

Submitted via Qualtrics

Company/Organisation view

Question 1

Do you agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares?

Yes

Please provide reasons for your views.

The proposal is a welcomed amendment to the Listing Rules. The removal of the requirement to cancel repurchased shares will bring the regime in Hong Kong in line with other major stock exchanges and will provide listed issuers with more flexibility in managing their capital structure.

Question 2

Do you agree with the proposal to require a resale of treasury shares to be subject to the same requirements as an issue of new shares as described in Proposal (1)(a) to (c) above?

Yes

Please provide reasons for your views.

We agree with proposal (1)(a) that resale of treasury shares should be subject to the same documentary requirement as an issue of new shares to ensure a uniform documentary standards, however, noting that the requirements are not intended to apply to any on-market sale of treasury shares, we recommended Rule 9.17 should be amended to “Rules 9.18 to 9.23 set out the documentary requirements for applications for the listing of equity securities, or sale or transfer of treasury shares (other than a sale of treasury shares on the Exchange or any other stock exchange on which the issuer is listed), by listed issuers.”

The proposed addition will eliminate the need for a separate carve-out language in Rule 9.23(2), and also clarifies that listing application requirement under Rule 9.18(2) will similarly not apply to on-market sale of treasury shares, which is consistent with the Exchange’s intention as laid out in paragraph 63 of the Consultation.

While proposal (1)(b) may be of limited use for listed issuer and issuer who wishes to fund its share scheme through shares traded on the market will likely continue to adopt share schemes funded by existing shares given the comparatively simple regulatory requirements applicable to such scheme (as well as convenience from an authorization and administrative perspective), the proposal will nonetheless give listed issuer an alternative for implementing their share scheme and we welcome the flexibility.

We also agree with the other proposals made under proposal (1)(c) of the Consultation.

Question 3

Do you agree with the proposal to require a resale of treasury shares (whether on-market or off-market) to be subject to a moratorium period after a share repurchase?

Yes

Please provide reasons for your views.

We agree with the proposal which is in line with the current 30 days moratorium imposed on securities issuance following a repurchase of shares. This will retain the principles set out under Listing Decision LD99-1 and avoid resale of treasury at a time where the market practice has been affected by the issuer's previous purchase.

Question 4

Do you agree with the proposal to require an on-Exchange share repurchase to be subject to a moratorium period after an on Exchange resale of treasury shares?

No

Please provide reasons for your views.

We respectfully submit that a repurchased moratorium follow an on-Exchange resale of treasury shares may not be conducive of listed issuers repurchase plans or an orderly market.

Firstly, unlike an issuance of new shares or resale of treasury shares, share repurchase are often conducted by listed issuer based on the market sentiment and as a demonstration of management confidence, which are dependent on factors that may be beyond the management's control. The repurchase moratorium will impede management's ability to react to changing market sentiment or heavily discourage the use of the on-Exchange resale mechanism (notwithstanding that it is a straightforward way to dispose of treasury shares in the course of managing a listed issuer's share capital structure). Concerns of frequent trading of an issuer's own shares via the on-Exchange repurchase mechanism with a view of profiting or manipulating share prices should be sufficiently mitigated by extending the 30 day issuance moratorium follow a share repurchase to resale of treasury shares as recommended in Q3 of the Consultation.

There is also the practical consideration of transaction windows availability if "either direction" moratoriums are applied, having taken into account with the current general restriction on repurchase during the one-month period preceding results announcements (as well as after inside information has come to its knowledge). Any prolonged moratorium may have significant impact on a listed issuer's ability to carry out their repurchase plans.

Finally, a repurchase moratorium follow on-Exchange resale may encourage listed issuers to conduct its on-Exchange resale in a wholesale fashion to minimize the moratorium period which will create a downward pressure on the shares' trading prices during the time of the resale. Having considered the forgoing factors, it would appear that an "either direction" moratorium would, if adopted, not be conducive of enabling listed issuer to "react promptly to market conditions and resell treasury shares in small lots on the market at market price" as set forth in paragraph 9 of the Consultation.

Question 5

Do you consider that the moratorium periods (in either direction) should be shorter than 30 days? If so, please share with us your views on the appropriate duration of the moratorium periods and the reason for your suggestion including your views on how the considerations in paragraph 68 should be addressed.

Yes

Question 6

Do you agree with the proposal that dealing restrictions described in paragraph 69 under Proposal (2)(b) above shall be imposed on a resale of treasury shares on the Exchange?

Yes

Please provide reasons for your views.

We agree with extension of dealing restrictions as described in paragraph 69 of the Consultation to on-Exchange resale of treasury shares as it is consistent with the current treatment for on-market repurchase of shares.

Question 7

Do you agree with the proposals for an on-market resale of treasury shares as described in paragraph 70 under Proposal (2)(b) above?

Yes

Please provide reasons for your views.

We agree with the proposal to not extend certain requirements of new share issuance to on-Exchange resale for practicality and administrative convenience, and agree that the disclosure requirement through next day disclosure return would be sufficient to inform markets of any on-Exchange resale activities.

Question 8

Do you agree with the proposal relating to new listing applicants as described in Proposal (3) above?

Yes

Please provide reasons for your views.

We agree that the 6 months restriction of share issuances by a new listing applicant should also apply to resale of treasury shares as it is consistent with the spirit behind Rule 10.08. We also noted that Rule 10.08(5) should also be updated to carve out for resale of treasury share by a GEM listing applicant who have successfully transferred to the Main Board to read as: “the issue, sale or transfer out of treasury of shares or securities to be traded on the Main Board by a listed issuer that has successfully transferred its listing from GEM to the Main Board...”

Question 9

Do you agree with the proposal to require issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders’ approval under the Listing Rules as described in Proposal (4)(a) above?

Yes

Please provide reasons for your views.

We agree with the Exchange’s reasoning as this reflects the general treatment of treasury shares under company laws.

Question 10

Do you agree with the proposal to disregard treasury shares for calculating an issuer’s issued shares and voting shares under the Rules as described in Proposal (4)(b) above?

Yes

Please provide reasons for your views.

We agree with the Exchange’s proposal as it is in line with the position of the Takeovers Code and current regime under the Listing Rules.

Question 11

Do you have any comments regarding the different treatment of treasury shares when calculating an issuer’s issued voting shares under the proposed Rules and Part XV of the SFO as described in paragraph 77 above?

We agree with the proposal of disregarding treasury shares for the purpose of calculating the percentage interest and/or threshold under the Listing Rules as suggested by the Stock Exchange.

As noted in the consultation, the proposed amendments is in line with the Takeovers Codes and the difference in treatment amongst the Takeovers Code, Part XV of the SFO and the proposed amendments could not be easily reconciled. The current proposal would maintain consistency with the Takeovers Code which should have a greater bearing on the market. We agree that divergence of the rules will have little impact on the existing practices for disclosures and this should not be unduly onerous on market participants. In addition, we believe that the requirements for listed issuers to make disclosure of interests

filings for holdings in their own equity is not meaningful given that the listed issuer will be required to disclose their repurchases by way of a next day disclosure return and the Exchange may considering exploring the dispensation or exemption of such requirements with the SFC.

Question 12

Do you agree with the proposal to require an issuer to disclose in the explanatory statement its intention as to whether the repurchased shares will be cancelled or kept as treasury shares as described in Proposal (4)(c) above?

Yes

Please provide reasons for your views.

We agree with the Exchange's proposal requiring an issuer to disclose their intention with repurchased shares in the explanatory statement. In the event that listed issuers may wish to retain flexibility and not disclose of such intent in their explanatory statement, the Exchange may permit non-disclosure of such intention, provided that a listed issuer must then disclose their intention with each lots of repurchased shares in the relevant next day disclosure return.

Question 13

Do you agree with the proposal to clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees as described in Proposal (4)(d) above?

Yes

Please provide reasons for your views.

It is respectfully submitted that to the extent that resale of treasury shares shall include resale by an agents, provision should be made to expressly exclude trustees appointed in connection with an issuer's share schemes. While it is unlikely that a trustee would engage in resale of an listed issuer's shares, it is possible that a trustee might have to resale shares where the awards are cancelled or lapsed in accordance with the terms of the grant, or upon the expiry of a share scheme (where the trustee still holds any residual assets not granted or vested). Such conduct should not fall within the scope of or be restricted by the new treasury shares regime.