

Whether the Exchange would approve a listed issuer's proposed issue of new shares after its redemption of convertible bonds

Facts

1. A Main Board issuer (**Company X**) exercised its option to redeem early all outstanding convertible bonds issued by it three years ago (~~the~~ **Early Redemption**).
2. It considered the Early Redemption to be in its interest and the interest of its shareholders as it would otherwise have had to pay 10% more to redeem the bonds on maturity a few months later.
3. It proposed to enter into an agreement within 30 days of the Early Redemption to place new shares to independent third parties. The purpose was to raise funds to repay loans due within one year and for general working capital. It sought the Exchange's approval of the proposal under Rule 10.06(3).

Relevant Listing Rules

4. Rule 10.05 states that:

Subject to the provisions of the Code on Share Repurchases, an issuer may purchase its shares on the Exchange or on another stock exchange recognised for this purpose by the Commission and the Exchange. All such purchases must be made in accordance with rule 10.06. Rules 10.06(1), 10.06(2)(f) and 10.06(3) apply only to issuers whose primary listing is on the Exchange while the rest of rule 10.06(2) and rules 10.06(4), (5) and (6) apply to all issuers. The Code on Share Repurchases must be complied with by an issuer and its directors and any breach thereof by an issuer will be a deemed breach of the Exchange Listing Rules and the Exchange may in its absolute discretion take such action to penalise any breach of this paragraph or the listing agreement as it shall think appropriate. It is for the issuer to satisfy itself that a proposed purchase of shares does not contravene the Code on Share Repurchases.

5. Rule 10.06(3) states that:

An issuer whose primary listing is on the Exchange may not make a new issue of shares or announce a proposed new issue of shares for a period of 30 days after any purchase by it of shares, whether on the Exchange or otherwise (other than an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that purchase of its own securities), without the prior approval of the Exchange.

[\(Rule 10.06\(3\) was amended on 11 June 2024. See Note below.\)](#)

6. Rule 10.06(6)(c) states that

for the purposes of rules 10.05, 10.06, 19.16 and 19.43 “shares” shall mean shares of all classes and securities which carry a right to subscribe or purchase shares, of the issuer provided that the Exchange may waive the requirements of those rules in respect of any fixed participation shares which are, in the opinion of the Exchange, more analogous to debt securities than equity securities. References to purchases of shares include purchases by agents or nominees on behalf of the issuer or subsidiary of the issuer, as the case may be.

Analysis

7. Rule 10.06(3) requires ~~that~~ an issuer to seek the Exchange’s approval before issuing new shares or announcing a new issue of shares within 30 days after its purchase of its own shares. This is ~~both~~ to ensure that the issue of new shares does not take place at a market price that has been affected by the issuer’s previous repurchase of its own shares ~~and that the repurchased shares are not in practice being treated almost as if they are being held as Treasury shares.~~
8. Here, the convertible bonds fell within the definition of “shares” under Rule 10.06(6)(c) and the redemption fell within the meaning of “purchase of shares” under Rule 10.06(3). Therefore, Company X had to obtain the Exchange’s approval under Rule 10.06(3) for its proposed issue of new shares under the placing agreement and publication of the related announcement.
9. The Exchange noted that the purpose of the Early Redemption and the proposed placing was to reduce Company X’s debts. It was satisfied that the concern mentioned in paragraph 7 above did not arise.

Conclusion

10. Company X’s proposed issue of new shares was acceptable under Rule 10.06(3).

[Note: Rule 10.06\(3\) was amended on 11 June 2024 to \(i\) apply the existing moratorium period requirement for an issue of new shares to a resale of treasury shares and \(ii\) extend the carve-out provision to include the grant of share awards or options under a share scheme that complies with Chapter 17, or a new issue of shares or a sale or transfer of treasury shares under a capitalisation issue, upon vesting or exercise of share awards or options under the share scheme that complies with Chapter 17 or pursuant to the exercise of outstanding warrants, share options or similar instruments. The Rule amendments would not change the analysis and conclusion in this case.](#)