

立法會
Legislative Council

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Panel on Financial Affairs

Meeting on 26 February 2009

**Background brief on the proposed extension of the "black out" period and
introduction of quarterly financial reporting**

Purpose

This paper summarizes the background of the proposed amendments to the Listing Rules for extension of "black out" period and introduction of quarterly financial reporting. It also summarizes Members' views and concerns raised at the meeting of the Panel on Financial Affairs (FA Panel) on 30 December 2008.

Background

Proposed amendment to the Listing Rules for extension of the "black out" period

2. On 11 January 2008, the Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of the Hong Kong Exchanges and Clearing Limited (HKEx), published a Combined Consultation Paper on proposals to address 18 substantive policy issues which covers a range of matters designed to enhance corporate governance standards as well as to facilitate the daily operations of the listed issuers and reduce costs of compliance. The consultation ended on 7 April 2008.

3. The consultation conclusions concerning 15 of the 18 substantive policy issues were published in November 2008. Among these 15 policy issues, the proposal to extend the "black out" period (the period during which directors of listed issuers are prohibited from dealing in securities of the issuers) put forward under the review of Model Code for Securities Transactions by

Directors of Listed Issuers (the Model Code) has aroused concern among market practitioners and directors of listed issuers.

4. The Model Code currently provides that a director of a listed issuer is prohibited from dealing in securities of the issuer for a period of one month immediately preceding the earlier of: (a) the approval of the issuer's annual, half-year or quarterly results; and (b) the deadline for the issuer to publish the results, and ending on the date of the results announcement. The periods when dealing is prohibited are generally referred to as the "black out" periods.

5. The proposed extension of the "black out" period will prohibit directors from dealing with their listed issuer's securities during the period between the issuer's financial year/period end date and the date on which the issuer publishes the relevant results announcement. Currently, a listed issuer has four months from the year-end and three months from the period end in which to publish annual results and half-year results respectively. Assuming that full use is made by a listed issuer of the periods permitted to publish the results, the maximum "black out" periods would be seven months.

6. The revised Listing Rules were originally proposed to take effect from 1 January 2009.

Introduction of quarterly financial reporting

7. On 31 August 2007, the Exchange released the Consultation Paper on Periodic Financial Reporting, setting out its proposals to shorten the deadlines for annual and half-year reporting and to implement mandatory quarterly reporting for Main Board listed issuers. Taking into consideration comments received from the market consultation and the views of the Securities and Futures Commission Board (SFC Board), the Listing Committee¹ proposed on 18 December 2008 that the proposal for mandatory quarterly financial reporting should take effect for financial quarterly periods ending on or after 31 December 2011. The Listing Rule amendments to implement this proposal will be forwarded to the SFC Board for approval in the near future. If the proposed shortening of reporting deadlines and quarterly reporting will be adopted and assuming that full use is made by a listed issuer of the period permitted to publish the results, the "black out" periods could be eight months.

¹ The Listing Committee of the Exchange, acts both as an independent administrative decision maker and an advisory body for the Exchange in relation to all listing matters. Subject to casual vacancies from time to time the Listing Committee shall consist of 28 members or such greater number of members as the Board of Directors of the Exchange may from time to time agree, comprising at least eight individuals who the Listing Nominating Committee considers will represent the interests of investors; 19 individuals who the Listing Nominating Committee considers will be a suitable balance of representatives of listed issuers and market practitioners; and the Chief Executive of HKEx as ex-officio member.

Members' major views and concerns

8. Noting that the proposed extension of the "black out" period will take effect from 1 January 2009, a number of listed issuers and some Members of the Legislative Council (LegCo) expressed grave concern about the impact of the proposal on the directors of listed issuers as well as on the position of Hong Kong as an international financial centre (IFC). The subject was discussed at a special meeting of the FA Panel held on 30 December 2008.

9. The FA Panel received a large number of similar submissions from listed issuers/individuals expressing strong objection to the implementation of the proposed "black out" period extension on 1 January 2009. They consider the proposal detrimental to listed issuers in Hong Kong as it excessively lengthens the period during which directors are prohibited from dealing in securities, and may deter companies from listing in Hong Kong, thereby having an adverse impact on the position of Hong Kong as an IFC. They are of the view that Hong Kong already operates under a set of effective Listing Rules, and instead of imposing more restrictions through amendment of the Listing Rules, reinforcing the vigilant application and enforcement of the existing rules will suffice. They request the implementation of the proposal be put on hold pending further in-depth review of the existing situation. Some Members shared these concerns.

10. Nevertheless, some other Members are of the view that the proposal has been finalized after proper consultation, taking into consideration the views of respondents on its pros and cons. They consider that the extension of the "black out" period will enhance investor confidence of a level playing field by building in more safeguards against abuse by directors of price sensitive information in the dealing of securities before public announcement of information at financial year/period ends.

11. The Panel passed a motion at the meeting on 30 December 2008, requesting HKEx not to implement the proposal as scheduled on 1 January 2009 and launch a six-month consultation on the issue afresh, so as to address the market concerns. The wording of the motion passed at the meeting is at **Appendix I**.

Recent developments

12. The Listing Committee met on 30 December 2008 to consider the recent comments from listed issuers, the media and LegCo Members together with views from SFC. In response to the concerns, the Listing Committee has decided to defer implementation of the extension of "black out" period until 1 April 2009, but it has no plan to conduct market consultation afresh nor to withdraw the proposal. The Chief Executive of HKEx has written to the

Listing Committee in January 2009, urging the Committee to re-consider the proposed extension of "black out" period together with the proposed shortening of reporting deadlines and mandatory quarterly reporting as a package. The Secretary for Financial Services and the Treasury and the Chairman of SFC also expressed a similar view subsequently.

13. The Listing Committee continued its discussions on the proposed rule amendments to extend the "black out" period at its meetings on 9 and 12 February 2009. After the meeting on 12 February 2009, the Listing Committee announced its decision to put forward a modified proposal for an extension of the "black out" period applicable to the publication of an issuer's annual financial results from one month to 60 days. The "black out" period for half-year and other interim periods will be 30 days, in line with the current requirement of one month. The maximum "black out" period will be three months (or five months after the introduction of quarterly financial reporting) under the modified proposal. Subject to approval by the SFC Board, the revised rule amendment will come into effect on 1 April 2009. As regards the proposed introduction of quarterly financial reporting, the Listing Committee considers this a long term goal. As an interim enhancement, the Exchange will explore alternative approaches and undertake a further consultation with stakeholders on the alternatives to quarterly financial reporting.

Latest position

14. The FA Panel has invited the Administration, SFC and HKEx to brief members on the latest state of play of the proposed extension of the "black out" period and quarterly financial reporting at the meeting on 26 February 2009.

References

15. A list of relevant papers is in **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
24 February 2009

**財經事務委員會
在2008年12月30日特別會議上通過的
有關"要求取消對《上市規則》有關修訂的落實，並重新展開諮詢"的議案**

"鑒於港交所對《上市發行人董事進行證券交易的標準守則》有關延長'禁止買賣期'的修訂引起市場強烈反響，本委員會要求有關當局取消原定於2009年1月1日對該守則修訂後的執行，並就有關問題重新展開為期6個月的諮詢，以妥善解決市場的疑慮。"

動議人：石禮謙議員, SBS, JP
和議人：林健鋒議員, SBS, JP

(Translation)

**Motion on "Requesting not to effect the amendments to the Listing Rules and
launch a consultation afresh"
passed by the Panel on Financial Affairs
at its special meeting held on 30 December 2008**

"That, given that the HKEx's amendments to the Model Code for Securities Transactions by Directors of Listed Issuers relating to the extension of the 'blackout period' have aroused strong reaction in the market, this Panel requests the authority concerned not to effect the amended Rules as scheduled on 1 January 2009 and launch a six-month consultation on the issue afresh, so as to address properly the market concerns."

Moved by : Hon Abraham SHEK Lai-him, SBS, JP
Seconded by : Hon Jeffrey LAM Kin-fung, SBS, JP

The proposed extension of the "black out" period and introduction of quarterly financial reporting

List of relevant papers

Committee	Paper	LC Paper No.
Meeting of the Panel on Financial Affairs (FA Panel) on 30 December 2008	✧ Letter dated 17 December 2008 from Hon Abraham SHEK, Hon Vincent FANG Kang, Hon Jeffrey LAM Kin-fung and Hon CHIM Pui-chung (Chinese version only) http://www.legco.gov.hk/yr08-09/chinese/panels/fa/papers/fa1230cb1-460-1-c.pdf	CB(1)460/08-09(01)
	✧ Hon CHIM Pui-chung's letter dated 23 December 2008 on the Hong Kong Exchanges and Clearing Limited's proposed extension of blackout period (Chinese version only) http://www.legco.gov.hk/yr08-09/chinese/panels/fa/papers/fa1230cb1-484-1-c.pdf	CB(1)484/08-09(01)
	✧ Hong Kong Exchanges and Clearing Limited's paper on amendments to Listing Rules arising from the Combined Consultation Paper and proposals to mandate quarterly reporting http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa1230cb1-493-1-e.pdf	CB(1)493/08-09(01)
	✧ Administration's response to members' concerns raised at the special meeting on 30 December 2008 http://www.legco.gov.hk/yr08-09/en	CB(1)696/08-09(04)

Committee	Paper	LC Paper No.
	<p data-bbox="549 232 1058 309">glish/panels/fa/papers/fa1230cb1-696-4-e.pdf</p> <p data-bbox="485 349 1058 506">✧ Administration's preliminary response to the motion passed at the special meeting on 30 December 2008</p> <p data-bbox="549 551 1058 663">http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa1230cb1-697-1-e.pdf</p>	CB(1)697/08-09(01)
----	<p data-bbox="485 710 1058 822">✧ HKEx's press release on extension of "black out" period issued on 30 December 2008</p> <p data-bbox="549 866 1058 943">http://www.hkex.com.hk/news/hkexnews/081230news.htm</p>	----
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