

CONSULTATION CONCLUSIONS EX-ENTITLEMENT TRADING AND SHAREHOLDER APPROVAL

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Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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EXECUTIVE SUMMARY

1. This paper presents the results of the public consultation on whether shares should be traded ex-entitlement only after the entitlement has been approved by shareholders.
2. We received majority support from the market on trading ex-entitlement after shareholder approval. Taking into careful consideration the respondents' comments, we will implement the following proposals:-
 - We will amend the Listing Rules to prevent a share from trading ex-entitlement before shareholder approval.
 - We will require the record date to be set at least 3 business days after the date of shareholder approval (i.e. at least one cum-trading day will be provided)
 - We will require a minimum of one last cum-trading day after the general meeting.
 - We will apply the proposed changes to all conditional entitlements that are subject to general meeting approval.
3. The above proposals are timely. During the consultation period, allegations were received from investors that a listed company had cancelled its rights issue after the ex-entitlement date and caused losses to many small investors.
4. The Listing Rule requirements are prescribed minimums only. It remains the issuer's and its directors' responsibility to ensure the distribution plans and arrangements are fair and orderly in specific circumstances, which would include developing and ensuring a timetable which is workable with the relevant stakeholders including its share registrar and underwriter.
5. The process for trading ex-entitlement and shareholder approval for Main Board issuers and GEM issuers are the same in practice. We therefore propose to make corresponding changes to the GEM Rules to be consistent with the Main Board Rules. All rule references in this paper are to the Main Board Rules.
6. We have finalised the Rule amendments to implement the proposals. They have been made by the Board of The Stock Exchange of Hong Kong Limited and approved by the Securities and Futures Commission, and will become effective on 20 June 2011. We will provide a transitional period such that the proposed amendments do not apply to entitlements with timetables announced before the effective date of the Rule amendments.

CHAPTER 1: INTRODUCTION

7. On 17 December 2010, The Stock Exchange of Hong Kong Limited (Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx), published a Consultation Paper on Ex-entitlement Trading and Shareholder Approval (Consultation Paper).
8. The Consultation Paper sought market views on whether shares should be traded ex-entitlement only after the entitlement has been approved by shareholders.
9. The consultation period ended on 28 February 2011. We received a total of 45 submissions (including 5 late submissions) from listed issuers, professional and industry associations, market practitioners and individuals. A list of respondents is provided in Appendix II.
10. The full text of all the submissions is available on HKEx website at <http://www.hkex.com.hk/eng/newsconsul/mktconsul/responses/cp2010123r.htm>.
11. We received majority support from the market on trading ex-entitlement after shareholder approval. Chapter 2 summarizes the major comments of the respondents and our responses. This paper should be read in conjunction with the Consultation Paper, a copy of which is posted on the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010123.pdf>.
12. The Rule amendments are provided in Appendix I. They have been made by the Board of the Exchange and approved by the Securities and Futures Commission, and will become effective on 20 June 2011.
13. We would like to thank all those who shared their views and suggestions with us during the consultation process.

CHAPTER 2: MARKET FEEDBACK AND CONCLUSIONS

14. We received majority support from the market on trading ex-entitlement after shareholder approval. We set out below major comments of the respondents and our responses.

I) Shares should be traded ex-entitlements only after shareholder approval

15. We sought market views whether shares should be traded ex-entitlements (for conditional entitlements) only after shareholder approval.

Comments received

16. A majority of the respondents supported trading ex-entitlement after shareholder approval.
17. They considered the proposed change can remove the risk of uncertainty in relation to trading of the shares during the period from the ex-date to the date of general meeting. This can promote a fair and orderly market as shares can be traded in a better informed basis.
18. A number of respondents commented that the proposal will also reduce the anomaly associated with ex-entitlement trading before shareholder approval (i.e. distortion of share prices during the ex-entitlement trading period). They felt aggrieved by a recent incident where a listed company had cancelled its rights issue after the ex-entitlement date causing disorderly trading of shares ex-entitlement. They expressed the view that the proposed change will address their concerns that sellers on the ex-date will not be exposed to any risk of uncertainty and the trading of stocks would be conducted in a fair manner to both buyers and sellers.
19. One structured product issuer pointed out that the practice of making capital adjustments on the ex-date (whether or not the relevant corporate action has approved by shareholders or otherwise become unconditional) applies to all equity derivative products. Banning shares from trading ex-entitlement before shareholder approval will also reduce the risk of uncertainty not only for the Exchange's related derivatives products, but also for all equity derivative products generally.
20. A few respondents supported the status quo of allowing ex-entitlement trading to be arranged before shareholder approval for the arguments set out in paragraphs 17 to 21 of the Consultation Paper, particularly because setting the record date for entitlement after the date of general meeting will prolong the distribution process (i.e. in the case of scrip dividend) and the timetable of time-sensitive deals such as rights issues.
21. One respondent considered that the advantage of creating an orderly market by removing the risk of uncertainty in case of shareholder approval not being obtained outweighs the concern of having a slightly longer timetable.

Our response

22. We are encouraged by the majority support of respondents on the proposal of trading ex-entitlement after shareholder approval. We believe that the proposal will remove the risk of uncertainty in case of shareholder approval not being obtained. This will help create a fair and orderly market and enhance investors' protection and in turn enhance the integrity of Hong Kong's securities market.
23. We also believe the benefits of trading ex-entitlement after shareholder approval outweigh the concerns about a prolonged timetable of the distribution process. As set out in the Consultation Paper, issuers and their share registrars can identify registered shareholders by closing the register just for a single day or by taking a snapshot of its register books at the end of the record date. To shorten the overall timetable, issuers can decide on a record date without a book closure.

II) The record date should be set at least 3 business days after the date of shareholder approval

24. We sought market views whether the record date should be set at least three business days after the date of shareholder approval (i.e. at least one cum-trading day be provided).

Comments received

25. We received general consensus from the respondents in support the proposal to set the record date at least three business days after the date of shareholder approval. They pointed out that as Hong Kong currently adopts a T+2 settlement period, investors who want to receive the entitlement (but do not want to purchase the shares before the general meeting) should be allowed sufficient time (at least 1 business day) to purchase the shares after the shareholders approval so as to become registered shareholders on the record date. Likewise, existing shareholders should also be provided sufficient time to consider whether to sell their cum-entitlement shares in the market if they do not want to take up the entitlement.

Our response

26. We will proceed with the proposed amendments. The proposal is comparable with the leading overseas market practices on the ex-date of conditional entitlements. (Appendix III).

III) A minimum of one last cum-trading day should be provided after the general meeting

27. We proposed to extend the last cum-trading day to at least the second business day after the general meeting if the issuer fails to publish its voting results via HKExnews website by 11pm on the date of the general meeting.

Comments received

28. A majority of the respondents considered that at least one cum-trading day after the general meeting should be sufficient for the market to digest the published information and for the investors to make their trading decisions based on that information.
29. A few respondents also indicated that no extension is needed if the voting results can be published by 8:30am (i.e. not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session) on the business day following the general meeting as set out in Listing Rule 13.39(5)*. Under the current practice, investors will still have one cum-trading day to make their trading decisions.

Our response

30. The purpose of the proposed arrangement to have at least one cum-trading day after the general meeting is to provide sufficient time for the market to digest the results of the general meeting. Irrespective of whether the issuer publishes the voting results by 11pm on the date of the general meeting or by 8:30am on the business day following the general meeting, it must ensure that there is sufficient time for shareholders to act after the issuer has announced the voting results.
31. We propose to amend the Listing Rules to provide a minimum of one last cum-trading day in the event that the voting results cannot be published by 8:30am (i.e. not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session) on the business day following the general meeting.

IV) The ex-entitlement arrangement should be applied to all conditional entitlements

32. We sought market views on whether trading ex-entitlements after shareholder approval should be applied to all conditional entitlements or only to some of them.

Comments received

33. A majority of the respondents supported that trading ex-entitlements after shareholder approval should be applied to all conditional entitlements.
34. Two respondents supported that the proposal should apply to all conditional entitlements but suggested the Exchange to allow certain flexibility to listed companies to waive the requirement in exceptional cases (e.g. time-sensitive deals).
35. Three respondents suggested that the following entitlements should be exempted from the proposed arrangement:

* Listing Rule 13.39(5) requires the issuer to announce the results of the poll by way of an announcement as soon as possible, but in any event not later than 30 minutes before the earlier of the commencement of the morning trading session or any pre-opening session on the business day following the general meeting.

- (a) Final dividend: The final dividend approved by shareholders at annual general meeting may be substituted by an interim dividend declared by the Board of directors so that a further book closure period may be avoided. Shareholders will also lose the opportunity to raise comments on dividend policy at the general meeting.
 - (b) Distribution in specie of existing shares in a spin-off company: In the case of spin-off, even the assured entitlements of shares distributed in specie is set after the general meeting and is approved by shareholders, the distribution is still contingent on other conditions of the spin-off transaction.
36. Two respondents also suggested that final dividends should be exempted from the proposed arrangement because final dividends are seldom disapproved in the general meetings.

Our response

37. Most of the respondents considered that the proposed requirement should be applied to all conditional entitlements consistently so as to avoid confusion for investors and market practitioners. We will proceed with the proposed amendments.
38. We have considered the views of the respondents on the suggested exceptions as mentioned above. However, we believe a uniform application of the requirement to all conditional entitlements will help reduce market confusion. The consistency will also benefit both the cash and derivatives markets as pointed out by one of the respondents that the practice of making capital adjustments on the underlying on the ex-date also applies to all equity derivative products.
39. As set out in the Consultation Paper, some entitlements are distributed by a company on condition that certain transactions are approved by shareholders at a general meeting. We acknowledge that even if the record date (and thus the ex-date) is set after the general meeting for this type of entitlement (i.e. distribution in specie of existing shares in a spin-off company as suggested by the respondent) the distribution could still be exposed to the risk of uncertainty since it may also be contingent on other conditions which ultimately may not be fulfilled. In this respect, we intend to conduct a separate review of these conditions (except for the approval of the listing application) to see if we can reduce its level of uncertainty before the distribution becoming unconditional.

CONSULTATION CONCLUSIONS

40. We will adopt the proposals as discussed above and amend the Main Board and GEM Listing Rules to reflect the proposed changes.
41. It should be noted that the Listing Rule requirements are prescribed minimums only. It remains the issuer's and its directors' responsibility to ensure the distribution plans and arrangements are fair and orderly in specific circumstances, which would include developing and ensuring a timetable which is workable with the relevant stakeholders including its share registrar and underwriter.
42. We believe the proposed changes will bring Hong Kong into alignment with international and Mainland market practices. To respond to changing market conditions, we will continue to monitor developments and welcome further feedback from and dialogue with market participants.

APPENDIX I: RULE AMENDMENTS

MAIN BOARD LISTING RULES

Closure of books and record date

- 13.66 (1) An issuer ~~shall publish in accordance with rule 2.07C a notice of the~~ must announce any closure of its transfer books or register of members in respect of securities listed in Hong Kong at least six business days before ~~the~~ such closure ~~in the case of for a rights issue, or 10 business days before the~~ such closure in other cases. In cases where there is an alteration of book closing dates, the issuer ~~must~~ shall, at least five business days before the announced closure or the new closure, whichever is earlier, notify the Exchange in writing and ~~give~~ make a further ~~announcement notice by publishing it in accordance with rule 2.07C.~~ If, however, there are exceptional circumstances (e.g. a typhoon) that render the giving of ~~the~~ such notification to the Exchange and publication of the ~~notice~~ announcement impossible, the issuer ~~must~~ shall comply with the requirements as soon as practicable. Where the issuer decides on a record date without book closure, ~~these~~ requirements ~~in this rule shall~~ apply to the record date.
- (2) An issuer must ensure that the last day for trading in the securities with entitlements falls at least one business day after the general meeting, if the entitlements require the approval of shareholders in the general meeting or are contingent on a transaction that is subject to the approval of shareholders in the general meeting. This rule shall not apply where the issuer announces the timetable of an entitlement on or before 19 June 2011.

Notes:

1. *See Practice Note 8 for emergency share registration arrangements during a typhoon and/or a black rainstorm warning.*
2. *In addition, ~~in the case of for a rights issue, the issuer must provide at least two trading days (as defined in the Rules of the Exchange) for trading in the securities with entitlements (i.e. before the ex-date) after publication of the book closure. If trading on the Exchange is interrupted due to a typhoon and/or a black rainstorm warning, the book-close date will be automatically postponed, where necessary, to provide at least two trading days (during neither of which trading is interrupted) for trading of the securities with entitlements during the notice period. In ~~such~~ these circumstances the issuer must publish an announcement on the revised timetable.~~*

3. For the purposes of rule 13.66(2),
- the record date (when there is no book closure) or the last registration date (when there is a book closure) must be at least three business days after the general meeting; and
 - if the issuer fails to publish the result of the poll conducted in the general meeting in the manner prescribed under rule 13.39(5), it must ensure there is at least one trading day for trading in the securities with entitlements after publication of the results of the poll. The issuer must publish an announcement on any revised timetable.

GEM LISTING RULES

Closure of books and record date

- 17.78 (1) ~~The An~~ issuer shall give notice (by way of an announcement) of the ~~must~~ announce any closure of its transfer books or register of members in respect of securities listed in Hong Kong at least six business days ~~prior to such~~ before the closure ~~in the case of~~ for a rights issue, or 10 business days before ~~such the~~ closure in other cases. In cases where there is an alteration of book closing dates, a further notice shall be given at least five business days before the announced closure or the new closure, whichever is earlier, unless exceptional circumstances render the giving of such notice impossible, in which case, a further notice (by way of an announcement) should be given as soon as practicable, save that no further notice need be given in the circumstances referred to in rules 17.79 to 17.80. Where the issuer decides on a record date without book closure, these requirements in this rule shall apply to the record date.
- (2) An issuer must ensure that the last day for trading in the securities with entitlements falls at least one business day after the general meeting, if the entitlements require the approval of shareholders in the general meeting or are contingent on a transaction that is subject to the approval of shareholders in the general meeting. This rule shall not apply where the issuer announces the timetable of an entitlement on or before 19 June 2011.

Notes:

1. ~~In the case of~~ For a rights issue, the issuer must provide at least two trading days ~~(as defined in the Rules of the Exchange)~~ for trading in the securities with entitlements (i.e. before the ex-date) after publication of the book closure. If trading on the Exchange is interrupted due to a typhoon and/or a black rainstorm warning, the book-close date will be automatically postponed, where necessary, to provide at least two trading days (during neither of which trading is interrupted) for trading of the securities with entitlements during the notice period. In ~~such~~ these circumstances the issuer must publish an announcement on the revised timetable.

2. For the purposes of rule 17.78(2),

- the record date (when there is no book closure) or the last registration date (when there is a book closure) must be at least three business days after the general meeting; and

- if the issuer fails to publish the result of the poll conducted in the general meeting in the manner prescribed under rule 17.47(5), it must ensure there is at least one trading day for trading in the securities with entitlements after publication of the results of the poll. The issuer must publish an announcement on any revised timetable.

APPENDIX II: LIST OF RESPONDENTS

LIST OF RESPONDENTS

Listed Issuers

1. Cathay Pacific Airways Limited
2. Guoco Group Limited
3. Henderson Investment Limited
4. Henderson Land Development Company Limited
5. HK Aircraft Engineering Company Limited
6. Swire Pacific Limited
- 7-12. Six Main Board Issuers (names not disclosed at the respondents' request)

Professional and Industry Associations

1. Hong Kong Institute of Certified Public Accountants
2. Hong Kong Securities Association Limited
3. Hong Kong Securities Professionals Association
4. The Chamber of Hong Kong Listed Companies
5. The Hong Kong Association of Banks
6. The Hong Kong Institute of Chartered Secretaries
7. The Law Society of Hong Kong

Market Practitioners

1. Computershare Hong Kong Investor Services Limited
2. Latham & Watkins
3. Mayer Brown JSM
4. Nomura International (Hong Kong) Limited
5. P. C. Woo & Co.
- 6-7. Two Market Practitioners (names not disclosed at the respondents' request)

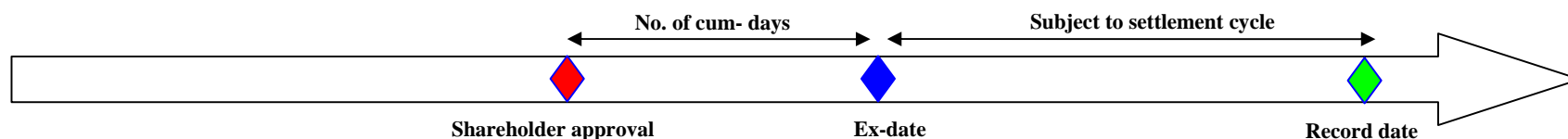
Individuals and Other Entities

1. Suen Chi Wai
2. Webb-site.com
3. 善水政經研究協會
4. 鄔世勇
- 5-19. Fifteen individuals (names not disclosed at the respondents' request)

Remarks:

1. *One submission is counted as one response.*
2. *The total number of responses is calculated according to the number of submissions received and not the underlying members that they represent.*

APPENDIX III: OVERSEAS MARKET PRACTICES ON EX-DATE OF CONDITIONAL ENTITLEMENTS



Number of cum-trading day after shareholder approval in selected leading markets

Stock Exchange	Requirement	Ex- trade before shareholder approval	Minimum no. of business days between record date and shareholder approval	Settlement cycle	Minimum no. of cum-trading days after shareholder approval
Australian Stock Exchange	Record date at least 7 business days after shareholder approval	No	7	T+3	4
Singapore Exchange	Last cum-trading day must be at least 1 day after shareholder approval	No	4	T+3	1
New York Stock Exchange	Record date must be at least 6 business days after shareholder approval	No	6	T+3	3
Shanghai / Shenzhen Stock Exchange	Record date must be announced after shareholder approval and CSRC approval. Ex-date is the trading day after the record date	No	3	T+1	2
Hong Kong Stock Exchange	Last cum-trading day must be at least 1 day after shareholder approval (proposal)	No	3	T+2	1

Notes:

1. London Stock Exchange allows listed companies to set a record date before shareholder approval. Its market system supports cum-trading under which entitlement will be transferred from seller to buyer for any trades settled by CREST from record date to ex-date. Ex-date is required to be set at least 2 business days (if announced before 8am) or 3 business days (if announced after 8am) after shareholder approval.
2. New York Stock Exchange requires any stock entitlement equivalent to 25% or more of issued capital to defer ex-date until one day after the payment date. From record date to ex-date, cum-trading is provided under a system similar to London.
3. Listing rules in Mainland China require issuers to announce details of the distribution, including date of shareholder approval and other appropriate regulatory approvals, at least 3 days before record date. This table assumes regulatory approvals are given on the date of shareholder approval.

* Material contained in this Appendix is for background and reference purposes only. This information was compiled on a best-effort basis through desktop research and discussion with overseas exchanges.

