

22 December 2023

BY POST and EMAIL

Hong Kong Exchanges and Clearing Limited  
8/F, Two Exchange Square  
8 Connaught Place  
Central, Hong Kong

Dear Sirs,

**Re: Consultation Paper on Proposed Amendments to Listing Rules relating to Treasury Shares**

### Introduction

We, Hong Kong REITS Association (“HKREITA”), are writing to provide our views on Proposed Amendments to Listing Rules relating to Treasury Shares.

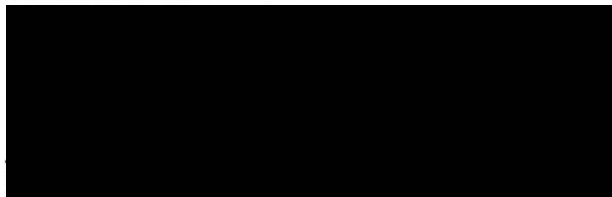
By way of introduction, HKREITA is an industry association of REITs in Hong Kong, with Link REIT, SF REIT and Yuexiu REIT as our co-founding corporate members. HKREITA represents the local REIT market, with a shared aim of driving the H-REIT industry to greater prominence in global capital markets.

HKREITA is supportive of the proposal to remove the requirements to cancel repurchased shares and adopt a framework to govern the resale of these treasury shares. We believe that the same flexibility shall be provided to listed REITs in Hong Kong as the SFC in general seeks to regulate REITs, to the extent appropriate and practicable, with reference to the requirements applicable to listed companies under the Listing rules (as amended from time to time).

We believe the proposal will provide flexibility to the issuers in managing their capital structure and offer an alternative means to raise fund. Moreover, there are several recommendations from our members that we hope the Hong Kong Exchange could consider before implementing the amendments. Please find attached our detailed responses to the questions set out in the consultation paper.

Should you have any questions, please do not hesitate to reach out to [REDACTED], Administrator of HKREITA at [REDACTED].

Yours faithfully,



Secretary General of HKREITA

### Question 1

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

Yes

No

Please provide reasons for your views.

The proposal allows listed issuers to hold repurchased shares in treasury for future resale. Not only could the listed issuers boost the value of the shares through share repurchase, they could also enjoy the flexibility to adjust their share capital more quickly, which may in turn lead to a reduction in cost of capital.

We note in the consultation paper that (i) treasury shares can be transferred as consideration, for satisfying employees' share schemes or upon conversion of convertible securities; and (ii) treasury shares may not be used as consideration shares in the UK and the PRC under the domestic company laws. In particular, we would like to clarify if there is any restriction on the use of treasury shares under the Listing Rules, i.e. whether the transfer of treasury shares is limited to the case of satisfying employees' share schemes or conversion of convertible bonds. We consider that treasury shares can be transferred as consideration for any obligations such as payment of fund manager's fees, acquisition costs or other expenses.

### 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

No

Please provide reasons for your views.

We generally agree with the proposal to treat a resale of treasury shares as new shares since a resale of treasury shares impacts existing shareholders in a similar manner as an issuance of new shares.

However, we consider that certain requirements shall not be applicable to a resale of treasury shares as there are fundamental differences between new issuance of shares and resale of treasury shares. In particular,

(i) Maximum Price Discount for On-market Resale of Treasury Shares

On-market resale of treasury shares under the general mandate shall not be subject to a maximum price discount of 20% since the share price will be determined by the market (instead of at the issuer's discretion when comparing with the new issuance of shares). It is not appropriate to restrict the on-market disposal price by comparing



with the last closing price or average closing price in last 5 trading days. It will prejudice the issuer's capital management flexibility in a volatile market.

(ii) Share Scheme Funded by Treasury Shares

We consider that a share scheme using treasury shares to satisfy share grants shall be treated as a share scheme funded by existing shares. It is fundamental the same for either the issuer or scheme administrator to purchase and accumulate shares to satisfy share grants throughout the year. The effect is also the same for an issuer to purchase existing shares upon settlement of share grants. Therefore, the Hong Kong Exchange should not extend the requirement of specific shareholders' approval on the share scheme funded by treasury shares solely due to the technical suspension of voting rights.

(iii) General Mandate for resale of treasury shares

We agree that a resale of treasury shares shall be subject to pre-emption similar to an issuance of new shares under 13.36 of the Listing Rules and be offered to all shareholders on a pro-rata basis, or alternatively, approved by shareholders under a general mandate approved by shareholders. For H-REITs, unitholders' approval is not required under 12.2 of the REIT Code if the aggregate number of new units issued during the financial year does not increase the total number of units outstanding at the end of the previous financial year by more than 20%. We would expect that a resale of treasury share shall be subject to pre-emption similar to an issuance of new units under 12.2 of the REIT Code. Further clarification from the SFC would provide much clarity to the REIT market.

### 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

No

Please provide reasons for your views.

We generally agree that a resale of treasury share shall be subject to a moratorium period after a share repurchase. The issuers are not expected to repeatedly repurchase and resell their share on market in a short period of time. It can also address the concerns on the stock market manipulation. However, we consider that a 30-day moratorium period after any share repurchase or resale is definitely too long having regards to the stock market volatility and other blackout period throughout the years. Please see our response on Question 5 for further details.

#### 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?

Yes

No

Please provide reasons for your views.

We generally agree that an on-Exchange share repurchase shall be subject to a moratorium period after an on-Exchange resale of treasury shares. However, we note that there is no moratorium period for share repurchase after the issuance of new shares. It is not consistent with the general principle to govern the resale of treasury shares by an issuer in the same manner as the Rules currently applicable to an issue of new shares.

We consider that a 10-day moratorium period would be sufficient to address the concerns on frequent trading and market manipulation. This moratorium period should be equally applied to on-Exchange repurchase after the issuance of new units. Please see our response on Question 5 for further details.

#### Question 5

Do you consider that the moratorium periods (in either direction) should be shorter than 30 days?

Yes

No

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.

We are of the view that the 30-day period is too long and should be shortened to 10 days. Issuers are currently subject to a restricted period when there is undisclosed inside information and preceding results announcement. The available window will be very limited for the issuer to conduct share repurchase or resale throughout the year (especially in the case that there is a 30-day moratorium period in either direction).

Any price sensitive information or issuer's action re shares repurchase or resale will be digested by the market within a short period of time. Stock market is volatile and subject to various political, economic and business factors etc. The issuer needs to react quickly and manage its capital structure in case there is a high market volatility.

In addition, all activities including any dealings by a listed issuer in its treasury shares, which amount to stock market manipulation and insider dealing are restricted by the SFO. It is not necessary to have such a long 30-day moratorium period for each repurchase and resale given that there are already sufficient measures to address these risks (e.g. the issuer should not deal in the shares when they have any non-public information). Regarding the risk of market



manipulation, it is not likely for an issuer to manipulate the share price through share repurchase or resale with a cooling period of 10 days.

#### 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

No

Please provide reasons for your views.

We generally agree that an issuer shall not resell treasury share on the Exchange during one-month period preceding results announcement or when there is undisclosed inside information to deter potential inside dealing.

We note under the Model Code for Securities Transactions by Director of Listing Issuers that a director must not deal in any securities of the listed issuer on any day on which its financial results are published and during the period of 60 days and 30 days immediately preceding the publication date of the annual and interim results respectively. We consider that the above blackout period applicable to the listed issuer and a director of the listed issuer shall be aligned. One-month blackout period for both annual and interim results shall be adopted on a consistent basis.

### 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

No

Please provide reasons for your views.

We do not see it necessary to publish a separate announcement regarding on-market resale of treasury shares since the disclosure obligation on next-day returns would have provided sufficient information. Moreover, the proposal would not substantially increase an issuer's compliance burden and we agree that the next-day returns will satisfy the disclosure obligation for the benefit of shareholders.

### Question 8

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

Yes

No

Please provide reasons for your views.

We agree that the new listing applicants should be subject to the same flexibility as for existing issuers and they should be able to retain their treasury shares upon listing. The lock-up requirement of six months upon new listing would potentially prevent dilution of investors' interests, as well as changes in the shareholding structure, shortly after listing. It could safeguard interests of the public investors by ensuring that controlling shareholders demonstrate their commitment to the issuer.

### 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

No

Please provide reasons for your views.

We believe it is fair to suspend the voting rights of issuers from voting on matters that require shareholders' approval. The proposal would prevent substantial shareholders from using treasury shares to consolidate their control over the issuer. It is also not appropriate for the listed issuer to vote on behalf of the shareholders from using treasury shares which were funded by shareholders' funds.

**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

No

Please provide reasons for your views.

We believe it is fair to disregard treasury shares for calculating an issuer's issued shares and voting shares since treasury shares are held by the issuers themselves and the rights attached to them are suspended.

**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 have no adverse 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.

For the purposes of Part XV of the SFO, treasury shares remain part of an issuer's issued voting shares and voting shares when calculating the percentage figures of interests of shareholders. It is also appropriate to require an issuer to disclose their shareholding interest when they acquired an interest in 5% or more of its own shares in accordance with Part XV of the SFO. On the other hand, the treatment of treasury shares under the proposed Rules shall be based on voting rights. Therefore, it is appropriate to amend the Rules to make it clear that treasury shares would be disregarded when calculating an issuer's voting shares.



### 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

No

Please provide reasons for your views.

We 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. It is also consistent with the existing practice to disclose that repurchased shares will be cancelled. We believe proper disclosure would allow investors to make a well-informed decision when voting for the share repurchase mandate.

### 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

No

Please provide reasons for your views.

We agree that there should be equal treatment for those issuers who wish to resell their treasury shares through agents or nominees. This is consistent with the existing rule that the requirements and restrictions on share repurchase apply equally to repurchases by agent or nominee on behalf of the issuer or its subsidiary.