

**Submitted via Qualtrics**

**Company/Organisation view**

**Question 1**

**Do you agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares?**

Yes

**Please provide reasons for your views.**

The proposal to amend the Listing Rules will remove the requirement to cancel repurchased shares, such that issuers listed on the Exchange can hold treasury shares. As the Exchange has pointed out in paragraph 46 of the Consultation Paper, approximately 92% of listed issuers are incorporated in jurisdictions that allow holding of treasury shares and such companies are prohibited from doing so as a result of the existing Listing Rules requirements.

This new treasury share regime, together with the recent release of the "Guidance on automatic share buy-back programs conducted on behalf of listed issuers" (HKEX-GL117-23 (October 2023) ("GL117-23"), will give listed issuers greater flexibility in managing their capital structure through share buy-back and resale of treasury shares in timely manner, which may lead to a reduction in their cost of capital. It will also allow a more stable share capital structure of listed issuers where the total issued share capital will fluctuate less as a result of buy-backs. Whilst there are obvious benefits of allowing issuers to hold treasury shares, we are of the view that this should be allowed only if appropriate safeguards and framework have been put in place in order to ensure a fair and orderly market and fair and equal treatment of all shareholders on the resale of treasury shares.

**Question 2**

**Do you agree with the proposal to require a resale of treasury shares to be subject to the same requirements as an issue of new shares as described in Proposal (1)(a) to (c) above?**

Yes

**Please provide reasons for your views.**

The proposal adopts a similar approach to regulate resale of treasury shares as a new issue of shares, and such mechanism may provide certain level of control to shareholders of an issuer over the treasury shares and safeguard shareholders' rights as a whole. As mentioned in paragraph 52 of the Consultation Paper, this approach is consistent with the approach adopted in major markets including the UK, NYSE and TSX .

On the other hand, we would like to raise our concerns that, there are non-H share listed issuers that are listed on both the Exchange and other reputable exchanges for the same

class of ordinary shares. For example, we have seen red-chip companies listed on both the Exchange and Mainland China. Similar to the wordings of Rule 19A.25, we suggest the proposed amendments to Rule 10.06(1)(c) to cover such situation, or to clarify in Rules 10.05 and 10.06 that such requirements apply to shares listed on the Exchange only.

### **Question 3**

**Do you agree with the proposal to require a resale of treasury shares (whether on-market or off-market) to be subject to a moratorium period after a share repurchase?**

Yes

**Please provide reasons for your views.**

If permitted under the laws of its home jurisdiction and its own constitutional documents, a listed issuer may purchase its own share and keep them as treasury shares under certain circumstances such as when its shares are undervalued, or the issuers wish to preserve the stock prices, or for other legitimate reasons.

The selling restrictions during the moratorium periods will provide a mechanism to prevent issuer from frequently trading on its own shares and to mitigate the risk of market manipulation and insider dealing. It is consistent with the current requirement under Rule 10.06(3) of the Listing Rules, where an issuer is not permitted make a new issue of shares or announce a proposed new issue of shares for a period of 30 days after a share buy-back without the prior approval of the Exchange.

However, we notice that listing rules of other stock exchanges or the local laws of other jurisdictions may not have trading moratorium for a public company, although some may have various other requirements on the holding period of the treasury shares. For example, the Companies Act 1967 of Singapore (Chapter 50 of the statutes of Singapore) (the "Singapore Companies Act") allows public companies to sell its treasury shares for cash and transfer the shares for the purposes of or pursuant to any share scheme, or as consideration for the acquisition of shares in or assets (see section 76K(1D)). In Mainland China, the Company Law of the PRC and the Listed Companies Share Buy-back Rules (上市公司股份回購規則)(issued by the CSRC) do not set out any moratorium for resale of treasury shares, but set out the maximum holding period of three years for treasury shares instead.

As such, while we generally agree to the adoption of a 30-day moratorium for a resale of treasury shares after a share buy-back, we suggest the Exchange to revisit the requirements of moratorium period in two to three years' time upon implementation to consider if any adjustment should be made.

**Question 4**

**Do you agree with the proposal to require an on-Exchange share repurchase to be subject to a moratorium period after an on Exchange resale of treasury shares?**

No

**Please provide reasons for your views.**

While we understand that the Exchange may want to introduce a prudent treasury share regime, there is no equivalent moratorium for share buy-back after a new issue under the current Listing Rules. We notice that there are no such requirements in some other major markets(e.g. Singapore).

**Question 5**

**Do you consider that the moratorium periods (in either direction) should be shorter than 30 days? If so, please share with us your views on the appropriate duration of the moratorium periods and the reason for your suggestion including your views on how the considerations in paragraph 68 should be addressed.**

No

**Question 6**

**Do you agree with the proposal that dealing restrictions described in paragraph 69 under Proposal (2)(b) above shall be imposed on a resale of treasury shares on the Exchange?**

Yes

**Please provide reasons for your views.**

The proposal and such restrictions are largely in line with those imposed on share buy-backs.

**Question 7**

**Do you agree with the proposals for an on-market resale of treasury shares as described in paragraph 70 under Proposal (2)(b) above?**

Yes

**Please provide reasons for your views.**

An issuer may have difficulties in knowing who are the buyers of the resale shares under the auto-matching trading system of the Exchange. Based on the proposed amended Listing Rules, so long as (i) an issuer will file next day disclosure returns and monthly returns to disclose its updated status of holding of treasury shares, and resale of treasury shares; and (ii) such issuer complies with the dealing restrictions as described in paragraph 69 under Proposal (2)(b), the market will be timely informed of the resale of treasury shares by such issuer.

**Question 8**

**Do you agree with the proposal relating to new listing applicants as described in Proposal (3) above?**

Yes

**Please provide reasons for your views.**

It is a logical conclusion that both new listing applicants and listed issuers are permitted to hold treasury shares. The current proposal to provide a six-month lock-up on the treasury shares is also consistent with the Exchange's proposal to govern a resale of treasury shares as a new issue of shares. By extending the application of Rule 10.08 of the Listing Rules to a resale of treasury shares will help to establish a stable market of the shares of a new listed issuer and prevent the listed issuer to impact the share trading at the initial six-month stage upon the new listing.

**Question 9**

**Do you agree with the proposal to require issuers (being holders of treasury shares) to abstain from voting on matters that require shareholders' approval under the Listing Rules as described in Proposal (4)(a) above?**

Yes

**Please provide reasons for your views.**

Shareholders' rights attached to treasury shares are normally suspended by laws. The proposal also aligns with the practice in other jurisdictions such as UK and Singapore. Under section 726 of the UK Companies Act 2006 and section 76J of the Singapore Companies Act, a company must not exercise any voting right in respect of the treasury shares.

**Question 10**

**Do you agree with the proposal to disregard treasury shares for calculating an issuer's issued shares and voting shares under the Rules as described in Proposal (4)(b) above?**

Yes

**Please provide reasons for your views.**

The proposal to disregard treasury shares for the purposes as described in paragraph 76 of the Consultation Paper aligns with the treatment that rights attached to treasury shares are normally suspended by laws. Listing rules of other stock exchanges that allow holding of treasury shares also adopt similar approach with regard to calculation of issuer's issued share and voting shares.

**Question 11**

**Do you have any comments regarding the different treatment of treasury shares when calculating an issuer's issued voting shares under the proposed Rules and Part XV of the SFO as described in paragraph 77 above?**

The proposal aligns with Part XV of the SFO. Section 308(1) of the SFO provides specifically that temporary suspension of voting rights in respect of shares in a listed corporation does not affect the application of Part XV in relation to interests in those shares. Paragraph 5.9.2 of the Outline of Part XV also confirms the SFC's approach in taking into account treasury shares in the number of shares of the listed corporation for the purposes of calculating percentage figure of interest in shares. Besides, an issuer is required to file a notification under Part XV of the SFO on first acquiring 5% interest or more of its own shares and on any subsequent changes in the percentage level of its interest. We agree that the treatment of treasury shares for the purpose of Part XV of the SFO shall remain the same as per the current practice.

**Question 12**

**Do you agree with the proposal to require an issuer to disclose in the explanatory statement its intention as to whether the repurchased shares will be cancelled or kept as treasury shares as described in Proposal (4)(c) above?**

Yes

**Please provide reasons for your views.**

This also aligns with practices in other jurisdictions such as Singapore where there is a similar requirement that for the purpose of obtaining shareholder approval for a share buy-back, the issuer must provide certain information to shareholders including whether the shares purchased will be cancelled or kept as treasury shares. We believe that such information will be necessary for shareholders to understand the potential impact of such share buy-back in order to make a well-informed decision.

**Question 13**

**Do you agree with the proposal to clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares through their agents or nominees as described in Proposal (4)(d) above?**

Yes

**Please provide reasons for your views.**

This aligns with the requirement under Rule 10.06(6)(c) and provides clarity to issuers.