

Listing Decisions Series 1-3 - Rule 10.06(2)(a) - Waiver from the 25% monthly share repurchase restriction (April 1999) (Withdrawn in September 2009)

[This Listing Decision is no longer applicable after the rule amendment in March 2004 to remove the 25% monthly share repurchase restriction.]

Summary	
Name of Party	Company A - a listed company
Subject	Waiver from the 25% monthly share repurchase restriction
Listing Rule	Rule 10.06(2)(a)
Decision	As Company A fulfilled all the conditions set out in the Exchange's announcement dated 5 th November, 1998, a waiver should be granted

Summary of Facts

Company A submitted an application for a waiver from strict compliance with Rule 10.06(2)(a) which restricts the purchase by an issuer of its own shares on the Exchange in any one calendar month to not more than 25% of the total number of that kind of shares which were traded on the Exchange in the preceding calendar month, as stated in the Exchange's daily quotations sheets for the previous month.

Rule 10.06(2)(g) states that the Exchange may waive the 25% monthly share repurchase restriction if, in the opinion of the Exchange, there are exceptional circumstances justifying the waiver of such restriction. On 5th November, 1998, the Exchange published an announcement stating that it would be prepared to consider an application for waiver under Rule 10.06(2)(g) if certain conditions were satisfied.

Company A submitted the following facts for the Exchange's consideration:

- The financial turmoil currently faced by Hong Kong and the low turnover in its equity market in general and in the trading in the shares of Company A constituted exceptional circumstances in support of the waiver sought.
- The shares of Company A had been traded at a deep discount to its net asset value and the price earnings ratio was low.
- The average monthly trading turnover of Company A's shares in 1998 was relatively low as compared to that of 1997.
- The board of directors of Company A was of the view that Company A had not been and would not be able to utilise fully its repurchase mandate for the benefit of its shareholders given the restriction under Rule 10.06(2)(a) and that it would be beneficial to increase Company A's flexibility in this regard.

Analysis

Company A had demonstrated that all the conditions set out in the Exchange's announcement on share repurchase programmes had been or would be fulfilled:

- The market capitalisation of Company A held by the public was substantially larger than the minimum requirement of HK\$100 million.
- The total number of shares repurchased by Company A during the year to date represented only a small percentage of its issued share capital (i.e. <10%).
- The public float of Company A was substantially larger than the minimum requirement of 25%.
- Company A had provided a letter of undertaking signed by its directors with respect to compliance with all the remaining conditions stated in the announcement.

In addition, Company A's submission was supported by a copy of the board resolution approving the waiver application, which included the views of the independent non-executive directors and their consent to the application being made.

Decision

The waiver was granted on the basis that all the conditions set out in the Exchange's announcement had been or would be fulfilled.