



**ASSOCIATION OF HONG KONG CAPITAL MARKET PRACTITIONERS**

21 WING WO STREET, CENTRAL, HONG KONG

**HKEX Consultation Paper**  
**Proposed Amendments to Listing Rules Relating to Treasury Shares**  
**Written response of HKCMP**

No.	Comments and responses
1.	<p data-bbox="164 835 1511 905"><i>Do you agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares? Please provide reasons for your views.</i></p> <p data-bbox="164 936 293 963"><b>Response:</b></p> <p data-bbox="164 999 1430 1026">We agree with the proposal to amend the Listing Rules to remove the requirement to cancel repurchased shares.</p> <p data-bbox="164 1062 1511 1251">The ability for issuers to hold their shares in treasury will enable them to have more flexibility in managing their capital structure and reacting promptly to market conditions. They will be able to adjust their share capital to achieve optimum financial gearing without the costs of issuing new shares, leading to a reduction in issuers’ overall cost of capital. As stated in the Consultation Paper, 92% of the issuers listed on the Exchange are incorporated in jurisdictions that allow the holding of treasury shares and they are a standard feature of listed companies capital structures in other developed markets.</p> <p data-bbox="164 1287 1511 1413">As a general comment, we note that the Consultation Paper does not mention the arrangements for treasury shares under the current clearing system and there is a need for clarity on the logistical/practical issues that issuers may face including, <i>inter alia</i>, how treasury shares will be held. This may be in the form of further elaboration in the Consultation Conclusion, guidance letters and/or amendments to the CCASS rules as may be necessary.</p>
2.	<p data-bbox="164 1451 1511 1520"><i>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.</i></p> <p data-bbox="164 1551 293 1579"><b>Response:</b></p> <p data-bbox="164 1614 1511 1677">We 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) of the Consultation Paper.</p> <p data-bbox="164 1713 1511 1839">As mentioned in the Consultation Paper, this is consistent with the approach adopted in other major markets including the UK, NYSE and TSX. We are of the view that having the resale of treasury shares be subject to the same requirements as an issue of new shares allows for a uniform and familiar approach, which would be welcomed by issuers and market practitioners alike.</p>

3.	<p><i>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.</i></p>
	<p><b>Response:</b></p> <p>We agree with the proposal to require a resale of treasury shares to be subject to a moratorium period after a share repurchase.</p> <p>Allowing issuers to both buy and sell their shares creates flexibility but it may also create a perception in the minds of investors that issuers might use this flexibility to create a false market or to manipulate the price of their shares, particularly for short-term gain. We are of the view that extending the moratorium period on any resale of treasury shares (whether on-market or off-market) would assist in mitigating risks of market manipulation and insider dealing.</p>
4.	<p><i>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.</i></p>
	<p><b>Response:</b></p> <p>We 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. For the same reasons set out in question 3 above, we are of the view that this will provide additional safeguards against any potential risks of market manipulation and insider dealing.</p>
5.	<p><i>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.</i></p>
	<p><b>Response:</b></p> <p>We believe that the proposed moratorium period of 30 days is reasonable. Considering the Exchanges’ approach in treating new shares and treasury shares alike, it would be logical to also adopt the existing and familiar 30-day period under Rule 10.06(3) of the Listing Rules.</p>
6.	<p><i>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.</i></p>
	<p><b>Response:</b></p> <p>We agree with the proposal to impose dealing restrictions on the resale of treasury shares on the Exchange as set out in paragraph 69 of the Consultation Paper. For the same reasons set out in question 3 above, we are of the view that extending the existing rules is logical and reasonable.</p>
7.	<p><i>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.</i></p>
	<p><b>Response:</b></p> <p>We generally agree with the proposals as described in paragraph 70 of the Consultation Paper.</p> <p>It is proposed that issuers will not be required to publish an announcement for its on-market resale of treasury shares given that the relevant information would be set out in the next day disclosure return. However, we are of the view that this may result in possible confusion and/or misunderstanding on the part of shareholders or investors, given that it would necessitate them searching the next day disclosure return to properly assess the issuers’ latest position. Certain persons, such as elderly individuals or those inexperienced with navigating the Exchanges’ website, may lack the</p>

	necessary knowledge on how to access the next day disclosure return of issuers. Therefore, we are of the view that such information should be made more apparent and readily available to shareholders and investors (i.e. providing clear guidance to the public on how to access this or enabling real-time input in some way).
8.	<p><i>Do you agree with the proposal relating to new listing applicants as described in Proposal (3) above? Please provide reasons for your views.</i></p> <p><b>Response:</b></p> <p>We agree with the proposal relating to new listing applicants as described in Proposal (3) of the Consultation Paper. The extension of the application of Rule 10.08 of the Listing Rules to a resale of treasury shares is logical and consistent with the approach of treating new shares and treasury shares alike.</p>
9.	<p><i>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? Please provide reasons for your views.</i></p> <p><b>Response:</b></p> <p>We agree with the proposal to require issuers to abstain from voting on matters that require shareholders' approval under the Listing Rules as described in Proposal (4)(a) of the Consultation Paper. This will mitigate risks of inflated voting rights and help with protection of minority shareholders.</p>
10.	<p><i>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.</i></p> <p><b>Response:</b></p> <p>We agree with the proposal to disregard treasury shares for calculating an issuer's issued shares and voting shares under the Listing Rules as described in Proposal (4)(b) of the Consultation Paper. This is logical and reasonable, consistent with the approach taken in Proposal (4)(a) (i.e. question 9 above).</p>
11.	<p><i>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?</i></p> <p><b>Response:</b></p> <p>We generally agree with the different treatment of treasury shares when calculating an issuer's issued voting shares under the proposed Listing Rules and Part XV of the SFO as described in paragraph 77 of the Consultation Paper. That said, as a result of the differing treatments, there is a possibility for confusion on the part of shareholders and investors. It may be more clear if treasury shares are disclosed separately (e.g. as a separate class with no voting rights) for the purposes of disclosure of interests only.</p>
12.	<p><i>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.</i></p> <p><b>Response:</b></p> <p>We agree with the proposal to mandate that issuers disclose their intention regarding repurchased shares in the explanatory statement as described in Proposal (4)(c) of the Consultation Paper. This is reasonable and will ensure transparency for shareholders and investors. Similarly, we are of the view that any future changes to the intention should be disclosed by way of announcements for the same reasoning.</p>

13.	<i>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.</i>
	<b><i>Response:</i></b>  We agree with the proposal to clarify that a resale of treasury shares by an issuer or its subsidiary includes resale of treasury shares by their agents or nominees as described in Proposal (4)(d) of the Consultation Paper.