

CONSULTATION PAPER
ON PROPOSALS TO ACCELERATE
RIGHTS ISSUES AND OPEN OFFERS

July 2009



Hong Kong Exchanges and Clearing Limited
香港交易及結算所有限公司

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How to respond to this Consultation Paper

We invite interested parties to submit written comments on this paper no later than **30 September 2009**. Responses should, if possible, be made by completing and returning the questionnaire (Questionnaire) which is available at: http://www.hkex.com.hk/consul/paper/cp200907q_e.doc by one of the following methods:

By mail or hand delivery to Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on
Proposals to accelerate rights issues and
open offers**

By fax to (852) 2524-0149

By e-mail to response@hkex.com.hk

Please mark in the subject line:

**“Re: Consultation Paper on
Proposals to accelerate rights issues and
open offers”**

Our submission enquiry number is (852) 2840-3844.

In the Questionnaire, we invite interested parties to give views on the proposed changes, and where appropriate support the answers with reasons. Respondents should reply to the questions against the backdrop of this Consultation Paper. For the purpose of the public consultation, respondents are reminded that we will publish responses on a named basis in the intended consultation conclusions. Please refer to the Questionnaire on how to complete it.

Our policy on handling personal data is set out in **Appendix III** of this paper and the Questionnaire.

Next Steps

We will carefully consider and analyse all the responses received, and if appropriate, develop (or further progress) rule amendments to implement the final agreed conclusions. As usual we will develop the consultation conclusions and work with the Securities and Futures Commission for any relevant rule amendments.

EXECUTIVE SUMMARY

This consultation paper seeks comments on our proposed initiatives to accelerate rights issues and open offers to facilitate fund raisings by listed issuers.

In Hong Kong, a rights issue or an open offer normally takes at least five to six weeks. The long timetable can in part be attributed to the minimum notice period for book closure and minimum subscription period under the Listing Rules (i.e. 14 calendar days for each).

To help expedite fund raisings, we propose to shorten the notice period for book closure in respect of rights issues from 14 calendar days to five business days. We propose the same amendment for open offers.

The reduced notice period may result in a narrower time window for trading in securities with entitlements before the ex-date (i.e. cum-rights). The window will be further narrowed if, for examples, trading on the Exchange is interrupted by typhoon and/or black rainstorm warning or trading of the issuer's securities is suspended. In this circumstance, we propose to require extension of the notice period (by postponing the book closure date) to provide the market with a minimum of two uninterrupted trading days for trading securities on a cum-rights basis.

Regarding subscription period, we consider the minimum period of 14 calendar days under the existing Listing Rules appropriate. However, we propose to specify the period as 10 business days to provide time when the timetable for the fund raising overlaps long public holidays.

We also propose housekeeping amendments relating to notice of book closure and subscription periods.

The process for rights issues and open offers for Main Board issuers and GEM issuers are the same in practice. We therefore propose to make corresponding changes to the GEM Rules to be consistent with the Main Board Rules. All rule references in this consultation paper are to the Main Board Rules.

CHAPTER 1 INTRODUCTION

Purpose

1. This consultation paper seeks comments on our proposals to accelerate rights issues and open offers to facilitate fund raisings by listed issuers.

Background and reasons for review

2. A rights issue is a pre-emptive issue. It offers shareholders rights to subscribe new shares in proportion to their holdings. A shareholder may exercise his/her rights to maintain his/her percentage holding in the issuer, or sell them in market, or strike a combination of both. Rights issues protect shareholders by delivering both the right of pre-emption and compensation for non-subscribing shareholders.
3. An open offer is a similar fund raising method to a rights issue. It differs from a rights issue primarily in that the offer shares in an open offer may or may not be allotted in proportion to the existing holding of shareholders, and are allotted on a non-renounceable basis (i.e. shareholders are not allowed to sell the subscription rights).
4. Rights issues and open offers often demand a long execution period. This exposes both the listed issuers and underwriters to significant market risks, and also causes delay to issuers in obtaining funding.
5. We received proposals from market participants to accelerate rights issues and open offers. They pointed out that rights issues and open offers have gained increased popularity and importance as a recapitalization tool amid current market conditions and difficulties in fund raising. Whilst a shorter timetable may be regarded as less favourable to retail investors, we believe that it will facilitate more listed issuers to raise funds by rights issues or open offers which are in the interests of shareholders including retail investors.

Timetable of rights issue and open offer:

6. A rights issue or an open offer takes a significantly longer time to complete than many other fund-raising exercises such as placing. A rights issue or an open offer in Hong Kong normally takes at least five to six weeks (from announcement date):–
 - (a) Two weeks for notice period for book closure;
 - (b) About one week to prepare for despatch of Provisional Allotment Letters (“PALs”) to non-CCASS shareholders and credit of nil paid rights to stock accounts in CCASS for a rights issue; and despatch of subscription forms for an open offer;
 - (c) Two weeks for subscription; and

- (d) About one week to prepare for despatch of new share certificates and credit of new shares to CCASS accounts.

If shareholders' approval is required¹, it may take over two months. This is primarily due to the time for the issuer to prepare a shareholder's circular and the notice period for the shareholders' meeting.

7. As illustrated above, the long timetable of a rights issue or an open offer can in part be attributed to the minimum notice period for book closure and minimum subscription period under the Listing Rules (i.e. 14 calendar days for each). In this regard, we have received proposals from market participants to shorten these minimum periods.
8. We note the potential issues associated with a long execution timetable of rights issues and open offers. We agree that it will be in the interests of listed issuers and the market to explore possibilities to accelerate rights issues and open offers in Hong Kong. In this paper, we will discuss possible initiatives to reduce these periods.
9. In preparing this market consultation, we have held discussion with a selected group of market participants, including custodian banks, brokers firms and share registrars, and sought their views on reducing the notice period for book closure and subscription period. We thank them for engaging their valuable contribution.
10. The discussion and proposals on the minimum notice period for book closure and subscription period are set out in Chapter 2 and Chapter 3 respectively of this paper.

¹ Shareholders' approval is required if the rights issue or open offer would increase either the share capital or market capitalization by over 50% (on its own or when aggregated with rights issues/open offers within the last 12 months) (Rules 7.19(6) and 7.24(5)).

CHAPTER 2 NOTICE PERIOD FOR BOOK CLOSURE

11. A listed issuer maintains a register of members or transfer book to record identities of its shareholders. In a corporate action, the issuer usually “closes its book” temporarily to facilitate the share registrar to identify shareholders who are entitled to the corporate action.
12. Rule 13.66 requires a listed issuer to announce closure of its register of members at least 14 days before the closure. This is equivalent to 10 business days assuming no public holiday during the 14-day period.
13. The notice period allows time for shareholders holding the shares through nominees or brokers to re-register under their own names.
14. In a rights issue or an open offer, shareholders may trade their shares that come with subscription rights (“**cum-rights**”) during the notice period. The last cum-rights date (i.e. the last day for trading cum-rights shares) is usually three business days before the book closure date (to allow time for settlement on T+2). In effect, shareholders will have at least **seven clear business days** (excluding the announcement date) to trade cum-rights shares under the current 14-day regime.
15. We have received suggestions from market participants to reduce the notice period for book closure from 14 days to five business days. This allows four clear business days (excluding the announcement date) for market operations.

Our view

(a) *Reduction of notice period for book closure for rights issues and open offers*

16. We consider that there is room for and benefits from reducing the notice period:-
 - (i) The window of 10 business days for share re-registration and seven clear business days for trading cum-rights shares appear to be excessive for the corresponding actions.
 - (ii) Shortening the notice period can expedite a rights issue or an open offer that is not subject to shareholders’ approval² and thus help reduce market risks. The benefit may outweigh the shortcomings of a narrower window for re-registering and trading in cum-rights shares.
 - (iii) The existing 14-day requirement appears to be more stringent than other markets with book closure mechanism (Please refer to **Appendix I**).

² If the rights issue or open offer is subject to shareholders’ approval under the Listing Rules, the issuer has to give sufficient notice of a general meeting in accordance with the laws of its incorporation in any event. For example, a Hong Kong incorporated issuer must give a notice of at least 14 calendar days under the Companies Ordinance.

- (iv) As regards rights issues, investors will still have another window for buying or selling nil-paid rights during the 14-day subscription period.
- 17. We have consulted a selected group of market participants comprising custodian banks, broker firms and share registrars on this proposal. They indicated that a minimum notice period of five business days for book closure would not cause major operational impact on their operations.
- (b) ***Housekeeping amendments to Rule 13.66***
- 18. We also propose housekeeping amendments to Rule 13.66 on the notice period for book closure.
- 19. Under the existing requirement based on calendar days, the actual notice period will be less than 10 business days if there are public holidays during the 14-day notice period. The shortfall can be significant if the notice period overlaps long public holidays, such as Chinese New Year, Christmas and Easter. To provide greater certainty, we consider it more appropriate to specify the notice period by reference to business days.
- 20. In the event an issuer changes the book closure date, it is required to give notice at least six calendar days before the originally announced closure or the newly proposed closure, whichever is earlier. The rule intends to give shareholders adequate advance notice in the event of a change in the book closure date. We propose to amend the rule to clarify this point.

Proposals

- (a) ***Reduction of notice period for book closure for rights issues and open offers***
- 21. We propose to shorten the notice period for book closure for a rights issue or an open offer from 14 calendar days to five business days (or four clear business days excluding the announcement date).
- 22. The Exchange adopts a T+2 settlement system. As described in paragraph 14, the last cum-rights date is usually three business days before book closure date. Therefore, under the reduced minimum notice period of five business days, shareholders will be effectively allowed two days (excluding the announcement date) to trade in cum-rights securities.
- 23. The trading window of cum-rights securities would be narrowed if, for examples, trading on the Exchange is interrupted due to typhoon and/or a black rainstorm warning, or trading of the issuer's securities is suspended, during the two-day period.
- 24. In this circumstance, we propose to amend the Listing Rules 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.

Consultation questions

25. *Question 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.
26. *Question 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 examples, 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.
27. *Question 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.

(b) *Housekeeping amendments to Rule 13.66*

28. We propose to amend the notice period for book closure (in cases other than rights issues or open offers) from 14 calendar days to 10 business days, and we propose to amend the notice period for alteration of book closure date from six calendar days to five business days.
29. We also propose to clarify the rule that if an issuer changes the book closure date, it is required to give notice at least five business days before the originally announced closure or the newly proposed closure, whichever is earlier.

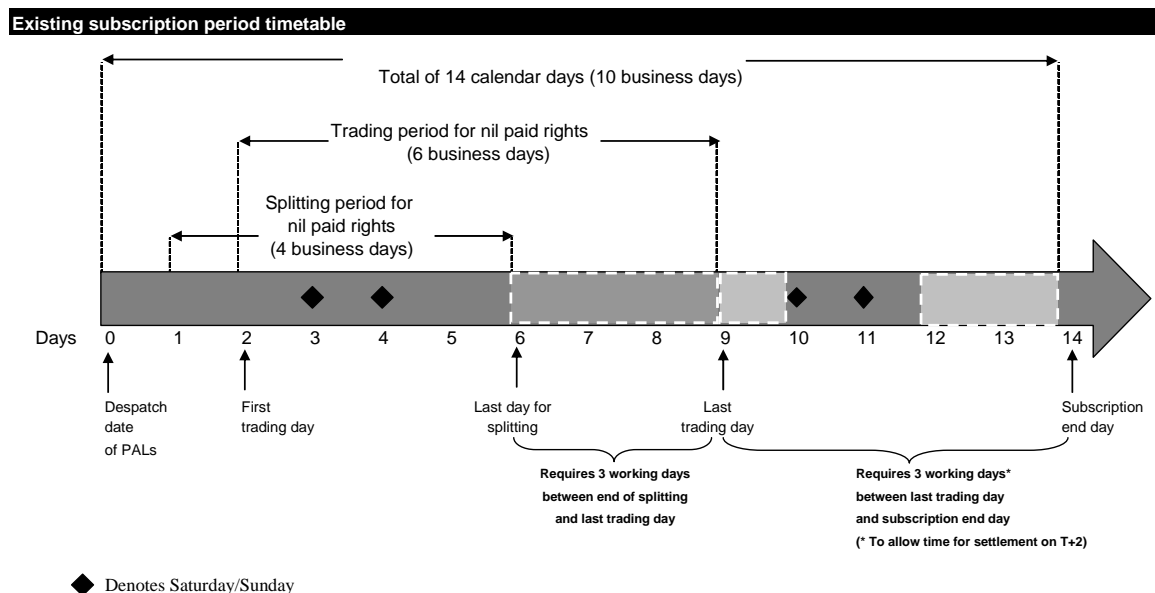
Consultation questions

30. *Question 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.
31. *Question 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.

32. *Question 6:* Do you agree to our proposal to clarify the rule that if an issuer changes the book closure period, 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.
33. *Question 7:* Are there any other comments you would like to make? If your answer is “Yes”, please state.

CHAPTER 3 SUBSCRIPTION PERIOD

34. The Listing Rules³ require a minimum subscription period of 14 calendar days for a rights issue. The same requirement applies to an open offer⁴. It is equivalent to 10 business days assuming no public holiday during the 14-day period.
35. Shareholders make investment decisions during this 14-day period as to whether (and how much) they wish to subscribe for the rights issue or open offer.
36. For a rights issue, a shareholder has more options and may need additional time for taking relevant actions. In particular, the shareholder may (i) fully exercise his/her subscription rights; (ii) sell all of them; or (iii) partially exercise his/her subscription rights and sell the remainder. If the shareholder chooses option (iii), he/she needs to split his/her PAL before subscribing the desired portion and disposing of the rights of the remainder portion in the market. Under the current 14-calendar day (10-business day) requirement, a shareholder normally has:-
- (i) four business days to consider splitting his/her entitlement;
 - (ii) six business days to sell or buy nil-paid rights in the market; and
 - (iii) 10 business days to subscribe.
37. The following diagram illustrates the above:-



Source of reference: *The Guide on Trading Arrangements for Selected Types of Corporate Actions* issued by the Exchange on 28 November 2008.

³ Rule 7.20

⁴ Rule 7.25

Our view

38. We consider the present subscription period of 14 days (or 10 business days) appropriate:-
- (i) It provides sufficient time for investors to consider the rights issue or open offer and make their investment decisions. In practice, brokers and custodians often set an earlier deadline for their clients to confirm subscription and remit funds and the subscription period for these clients is in fact shorter than 10 business days. A reduction of the subscription period will have a greater impact on investors holding shares through complex chains of custodians.
 - (ii) For a rights issue, some shareholders may need to do “tail swallowing” (i.e. selling sufficient nil-paid rights to fund the take up of the balance). The present requirement allows four business days for considering splitting the PAL and six business days for trading nil-paid rights. A reduction in the subscription period will slash the time allowed for such actions by the same number of days. This will result in a very narrow time window for splitting and trading the nil-paid rights⁵.
 - (iii) The current subscription period is broadly in line with comparable markets, i.e. UK, Australia and Singapore (Please refer to **Appendix I**).
39. We have consulted a selected group of market participants comprising custodian banks, broker firms and share registrars on the change of subscription period. In general, they consider the existing minimum period appropriate and do not prefer a reduction.

Proposals

40. We propose to maintain the subscription period for rights issues and open offers at the existing level in order to allow sufficient time in particular for brokers and retail investors to complete the subscription process.

Housekeeping amendments

41. However, for the same reason as stated in paragraph 19, we consider it appropriate to specify the subscription period by reference to business days to provide greater certainty. In particular, we propose to:-
- (i) amend the minimum subscription period for rights issues and open offers from 14 calendar days to 10 business days; and
 - (ii) 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.

⁵ PAL holders can also through brokers deposit the PAL to CCASS and perform tail swallowing without going through the process of splitting through share registrars.

Consultation questions

42. *Question 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.
43. *Question 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.
44. *Question 10:* Are there any other comments you would like to make? If your answer is “Yes”, please state.

**APPENDIX I COMPARISON OF INTERNATIONAL PRACTICE REGARDING RIGHTS
ISSUE TIMETABLE**

	Hong Kong		United Kingdom	Australia	Singapore
	Current	Proposed			
Notice Period for Book Closure	At least <u>14 calendar days</u> before closure of the register of members	Proposed shortened to <u>5 business days</u> before closure of register of members	There <u>is no prescribed minimum notice period.</u> Record date can be on the same date as the announcement date	Must give ASX not less than <u>7 business days</u> notice of a proposed record date or any change to a proposed record date	Reduced from 10 business days to <u>5 business days</u> since January 2009
Minimum Subscription Period	A minimum subscription period of <u>14 calendar days</u>	Proposed amended to <u>10 business days</u> for the minimum subscription period	Reduced from 21 calendar days to <u>10 business days</u> since February 2009	At least <u>10 business days</u> after the entity announces that the despatch of the prospectus or offer information statement has been completed	At least <u>10 business days</u> following the despatch of PALs

APPENDIX II DRAFT RULE AMENDMENTS

Notice of Book Closure

Rule 13.66:

“An issuer shall notify the Exchange in writing and publish in accordance with rule 2.07C a notice of the closure of its transfer books or register of members in respect of securities listed in Hong Kong at least ~~14~~ five business days before such closure in the case of a rights issue or an open offer, or 10 business days before such closure in other cases. In cases where there is an alteration of book closing dates, the issuer shall, at least ~~six~~ five business days before the announced closure or the new closure, whichever is earlier, notify the Exchange in writing and give further notice by publishing it in accordance with rule 2.07C. If, however, there are exceptional circumstances (e.g. typhoon) that render the giving of such notification to the Exchange and publication of the notice impossible, the issuer shall comply with the requirements as soon as practicable.

Notes:

1. *See Practice Note 8 for emergency share registration arrangement during a typhoon and/or a black rainstorm warning.*
2. *In addition, in the case of a rights issue or an open offer, the issuer must provide at least two trading days (as defined in the Rules of the Exchange) for trading in the securities with entitlements (i.e. before the ex-date) after publication of the book closure. If trading on the Exchange is interrupted due to typhoon and/or a black rainstorm warning, the book-close date will be automatically postponed, where necessary, to provide at least two uninterrupted trading days for trading of the securities with entitlements during the notice period. In such circumstance the issuer must publish an announcement on the revised timetable.”*

Subscription Period

Rule 7.20

“Offer of securities by way of rights are normally required to be conveyed by renounceable provisional letters of allotment or other negotiable instrument, which must state the time, being not less than ~~14~~ 10 business days, in which the offer may be accepted. In cases where the issuer has a large number of overseas members a longer offer period may be desirable, provided that the Exchange must be consulted if the issuer proposes an offer period of over ~~21~~ 15 business days.”

Rule 7.25

“Offer of securities by way of open offer must remain open for acceptance for a minimum period of ~~14~~ 10 business days. In cases where the issuer has a large number of overseas members a longer offer period may be desirable, provided that the Exchange must be consulted if the issuer proposes an offer period of over ~~21~~ 15 business days.”

APPENDIX III PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY STATEMENT

Provision of Personal Data

1. Your supply of Personal Data to HKEx is on a voluntary basis. “Personal Data” in these statements has the same meaning as “personal data” in the Personal Data (Privacy) Ordinance, Cap 486, which may include your name, identity card number, mailing address, telephone number, email address, login name and/or your opinion.

Personal Information Collection Statement

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx’s use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

Purpose of Collection

3. HKEx may use your Personal Data provided in connection with this consultation paper for purposes relating to this consultation and for one or more of the following purposes:
 - administration, processing and publication of the consultation paper and any responses received;
 - performing or discharging HKEx’s functions and those of its subsidiaries under the relevant laws, rules and regulations;
 - research and statistical analysis; and
 - any other purposes permitted or required by law or regulation.

Transfer of Personal Data

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.
5. To ensure that the consultation is conducted in a fair, open and transparent manner, any response together with your name may be published on an “as is” basis, in whole or in part, in document form, on the HKEx website or by other means. In general, HKEx will publish your name only and will not publish your other Personal Data unless specifically required to do so under any applicable law or

regulation. If you do not wish your name to be published or your opinion to be published, please state so when responding to this paper.

Access to and Correction of Data

6. You have the right to request access to and/or correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to: Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

**Re: Consultation Paper on
Proposals to accelerate rights issue and open offers**

By email to: pdpo@hkex.com.hk

Retention of Personal Data

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

Privacy Policy Statement

8. HKEx is firmly committed to preserving your privacy in relation to the Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, identity card numbers, telephone numbers, mailing addresses, e-mail addresses, login names, opinion, etc., which may be used for the stated purposes when your Personal Data are collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law or regulation.
9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.

