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25 September 2009

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Dear Sirs

Re: Consultation Paper on Proposals to Accelerate Rights Issues and Open Offers

Please see below our comments on the proposals in the captioned consultation paper.

Question 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?

Our comments

We are generally supportive of the Stock Exchange's initiatives to accelerate rights issues and open offers in Hong Kong.

We agree that a 14-day notice period for book closure seems excessive and can be reduced to five business days.

Whilst we see the importance of providing sufficient notice of any book closure, we note, however, that in a number of jurisdictions (including the UK), it is not very common for the register to be closed at or around the record date for corporate actions such as a rights issue. In those markets, it is generally possible to take a "snapshot" of the register on the record date to establish entitlements, without ever closing the book. Book closures are generally tend to be seen as undesirable (in much the same way that trading suspensions are less common in markets outside Hong Kong).

Hong Kong seems to be unusual in respect of its market practice to close the share registers for establishing entitlements in rights issues and open offers. On the other hand, as shown in the Standard Chartered rights issue in 2008 and the HSBC rights issue in 2009, it is not necessarily the case that an issuer will need to close its book in Hong Kong to determine entitlements on the record date. Further, we understand that market practice is also moving towards not using a book closure for a rights issue.

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From the consultation paper, it seems that the primary concern is that shareholders should be given the opportunity to trade their shares on a "cum-rights" basis for a minimum period of time after notice of the corporate action has been given. However, the duration of a "cum-rights" trading period after notice of a corporate action has been given, and the duration of the notice period for a book closure, although often linked together, are not necessarily related. In this regard, there may be some lack of clarity as to whether the proposed notice period should relate to the book closure date or the time at which shares start to trade on an "ex-rights" basis.

The proposal set out in the consultation paper relates to shortening the notice period for the book closure date. Yet, if the issuer's book is not closed for its rights issue or open offer, trading in its shares may go "ex-rights" without any notice being required, which seems to defeat the reasoning expressed in the consultation paper. Accordingly, it seems that the required notice period ought to relate to the record date rather than the book closure date.

Please see our response to question 2 for our views on whether it is important to mandate a minimum period of trading "cum-rights" after notice has been given.

If the view is taken that a period of trading "cum-rights" is important, then all of this reasoning applies not to the amount of notice an issuer should be required to give of its book closure, but of the amount of notice an issuer should be required to give of a record date for certain corporate actions. Accordingly, we would have thought that the consultation paper should be asking whether there should be a minimum five business days' notice period before a record date for a rights issue or an open offer, rather than a book closure (which, as stated above, is not a necessary element of setting the record date).

Question 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 example, trading on the Exchange is interrupted due to typhoon and/or a black rainstorm warning or trading of the issuer's securities is suspended?

Our comments

We see the importance of giving sufficient notice for a book closure but again stress that the concerns expressed in the consultation paper ought to apply to notice of a record date for certain corporate actions.

We note that the two "cum-rights" trading days proposal is consistent with the "cum-rights" trading period provided to the shareholders in the 2008 Standard Chartered rights issue (even though there was no book closure). We also understand that the Stock Exchange is adopting the practice that, where there is a record date but not book closure, a minimum of five business days' notice are still being required. If this is in fact a requirement, we suggest that the rules should expressly provide for it.

It would seem to us that if five business days' notice are given (D) for a record date (assuming there is no book closure) that will fall at the close of business on D+5, then the market will have a window of three trading days (D+1, D+2 and D+3) in which to trade "cum-rights", before dealings go "ex-rights" on D+4. This would mean that there could be one interrupted day of trading without needing to reset the record date under the proposal in question 2.

On the other hand, if there is a book closure, then after the notice is given on "D", there would only be two days of "cum-rights" trading (D+1 and D+2), with the "ex-rights" date on D+3 and the book being closed at the beginning of D+5. This means that any interrupted days would give rise to the need to reset the record date under the proposal in question 2.

We would make the following points about whether it is important to have a minimum period of trading "cum-rights":

- We see that "cum-rights" trading provides certain benefits in the context of an open offer as shareholders will not have the opportunity to sell their entitlements during the open offer and there is no restriction on the maximum discount on the pricing (unlike in many other markets). In a rights

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issue, however, even without "cum-rights" trading, shareholders will be able to sell their entitlements in the form of nil-paid rights during the subscription period.

- In relation to the view that the period allows time for beneficial holders to re-register the shares under their own names, it is noted that such re-registration may benefit the beneficial holders where, for instance, the issuer decides to give preference to its registered shareholders by topping-up odd lots to whole board lots in its allocation of shares pursuant to the excess applications.
- However, it is also noted that if a shareholder is especially keen to hold his shares directly on the register, it should always be open for the shareholder to do so, and, in any event, a beneficial holder who is not on the register may participate in a rights issue or an open offer through instructing his broker or nominee. On balance, though, we agree that there are advantages to allowing a short period of time to enable a non-registered shareholder to get on to the register.

Whilst we do not express a definite opinion on whether a "cum-rights" trading is essential, if the Stock Exchange intends to adopt the practice of ensuring shareholders are always provided with two "cum-rights" trading days, we suggest it would be more sensible to set out the requirement in a separate rule, rather than combining it with the rule governing book closures.

We would, however, have some reservations about the consequences of re-setting the record date in the event of trading interruption.

- We suggest that you seek the views of the registrars on whether this might present logistical difficulties (for example, record dates are often set on a Friday to give registrars the weekend in order to process transfers etc. If this was re-set to a Monday, this might present logistical difficulties).
- We also note that this will effectively increase the period which underwriters are "on-risk", and this may have consequences for the terms on which underwriters are prepared to take this risk.
- It also provides issuers and the market with less certainty about the timetable of a rights issue, which may be crucial if the fund-raising is linked to an acquisition, or to the refinancing of debt, the avoidance of a covenant breach, or the maintenance of regulatory capital.

Question 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)?

Our comments

For reasons stated in our comments on questions 1 and 2, if it is decided to adopt this rule, we suggest it would be more sensible to set out the two "cum-rights" trading days requirement in a separate rule, rather than combining it with the rule governing book closures.

Question 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?

Our comments

Subject to our comments above, we agree to the principle of referring to business days rather than calendar days.

Question 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?

Our comments

We agree in principle to the specification of the notice period by reference to "business days".

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Again, in the case of a rights issue or an open offer, we believe this should be a reference to a record date rather than a book closure. Given that the notice period for an open offer and a rights issue is proposed to be five business days only, however, the requirement of a five-day notice for a change of the book closure date/record date seems disproportionate. The market will have already had opportunity to trade "cum-rights" due to the originally announced record date. It may, therefore, be more sensible to set a shorter notice period for the change of book closure/record date in a rights issue or an open offer.

Question 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?

Our comments

The effect of the requirement could be bizarre - effectively it means that a company which has given the 5-day minimum notice period for a record date cannot change the record date as it would not be able to give enough notice before the originally set date.

This would be undesirable particularly where the issuer intends to postpone the record date only - such postponement should not be harmful to the shareholders who, in any event, would have had more than two days to trade on a "cum-rights" basis before the postponed record date.

Question 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?

Our comments

We note that this is effectively an extension of the rights issue period, rather than an acceleration. However, we also note that it is consistent with the new regime in the UK and have no objections to the proposal in principle.

Question 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?

Our comments

We agree to the proposal in principle.

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

Our comments

It is noted that the Singapore Stock Exchange is considering to improve Singapore's rights issue regime by introducing an "accelerated rights issue" structure in the country.

The proposed structure entails an accelerated wholesale tranche and a retail tranche (which follows the conventional rights issue timetable). The accelerated wholesale tranche allows companies to receive majority of their funds under the rights issue in a much shorter timeframe, which potentially reduces underwriting costs. The structure is considered useful in reducing the exposure of issuers and underwriters to market risks and setting the optimal price for the rights issue, whilst giving all shareholders the opportunity to participate in the offer.

It is noted that the Financial Services Authority is also looking into an expansion of the UK offer repertoire by introducing an accelerated rights issue structure that is similar to the RAPIDS model used in Australia.

To protect Hong Kong's competitiveness and in line with the objective of accelerating rights issues in Hong Kong, it may be worthwhile to explore the feasibility of introducing an accelerated rights issue structure in Hong Kong.

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If you wish to discuss the comments above, please contact our Partner,
whose contact details are set out on the first page of this letter.

or our Know-How Lawyer,

Yours faithfully

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