

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.

We agree with the proposal which could address the inconsistency of practice by aligning the Listing Rules with the prevailing regulations in other jurisdictions. In particular, since mainland Chinese companies account for more than three-quarters of the market capitalization of the HKEX, this makes it easier for them to respond to the Chinese regulators' promotion of the buyback of shares to stimulate the stock market.

The availability of retaining repurchased shares, indeed, allows the Listed Issuers additional flexibility in the management of their capital base by enabling companies' speedier resale of shares in smaller lots and holding shares to cover the exercise of share options. Generally speaking, we expect that the proposal allows companies to operate, on average, with a higher level of debt/equity gearing and a correspondingly lower cost of capital.

In light of the statistical findings of the United States from the year 2014 to 2019, its economy has done an efficient job at recycling share repurchase capital into venture capital and private equity that gets investment into more prospering businesses and fields. We fervently hope that Hong Kong would see a similar development that leads to a strengthening economy.

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.

As the effect of resale of treasury shares is essentially comparable to an issue of new shares, we are of the view that the same requirements should apply, which notify the HKEX and the general public to the same extent and subject to the same restrictions.

In relation to proposal (1)(a) "Proposals to treat a resale of treasury shares as new shares", we endorse such a proposal, highlighting the benefit and convenience enjoyed by the

Listed Issuer in utilizing the repurchase mandate to resale its treasury shares in addition to the general mandate. At the same time, we appreciate the freedom granted to the Listed Issuers in deciding whether to increase shares in circulation by resale of treasury shares or issuance of new shares, as well as adjusting the total issued shares by picking either way above as the Listed Issuers so wished. We also applaud the uniform treatment of on-market resale and off-market resale of treasury shares in alignment with the issuance of new shares, as we consider all kinds of resale of treasury shares bring about an increase in total issued shares, same as the issue of new shares.

In relation to proposal (1)(b) "Share scheme", we concur that the Listed Issuers should be permitted to use treasury shares to satisfy share grants under the share scheme. Adopting the same requirements with a share scheme funded by new shares under a share scheme is sensible.

In relation to proposal (1)(c) "Other proposals relating to resale of treasury shares", the proposed regulatory requirements seem to be practical complements to the resale of treasury shares. Resale of treasury shares to connected persons essentially serves the same function as allotment of new shares to connected persons, which is the distribution of new shares. The application of the relevant reporting and disclosure requirements under the Listing Rules is sensible and reasonable. Since the shares allocation and distribution would be changed after resale of treasury shares, it is crucial that the general public are notified of the changes through announcements, listing documents and the Next Day Disclosure Return, etc.

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.

We hold a positive view towards the proposal. One of the major risks of resale of treasury shares would be market manipulation by Listed Issuers repeatedly repurchasing and reselling their own shares. The setup of the moratorium period is a useful and common tool to regulate the above possible market misconduct.

As discussed above, we see no major difference in on-market or off-market resale of treasury shares in terms of the effect on the market and change in issued share capital, hence we believe a consistent treatment of subject to the same moratorium period requirements should be adopted.

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?

Yes

Please provide reasons for your views.

We have a favorable opinion of the proposal. This proposal, in conjunction with the required moratorium period after a resale of treasury shares, forms a comprehensive protection against market manipulation and insider dealing by making use of the treasury shares regime. The two proposals complement each other and possibly halt any repeated sale and repurchase.

We support adopting the same duration of the restricted moratorium period with the required moratorium period after a resale of treasury shares, for the sake of ensuring the same level of protection also applies to share repurchase, as well as avoiding possible confusion due to different moratorium periods.

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.

Yes

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.

In general, we support the dealing restrictions proposed. The imposition of the Restricted Period to resale of treasury shares resembles the Close Period arrangement of the London Stock Exchange and is in line with the EU Market Abuse Regulation. It is sensible to emulate the successful course taken by other major jurisdictions, as this Restricted Period arrangement aligns with their long-standing regulations.

The proposed regulation of restrictions on knowingly dealing with connected persons is consistent with the general principle of prohibiting market abuse and insider dealings. The imposition of a duty to Listed Issuer to procure brokers to disclose repurchase of shares can similarly prevent market abuse by making the treasury shares transactions transparent to the public.

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?

No

Please provide reasons for your views.

We express concern about not extending the announcement requirement to resale of treasury shares. While we agree that the on-market resale information can be disclosed through a Next Day Disclosure Return, we wonder whether such a Return (i) contains sufficient details of the resale to the general public and (ii) constitutes adequate notice and alert to the shareholders.

The current version of the Next Day Disclosure Return contains various tables that mainly prescribe the Listed Issuers to disclose the numerical figures concerning the change in issued shares capital e.g. Issue price per share and % discount, etc., but may not include details of the allottee and basis for determining the issue price (these details are to be disclosed in an issue of securities announcement in a share allotment case). Without requiring the Listed Issuers to publish such an announcement in resale of treasury shares, the general public might not be able to comprehend the entire resale arrangement which could lead to confusion and misunderstandings. We, therefore, suggest the announcement requirement be extended to the resale of treasury shares, with some of the content required under Listing Rule 13.28 being removed. We understand that some of the required content may not be necessary to disclose in a resale of treasury shares again as the same was published when the respective shares were first issued. At the same time, we note one of the purposes of introducing the resale of treasury shares to provide Listed Issuers with ease, convenience, and flexibility in managing their share capital, as a result, the Exchange tends not to impose needless and repetitive compliance requirements. As such, we propose that some of the content mandated by Listing Rule 13.28 should be dropped if the announcement requirement is expanded to include the situation of transfer of Treasury shares, leaving only the essential information.

Another reason why we suggest a relaxed and shortened announcement is that from our observation, the general public is more aware of an announcement with the subject matter as the document headline shown on HKEX New and explanations of any arrangement/transactions in paragraph form than a standard Next Day Disclosure Returns form which primarily consists of tables and lacks any indication of the subject matter from the headlines. This is another reason why we recommend a more relaxed and condensed announcement.

On a separate note, we are in favour of adopting the requirement under Listing Rule 9.23(2) on not requiring the Listed Issuers' submission of placee information in the case of on-market resale of treasury shares, which could align with the auto-matching trading system.

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.

As discussed in Q2 above, we generally agree that the effect of resale of treasury shares is essentially comparable to an issue of new shares. Hence, we welcome the incorporation of the disclosure and lock-up requirements for the new listing applicants holding treasury shares.

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.

We support this proposal. Despite the Listed Issuer is the holder of treasury shares, a company cannot have rights against itself including voting upon any shares issued by it. The underlying theory is not the voting power is lost but withdrawn/suspended to effect fair distribution of voting powers of shareholders and prevent the directors from perpetuating their control of the company. The above is confirmed by many different jurisdictions including the United Kingdom and the United States. The abstention arrangement is reasonable, adhere to common law principle and indeed a practical way to address the rights attached to treasury shares. At the same time, the abstention permits uniformity in the management of voting rights under the Listing Rules and the domestic law where the Listed Issuer is incorporated.

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.

As discussed in Q9, we agree that the rights attached to the treasury shares should be suspended until resale and release back to market circulation. By the same token, we support the proposal to amend the relevant Listing Rules to disregard the treasury shares in calculation of issued shares. This also better reflects the actual capitalization of the Listed Issuer.

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?

As discussed in Q9, the rights and interest attached to the treasury shares are temporarily withdrawn/suspended but not lost, and will be restored upon resale. As a result, regardless of whether the shares are currently in the treasury, their rights and interests are always linked to them. Hence, for the purpose of disclosure of interests under Part XV of the SFO, it is evident that treasury shares remain part of an issuer's issued voting shares and voting shares when calculating the percentage figures of interests of shareholders. This arrangement makes sense and might more accurately depict the reality, which justifies departing from the custom of disregarding the treasury share, as was covered in Q10.

In light of the above different treatments, we propose that the Exchange could publish further practice notes, letters of guidance, and a FAQ following an open call for inquiries from the general public to clarify the consequential implications.

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.

We recognize the importance of disclosing the intention to cancel or keep as treasury shares as this allows the shareholders to make an informed decision in voting. Delivering to the shareholders all the information reasonably necessary to enable those shareholders to make an informed decision is prescribed in the Listing Rule 10.06(1)(b). Such a proposal complies with this existing requirement.

Nevertheless, we suggest, by referencing the Listing Rules of the London Stock Exchange, the Listed Issuers disclose also the proposed timeframe of resale (if applicable) and the number of shares intended to be canceled and/or kept as treasury shares respectively on top of the above proposed intention.

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.

As discussed in Q2 above, we generally agree that the effect of resale of treasury shares is essentially comparable to an issue of new shares. We thus welcome the extension of the rules that now govern the issue of new shares to the resale of Treasury shares. In particular, we acknowledge that the acts of an agent and nominee operating on behalf of a Listed Issuer ought to be attributed to the Listed Issuer and, as such, ought to be governed by the same regulations.