

Guidance on automatic share buy-back programs conducted on behalf of listed issuers

I. Background and purpose

1. A listed issuer may, from time to time, buy back its own shares on the Exchange. This could be conducted to enhance its earnings per share, to return capital to its shareholders, to adjust its debt-to-equity ratio, or to signal to the market that its shares are undervalued and that the management have confidence in the prospects of the listed issuer.

Regulatory framework for repurchase of shares

2. On-market share repurchases may create conditions for market manipulation and insider trading as an issuer may influence its share price through share repurchases and insiders may trade in the shares to benefit from non-public information about share repurchases.
3. In Hong Kong, Parts XIII and XIV of the Securities and Futures Ordinance (**SFO**) contain provisions against price manipulations and prohibit insiders from unfairly using inside information to deal in securities. Additionally, the Listing Rules impose certain dealing restrictions¹ for share repurchases on the Exchange to guard against price manipulations and to prohibit a listed issuer from unfairly using inside information to deal in its shares. These include prohibiting an issuer from share repurchases on the Exchange while in possession of undisclosed inside information and during the ~~one month~~30 days prior to the release of financial results (the **Restricted Period**)².
4. Other markets including the UK and the US also have provisions to prohibit price manipulations and trading on the basis of material non-public information and/or during closed periods³. At the same time, these markets also provide exemptions or safe harbours for trading programs conducted during the restricted period, provided that there is sufficient safeguard to ensure that share repurchases are carried out independently and the issuer has no influence over the share repurchases.

¹ Main Board Rule 10.06(2) (GEM Rule 13.11)

² Main Board Rule 10.06(2)(e) (GEM Rule 13.11(4))

³ The US does not impose a closed period. The UK imposes a closed period of 30 days.

Waivers granted for dually listed issuers

5. We have granted waivers allowing issuers to conduct automatic share buy-back programs on the Exchange and to continue these programs throughout the Restricted Period, provided that the terms of the programs were determined outside the Restricted Period (the **Waivers**). These issuers are dually listed on the Exchange and the London Stock Exchange (**LSE**) or the New York Stock Exchange (**NYSE**), and the programs are similar to the share buy-back programs adopted by these issuers for their share buy-backs on LSE or NYSE under the exemption from the Market Abuse Regulation of the UK (**MAR**)⁴ or the “safe harbour” under the Securities Exchange Act of the US (**SEA**)⁵.
6. Generally, these programs are established before an issuer is in possession of material non-public information and are lead-managed by a single broker which makes its trading decisions independently of the issuer, subject to pre-determined parameters. The share repurchases must also comply with the limits on purchase price and daily trading volume, and restrictions on trading during the opening/closing sessions. The issuers are also required to disclose details of their share repurchases under the programs.

Purpose of this guidance letter

7. The Exchange will consider granting a Waiver for automatic share buy-back programs of individual issuers (regardless of whether they are solely or dually listed on the Exchange) provided that the automatic share buy-back programs are structured in a manner to mitigate the risks of abuse of undisclosed inside information and price manipulation. The issuer must also demonstrate that strict compliance with the Restricted Period is unduly burdensome.
8. This letter provides guidance to listed issuers on conducting automatic share buy-back programs on the Exchange, and the framework for the Exchange’s assessment of the issuer’s share buy-back program in considering a Waiver application.

II. Relevant Listing Rules

9. Main Board Rule 10.06 (GEM Rule 13.11(4)) states that:

“ ...

(2) Dealing Restrictions

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| (e) *an issuer shall not purchase its shares on the Exchange at any time after inside information has come to its knowledge until the information is made publicly available. In particular, during the period of ~~one month~~ 30 days immediately preceding the earlier of:*

| (i) *the date of the board meeting (as such date is first notified to the Exchange in accordance with the Listing Rules) for the approval of the issuer’s results for any year, half-year, quarterly or any other interim period (whether or not required under the Listing Rules); and*

⁴ In the UK, Article 5 of the MAR exempts issuers’ buy-back programs from Articles 14 (dealing with inside information) and 15 (market manipulation).

⁵ In the US, s240.10b5-1 and s240.10b-18 of the SEA provide a “safe harbour” from liabilities for trading on the basis of material non-public information and manipulation for an issuer’s repurchase of shares on the market.

- (ii) *the deadline for the issuer to announce its results for any year or half-year under the Listing Rules, or quarterly or any other interim period (whether or not required under the Listing Rules),*

and ending on the date of the results announcement, the issuer may not purchase its shares on the Exchange, unless the circumstances are exceptional.

...”

III. Guidance

10. The Exchange will consider granting a Waiver to allow an automatic share buy-back program to continue throughout the Restricted Period if the risk of abuse of undisclosed inside information and price manipulation is low. The Exchange will apply the following criteria (which is not meant to be exhaustive) in assessing the share buy-back program of an issuer and its application for Waiver.

(A) Safeguards against trading with undisclosed inside information

Irrevocable non-discretionary arrangement with a single independent broker

11. An automatic program should be established outside the Restricted Period and cannot be modified or terminated (unless required by applicable laws) during the Restricted Period. There should also be restrictions on the appointed broker to safeguard against dealing with inside information:
- (i) **Irrevocable non-discretionary arrangement** – The listed issuer should enter into a binding contract with a broker with parameters for share buy-backs (i.e. fixed trading parameters including price, volume and dates, or formula or algorithm for determining the price, volume and dates) set prior to the commencement of the automatic program. The contract should be entered into outside the Restricted Period, and modification or termination (unless required by applicable laws) of the program would not be permitted during the Restricted Period.
 - (ii) **Independent broker** – The listed issuer should appoint a broker independent of the listed issuer and its connected persons. The issuer and its broker must have in place appropriate systems and controls with Chinese Walls to ensure that (i) there is no influence by the issuer or any of its connected persons over the automatic program after its commencement date and that all investment decisions under the automatic program are made independently from the listed issuer and its connected persons; and (ii) no non-public information of the issuer and its connected persons is given directly or indirectly to, or received by any personnel of the broker involved with the establishment or execution of the automatic program until a reasonable time after its completion or termination. The broker must also conduct the buy-backs in accordance with the pre-determined trading parameters set out in the binding contract and in compliance with the applicable rules or laws.
 - (iii) **Single broker** – Share buy-backs should be effected through only one broker. This is to avoid the perception of widespread interest in the listed issuer’s shares should many brokers are appointed to repurchase the shares.

Terms of the buy-back program

12. The terms of the buy-back program should not be structured to circumvent the dealing restrictions under the Rules and to avoid the perception of abuse of inside information by the listed issuer. For example, if a listed issuer enters into a program shortly before the blackout period and terminate the program shortly after the release of results, it may raise a concern on whether the program was established to circumvent the blackout period under the Listing Rules.
- (i) **Duration of program** – While the Exchange does not propose to set a fixed minimum period for a share buy-back program, the program should be of sufficient duration. A listed issuer should justify the reasonableness of the duration of the program, for example, by reference to the proposed size of the program and parameters agreed with the broker, including the expected price and timing of buy-backs. A program of short duration may raise a concern that the program is established to avoid the blackout period.
- (ii) **Cooling-off period** – As best practice, there should be a time gap between the commencement of the share buy-back under the program and the Restricted Period. Commencing a program shortly before the Restricted Period may give rise to a perception that a listed issuer may benefit from any material non-public information of which it may have been aware at the time of adopting the program. Further, management may be in possession of confidential information which even if not material (i.e. not an inside information), may nevertheless be relevant to the market assessment of the price of its securities.

The terms of a specific program may determine whether both a cooling-off period and a long duration is required. For example, where a program is to be entered into shortly after release of the results, it may not be necessary to impose a cooling-off period.

(B) Safeguards against potential price manipulations

13. The Exchange will take into account the specific circumstances of an issuer (such as its market capitalisation and sufficient liquidity) in assessing the risk of price manipulations.

Issuer's size and liquidity of its shares

14. Share repurchases may reduce the liquidity of an issuer's shares and raise the risk that the share buy-back program may materially affect the market price of its shares. This is especially the case for listed securities which are thinly traded on the Exchange. Also, a large scale share repurchases may have a disproportionate impact on the share price.
15. Therefore, the Exchange considers that a Waiver may be granted to issuers with a large market capitalisation and sufficient liquidity, as their securities would be less susceptible to price manipulation through a buy-back program. As a reference, the Exchange would consider (i) market capitalisation of at least HK\$10 billion⁶; and (ii) an average daily turnover volume (ADTV) of at least HK\$10 million⁷ in the six months immediately prior to the adoption of the buy-back program, as a benchmark for eligibility for the Waiver.

⁶ With reference to new listing applicants eligible for a reduced public float under Main Board Rule 8.08(1)(d).

⁷ With reference to one of the criteria for designated securities eligible for short selling in Hong Kong under Regulation (18)(f) in the Eleventh Schedule to the Rules and Regulations of the Exchange and the Options Trading Rules, which requires the designated security to have a market capitalisation of at least HK\$3 billion and an aggregate turnover during the preceding 12 months to market capitalisation ratio of not less than 60% (i.e. ADTV of about HK\$7 million).

Dealing restrictions

16. The Exchange considers that a share buy-back program allowing dealing within a Restricted Period should be subject to additional dealing restrictions to limit the impact on share prices, so as to mitigate the risks of price manipulation.
 - (i) **Trading volume limit** – Trading under a share buy-back program should be limited to 25% of the average daily trading volume over the immediately preceding 20 trading days as a condition for the Waiver so as to limit the impact of the share repurchases on the liquidity of the shares and hence the share prices.
 - (ii) **Intra-day limit** – Participation in opening and/or closing auctions/ periods should be restricted as market activities at such times are considered to be a significant indicator of the direction of trading, the strength of demand and the current market value of the securities. This condition for the Waiver aims to prevent an issuer from creating or sustaining a high bid or transaction price at or near the close of trading.
17. Apart from the above dealing restrictions, trading under a share buy-back program is subject to the price restriction imposed under the Listing Rules for all share repurchases⁸.

(C) General conditions

18. The Exchange obtained the SFC's consent for granting Waivers for automatic share buy-back programs of issuers by applying the framework criteria as set out in this letter.
19. Listed issuers may refer to the [Guide on Applications for Waivers and Modifications of the Listing Rules](#) for guidance on the criteria in assessing the Waiver applications, including whether compliance with the Rules would be unduly burdensome, and whether it would result in undue risks to shareholders.
20. Issuers should disclose details of their automatic share buy-back programs by way of announcements and any share repurchases conducted thereunder by way of next day disclosure returns⁹. These disclosures not only ensure transparency of share repurchases conducted under the programs, they also facilitate oversight of the issuers to prevent non-compliance.
21. In addition, issuers must ensure their compliance with the SFO, in particular the provisions relating to market manipulation and insider dealing, in relation to their adoption of automatic share buy-back program and the share repurchases conducted thereunder.

Important note:

⁸ Main Board Rule 10.06(2)(a) (GEM Rule 13.11(6)) prohibits share repurchases on the Exchange at a purchase price higher by 5% or more than the average closing price for the 5 preceding trading days on which the shares were traded on the Exchange.

⁹ Main Board Rule 13.25A (GEM Rule 17.27A)

This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.