

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 are generally supportive of the proposals to allow treasury shares for Hong Kong listed issuers and welcome the Exchange's initiative in this regard, although as this involves various technical considerations, for some of the detailed proposals we have not indicated our separate view pending further clarification of the detailed proposals or comparisons with other jurisdictions.

We have the following general comments on the proposed regime for treasury shares:

1. We propose the Exchange should aim to ensure the requirements on the resale or transfer of treasury shares ("Resale") are generally not more restrictive than those applicable in other major markets. If the Hong Kong requirements are regarded as unduly onerous, it may detract from the benefits of the regime and the overall competitiveness of the Hong Kong market.

2. Certain dual-listed Issuers have the benefit of treasury share waivers to allow them to be placed on the same footing in relation to treasury shares as other issuers listed in the overseas market and to ensure they are not placed at a disadvantaged position by the Hong Kong rules. These Issuers are subject to modifications to the Listing Rules which reflect this approach, as well as the applicable overseas rules in relation to treasury shares. On the basis the relevant overseas rules are not being altered, we submit such Issuers should be permitted to continue to benefit from key provisions under their existing waivers / modifications to the extent they are less restrictive than the revised HK position.

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?

Please provide reasons for your views.

We have the following comments and queries:

1. We note the consultation paper states a Resale by companies listed in the UK, NYSE and TSX is subject to shareholder approval requirement in the same way as an issuance of new shares – on this basis, the proposed approach appears to be generally consistent with other major markets. We would invite the Exchange to consider providing a clear carve-out generally for Resales the purpose(s) of which do not involve the raising of capital such as those in connection with any share schemes adopted by issuers and distribution of scrip dividends.

2. Can the Exchange please clarify whether an issuer's general mandate can be used to conduct a Resale even if the mandate does not specifically refer to a Resale (including existing general mandates passed before the implementation of the new rules)?

3. LR 13.25A(2)(b) and LR 13.25A(3), together, currently only provide exemptions to the obligation to file next-day returns in the cases of the exercise of options not by a director of the issuer provided that the conditions under LR 13.25A(3) are met. We wonder if the same principle should apply to the vesting of share incentives under any share incentive schemes and therefore we query whether the exemption under LR 13.25A(2)(b) and LR 13.25A(3) should be made wider to cover all vesting (resulting in a change in the issued shares or treasury shares of an issuer) under any share incentive scheme of the issuer.

4. LR 13.36(1A) extends LR 13.36 to Resale of treasury shares listed on the Exchange. We understand treasury A shares will be excluded from LR13.36 on the basis A shares are not "listed" on the Exchange (by reference to the definition of "listing"). Aside from treasury A shares, can the Exchange please clarify the application of LR13.36 to treasury securities of dual-listed issuers that are listed or sold on other overseas exchanges?

5. LR 13.36(5A) specifies how the benchmarked price under LR13.36(5) would be calculated in the case of a Resale "on the Exchange or any other stock exchange on which the issuer is listed". We would be grateful for the Exchange's elaboration on the application of LR13.36(5) on a Resale on a stock exchange other than the Exchange (for example, how the benchmarked price should be referenced in the case of a dual-listed issuer).

6. LR 14.44(1) and 14A.37(1) both provide a condition to written shareholders' approval that "no shareholder is required to abstain from voting if the issuer were to convene a general meeting...", but Note (1) under the definition of "treasury shares" states that "for the purpose of the Rules, a holder of treasury shares shall abstain from voting on matters that require shareholders' approval under the Rules" – this means that technically, any issuer which holds any treasury share will not be able to meet the condition under LR 14.44(1) or 14A.37(1). We would be grateful if the Exchange could clarify that the

“shareholders” for the purpose of LR 14.44(1) and 14A.37(1) refer to shareholders other than those who are holders of treasury shares.

7. We would be grateful if the Exchange can confirm that the annual report disclosure under paragraphs 11 and 11A of Appendix D2 do not apply to any new shares issued or treasury shares sold or transferred pursuant to any share incentive scheme of the issuers.

8. We note a Resale would be subject to stamp duty. We would like to clarify whether the Exchange has raised for discussion the possibility of exempting a Resale from stamp duty given stamp duty would already have been paid on the repurchase and it is otherwise treated as an issuance of shares for most purposes. We note certain markets exempt Resales from stamp duty.

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?

Please provide reasons for your views.

As a general comment, we would propose the Exchange consider the extent the package of moratorium restrictions is in line with other major markets and whether it would be more appropriate to leave such restrictions to be determined by the market misconduct and insider dealing provisions of the SFO and applicable overseas rules.

Can the Exchange please consider including a clearer carve-out for Resales “the purpose of which do not involve the raising of capital (including Resales in connection with any share schemes adopted by the issuer or distribution of scrip dividends)” – the current wording refers to share options and similar instruments outstanding prior to the repurchase.

We would also like to clarify the extent to which exemptions available to treasury A shares (such as the carve-out from the moratorium period) would also apply to treasury shares of other overseas-listed Issuers where they are sold / transferred on an overseas exchange.

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?

Please provide reasons for your views.

We note there is no moratorium for share repurchases after an issue of new shares and understand there is no equivalent restriction for Resales in the UK for example – we therefore query if the restriction as proposed would be too restrictive. Please also see our general comment at question 3 above.

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.

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?

Please provide reasons for your views.

Please see our general comments at question 3 above.

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?

Please provide reasons for your views.

We agree an announcement under LR13.28 and placee information should not be required for on-market Resales.

Question 8

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

Please provide reasons for your views.

We would request the Exchange consider if this restriction would be in line with other major markets.

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 agree issuers should not be able to vote on matters that require shareholder approval. We note there is no restriction under the Listing Rules for issuers holding treasury shares to enjoy other shareholder rights, such as dividend rights and participating in rights issues and bonus issues. Could the Exchange please therefore confirm the ability for Issuers to participate in such rights would be subject to the relevant company laws and (if applicable) overseas listing rules.

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.

We agree as the voting rights are suspended while the shares are held in treasury.

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?

We query the rationale for including treasury shares for the purpose of XV of the SFO given an issuer cannot exercise these voting rights. This approach seems inconsistent with the Listing Rules and would result in the possibility of a shareholder not having a discloseable interest under Part XV despite in fact controlling 5% or more of an issuer's voting power.

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?

Please provide reasons for your views.

We would be grateful if the Exchange could clarify the following:

1. would an issuer be permitted to change its plans from what is disclosed in the explanatory statement, and if so, whether and when a subsequent announcement is required; and

2. where an issuer discloses it would hold the repurchased shares as treasury shares, would it be considered a change to its plans if the treasury shares are subsequently (but not immediately) cancelled? If the answer is no, we query if the proposed disclosure should in fact relate to whether the repurchased shares will be immediately cancelled upon repurchase or held in treasury (either for future resale or cancellation).

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?

Please provide reasons for your views.

We would like to clarify if the Exchange envisages an agent or nominee would be permitted to hold treasury shares on behalf of an issuer for Resale. If not, we query if the clarification is strictly necessary. If this scenario is possible, we would suggest the proposed wording be clarified along the following lines: "References to sales or transfers of treasury shares include sales or transfers by agents or nominees on behalf of the issuer or (where the rule applies to a subsidiary of the issuer) subsidiary of the issuer...". Could the Exchange please also clarify how an Issuer would hold treasury shares in the USM (uncertified securities market) environment?