Nevertheless, in so far as the provision deals with the use of specified requests to effect transfers, it will necessarily apply only to participating securities. This is because the use of specified requests is limited to securities that are in uncertificated form and only participating securities can be in uncertificated form.

[84] Paragraph (2) seeks to echo section 150 of the CO and section 36 of the SDO (as amended by the USM Amendment Ordinance), both of which require either an instrument of transfer or a specified request to be delivered in order to register a transfer. There is no similar requirement under the USM Rules.

[85] The reference here should be to the provision in the articles/bye-laws that sets out requirements relating to the use of an instrument of transfer. In the context of the Schedule 1 Model Articles, the relevant provision is article 80(1).

[86] See in particular rule 12 of the USM Rules, which deals with the registration of transfers using an instrument of transfer.

(b) if the [shares] are held by the transferor in uncertificated form — by means of a specified request from the transferor and transferee that complies with the USM Rules[87].

(3) Notwithstanding paragraph (2)(b), [shares] in [the company] held by the transferor in uncertificated form may be transferred by means of an instrument of transfer if [the directors] are satisfied that it is not reasonably practicable to transfer them by means of a specified request.[88]

(4) A reasonable fee (not exceeding any applicable limits prescribed under the ASR Code) may be charged by [the company's] ASR for registering any instrument of transfer, specified request or other document relating to or affecting the title to any [share].

Suggested amendment: Consider adding the following qualification at the end of article 81[89] (or any equivalent article(s)/bye-law(s) that deals with the company's/directors' right to refuse transfers of shares and the company's/directors' obligations following such refusal).

81. Power of directors to refuse transfer of shares

...

This [article] applies subject to [article 81A].

Suggested amendment: Consider adding the following new article after article 81 (or after any equivalent article(s)/bye-law(s) that deals with the company's/directors' right to refuse transfers of shares and the company's/directors' obligations following such refusal).

[81A.] Additional matters relating to power of [directors] to refuse transfer of [shares]

(1) [Without prejudice to [article 81[90]],][91] [the directors] may refuse to register the transfer of a [share]—

(a) if the [share] is in certificated form, and a specified request is sent;

(b) if the [share] is in uncertificated form, and—

(i) the specified request is not sent in accordance with the operating rules of [the company's] ASR; or

(ii) subject to [article 80A(3)], an instrument of transfer is lodged;[92]

[87] See in particular rule 13 of the USM Rules, which deals with the registration of transfers using a specified request.

[88] Together, paragraphs (2)(b) and (3) seek to clarify that, as far as possible, specified requests should be used to effect transfers of shares that are in uncertificated form, and instruments of transfer should be used in exceptional circumstances only. (See paragraph 4.3 of this Appendix for more information on this.)

[89] One option would be to add the qualification as a new paragraph (5) under article 81.

[90] The reference here should be to the article/bye-law that deals with the power of directors (or other relevant person or body, as applicable under the relevant articles/bye-laws) to refuse to register transfers. In the context of the Schedule 1 Model Articles, the relevant provision is article 81.

[91] The words in brackets may be unnecessary, or need modification, depending on: (i) whether the articles/bye-laws include a provision equivalent to article 81 of the Schedule 1 Model Articles; and (ii) if so, how it is cast.

[92] Paragraphs (1)(a) and (b) seek to echo paragraphs (2) and (3) of sample article 80A by confirming the directors' ability to compel the use of specified requests to effect transfers of shares that are in uncertificated form, save only in exceptional circumstances. (See paragraph 4.3 of this Appendix for more information on this.)

(c) if [the directors] are entitled to do so by virtue of article 86A[93]; or
(d) on any other ground provided under the USM Rules.

(2) Where [article 80A] applies, and [the directors] refuse to register the transfer of a [share], a notice of refusal must be sent to the transferor and transferee within such period as indicated in the ASR Code[94].

SAMPLE PROVISION ON TRANSMISSIONS
(Based on article 85 of the Schedule 1 Model Articles)

Suggested amendment: Consider amending article 85(5) (or any equivalent article(s)/bye-law(s) that requires a transmittee to execute an instrument of transfer when transferring shares to another person) to allow for the possibility that a specified request may be used instead.

85. Exercise of transmittee's rights

…

(5) If the transmittee chooses to have the [share] transferred to another person, the transmittee must—
(a) execute an instrument of transfer in respect of it; or
(b) if [article 80A] applies and so permits, send a specified request in respect of it.

[( )] All the limitations, restrictions and other provisions of these articles relating to the right to transfer and the registration of transfer of [shares] apply to the transfer under paragraph [(5)], as if the transmission had not occurred and the transfer were a transfer made by the holder of the [share] before the transmission.[95]

4.3 **Use of specified requests wherever possible**: To facilitate the market's early transition to the USM regime, it is necessary to encourage the use of specified requests, and discourage the use of instruments of transfer, wherever possible. To that end, issuers are generally expected to require transfers of participating securities in uncertificated form to:

(a) be effected by means of specified requests; and

(b) permit the use of instruments of transfer only in exceptional cases *and* after expending every effort to facilitate the use of a specified request[96].

[93] Sample article 86A (on page 44 below) deals with the issuer's ability to refuse certain requests (including requests to register a transfer of shares) in certain circumstances. This is discussed in more detail below under paragraphs 6.5 and 6.6 of this Appendix.

[94] Relevant timeframes are currently indicated under section 2.1 of Schedule 2 to the ASR Code.

[95] This additional paragraph seeks to make clear that provisions relating to transfers, including in particular sample article 80A and 81A, apply in respect of transfers by transmittees also. The paragraph largely replicates article 85(6) of the Schedule 1 Model Articles. Accordingly, issuers whose articles/bye-laws *already* include a provision equivalent to article 85(6) do not need to add this further paragraph.

[96] One such case where the use of an instrument of transfer may be unavoidable is where the shares are being transferred in response to a general offer, and the offeror has appointed someone other than the *company's* ASR to be its receiving agent for collecting acceptances and transfer instructions. In such cases, the receiving agent will not be in a position to receive transfer instructions by way of a specified request because it does not operate the UNSRT system through which title to *those* shares may be evidenced and transferred electronically.

Issuers should therefore understand from their respective share registrars/ASRs: (i) the possible exceptional cases that might justify the use of an instrument of transfer; and (ii) the arrangements to be put in place to facilitate the use of a specified request as far as possible (eg, arrangements for assisting elderly non-tech savvy persons to effect transfers by means of specified requests).

5. Lost / damaged share certificates

5.1 **Possible existing provisions**: The articles/bye-laws may include provisions that require the company to issue new share certificates to replace any existing ones that are lost or damaged.[97] Such provisions may also require certain procedures and pre-requisites to be completed before replacement certificates are issued, eg, providing satisfactory evidence of the loss or damage, publishing relevant notices, providing an indemnity, etc.

5.2 **Amendments needed**: Such provisions will need to be suitably amended or qualified for consistency with the USM regime. In particular, issuers should consider clarifying that: (i) so long as their shares remain participating securities; and (ii) save as otherwise permitted or required under the USM Rules:

(a) no replacement certificates will be issued; and

(b) the shares covered by any lost or damaged share certificate may instead be dematerialized in accordance with the USM Rules, and recorded in the register of members as being held in uncertificated form; and

(c) that existing procedures and pre-requisites for replacing lost or damaged share certificates will still have to be completed.

It is worth highlighting that it is not enough for any existing provisions on the replacement of lost or damaged certificates to simply be made subject to sample article 66A (discussed under section 3 above). Such an approach will not cater for the matters mentioned in paragraphs (b) and (c) above, which are important for the articles/bye-laws to make clear.

SAMPLE PROVISIONS ON LOST OR DAMAGED INSTRUMENTS
(Based on article 67 of the Schedule 1 Model Articles)

Suggested amendment: Consider adding the following qualification at the end of article 67[98] (or any equivalent article(s)/bye-law(s) that deals with the replacement of lost or damaged share certificates).

67. Replacement [share] [certificates]

…

This article applies subject to [article 67A].

[97] See, for example, article 67 of the Schedule 1 Model Articles.

[98] One option would be to add the qualification as a new paragraph (3) under article 67.

Suggested amendment: Consider adding the following new article after article 67 (or after any equivalent article(s)/bye-law(s) that deals with the replacement of lost or damaged share certificates).

[67A.] No obligation to issue [replacement certificates] in respect of participating securities

(1) This [article] applies—

(a) to [shares] in [the company] for so long as[99] they are participating securities and not in the process of delisting; and

(b) save as otherwise permitted or required under the USM Rules.

(2) If a [certificate] issued in respect of a [member's] [shares] is defaced, damaged, lost or destroyed, and no [replacement certificate] is issued prior to the day on which [shares] in [the company] become participating securities—

(a) the [member] is not entitled to be issued with a [replacement certificate] in respect of the same [shares]; and

(b) subject to paragraph (3), the [shares] may instead be dematerialized in accordance with the USM Rules[100].

(3) [Shares] of a [member] that are covered by a [certificate] that is defaced, damaged, lost or destroyed may not be dematerialized unless the [member] has complied with [the conditions as to evidence, indemnity and the payment of a reasonable fee that [the directors] decide[101]].

6. New issues in uncertificated form, dematerialization and rematerialization

6.1 **Unlikely to be any existing provisions**: Existing articles/bye-laws are unlikely to include provisions regarding the issue of shares in uncertificated form or their dematerialization and rematerialization. Nevertheless, the articles/bye-laws should be reviewed to see whether this is the case.

6.2 **Provisions/amendments needed**: Issuers should consider incorporating suitable provisions, and (where applicable) amending existing provisions, to ensure consistency with the USM regime. In particular, issuers should consider clarifying in the articles/bye-laws that: (i) so long as shares in the company remain participating securities; and (ii) subject as otherwise permitted or required under the USM Rules:

(a) new shares will be in uncertificated form only;

(b) existing shares may be dematerialized or rematerialized in accordance with the USM Rules;

[99] Similar to footnote 73 above, the reference here to *"for so long as"* is to limit the application of this sample article 67A so that it does not apply during any period when the shares are not yet (or are no longer) participating securities, and any existing provisions in the articles/bye-laws dealing with the replacement of lost or damaged certificates can apply instead without the need for further amendment.

[100] The language of paragraph (b) here (ie, *"may instead be dematerialized in accordance with the USM Rules"*) is intended to cover both dematerialization at the member's request and dematerialization at the company's initiative.

[101] With respect to the words in square brackets here (ie, *"the conditions as to … [the directors] decide"*), the language used is expected to track relevant language in the original provision on the handling of lost or damaged share certificates. Accordingly, the sample provision here tracks the language in article 67(2)(c) of the Schedule 1 Model Articles.

(c) a fee, not exceeding limits prescribed under the ASR Code, may be charged for dematerialization; and

(d) such fee may be charged irrespective of who initiates the dematerialization.

6.3 **Additional clarification regarding rematerialization**: The USM Rules (rule 27) require certain steps to be taken following a rematerialization of participating securities. One of these is (in the case of shares) the requirement to issue share certificates to members following the rematerialization but only if the articles/bye-laws so require. Issuers should therefore consider clarifying in the articles/bye-laws: (i) whether share certificates will be issued to members following a rematerialization of their shares; and (ii) if yes, within what period. When considering such clarifications, issuers may wish to have regard to the following.

(a) With respect to (i), if the existing articles/bye-laws provide for the issue of share certificates in *other* circumstances (eg, following an allotment or transfer of the shares before they become participating securities), it would seem logical to provide that share certificates will be issued following a rematerialization as well. Conversely, if the existing articles/bye-laws do not provide for the issue of share certificates in *any* circumstances, it would seem logical to expect that no share certificates will be issued following a rematerialization either.

(b) With respect to (ii), one option might be to align the period with the period for issuing share certificates in other circumstances (eg, following an allotment or transfer of the shares *before* they become participating securities, etc).

Issuers should also take into account the possible circumstances in which their shares may need to be rematerialized[102], and their ability to issue share certificates in such circumstances (eg, if they no longer have an ASR to assist them at the time). Issuers are encouraged to discuss the matter of rematerialization with their respective share registrars/ASRs.

6.4 **Placement of new provisions**: Issuers should review their articles/bye-laws to assess where best to place provisions relating to new issues in uncertificated form, dematerialization and rematerialization. One option might be to incorporate them under the part that deals with shares, and after provisions dealing specifically with the issue of share certificates. In the case of the Schedule 1 Model Articles, this would mean placing the provisions under a new Division 3A that comes after Division 3 (Share Certificates) of Part 4 (Shares and Distributions).

SAMPLE PROVISIONS ON NEW ISSUES IN UNCERTIFICATED FORM,
DEMATERIALIZATION AND REMATERIALIZATION
(New provisions for inclusion after Division 3 of Part 4 of the Schedule 1 Model Articles)

Suggested amendment: Consider adding the following new articles in a suitable place (eg, after the provisions that deal with the issue of share certificates).

[Division 3A—New Issues in Uncertificated Form, Dematerialization and Rematerialization][103]

[67B.] Scope of articles

[102] In most cases, rematerialization is likely to be the result of the shares having to be delisted from the SEHK. Delisting may be due to many reasons, privatisation, merger, financial or other difficulties, etc.

[103] The inclusion of a heading is optional and will depend on whether headings are adopted generally in the articles/bye-laws.

Articles [67C and 67D] apply—

(a) to [shares] in [the company] for so long as[104] they are participating securities and not in the process of delisting; and

(b) save as otherwise permitted or required under the USM Rules.

[67C.] New [shares] to be in uncertificated form

Any [share] issued on or after the day on which [shares] in [the company] become participating securities will be issued in uncertificated form and no [certificate] will be issued in respect of it.

[67D.] Dematerialization of [shares]

(1) With effect from (and including) the day on which [shares] in [the company] become participating securities, [shares] which are in certificated form may be dematerialized in accordance with the USM Rules.

(2) A reasonable dematerialization fee (not exceeding any applicable limits prescribed under the ASR Code) may be charged by [the company's] ASR to the holder and/or transferee of a [share] in connection with the dematerialization of the [share]. Such fee may be charged irrespective of whether the dematerialization is initiated by [the company] or requested by the holder or transferee.

[67E.] Rematerialization of [shares] in limited circumstances

(1) This [article] applies to [shares] in [the company] if they are participating securities.

(2) [Shares] in [the company] which are in uncertificated form may be rematerialized in accordance with the USM Rules.[105]

[(3) [As soon as reasonably practicable after / Within [ ] months after][106] any rematerialization, [the company] must issue, free of charge, to each [member] whose [shares] are rematerialized, such number of [certificates] in respect of those [shares] as is required under the USM Rules.

(4) If more than one person holds a [share], only one [certificate] may be issued in respect of it.][107]

6.5 **Refusing transfers and transmissions in certain circumstances**: To facilitate the market's early transition to the USM regime, it is necessary to discourage the use of paper and manual processes, and encourage dematerialization, wherever possible. To that end, the USM Rules (rules 25 and 26)

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[104] Similar to footnote 73 above, the reference here to *"for so long as"* is to limit the application of sample articles 67C and 67D so that they do not apply during any period when the shares are not yet (or are no longer) participating securities. As a result, the sample articles will simply have no effect during such periods, and further amendment is unnecessary.

[105] Under the USM Rules, shares (and other participating securities) may be rematerialized under two circumstances, ie: (i) if they are in the process of delisting; or (ii) if they are the subject of an exemption (under rule 32) that permits title instruments to be issued in respect of them. For (i), the rematerialization will be governed by rule 27 of the USM Rules. For (ii), the rematerialization will be governed by the conditions of the exemption.

[106] The reference to "As soon as reasonably practicable" tracks the language in rule 27 of the USM Rules. Issuers may consider providing for a different period taking into account other provisions in their articles/bye-laws (eg, provisions dealing with the issue of certificates following an allotment of shares that are not participating securities) and other relevant factors. (See also paragraph 6.3 of this Appendix.)

[107] Paragraphs (3) and (4) are necessary only if the company intends to issue share certificates following rematerialization — see paragraph 6.3 of this Appendix.

enable issuers to: (i) initiate the dematerialization process themselves, ie, without receiving a dematerialization request from the relevant holder or transferee; and (ii) issue new units of the shares in uncertificated form. However, even where issuers have initiated the dematerialization process or issued shares (eg, bonus shares) in uncertificated form, the holder of the dematerialized or new shares may not have completed the process of becoming a system-member of the UNSRT system provided and operated by the issuer's ASR. In such circumstances, the holder will not only possess no share certificate in respect of their shares, but will also be unable to view and manage their shares electronically.[108] This leaves the investor in an undesirable position, and also delays the market's transition to full dematerialization. To address this, it is necessary to encourage and incentivise holders to complete the process of becoming a system-member as quickly as possible. Issuers can assist in this regard by refusing instructions to transfer or transmit shares if the shares are participating securities and:

(a) the holder/transferee (as applicable) has not completed the process of becoming a system-member; or

(b) (where applicable) related dematerialization fees have not been paid[109].

The USM Rules permit this.[110] If this approach is adopted, relevant clarification will need to be included in the articles/bye-laws, and (where applicable) the relevant listing documents.[111]

6.6 **Placement of provision**: Issuers should review their articles/bye-laws to assess where best to place any clarification regarding refusals of transfers and transmissions on the grounds discussed above. In the context of the Schedule 1 Model Articles, there are two possibilities, ie: (i) to amend article 81, which deals with directors' power to refuse transfers and then rely on article 84(2) to extend the application to transmittees; or (ii) to add a separate provision at the end of Division 5 of Part 4 which deals with both transfers and transmissions. The sample article below adopts the latter approach.

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[108] Such a result may arise in other situations as well, such as where the issuer has changed its ASR, and the holder is not a system-member of the *new* ASR's UNSRT system.

[109] The requirement for related dematerialization fees to be paid is to ensure that holders that refuse to dematerialize their participating securities (and instead rely on the issuer to take the initiative to do so) do not benefit at the expense of those that dematerialize voluntarily. Dematerialization fees are only expected to be payable in respect of prescribed securities that are converted from certificated to uncertificated form. There should therefore be no dematerialization fee in respect of prescribed securities that are in uncertificated form from the time of their issue.

[110] In particular: (i) rules 22 to 24 permit issuers to refuse a dematerialization request from a registered holder or transferee if the holder or transferee (as the case may be) is not a system-member, or has not paid the dematerialization fee, and to refuse to register a transfer when the dematerialization request is refused; and (ii) rule 12 permits issuers to refuse to register transfers of shares in uncertificated form on the basis of an instrument of transfer. In other words, the issuer can require a specified request to be used for such transfers, and specified requests can only be sent by a system-member.

[111] For example, where bonus shares or rights are issued in uncertificated form, the relevant disclosure or listing documents will need to clarify the steps to be taken by holders (eg, the need to be system-members) and the consequences of failing to do so (eg, that the bonus shares cannot be transferred, or the bonus rights cannot be transferred or exercised). For more details, see Part C of Appendix 2 to the SEHK's USM Guide and paragraph 12 of Appendix G1 to the Listing Rules (Main Board).

SAMPLE PROVISION ON REFUSING CERTAIN INSTRUCTIONS (New provision for inclusion after article 86 of the Schedule 1 Model Articles)
Suggested amendment: Consider adding the following new article in a suitable place (eg, after the provisions that deal with transfers and transmissions). **[86A.] Refusal of transfers and transmissions in certain circumstances** (1) This article applies— (a) to [shares] in [the company] for so long as[112] they are participating securities and not in the process of delisting; and (b) save as otherwise permitted or required under the USM Rules. (2) [The directors] may refuse to register the transfer or transmission of a [share] if—[113] (a) the [share] is in certificated form and a dematerialization request in respect of that [share] and any other [share] covered by the same [certificate] as that [share]— (i) is not received; or (ii) is refused under the USM Rules; (b) the [share] is in uncertificated form as a result of [the company] having initiated its dematerialization, and the dematerialization fee payable in respect of the dematerialization remains unpaid; or (c) the transferor[114], transferee or transmittee (as applicable) of the [share] is not a system-member of the UNSRT system operated by [the company's] ASR.

6.7 **Additional considerations for certain companies**: See also paragraphs 9.3 and 9.4 of this Appendix which discuss dematerialization issues that are specific to companies that do not currently issue share certificates, or are dual listed companies.

7. Register of members

7.1 **Possible existing provisions**: The articles/bye-laws will likely cover matters regarding registration or entries in the register of members. However, these may be interspersed across different provisions, eg, provisions dealing with transfers, transmissions, forfeitures, book closure, communications, etc.

7.2 **Amendments needed**: Such provisions will need to be reviewed and suitably amended and/or supplemented to ensure consistency with the USM regime. In particular, issuers should consider clarifying that: (i) so long as such shares remain prescribed securities; and (ii) save as otherwise permitted or required under the USM Rules:

[112] Similar to footnote 73 above, the reference here to *"for so long as"* is to limit the application of this sample article 86A so that it does not apply during any period when the shares are not yet (or are no longer) participating securities. As a result, the sample article will simply have no effect during such periods, and further amendment is unnecessary.

[113] Paragraphs (2)(a) and (b) focus on having to complete the dematerialization process, while paragraph (c) focuses on completing the process for becoming a system-member. The former are therefore relevant to existing shares only, while the latter is relevant to both existing shares and new issues.

[114] The directors may also require the transferor to be a system-member in certain cases, eg, where the certificate covering the shares to be transferred also cover other shares that are not the subject of the transfer — see paragraph 6.4(a) of the main body of this Guidance Note.

(a) the register of members will be kept and updated in accordance with the USM Rules, and will include such matters as are required by those rules to be entered in it;

(b) the register of members will record that shares are in uncertificated form, where this is the case;

(c) in the absence of evidence to the contrary, entries in the register of members reflecting that any shares of a holder are in uncertificated form will be proof of the holder's title to those shares;

(d) a person is entitled to inspect, and make copies of, the register of members in accordance with the USM Rules; and

(e) the register of members may not be closed except in accordance with the USM Rules.[115]

7.3 **Application to non-Hong Kong companies**: In the case of companies incorporated outside Hong Kong, the laws of their place of incorporation may impose different requirements relating to how registers of members are to be kept, and made available for inspection and copying, as well as the evidential value of their contents. Consequently, it may not be possible for all of the above amendments to be adopted. Issuers should take this into account when considering how best to amend their articles/bye-laws in respect of such matters.

7.4 **Placement of provisions**: Issuers should review their articles/bye-laws to assess where best to incorporate the above matters. In the Schedule 1 Model Articles, matters relating to the closure of the register of members could be incorporated into article 82, while other matters could be dealt with under a new Part 4A.

SAMPLE PROVISION ON CLOSURE OF THE REGISTER OF MEMBERS (Based on article 82 of the Schedule 1 Model Articles)
Suggested amendment: Consider adding the following qualification at the end of article 82[116] (or any equivalent article(s)/bye-law(s) that empowers directors to suspend the registration of transfers or close the register of members for a specified period of time). **82. Power of directors to suspend registration of transfer of shares** … For so long as[117] [shares][118] in [the company] are participating securities], this article applies subject to the USM Rules.

[115] Under rule 9 of the USM Rules, the register of holders of any participating securities may not be closed for more than: (a) 2 consecutive business days at a time; or (b) any longer period during which trading in the securities is suspended, unless otherwise exempted by the SFC.

[116] One option would be for the existing provision article 82 to be renumbered as paragraph (1) and the suggested amendment to be added as paragraph (2).

[117] Similar to footnote 73 above, the reference here to *"for so long as"* is to limit the application of this amendment so that the book closure restrictions under the USM Rules do not apply during any period when the shares are not yet (or are no longer) participating securities. As a result, the sample amendment will simply have no effect during such periods, and further amendment is unnecessary.

[118] The restrictions on book closure under rule 9 of the USM Rules apply in respect of the register of holders of participating securities only. Hence, if a company has more than one type or class of shares (eg, Class A and Class B shares), and not all are

SAMPLE PROVISIONS ON OTHER MATTERS RELATING TO THE REGISTER OF MEMBERS
(New provisions for inclusion after Part 4 of the Schedule 1 Model Articles)

Suggested amendment: Consider adding the following new articles in a suitable place (eg, under a separate section that follows the section dealing with shares, distributions and entitlements).

[Part 4A
Register of Members][119]

[99A.] Application of Part 4A

This Part applies—

(a) to [shares] in [the company] for so long as[120] they are prescribed securities; and

[(b) in respect of that portion of the [register of members] relating to such [shares]][121].

[99B.] Keeping of [register of members]

(1) [The company] will keep a [register of its members] in accordance with the USM Rules, and include in it such matters as are required by those rules to be included in it.

(2) Where any [share] is issued in uncertificated form, or is dematerialized—

(a) the [share] will be recorded in the [register of members] as being in uncertificated form; and

(b) such record will not be amended or removed except in accordance with the USM Rules.

[99C.] Effect of and changes to entries in the [register of members]

(1) Entries in the [register of members] will have such evidential value and other effect as provided in the USM Rules.

(2) Changes to any entry in the [register of members] relating to the holder of a [share] will be notified to the holder in accordance with the USM Rules and the ASR Code.

[99D.] Inspection and copying

A person may, in accordance with the USM Rules, inspect, make copies of, and request to be provided with copies of, entries in the [register of members].

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participating securities, only that part of the register of members which relates to shares that are participating securities will be subject to the restriction under the USM Rules. Such companies should consider whether the sample provision needs further modification, taking into account how its existing article/bye-law on book closure is worded.

[119] The inclusion of a heading is optional and will depend on whether headings are adopted generally in the articles/bye-laws.

[120] Similar to footnote 73 above, the reference here to *"for so long as"* is to limit the application of sample articles 99A to 99D so that obligations under the USM Rules relating to the register of members/holders do not apply during any period when the shares are not prescribed securities. As a result, the sample articles will simply have no effect during such period, and further amendment is unnecessary.

[121] The provisions in the USM Rules (rules 5 to 8) relating to how registers of members are to be kept, made available for inspection and copying, etc apply in respect of prescribed securities only. Accordingly, paragraph (b) of sample article 99A is intended only for companies that have different types or classes of shares (eg, Class A and Class B shares), and not all are prescribed securities.

7.5 **Application to non-Hong Kong companies**: The articles/bye-laws may include other provisions that restrict access to the books and records of the company. In the case of companies incorporated outside Hong Kong, these provisions should be reviewed to see if any amendment is needed. By way of example, article 103 of the Schedule 1 Model Articles restricts the right to inspect the accounts and "other records" of the company (which could cover the company's register of members) except in certain circumstances. Such circumstances include where inspection is permitted under "an enactment". However, "an enactment" could be confined to domestic laws.[122] It follows that if the articles/bye-laws of a non-Hong Kong company include a provision similar to article 103, this may conflict with the inspection and copying rights conferred under the USM Rules, and consequently need to be amended.

8. Communications using authenticated messages

8.1 **Possible existing provisions**: The articles/bye-laws may include provisions regarding communications to and by the company. They may also specify whether such communications may be sent by electronic means, and the pre-requisites for doing so (if any).[123] However, depending on how such provisions are cast, they may or may not cover the use of "authenticated messages"[124] as envisaged under the USM Rules.

8.2 **Amendments to consider**: The USM Rules do not mandate the use of authenticated messages for any purpose other than for effecting transfers of participating securities electronically. However, given the convenience of using authenticated messages, and the protections that the USM Rules (rules 18 to 21) confer in respect of them, issuers may wish to consider whether to permit the use of authenticated messages for communications, and if so, to what extent. In particular, issuers may wish to consider whether such messages may be used for:

(a) communications with *all* registered holders and transferees, ie, irrespective of whether they hold their securities in uncertificated form, certificated form or a combination of both; and

(b) communications in respect of *all* prescribed securities, ie, irrespective of whether the securities are participating securities or not and whether they are in uncertificated form or not.

There will of course be pros and cons to restricting the use of authenticated messages to certain persons and/or certain securities. Moreover, issuers' ASRs may also have possible operational limitations in this regard, and these may change over time as well. Issuers should take these factors into account and incorporate appropriate qualifications as to whether and to what extent authenticated messages may be used. A related point to note is that the term "authenticated message" is defined under the USM Rules by reference to *participating* securities only. It follows that if the articles/bye-laws seek to permit the use of authenticated messages for securities that are *prescribed* securities (ie, including those that are not participating securities), a more specific definition will need to be set out in the articles/bye-laws.

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[122] In Hong Kong, an "enactment" means any Ordinance and subsidiary legislation (ie, Hong Kong laws) — see section 3 of the Interpretation and General Clauses Ordinance (Cap 1).

[123] See, for example, article 100 of the Schedule 1 Model Articles.

[124] The term "authenticated message" is defined in rule 2(1) of the USM Rules.

8.3 **Sample provision**: The sample provision below is cast on the basis that authenticated messages may be used for *all* communications with holders and transferees of prescribed securities, albeit subject to any limitations imposed by the ASR. A broader definition for "authenticated message" is therefore also set out for consideration. The sample provision does *not* deal with the question of fees, ie, whether and in what circumstances fees may be charged for paper form communications, or communications other than by authenticated messages. Issuers should discuss this with their respective share registrars/ASRs and consider whether and how best to provide for the same in the articles/bye-laws. In doing so, issuers should also take into account any applicable laws and regulations that impose limitations or restrictions on charging fees for communications.

SAMPLE PROVISION ON ELECTRONIC COMMUNICATIONS
(Based on article 100 of the Schedule 1 Model Articles)

Suggested amendment: Consider adding the following supplement to article 100(1)[125] *(or to any equivalent article(s)/bye-law(s) that provides for whether and how electronic communications may be sent).*

100. Means of communication to be used

…

[(1A)] [Without limiting [paragraph (1)], but][126] subject to any limitations imposed by [the company's] ASR[127]—

(a) anything sent or supplied by [the company] to any holder or transferee of [shares] in [the company]; and

(b) anything sent or supplied by any holder or transferee of [shares] in [the company] to [the company],

may be sent or supplied by means of an authenticated message.

[(1B)] The provisions of the USM Rules relating to the effect of an authenticated message apply if, in accordance with the USM Rules—[128]

(a) the message is attributable to the person sending or supplying it; and

(b) the person receiving the message is the addressee of the message.

[(1C)] For the purposes of paragraphs [(1A) and (1B)], "authenticated message" bears the meaning given under the USM Rules [except that such message may relate to all [shares]in [the company] that are prescribed securities, and not only those that are participating securities][129].

…

[125] One option would be to add the supplement as new paragraphs (1A) to (1C) under article 100.

[126] The words in brackets may be unnecessary, or need modification, depending on: (i) whether the articles/bye-laws include a provision equivalent to article 100(1) of the Schedule 1 Model Articles; and (ii) if so, how it is cast.

[127] The qualification here is to cater for any operational or other limitations that the ASR may have in facilitating the use of authenticated messages — see paragraph 8.2 of this Appendix.

[128] Paragraph (1B) is necessary if the authenticated message is to benefit from the protections set out under rules 18 to 21 of the USM Rules.

[129] The words in brackets here (ie, *"except that such message may relate to all [shares] in [the company] that are prescribed securities, and not only those that are participating securities"*) are necessary only if the issuer intends to permit the use of "authenticated messages" for all shares that are prescribed securities, ie, irrespective of whether they are participating securities or not — see paragraph 8.2 of this Appendix.

8.4 **Use of authenticated messages for proxy documents**: Additionally, issuers may also wish to consider permitting the use of authenticated messages for the purposes of proxy appointments and revocations. Again, issuers will need to take into account any operational or other limitations that their respective share registrars/ASRs may have in facilitating this. The sample provision below is based on articles 53 and 55 of the Schedule 1 Model Articles, and is cast on the basis that authenticated messages may be used for proxy appointments and revocations, albeit subject to any limitations imposed by the ASR.

SAMPLE PROVISIONS ON PROXY APPOINTMENTS AND RECOVATIONS **(Based articles 53 and 55 of the Schedule 1 Model Articles)**
<u>*Suggested amendment*</u>*: Consider adding the following expansion to article 53(1)(c) (or to any equivalent article(s)/bye-law(s) that provides for how proxy appointments may be executed).* **53. Content of proxy notices** (1) A proxy may only validly be appointed by a notice in writing (***proxy notice***) that— … (c) is authenticated, or is signed on behalf of the member appointing the proxy, or (subject to any limitations imposed by [the company's] ASR) is an authenticated message (as defined in article 100(1C)) [that is attributable and addressed as described in [article 100(1B)]][130]; and …
<u>*Suggested amendment*</u>*: Consider adding the following expansion to article 55(2) (or to any equivalent article(s)/bye-law(s) that provides for how proxy appointments may be revoked).* **55. Delivery of proxy notice and notice revoking appointment of proxy** … (2) An appointment under a proxy notice may be revoked by delivering to the company a notice in writing given by or on behalf of the person by whom or on whose behalf the proxy notice was given. Subject to any limitations imposed by the [company's] ASR, such notice may be sent by means of an authenticated message (as defined in article 100(1C)) [that is attributable and addressed as described in [article 100(1B)]].[131] …

8.5 **Application to non-Hong Kong companies**: In the case of companies incorporated outside Hong Kong, the laws of their place of incorporation may also impose requirements relating to the delivery and receipt of electronic communications. These requirements may be inconsistent with the use of an authenticated message, or there may be additional requirements that make it impracticable to use an authenticated message (eg, a proxy appointment by a holder that is a corporate entity may need to be accompanied by a board resolution). Moreover, it may or may not be possible for such requirements to be disapplied. Alternatively, disapplication may be subject to certain pre-requisites (eg, that the

[130] The words in brackets here (ie, *"that is attributable … in [article 100(1B)"*) are to ensure that only authenticated messages that are attributable and addressed as provided for the USM Rules may be used for the purposes of proxy appointments. This is important because only such messages may benefit from the protections under rules 18 to 21 of the USM Rules.

[131] See footnote 130 above, which applies equally in respect of the addition here.

disapplication is stated explicitly in the articles/bye-laws). Issuers should take such matters into account when considering whether and how best to amend the articles/bye-laws to provide for the use of authenticated messages for communications generally, and for proxy appointments and revocations.

9. Others

9.1 **Class of shares**: Under the USM regime, there will be a period during which some shares in a company are held in certificated form and some in uncertificated form, and the register of members will reflect this. However, despite the difference in form, the shares will belong to the same class, ie, it is not intended that shares in certificated form and shares in uncertificated form should constitute different classes of shares. It may be useful to make this clear in the articles/bye-laws to avoid doubt or misunderstanding. In the context of the Schedule 1 Model Articles, the relevant clarification could be incorporated in article 61.

SAMPLE PROVISION RELATING TO CLASS OF SHARES (Based on article 61 of the Schedule 1 Model Articles)
<u>*Suggested amendment*</u>*: Consider adding the following clarification at the end of article 61*[132] *(or any equivalent article(s)/bye-law(s) that provides for the issue of different classes of shares).* **61. Powers to issue different classes of shares** … For the avoidance of doubt, [shares] in [the company] do not constitute a separate class solely by virtue of being in certificated form or uncertificated form.

9.2 **Calculation of entitlements**: Under the USM regime, there is no obligation for registered holders of shares to dematerialize their shares, even after the shares become participating securities. As a result, a registered holder of shares in a company may hold some of their shares in certificated form and some in uncertificated form. This may, in certain circumstances, give rise to practical limitations when it comes to calculating the entitlements to be distributed to such holder. As a result, it may be necessary for such holder's entitlements to be calculated separately in respect of their certificated portion and their uncertificated portion. That said, our current expectation is that such practical limitations are likely to arise only in the context of a share consolidation or sub-division exercise[133],

[132] One option would be to add the clarification as a new paragraph (4) under article 61.

[133] In a share consolidation or sub-division exercise, the number of shares held (ie, "old shares") are consolidated or sub-divided into shares of a larger or smaller nominal value (ie, "new shares"). Following such an exercise, practical limitations may arise because it is not possible to compel the return of existing certificates following a consolidation or sub-division exercise, and without the return of such certificates, it is not possible to dematerialize old shares. Additionally, rematerialization is not an option except in very limited circumstances. In other words: (i) old shares held in uncertificated form cannot be rematerialized immediately following the consolidation or sub-division exercise; and (ii) old shares held in certificated form cannot be recorded as dematerialized immediately following the consolidation or sub-division exercise because the certificates have not yet been returned. It follows that the new shares must be based either *wholly* on old shares that are in certificated form or *wholly* on old shares that are in uncertificated form. The new shares cannot be based on *both*.

and not in the context of dividend or bonus distributions[134]. In any case, issuers may wish to consider amending the articles/bye-laws to allow for the possibility that entitlements may have to be calculated on such separate basis in certain circumstances.

SAMPLE PROVISIONS ON CALCULATION OF ENTITLEMENTS (Based on article 99 of the Schedule 1 Model Articles)
<u>Suggested amendment</u>: Consider adding the following to article 99[135] (or to any equivalent article(s)/bye-law(s) that provides for the adjustment of rights among members/holders where necessary).   **99. Capitalization of profits**   …   To the extent necessary, [the directors] may make arrangements to calculate a [member's] rights separately in respect of the portion of [shares] held by the [member] in certificated form and the portion held in uncertificated form where it is impracticable to do otherwise.

9.3 **Companies that currently do not issue share certificates**: There may be companies whose articles/bye-laws already provide that no share certificates will be issued in respect of their shares. Such companies' articles/bye-laws will still have to be suitably amended to clarify that:

(a) so long as such shares remain participating securities; and

(b) save as otherwise permitted or required under the USM Rules,

existing shares may be dematerialized in accordance with the USM Rules and recorded in the register of members as being held in uncertificated form, and new shares issued after the participation date will be in uncertificated form only.[136] This is necessary because the non-existence of a share certificate, alone, does not suffice for the share to be regarded as being in uncertificated form. The share must also be registered in the register of members as being in uncertificated form.[137]

9.4 **Dual listed companies**: In the case of shares in dual listed companies, if these are participating securities, and a holder wishes to move their shares from the non-Hong Kong register to the Hong Kong register, it may be necessary to require the shares to be dematerialized as part of the process. This is because the existing share certificate (reflecting the shares as being registered on the non-Hong Kong register) may no longer be valid, and new certificates can no longer be issued under the USM regime. Such companies should consider clarifying in their articles/bye-laws that the removal of shares from the non-Hong Kong register to the Hong Kong register may be refused on similar grounds as those set out under sample article 86A (eg, if a dematerialization request is not received or not accompanied by the relevant dematerialization fee, or the holder is not a system-member of the UNSRT system operated by the company's ASR).

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[134] In the case of dividend or bonus distributions (whether of cash or securities), there is no need to return existing certificates, and hence there should be no practical limitations to calculating a shareholder's entitlement by reference to their aggregate holdings (ie, by reference to both the certificated and uncertificated portions collectively).

[135] One option would be to make the addition as a new paragraph (4) under article 99.

[136] In other words, sample provisions 67B, 67C, 67D(1), 67E(1) and (2) and 99B(2) will still be relevant.

[137] For more details, see paragraphs 6.8 and 6.9 of the main body of this Guidance Note.

9.5 **Virtual and hybrid meetings**: Consistent with the objectives of the USM regime, and requirements under the Listing Rules (paragraph 14(6) of Appendix A1), issuers must ensure that their articles/bye-laws allow for virtual or hybrid meetings[138] and for shareholders to speak and vote at such meetings electronically. Division 1 of Part 3 of the Schedule 1 Model Articles already includes provisions in this regard. Issuers may wish to refer to these.

9.6 **Limitation on number of proxies**: Section 596 of the CO has been amended to limit the number of proxies that may be appointed by shareholders who are individuals to two unless otherwise provided in the articles.[139] Consequent to this, section 597 has also been amended to require the notice of meeting to reflect this restriction where applicable.[140] Given that the 2-proxy restriction was introduced to deal with potential abuse[141], issuers may wish to consider incorporating this restriction in their articles/bye-laws. If it is incorporated, and the articles/bye-laws include a provision stipulating what must be stated in the notice of general meetings regarding proxy appointments, then issuers may also wish to clarify that the 2-proxy restriction will be set out in the notice. In the context of the Schedule 1 Model Articles, amendments could be made to articles 39(4)(g) and 50.

SAMPLE PROVISIONS ON NUMBER OF PROXIES
(Based on articles 39(4)(g) and 50 of the Schedule 1 Model Articles)

Suggested amendment: Consider amending article 39(4)(g) (or any equivalent article(s)/bye-law(s) that provides for a member's right to appoint a proxy to be set out in the notice of general meetings).

39. Notice of general meetings

…

(4) The notice must—

….

(g) contain a statement specifying a member's right to appoint a proxy …. and any limit on the number of proxies to be appointed as imposed under [article 50(2)].

…

Suggested amendment: Consider adding the following supplement to article 50(2) (or any equivalent article(s)/bye-law(s) that provides for or permits (whether expressly or impliedly) the appointment of more than one proxy).[142]

50. Number of votes a member has

[138] By virtual meetings, we mean meetings that do not require the presence of members at any physical location. By hybrid meetings we mean meetings adopting a mixed mode, ie, where some members attend at physical location(s) while others attend virtually.

[139] See section 69 of the USM Amendment Ordinance.

[140] See section 70 of the USM Amendment Ordinance.

[141] The limitation was introduced to address concerns about abuse by individuals who appoint a large number of proxies for no legitimate purpose – see paragraph 121 of the April 2020 *Joint Consultation Conclusions on a Revised Operational Model for Implementing an Uncertificated Securities Market in Hong Kong*.

[142] Issuers of companies incorporated outside Hong Kong should consider whether the laws of their home jurisdictions permit the number of proxies to be limited to two when considering whether and how best to amend their articles/bye-laws on this point.

…

(2) If a member appoints more than one proxy, the proxies so appointed are not entitled to vote on the resolution on a show of hands. The number of proxies appointed by a [member] who is an individual may not in any event exceed 2.

…

9.7 **Review of certain terminology**: The articles/bye-laws should also be reviewed to see if other amendments are needed. In particular, provisions referring to terms such as “certificate”, “title instrument”, “instrument of transfer” (and “transfer”, since sometimes “transfer” can be used to mean “instrument of transfer”) should be reviewed to see if these need to be amended for consistency with the USM regime. Below are some examples of provisions under the Schedule 1 Model Articles that may need amendment.

SAMPLE PROVISIONS RELATING TO MISCELLANEOUS MATTERS
(Based on articles 69, 77, 78 and 99 of the Schedule 1 Model Articles)

Suggested amendment: Consider adding suitable qualifications to article(s)/bye-law(s) that require the delivery of a share certificate, ie, so as to allow for the possibility that no certificate may have been issued (eg, in respect of shares that are in uncertificated form).

69. Enforcement of company’s lien

….

(5) The net proceeds of the sale (after payment of the costs of sale and any other costs of enforcing the lien) must be applied—
   (a) first, in payment of so much of the sum for which the lien exists as was payable at the date of the lien enforcement notice;
   (b) second, to the person entitled to the shares at the date of the sale.

(6) Paragraph (5)(b) applies—
   (a) only after ~~the~~ any certificate ~~for~~ issued in respect of the shares sold has been surrendered to the company for cancellation or a suitable indemnity has been given for any lost certificates; and
   (b) subject to a lien equivalent to the company’s lien on the shares before the sale for any money payable in respect of the shares after the date of the lien enforcement notice.

…

77. Effect of forfeiture

…

(2) If a person’s shares have been forfeited—
   …
   (c) that person must surrender ~~the~~ any certificate ~~for~~ issued in respect of the shares forfeited to the company for cancellation;

   …

<u>Suggested amendment</u>: Consider adding suitable amendments to article(s)/bye-law(s) that require or envisage the use of an instrument of transfer, ie, so as to allow for the possibility that a specified request may be used instead (eg, in respect of transfers of shares that are in uncertificated form). **78. Procedure following forfeiture** (1) If a forfeited share is to be disposed of by being transferred, the company may receive the consideration for the transfer and the directors may authorize any person to execute the instrument of transfer or send the specified request. …
<u>Suggested amendment</u>: Consider adding a suitable qualification to article(s)/bye-law(s) that provide for the issuing of share certificates, ie, so as to cater for the prohibition on issuing share certificates in respect of shares that are participating securities. **99. Capitalization of profits** … (3) To the extent necessary to adjust the rights of the members among themselves if shares or debentures become issuable in fractions, the directors may make any arrangements they think fit, including (subject to [article 66A]) the issuing of fractional certificates or the making of cash payments or adopting a rounding policy. …

9.8 **Overarching provision as added safeguard**: Lastly, issuers may also wish to consider including an overarching provision confirming that provisions of the USM regime: (i) prevail over any conflicting or inconsistent provision in the articles/bye-laws; and (ii) apply in respect of matters on which the articles/bye-laws are silent. It may also be useful to make clear that such overriding provision applies in respect of both provisions under the USM regime that are mandatory and those that are enabling. However, any such overarching provision should be incorporated as an *additional* safeguard only. Issuers should not rely solely or heavily on such overarching provision as this will likely result in the terms of the articles/bye-laws (and in particular the rights and obligations of relevant parties) being unclear or ambiguous, and consequently lead to doubt and disputes between issuers and holders of prescribed securities.

SAMPLE OVERARCHING PROVISION **(New provision)**
<u>Suggested amendment</u>: Consider adding the following new article/bye-law in a suitable place. One option might be to add it under the interpretation section of the articles/bye-laws. **[ ]. Overarching effect of [USM regime]**

[(1)] [143]If any provision of these [articles] conflicts or is inconsistent with any provision of the USM regime (and irrespective of whether the provision is mandatory or enabling in nature), the latter will prevail to the extent of the conflict or inconsistency.

[(2)] If these [articles] are silent in respect of any matter provided for under any provision of the USM regime (and irrespective of whether the matter is required or permitted under such provision), the matter will be regarded as required or permitted (as the case may be) under these [articles].

[(3)] For the purposes of paragraphs (1) and (2), the provisions of the USM regime refers to all laws, rules or regulations governing the evidencing, transfer, dematerialization, rematerialization, or registration of prescribed securities, and includes the following:
(a) the SFO;
(b) any rules made under the SFO, including the USM Rules and the ASR Rules;
(c) the ASR Code;
(d) any rules made by the SEHK pursuant to section 23 of the SFO[, including the Rules Governing the Listing of Securities on the SEHK, and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the SEHK];
(e) any rules made by HKSCC pursuant to section 40 of the SFO[, including the General Rules of HKSCC and Operational Procedures of HKSCC]; and
(f) the operating rules of [the company's] ASR.

10. Subscription warrants and rights under a rights issue

10.1 **Terms of issue separate from terms of issue of underlying securities**: The terms of issue of subscription warrants and rights under a rights issue are usually separate from the terms of issue of their underlying securities. So, for example, in the case of subscription warrants or rights to subscribe for shares in a company, the terms of issue of the warrants and rights will *not* usually be set out in the articles/bye-laws of the company. However, if the articles/bye-laws *do* include provisions regarding such warrants or rights, such provisions will need to be reviewed and amended as appropriate to cater for the USM regime.

10.2 **Provisions/amendments needed to terms of issue**: As noted in paragraph 5.5 of the main body of this Guidance Note, subscription warrants and rights under a rights issue have to become participating securities only if they are issued *after* their underlying prescribed securities become participating securities. In such cases, the terms of issue of the warrants/rights (eg, the relevant listing documents) will have to be consistent with the USM regime. In particular, issuers should consider clarifying in the terms of issue that:

(a) the warrants/rights will be in uncertificated form, and no certificates or other title instruments will be issued in respect of them;

(b) any transfer of the warrants/rights must be by means of a specified request unless there are exceptional circumstances justifying the use of an instrument of transfer;

[143] Issuers of companies incorporated outside Hong Kong may wish to consider adding a further qualification to this paragraph to confirm that its application must not be prohibited under, or inconsistent with, their home laws, eg, *"Unless otherwise required under applicable law, if any provision of these …"*.

(c) instructions or requests to transfer or exercise the warrants/rights may be refused if the holder has not yet completed the process of becoming a system-member of the UNSRT system provided and operated by the issuer's ASR;

(d) any rematerialization of the warrants must be in accordance with the USM Rules; and

(e) the register of holders of the warrants/rights will be kept, maintained, open for inspection and copying, and have such evidential value, as provided for under the USM Rules.

The reasons for covering these matters are largely similar to those discussed elsewhere in respect of shares.[144]

10.3 **Dematerialization and rematerialization**: Paragraph 10.2(d) above does not cover the dematerialization of either subscription warrants or rights under a rights issue, nor the rematerialization of such rights. The following explains why:

(a) Under the USM Rules, if the subscription warrants or rights under a rights issue are issued *before* their underlying prescribed securities become participating securities, they may stay in paper form until their expiry or exercise, and may be transferred in paper form. In other words, there is no requirement for them to be dematerialized. As for warrants or rights issued *after* the underlying prescribed securities become participating securities, they will be in uncertificated form from the time of their issue, which means the issue of dematerialization will never arise.

(b) As for rematerialization, given the very short-dated nature of rights under a rights issue (typically spanning only about 2 weeks), there may be very little (if any) need to provide for their rematerialization. In the case of subscription warrants however, these may have a longer term (typically spanning about 1 to 5 years), and hence the need for rematerialization may be greater.

[144] See, paragraphs 3 to 6 and 7 of this Appendix.

Appendix 3 — Key areas that legal advice should cover

The contents of Appendix 3 **should not be viewed as constituting a complete list of all matters that issuers need to consider when seeking legal advice on the compatibility of their home laws and regulations with the USM regime**, particularly as home laws and regulations may differ significantly from case-to-case. Moreover, given the potential adverse consequences of securities becoming participating securities in breach of applicable home laws and regulations, further clarification may be required in some cases in respect of any legal advice provided. **Issuers intending for their securities to become participating securities on a voluntary basis are urged to reach out to the SFC and the SEHK at an early stage.**

1. General

1.1 **Purpose and scope of this Appendix**: This Appendix expands on the key areas that a legal advice on compatibility with the USM regime should cover. It is relevant to issuers whose prescribed securities are constituted under the laws of a place other than one of the four specified jurisdictions, and who wish for those securities to become participating securities on a voluntary basis.

2. What the advice should cover

2.1 **Matters to be covered**: The legal advice on compatibility should clarify whether, under the home laws or regulations, there are any specific requirements or restrictions regarding the following matters (**relevant matters**):

(a) the appointment of an ASR to provide certain services in respect of the securities;

(b) the form and manner in which securities may be allotted, evidenced or held;

(c) the form and manner in which legal title to securities may be transferred or transmitted;

(d) whether the securities may be dematerialized or rematerialized, and if so, the process for doing so;

(e) how lost or damaged title instruments are to be dealt with;

(f) whether a branch register of holders of the securities (or its equivalent) may be kept in Hong Kong, and if so, how such register is to be kept and maintained, made available for inspection and/or copying, closed, and may serve as evidential value;

(g) the manner in which the issuer may communicate with, and receive instructions from, registered holders of the securities, including in respect of corporate actions;

(h) the manner in which meetings of registered holders may be held and attended, proxies appointed and withdrawn, and voting conducted;

(i) the giving of instructions by joint holders; and

(j) the ability of the issuer and registered holders of the securities to comply with obligations imposed on them under the USM regime.

2.2 **Where there are *no* requirements/restrictions**: For relevant matters in respect of which there are *no* specific requirements or restrictions, the legal advice should confirm:

(a) whether the matter can be dealt with entirely in accordance with Hong Kong laws and regulations[145]; and

(b) if yes, whether there are any pre-requisites or pre-conditions for doing so (eg, amending the terms of issue to provide for the application of Hong Kong laws and regulations).

2.3 **Where there *are* requirements/restrictions**: For any relevant matter in respect of which there *are* specific requirements or restrictions, the legal advice should confirm:

(a) what those requirements or restrictions are; and

(b) whether it is nevertheless possible to achieve the objectives discussed under section 3 of this Appendix, and if so, how (eg, amending the terms of issue as necessary).

3. Objectives

3.1 The objectives referred to in paragraph 2.3 of this Appendix are as follows.

(a) **Appointment of ASR**: That the issuer can appoint an ASR to:

(i) maintain its register of holders;

(ii) provide and operate a UNSRT system for evidencing and transferring legal title to the securities; and

(iii) provide services in connection with the public offer of, and corporate actions relating to, the securities.

(b) **Allotment and evidencing**: That:

(i) the securities can be allotted, evidenced and held in uncertificated form[146] and through a UNSRT system that is provided and operated by an ASR; and

(ii) registered holders cannot compel the issuer to issue title instruments.

(c) **Transfer and transmission**: That once the securities are in uncertificated form:

(i) the securities can be transferred electronically in accordance with the USM Rules[147];

(ii) transmission of the securities does not require the execution of any paper instruments, and electronic alternatives may be used instead (eg, a specified request); and

(iii) registered holders cannot compel the issuer to register a transfer of the securities that is effected using paper instruments.

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[145] The reference to "Hong Kong laws and regulations" here refers to: (i) the SFO; (ii) any rules made under the SFO, including the USM Rules, the ASR Rules and the SML Rules; (iii) the ASR Code; (iv) any rules made by the SEHK pursuant to section 23 of the SFO, including the Listing Rules; (v) any rules made by HKSCC pursuant to section 40 of the SFO, including the General Rules of HKSCC and Operational Procedures of HKSCC; and (vi) the operating rules of the issuer's ASR (ie, the ASR's rules (by whatever name called) for using any facilities provided by it, including in particular any facilities for evidencing and transferring legal title to participating securities issued by the issuer, or for subscribing for such securities under a public offer).

[146] The term "uncertificated form" does not simply mean that no title instrument has been issued. It has a more technical meaning. See the Glossary for more details.

[147] The USM Rules provide for participating securities to be transferred electronically by means of a specified request.

(d) **Dematerialization**: That the securities can be dematerialized in accordance with the USM Rules.[148]

(e) **Rematerialization**: That once the securities are in uncertificated form, they cannot be rematerialized except in accordance with the USM Rules.[149]

(f) **Lost or damaged title instruments**: That:

(i) securities represented by a lost or damaged title instrument can be dematerialized in accordance with the USM Rules; and

(ii) registered holders cannot compel the issuer to issue new title instruments to replace any lost or damaged ones.

(g) **Register of holders**: That:

(i) a branch register of holders of the securities (or its equivalent) can be kept in accordance with the USM Rules[150] and maintained by an ASR as envisaged under the ASR Code;

(ii) such branch register (or its equivalent) can be made available for inspection and/or copying in accordance with the USM Rules, and will not be closed except in accordance with those rules; and

(iii) entries in such branch register (or its equivalent) can have such evidential value as provided for in the USM Rules[151].

(h) **Corporate communications**: That:

(i) communications between the issuer and registered holders of the securities (including communications in respect of corporate actions) can be in electronic form;

(ii) instructions relating corporate actions can be sent electronically by way of authenticated messages; and

(iii) a reasonable fee can be charged by the issuer's ASR to registered holders who require communications to be in paper form.

(i) **Meetings and proxies**: That:

(i) meetings of registered holders of the securities can be held virtually or in hybrid form[152];

(ii) registered holders can attend and cast votes at such meetings electronically; and

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[148] The USM Rules permit participating securities to be dematerialized at the request of the registered holder or at the issuer's initiative. The rules also set out the process for dematerializing securities, which includes (among other things) the return and cancellation of any title instrument previously issued and not lost or damaged.

[149] The USM Rules do not permit participating securities to be rematerialized except where: (i) they are in the process of delisting; or (ii) a relevant exemption has been granted by the SFC. The rules also set out the process for rematerializing securities, which includes (among other things) the removal of certain records from the register of holders and the issue of title instruments, which (in certain cases) must be of a specified number and denomination.

[150] The USM Rules include requirements relating to: (i) the language in which the register of holders must be kept; (ii) the matters that it must record and by when; (iii) the circumstances under which certain records may be added, amended or removed; and (iv) the period for which the records must be retained.

[151] Rules 3 and 11 of the USM Rules provide for matters concerning the evidential value of entries in the register of holders.

[152] By "held virtually", we mean the meetings do not require the presence of members at any physical location. By "in hybrid form", we mean the meetings adopt a mixed mode, ie, where some members attend at physical location(s) while others attend virtually.

(iii) proxies can be appointed, and their appointments withdrawn, electronically (including by means of an authenticated message).

(j) **Joint holdings**: That instructions given by one joint holder can be binding on all other joint holders.

(k) **Other restrictions and obligations**: That once the securities have become participating securities, the various obligations imposed on issuers under the USM regime can apply and be enforced, including:

(i) the obligation not to issue new units of the securities in certificated form;

(ii) the obligation not to issue any new title instruments in respect of the securities;

(iii) the obligation to dematerialize within a specified period from the participation date all units of the securities held in CCASS; and

(iv) the obligation to send written confirmations to registered holders of the securities in respect of any change made to entries in the register of holders that relate to them or to securities held by them in uncertificated form.[153]

[153] These obligations are reflected in, respectively, rules s29, 30, 31 and 6 of the USM Rules.