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**From:** David M Webb

**Sent:** Friday, May 09, 2008 8:27 PM

**To:** Richard Williams

**Cc:** Paul Chow; Brian Ho; Charles Grieve; Daisy Lai; Sally Yu

**Subject:** Insider blackout period survey

Dear Richard,

Please treat this as an additional submission to the Listing Committee.

I attach the results of the opinion poll on Webb-site.com on the blackout period for insiders dealing before results. Any person was free to participate, and a valid e-mail address was required to receive a voting PIN, deterring multiple-voting. The results can also be retrieved at this link:

<http://webb-site.com/vote/result.asp?p=25>

The results show that 94.6% of 443 respondents think that directors often benefit by share dealing after the financial period has ended but before results are released. 97.5% of 475 respondents agree with the Listing Committee's and Exchange's proposal that directors should be prohibited from share dealing from the end of the financial period until the results are published.

I also attach the article "The insider blackout period" dated 24-Apr-08, which forms part of my submission and may be reproduced. It can also be found at this link:

<http://webb-site.com/articles/blackout.htm>

Regards

David

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David M Webb

## Poll results: Insider dealing blackout

Current time:	19:28:05 9-May-2008
Closing time:	18:00:00 9-May-2008
Time remaining:	<b>Poll closed</b>

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### Introduction

Read our article [The insider blackout period](#) and then answer this poll.

### Questions

1. Do directors often benefit by share dealing after the financial period has ended but before results are released?

Answer	Responses	Share
Yes	419	94.6%
No	24	5.4%
Total	443	100.0%

2. Should directors be prohibited from share dealing from the end of the financial period until the results are published?

Answer	Responses	Share
Yes	463	97.5%
No	12	2.5%
Total	475	100.0%

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*Webb-site.com* supports the Listing Committee's proposal to rebase the blackout period on directors' dealings from the end of the financial period until results are published. Tell us what you think in our opinion poll.

## The insider blackout period 24th April 2008

### [Take our blackout poll](#)

The recent [consultation paper](#) on the Listing Rules by the Stock Exchange of Hong Kong Ltd (**SEHK**) includes a proposal to rebase the blackout period on directors' dealings in their companies' shares.

Currently, under Rule A.3 of the Model Code in [Appendix 10](#) of the Listing Rules, a director cannot deal within 1 month before the announcement date of results. This obviously gives directors, who control the release date, an incentive to delay the results in order to have more time to deal on inside information. That absurd rule has featured in our [Listing Loopholes](#) page since *Webb-site.com* was founded in 1998, along with the solution which SEHK is at last proposing.

Another perverse effect of the rule is that, although companies only have to disclose the results date at least "7 clear business days" before the meeting date ([Listing Rule 13.43](#)), they must either know the date 1 month ahead of time in order to enforce the blackout, or they have to delay the results if someone deals.

The solution is to rebase the blackout period by reference to the end of the financial period, and prohibit dealings until the results are released. This will give directors an incentive to get their company's results out faster so that they have longer periods of the year in which they can deal, and will remove the incentive to keep investors in the dark.

When we say "by reference to", there is nothing magic about whether the blackout should start the day after the financial period, or at some point earlier than that. It could certainly be argued that any CEO or finance director who has no idea of his company's financial performance until the period has ended isn't doing his job properly. That is particularly true if the company does not report quarterly, because the end of each period is 6 months after the previous period ended, so a huge information gap opens up between insiders and outsiders regarding the company's performance.

Right now, for example, some companies have yet to report their results for 2007, and the best information the public has is half-year results for 30-Jun-07, a period which began 16 months ago and ended 10 months ago. Unless the directors are asleep, they know much more than you do, but they could have been dealing in the shares until 31st March if they set their results date on the deadline of 30th April.

So SEHK's proposal in paragraph 18.13 of the consultation paper, a proposal which is specifically endorsed by the Listing Committee, is a simple one. **Start the blackout on the day after the financial period ends, and end it when results are announced.**

## **We strongly support this.**

Predictably, listed companies and their directors are opposing this move. They whinge that it will deter companies from listing in HK in the first place, or that it will deter people from becoming directors - as if insider dealing is one of the perks of the job! We disagree, and more importantly, we say that keeping the status quo deters investors from investing here or paying as much for shares as they would otherwise, because they cannot expect a level playing field.

Listed companies choose markets where they can get the best price for their shares, so building a regulatory framework which attracts investors to pay more is consistent with that. If we deter a few cowboys from listing here, those who would rather benefit from loose rules on insider dealing at the expense of other shareholders, then that is a good outcome.

Opponents of change also point to the law that prohibits insider dealing on price-sensitive information, and claim that this is sufficient. The hole in that argument is that it is far harder and costlier to prove insider dealing to a standard of a civil tribunal or a criminal court - evidence of what the directors knew, when they knew it, and whether it was price-sensitive (relative to market expectations) are all hard to obtain. That's why we have very few insider dealing cases in HK and have yet to see a completion of a civil case in the [Market Misconduct Tribunal](#) or a criminal case in the courts since the Securities and Futures Ordinance came into effect on 1-Apr-03, over 5 years ago. 3 MMT cases and 1 criminal case are now underway.

By comparison, the Model Code in the Listing Rules can provide a clear-cut prohibition on dealing during periods when a director could reasonably obtain an information advantage simply by looking at the latest monthly management accounts of the group (as they all should, if they run their boards well). By the end of a 6-month period he should at least have access to 5 months of extra information.

These same issues are currently playing out in Australia, where governance research firm [Regnan](#), which represents institutional investors, recently [found](#) that directors of 23 of Australia's largest 200 companies traded shares between books-close and results-release dates, prompting articles like [this one](#) in the Sydney Morning Herald.

In the [UK Model Code](#), the blackout period for annual results starts from the end of the accounting period or 60 days before the results announcement, whichever comes later. In practice, since most companies announce their results within 60 days, it is the period-end which forms the base. For half-year results, the UK blackout starts from the end of the half-year period, because the Rules require interim results within 2 months anyway.

Company directors should not be regularly dealing in their shares anyway. Their job is to run the company to generate long-term shareholder value, not to punt in and out of the shares. It should be more than sufficient that they have several months of the year in which they can invest on the basis of fresh results available to all shareholders. If they are slow to report results, then they should not be allowed to benefit from that by insider dealing.

What do you think? [Take our opinion poll](#) on the insider dealing blackout!

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