

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink: http://www.hkex.com.hk/consul/paper/cp200907_e.pdf.

Where there is insufficient space provided for your comments, please attach additional pages.

Consultation Questions on Notice Period for Book Closure

1. Do you agree to our proposal to shorten the notice period for book closure for a rights issue or an open offer from 14 calendar days to five business days?

Yes

No

Please provide reasons to support your view.

The Group strongly supports the Exchange's proposal to shorten the rights issue and open offer processes to facilitate capital raising in difficult markets. It also agrees that a total period of 15 business days is the appropriate minimum duration for the combined notice and subscription periods.

Although common practice in Hong Kong, book closure is not mandatory under the Listing Rules or the Companies Ordinance (CO) and companies' books may remain open during rights issues and open offers. The requirement for 14 days' notice under Main Board Rule 13.66 (GEM Rule 17.78) therefore applies only if the company's books are in fact closed.

Where a company does not close its books, notice of the record date will in practice be given in the announcement of the rights issue/open offer which is required to be made on the business day following the board's decision to conduct the rights issue/open offer (Main Board Rule 13.28/GEM Rule 17.30). That announcement does not however specifically require notice of the record date to be given nor any minimum notice period. Where the share register remains open therefore, shareholders could theoretically receive considerably less notice of a rights issue/open offer record date, than would be the case if the company had to give notice of book closure. It is submitted therefore that a specific requirement for a minimum period of notice of a rights issue or open offer record date should be included in the contents requirements for announcements under Main Board Rule 13.28/GEM Rule 17.30, either to replace or supplement the amended Rule 13.66.

As to the periods of notice and acceptance, the Group agrees that a minimum of 15 business days in total is probably required. It is considered, however, that a longer period of notice is required for open offers than is necessary for rights issues, whereas rights issues require a longer subscription period than open offers. As invitations to apply under an open offer are not transferable during the acceptance period, the

ability to sell shares before the record date offers the only way out for a shareholder not wanting to take up the offer or to suffer dilution. In a rights issue, on the other hand, shareholders still have the option of selling their rights nil-paid during the subscription period. The Group therefore recommends that the notice period for open offers should be longer (say 10 business days) to allow non-accepting shareholders more time to sell before the record date. As shareholders cannot sell or split their entitlements during the open offer acceptance period (as is possible on a rights issue), the acceptance period for open offers could be correspondingly shorter (say 5 business days). The total period would be the same as for rights issues, which would have a 5 business day notice period and 10 business day acceptance period (to allow selling and splitting of entitlements) as proposed in the Consultation Paper.

Another issue to consider is whether the notice period could be shortened by allowing shares to be sold cum-rights between the record date and the start of the acceptance period. In the U.K., the company's share register is not closed and this allows shares to continue to trade cum-rights after the record date until they are marked ex-rights at the start of the offer period. In the March 2009 rights issue of HSBC Holdings plc, although the record dates for the U.K. and Hong Kong registered shares were the same, holders of the U.K. registered shares had 7 days longer to trade the shares cum-rights. In Hong Kong, the shares were marked ex-rights on 12 March, the day before the record date, whereas in the U.K., the shares were only marked ex-rights on 20 March, at the start of the offer period.

In the U.K., transfers of shares cum-rights after the record date are facilitated under the CREST system. A claim transaction is apparently generated automatically and the appropriate number of nil paid rights are transferred through CREST to the transferee on settlement. There does not appear to be a comparable mechanism available through CCASS and it is considered that it would be worth looking into whether CCASS could offer a similar mechanism to allow trading shares cum-rights through CCASS after the record date. Where shares are held outside CCASS, a provision is already generally included to require a shareholder who has sold shares cum-rights before the record date to forward to the purchaser the prospectus and any provisional letter of allotment when received. If cum-rights trading were permitted after the record date, this requirement could simply be extended to apply (as it does in the U.K. to shareholders holding shares outside CREST) until the start of the subscription period which would be the ex-rights date.

According to the Consultation Paper (at page 11), on a U.K. rights issue or open offer, the record and announcement dates for rights issues and open offers can be the same. While notice of the record date is arguably less important where shareholders can still trade cum-rights after the record date, shareholders should in our view still be given adequate notice of a record date, particularly in the case of an open offer. If it were possible to allow cum-rights trading after the record date, this could support a reduction in the minimum notice period of an open offer record date to 5 business days, in line with the proposed notice period for rights issues.

Finally, it appears that one of the reasons behind the Hong Kong practice of closing the share register between the record date and the despatch of the prospectus, is to ensure the availability of the exemption from the CO prospectus requirements

provided by Sections 38(5)(a) and 342(5)(a) CO for prospectuses issued to existing members of a company and regardless of whether or not the rights granted are renounceable. The argument is apparently that the shareholders' register must be closed from the record date until the despatch of the prospectus in order to ensure that the prospectus is issued to "existing members" (i.e. members on the record date). Thus if cum-rights trading were to be allowed after the record date, amendments to Sections 38(5)(a) and 342(5)(a) CO would be required to ensure that the exemption is available where a prospectus is issued to transferees who have acquired the shares after the record date.

2. In the case of a rights issue or an open offer, do you agree to our proposal to require extension of the notice period by postponing the book closure date, if necessary, to provide the market with a minimum of two uninterrupted trading days for trading in cum-rights securities during the notice period if, for examples, trading on the Exchange is interrupted due to typhoon and/or a black rainstorm warning or trading of the issuer's securities is suspended?

Yes

No

Please provide reasons to support your view.

As indicated in the response to Question 1 above, in the case of open offers in particular, it is important to ensure that shareholders have sufficient time to sell their shares cum-rights before the book closure date.

3. If your answer to question 2 is "Yes", do you agree that the proposed draft rule amendments in Appendix II will implement our proposal(s)?

Yes

No

Please provide reasons to support your view.

The proposed draft rule amendments will implement the suggested proposals. As noted in the response to Question 1 above, however, the Group considers that while 5 business days' notice of a rights issue record date should be sufficient, 10 business days' notice should be given of an open offer record date. The Group would also ask the Exchange to consider implementing the notice requirement by including the requirement for a minimum period of notice of the record date in the contents requirements for announcements of rights issues and open offers under Main Board Rule 13.28 and GEM Rule 17.50.

4. Do you agree to our proposal to amend the notice period for book closure (in cases other than a rights issue or an open offer) from 14 calendar days to 10 business days?

Yes

No

Please provide reasons to support your view.

Calculation of notice periods by reference to business days is preferred as this prevents notice periods from being rendered insufficient where public holidays fall within a period based on calendar days. It also makes for greater consistency if all periods within the Listing Rules are calculated on the same basis.

5. Do you agree to our proposal to amend the notice period for alteration of book closure date from six calendar days to five business days?

Yes

No

Please provide reasons to support your view.

Please see our response to Question 4 above.

6. Do you agree to our proposal to clarify the rule that if an issuer changes the book closure date, it must give notice at least five business days before the originally announced closure or the newly proposed closure, whichever is earlier?

Yes

No

Please provide reasons to support your views.

As indicated above, informing shareholders of the record date for a rights issue or open offer is essential to allow disposal of the shares cum-rights should the shareholders wish to do so. Any clarification which ensures that shareholders are informed of a change to the record date is therefore strongly supported.

7. Are there any other comments you would like to make?

Yes

No

If your answer is “Yes”, please state below.

Another issue the Group would like to raise is that of compensation for non-accepting shareholders under open offers and rights issues. The current Listing Rules (Main Board Rule 7.26A/GEM Rule 10.42) provide that open offer shares not taken up may be offered to other shareholders who have made excess applications. On a rights issue, the Listing Rules allow the unsubscribed shares to either be allocated to other shareholders who have made excess applications or sold in the market for the benefit of the non-accepting shareholders (Main Board Rule 7.21/GEM Rule 10.42). Any other arrangements require independent shareholders' approval.

*In the U.K., a requirement for shares not taken up on a rights issue to be sold for the benefit of the holders is included in Listing Rule 9.5.5. In the case of open offers, the November 2008 Report of the Rights Issue Review Group to the Chancellor of the Exchequer (**Rights Issue Report**) included a recommendation that the Financial Services Authority consult on a new form of open offer which would provide compensation to shareholders not taking up the offer. At the end of the offer period, the shares not taken up would be sold in the market and the non-accepting shareholder would receive any value over and above the issue price.*

The Group considers that it would be more in keeping with the spirit of preemptive offers if the excess application option were removed. Instead, there should be a requirement that shares not taken up under rights issues and open offers (including shares which would otherwise have been offered to overseas shareholders who are excluded from the rights issue or open offer) should be sold in the market if a premium can be obtained, and for the proceeds (net of the issue price and expenses) to be sent to the non-accepting/overseas shareholders.

Consultation Questions on Subscription Period

8. Do you agree to our proposal to amend the minimum subscription period for rights issues and open offers from 14 calendar days to 10 business days?

Yes

No

Please provide reasons to support your view.

The proposed amendment should only make a substantial difference where public holidays such as Christmas or Chinese New Year fall during a subscription period. Nevertheless the Group is supportive of using business days to determine notice and acceptance periods under the Listing Rules.

The Group generally considers that the benefits of a shorter subscription period (faster access to capital and reduced market risk etc.) outweigh the potential drawbacks (e.g. for shareholders who are away at the time). As discussed in the response to Question 1 above, in the case of open offers the acceptance period could

be shorter, say 5 business days, which would allow a longer period of notice (say 10 business days) to be given of the record date to allow more time for the sale of shares before the record date. For rights issues, however, 10 business days is considered to be the minimum that should be allowed since time is required for the splitting and sale of entitlements. The overall period for rights issues and open offers should however be the same to prevent issuers preferring non-compensatory open offers over rights issues.

The Exchange's requirement that prospectuses are published on the websites of the issuer and the Stock Exchange further supports the shortening of the subscription period. If the subscription period is to be reduced, it will be important to ensure that the prospectus is available on-line at the start of the subscription period. The amendments to the Listing Rules which came into effect on 1 January 2009 also allow overseas issuers (but not Hong Kong incorporated issuers) to make corporate communications available to shareholders solely on the issuer's website (provided shareholders are notified of the presence of the document on the website) and introduced a new procedure for deeming shareholders' consent to receipt of communications via the company's website. It is hoped that the requirements of the Companies Ordinance for shareholders to expressly consent to electronic communication are removed in the near future to put Hong Kong issuers in the same position as overseas incorporated issuers.

9. Do you agree to our proposal to amend the maximum subscription period for rights issues and open offers (over which the issuer must consult the Exchange) from 21 calendar days to 15 business days?

Yes

No

Please provide reasons to support your view.

This would be consistent with the minimum period.

10. Are there any other comments you would like to make?

Yes

No

If your answer is "Yes", please state below.

The Group would also ask the Exchange to consider the proposals outlined below.

1. The focus of the Consultation Paper is shortening the rights issue and open offer process in situations where shareholders' approval is not required. In cases where shareholder approval is necessary, the rights issue/open offer process will be

lengthened by the required period of notice (either 14 or 21 days) for the general meeting. This was one of the issues considered by the U.K. Rights Issue Report referred to in the response to Question 7 above. The Report recommended permitting conditional dealing in rights issues to allow the EGM notice period and the rights issue subscription period to be run in parallel rather than consecutively. The difficulty in the case of rights issues is that if shareholder approval is not obtained, any trades in nil-paid rights would have to be unwound. The Report suggested that either a "Forward Settlement Model" or "Conditional Instrument Model" should be allowed. Under the Forward Settlement Model, trading in the nil-paid rights would be allowed but CREST settlement would be delayed until 2 days after the general meeting approving the rights issue. This would allow trades to be easily unwound if shareholders' approval is not obtained.

Under the Conditional Instrument Model, a conditional instrument evidencing an entitlement to nil-paid rights would be unconditionally dealt and settled on T+1. The entitlement conferred would however be conditional on the rights issue resolutions being approved at general meeting. If the rights issue is not approved, the ultimate holder of the instrument receives no value.

In the case of an open offer, the offer acceptance period and, if necessary, the EGM notice period could be run simultaneously over 14 days to quicken the process. As entitlements under an open offer cannot be traded during the acceptance period, the problems of unwinding transactions if approval is not obtained would not occur. As already mentioned, the Group considers that the overall period for an open offer should not be made shorter than that for a rights issue since this might render open offers the preferable route on the basis of timing, which is not in keeping with the principles of pre-emption.

2. In order to reduce the preparation time for a rights issue, the Group considers it essential that a short form prospectus only should be required for rights issues. It was proposed in better times (August 2005) that the prospectus disclosure requirements for rights issues should be increased to "reduced disclosure requirements" from "negligible disclosure requirements" (SFC Consultation Paper on Proposed Reforms to the Company's Ordinance Prospectus Requirements). Although the Consultation Conclusions published in 2006 have not yet been implemented, the Group sees no need to increase the prospectus disclosure requirements for rights issues. It is worth noting that the European Commission, having imposed a requirement for a full blown prospectus for rights issues in the Prospectus Directive, is now calling for a short form prospectus for rights issues.

3. The U.K. Rights Issue Report also recommended the use of shelf registration for equity issuance which would allow issuers to prepare a "shelf" document containing the bulk of the prospectus disclosure. Additional information is then published as and when securities are subsequently issued which, together with the shelf document, constitutes a prospectus. Although permitted under the Prospectus Directive, this is apparently rarely used in the U.K. Provisions allowing a prospectus to comprise a

"programme prospectus" and one or more "issue prospectuses" have been incorporated into the Hong Kong Companies Ordinance (Section 39B and Schedule 21), although we're not aware that these have been used for equity issuance.

4. The introduction of more accelerated rights issue models such as the Australian RAPIDS model (i.e. Renounceable Accelerated Pro-Rata Issue with Dual Book-build Structure as developed by MacQuarie Bank) is also being considered in the U.K. Under the RAPIDS model there is no trading of nil-paid rights but shares not taken up are sold at the end of the acceptance period and the excess (if any) above the issue price is paid to non-accepting shareholders. The model splits the pre-emptive offer into a faster wholesale offer settling on T+10 and a slower retail offer settling on T+26. The advantage is apparently that it allows between 60% and 80% of the proceeds to be received by the issuer within 10 days. This model is also currently under consideration by the Singapore Stock Exchange.

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