



Consultation Paper Proposals to Accelerate Rights Issues and Open Offers

1. Introduction

The Law Society has considered the Consultation Paper on Proposals to Accelerate Rights Issues and Open Offers published by Hong Kong Exchanges and Clearing Limited (Exchange) in July 2009 (Consultation Paper). The views of the Law Society are set out below.

The stated purpose for accelerating rights issues and open offers is to facilitate fund raisings by listed issuers. The focus of the proposals is amendments to two parts of the timetable for a rights issue or an open offer: (i) the minimum period for book closure and (ii) the minimum subscription period, under the Listing Rules.

The Paper notes that lengthy capital raising procedures can lead to various areas of concern including concerns over the risk that market conditions may have materially altered or the fact that companies themselves may experience changes in their financial position and prospects during lengthy processes. A shorter process would lead to a more efficient and orderly capital raising and enable companies to raise capital at a lower cost.

The Law Society recommends and supports initiatives which would help streamline the timetable for a rights issue or an open offer where this would facilitate fund raisings by listed issuers. However, rights issues and open offers are by nature pre-emptive forms of capital raising with an objective of protecting a shareholder's rights and ensuring that shareholders' interests are properly protected. Therefore, any proposed amendments should also be considered from the shareholders' perspective and their ability to properly enjoy their pre-emptive rights should be maintained.

Below are the Law Society's responses to the various questions set out in the Consultation Paper.

2. 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? Please provide reasons to support your view.*

The Exchange has focused on this part of the rights issue / open offer process in its proposal to shorten the timetable. The reasons for reducing the notice

period have been set out in paragraph 16 of the Consultation Paper. We agree with these reasons and also with the 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. We note that if no public holidays fall during the notice period for book closure (in cases other than a rights issue or an open offer), 10 business days will fall within 14 calendar days and therefore the effective notice period will have been decreased by a half, seven calendar days or five business days. Although the shortening of the notice period for book closure will limit the time available for investors to trade cum-rights shares, we believe that this is offset by the window for investors to trade nil-paid rights during the subscription period. We also refer you to our response to question 8 below, and the reasons for not shortening the minimum subscription period. If the timetable for a rights issue or an open offer is to be shortened, we submit that the shortening of this part of the procedure will be the least detrimental to the shareholders / investors' rights.

We note that under paragraph 17 of the Consultation Paper the Exchange states that they have consulted a selected group of market participants who have indicated that a minimum notice period of five business days for book closure would not cause major operational impact on their operations. Such market participants comprised of custodian banks, broker firms and share registrars. We submit that additional information should be collected from these market participants to obtain additional data on how much activity actually occurs during the notice period for book closure, e.g. shareholders holding the share through nominees or brokers may re-register shares under their own name or how much trading of cum-rights shares occurs. A high occurrence of such actions may be evidence against an excessive shortening of the notice period for book closure.

Separately, we support the move to change the days of reference from calendar days to business days. The use of business days will provide greater clarity and consistency and ensure that rights issues and open offers will not be affected by public holidays, weekends or other calendar days on which the markets do not trade.

However for a possible extension to the minimum period should be considered if trading in the relevant share is suspended on any business days which would also be trading days (see 2 below).

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? Please provide reasons to support your view.*

We agree with this proposal. The move towards reducing the notice period for book closure to five business days only in effect limits the window during which cum-rights securities may be traded to two trading days. If these two

trading days were to be affected by unforeseen interruptions, this may adversely affect an investors' ability to trade his/her cum-rights securities.

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)? Please provide reasons to support your view.*

We agree that the proposed draft rule amendments in Appendix II to the Consultation Paper will implement the proposals.

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)? Please provide reasons to support your view.*

We agree with this proposal. We note that if no public holidays fall during the notice period for book closure (in cases other than a rights issue or an open offer), 10 business days should in effect be the same as 14 calendar days and that therefore in effect there has been no change to the length of the notice period. We support the change to the use of business days rather than calendar days as a reference of time, for reasons which have been documented above.

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? Please provide reasons to support your view.*

We agree with this proposed change as it will provide consistency with the other proposals.

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? Please provide reasons to support your view.*

We agree with this proposed change. This will help capture the situation where the newly proposed date of book closure occurs before the originally announced date of book closure and provides better protection for the shareholders by ensuring that there will be an adequate notice period.

7. *Are there any other comments you would like to make? Please provide reasons to support your view.*

No.

3. 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? Please provide reasons to support your view.*

For the same reasons as those stated in our response to question 1, we agree with the movement towards the use of “business days” rather than “calendar days” as the reference of time. We note that this is also the approach adopted by the FSA in their recent amendments of February 2009 of the rights issue process for issuers listed on the London Stock Exchange.

We note and agree with the observations in paragraph 38 of the Consultation Paper regarding the reasons for maintaining the present subscription period and would advise against any proposal to shorten the minimum subscription period. We note that if no public holidays fall during the subscription period, 14 calendar days should in effect be the same as 10 business days. It is submitted that from the shareholder’s perspective the subscription period is the most important period as this is the time when the shareholders consider the terms of the rights issue or the open offer and can make their investment decisions based on the current economic climate. A sufficient timeframe should also be allowed for institutional investors to undertake a proper internal analysis and for proper authorization procedures to be undertaken. Any attempt to shorten the timetable for rights issues or open offers should focus on shortening the notice period for book closure rather than the subscription period, as this would least impinge on the ability of the shareholders to make an informed decision on whether to participate or not.

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? Please provide reasons to support your view.*

We agree with this proposal. We note that if no public holidays fall during the subscription period, 21 calendar days should in effect be the same as 15 business days. Please further refer to our responses to questions 1 and 8 for our reasons for supporting the change to the use of business days as a reference of time.

10. *Are there any other comments you would like to make? Please provide reasons to support your view.*

No.

**The Law Society of Hong Kong
Securities Law Committee
13 October 2009
128484v3**