

OVERVIEW COMMENTS

We welcome the Exchange's proposals with regard to the removal of the Listing Rules requirement to cancel repurchased shares. The proposals allow greater flexibility for companies listed on the Exchange in managing their capital structure as well as align with the laws and regulations of most of the jurisdictions in which listed companies are incorporated.

However, other than on-market repurchases of its shares pursuant to the repurchase mandate, an issuer may repurchase or otherwise receive its own shares under various circumstances, such as (i) off-market share buy-backs under the Shares Buy-backs Code (the "SBC"); (ii) employee share buy-backs permitted under the SBC; (iii) clawback mechanism pursuant to a share scheme; and (iv) purchases of and put/call options on convertible bonds. The current definition of "treasury shares" under the Consultation Paper, being "shares repurchased and held by an issuer in treasury..", is unclear as to whether shares received by the issuer under (ii) or (iii) above (or any other circumstances) will be captured. We submit that issuers should be able to hold any of its shares/securities received in treasury and encourage the Exchange to provide further guidance.

Similarly, it is unclear whether the revised Rule 13.36(2)(b) ("the number of such securities repurchased by the issuer itself since the granting of the general mandate (up to a maximum number equivalent to 10% of the number of issued shares (excluding treasury shares) of the issuer as at the date of the resolution granting the repurchase mandate)...") regarding resale of treasury shares under a general mandate would capture shares received by the issuer under (ii) to (iv) above.

Also, the current Proposal 1(a) only allows for a maximum of 10% limit to be added to the general mandate. We encourage the Exchange to provide further guidance for the resale mechanism of treasury shares should the general mandate limit be used up during the mandate period.

RESPONSES TO CONSULTATION QUESTIONS

Question 1

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

Yes
 No

Please give reasons for your views.

Yes. Allowing listed companies to hold repurchased shares in treasury will give them greater flexibility to adjust their share capital quickly, which may in turn lead to a reduction in their cost of capital. This also bridges the gap with the laws and regulations of most of the places of incorporation of listed issuers, where companies are allowed to hold shares in treasury.

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
 No

Please give reasons for your views.

Proposal 1(a)

Resale mechanism under general mandate: The current Proposal 1(a) only allows for the number of shares repurchased in the year under a repurchase mandate (subject to a limit of 10% of issued shares) to be added to the general mandate limit. We encourage the Exchange to provide further guidance on:

- A. If the issuer repurchases/receives shares under circumstances other than repurchases under the repurchase mandate, e.g. (i) off-market share buy-backs from specific shareholders under the SBC; (ii) employee share buy-backs permitted under the SBC; (iii) clawback mechanism pursuant to a share scheme; and (iv) purchases of and put/call options on convertible bonds, will Rule 13.36(2)(b) work similarly to add the repurchased/received shares to the general mandate limit?
- B. If the answer to question A above is no, the resale mechanism of treasury shares repurchased/received other than repurchases under the repurchase mandate, and also if the general mandate limit is used up during the mandate period.

Price pre-emptions: We agree that a resale of treasury shares off-market shall be subject to the same price discount limit as an issuance of new shares. However, such discount limit may not be relevant for an on-market resale as it is very unlikely an issuer would set a price discount of 20% for an on-market resale of its treasury shares.

Also, a carve-out should be made for the transfer of shares out of treasury pursuant to a share scheme under Chapter 17 and for the conversion of convertible bonds regarding the price pre-emptions.

Proposal 1(b)

We do not agree that a share scheme using treasury shares to satisfy share grants should be treated as a share scheme funded by new shares under Chapter 17 of the Listing Rules. Under the existing Chapter 17, a company can appoint a trustee to purchase existing shares on market to fund share schemes and such schemes need only comply with rule 17.12. The trustee, in that case, shall also abstain from voting on matters that require shareholders' approval under the Listing Rules with respect to any unvested shares, similar to the case with treasury shares. We do not see any fundamental difference between an issuer repurchasing itself on-market instead of appointing a trustee to conduct repurchases, and there should be no reason to treat the two differently.

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
 No

Please provide reasons for your views.

While we agree that a resale of treasury shares (whether on-market or off-market) should be subject to a moratorium period after a share repurchase to mitigate the risks of market manipulation, we would recommend a shorter moratorium period to allow flexibility (see response 5).

We also consider that there should be a carve-out for the transfer of shares out of treasury pursuant to a share scheme under Chapter 17, as such transfer should not create any risk of market manipulation or insider dealing.

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
 No

Please provide reasons for your views.

Same as Response 3 above. A carve-out for the transfer of shares out of treasury pursuant to a share scheme under Chapter 17 should be provided.

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
 No

We consider that the moratorium periods (in either direction) should be shorter than 30 days to allow reasonable flexibility for issuers to resell/transfer treasury shares. In particular, considering that some issuers announce results quarterly or are required to comply with other restrictions, we propose a period of 2-weeks, which should be sufficient for the market to disseminate information about the issuers' share repurchase and resale activities.

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
 No

Please provide reasons for your views.

We note that Rule 10.06(2)(c) prohibits an issuer from knowingly purchasing its shares from a core connected person and a core connected person shall not knowingly sell shares to the issuer on the Exchange.

However, pursuant to the revised definition of “on-market share buy-back” for the purpose of the SBC (which became effective in September 2023), an on-market share buy-back has to be done via an automatic order matching system. Thus, an issuer that complies with Rule 10.06(2)(c) may not fall within the exemption under the SBC. We encourage the Exchange to address the discrepancy or make a reference to the Takeovers Code.

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
 No

Please give reasons for your views.

Question 8

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

Yes
 No

Please provide reasons for your views.

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
 No

Please give reasons for your views.

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? Please provide reasons for your views.

Yes
 No

Please give reasons for your views.

Yes, in particular treasury shares should be disregarded in the calculations under paragraph 76 of the Consultation Paper to reflect the true power a person (e.g. controlling shareholder and substantial shareholder) can exert on matters that require shareholders' approval.

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?

Yes
 No

While we agree of the different treatment of treasury shares when calculating the voting rights in an issuer under the proposed Rules and Part XV of the SFO, we encourage the Exchange to provide further guidance on matters that may arise due to discrepancies in the calculation methodology, especially if a substantial holding of treasury shares for an extended period of time could distort the disclosures and identifications of effective substantial shareholders and connected persons for the purpose of the Listing Rules.

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
 No

Please give reasons for your views.

While we agree an issuer to disclose its intention as to whether the repurchased shares will be cancelled (in whole or in part) or kept as treasury shares (in whole or in part) in the explanatory statement, we would like the Exchange to provide more guidance on whether such intention statement can be altered during the mandate period.

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
 No

Please give reasons for your views.

December 27, 2023