

**Combined Consultation Paper and Quarterly Reporting
Opening Remarks by Richard Williams, Head of Listing, HKEx
to the Legislative Council Financial Affairs Panel on 30 December 2008**

Mr Chairman, thank you for your invitation to address the Panel.

The discussion paper which was circulated to members yesterday was, save for one paragraph, prepared at short notice before the Christmas break.

The section dealing with the current status of our proposals on quarterly reporting, which is from pages 7 to 18, is reasonably comprehensive and I believe speaks for itself so I will not comment further on that issue.

The sections covering on the Combined Consultation Paper and the rule amendment to extend the Blackout period are less comprehensive and pitched at a relatively high level. In light of further media commentary on the Black Out period and the newspaper advertisement taken out by certain interested parties I think that it is appropriate for me to supplement the paper we submitted with additional remarks on the background of the proposals and the consultation process.

Combined Consultation

The Combined Consultation Paper is not just about the proposal to extend the Black Out Period it is about more than forty proposals which were grouped together as eighteen substantive policy issues and a small number of minor rule amendments.

The issues included in the Combined Consultation originated from several sources and they arose over a long period. In an effort to maximize the efficiency with which we consult the market we decided to set out the different policy issues on which we sought market input in a single paper.

We arranged the issues in the order of the relevant Listing Rules. As such proposals dealing with Appendix 10 to the Main Board Listing Rules became Issue 18.

Where we had firm proposals we set out the detailed proposed rule amendments to invite comments on the drafting of the proposed rule amendments together with the substantive policy issues behind those proposals.

As you will note several proposals in the Combined Consultation which we have implemented represent the Exchange's targeted endeavours to relax the requirements of the Listing Rules or to adopt a more facilitative position.

For example, our proposals to extend, where permitted by domestic law, the use of website for communication between listed issuers and their shareholders has attracted very positive feedback.

Our proposals to reduce on a phased basis the scope of the pre-vetting of issuer announcements and circulars were well received. Although respondents and others we have spoken to asked us to provide more guidance to assist them. This we have done.

Other proposals we believe will enhance market standards and make Hong Kong more investor friendly.

Issue 18

Issue 18 is one such issue and an issue which originated outside the Exchange.

During the preparation of our consultation paper on Periodic Financial Reporting we were asked by SFC staff to incorporate several related issues in that consultation including a proposal to extend the period of the black out period from the end of the relevant financial period until the point at which the results are published.

The Combined Consultation Paper briefly sums up the genesis of the rule amendment. The idea was first raised by the SFC Public Shareholders Group and then championed by the staff of the SFC. As I think will become clear from the SFC's remarks today SFC staff have no qualms about being associated with this proposal.

In turn the Listing Committee adopted the SFC proposals. When proposals on this issue were first put to the Listing Committee in September 2007, the Listing Division outlined three possible approaches to the Black Out period.

The first option was the proposal that has now been adopted.

The second option was a proposal to adopt the UK approach which involves either a maximum sixty day period or the period from the financial period end until publication of the issuer's results. In addition the Listing Committee was invited to consider introducing a provision similar to one found in the UK Code whereby insiders dealing on considerations of a short term nature be refused clearance to deal.

The third option was the status quo.

As I recall there was a lively discussion on the proposals and at the end, overwhelming and robust support for Option 1.

Several points arose from those discussions which are worth repeating as they lend support to a solution which might be seen as more onerous than the requirements imposed in other relevant jurisdictions.

By relevant jurisdictions I mean the UK, Australia and Singapore. The US, because it addresses these issues through a very different approach, was not regarded as directly comparable.

First that there is a "real" perception issue with directors dealing after the year end and in some cases immediately prior to the commencement of the close period. In other words, there is a regulatory issue which should be addressed and the status quo would not contribute to the higher levels of investor confidence which are seen as a precondition for Hong Kong's further development as a financial centre. Accordingly the option to retain the status quo was rejected.

Second the ownership structure of many Hong Kong listed issuers is not comparable with that in other relevant jurisdictions.

It is widely recognised that Hong Kong has a large proportion of listed companies which are family owned and managed. This is to be contrasted with Singapore and Mainland China where a majority of sizeable companies are state-owned and professionally managed.

Australian and UK companies tend to be managed by professional management and a sizeable majority of companies have a wide shareholding structure.

These differences in shareholder structures are also reflected in the responses we received during the consultation and the most recent remarks on the topic.

If I may generalize we found that state owned companies and companies with a wide shareholder base and professional management either supported our proposals or had no substantive comments to offer. Those opposed to the proposals included a majority of owner managed companies.

Third that the financial reporting deadlines in the Hong Kong rules are lax compared to the other relevant jurisdictions and this exaggerates the impact of our proposal. The impact is further exaggerated by market practice in those jurisdictions which can result in a substantial number of listed companies, in particular large listed companies, reporting significantly earlier than the mandated deadlines.

The maximum period of restriction would only occur if companies report at the last possible moment allowed under the rules and the new reporting deadlines. Experience in Hong Kong is that 35% of all listed companies leave it until the last fortnight to report their final results and a further 25% report also report within one month of the deadline in the rules.

For those companies concerned with the extension of the black out they may see the proposal as an incentive to report earlier. The Listing Committee acknowledged that this would be a good side effect of extending the blackout period but not sufficient reason in itself for supporting the change.

Fourth, that whilst back end enforcement is an effective deterrent for abuse, it is not a practical solution to deal with the perception issues surrounding the dealing behaviour of company insiders. What is called for is the director dealing restrictions in the Listing Rules to operate in tandem with the statutory prohibition on insider dealing.

As I recall several Listing Committee members supported an observation from SFC staff that the issue is not whether the proposal would consist of a significant reduction in the window allowed for trading by directors, it would, but whether the remaining trading window is reasonable.

Whilst the Listing Rules indicate that the Exchange regards it as highly desirable that directors should hold securities in the listed issuer, they should be long term investors and should not be actively trading in their company's securities.

During the Committee's deliberations it was noted that the extension of the "black out" period should not unduly compromise the fund raising ability of listed companies.

The Listing Rules do not subject listed issuers to an equivalent "black out" period imposed on directors for new issue of shares or securities unless the new issue is to directors or their associates. However it is well understood that investors should not be asked to subscribe without up to date and accurate disclosure and this may necessitate the company making disclosure or refraining from issuing shares until it has addressed any disclosure concerns. The provisions applicable in the UK apply equally to directors and also the listed company itself. In this regard our proposal is less onerous than the UK.

The Committee suggested that a new exception to the definition of dealing should be introduced to facilitate directors supporting corporate fund raising activities through, so called, Top Up Placings. This proposal has also been adopted.

At this point I should like to clarify that the Exchange's current proposals have had no effect on the restrictions that apply to listed companies from conducting share repurchases and granting share options. A close period of 30 days continues to apply.

That said there is a strong, logical line of argument that as the directors represent the controlling mind of the listed company any restrictions on directors should equally restrict listed companies to the same extent. This issue is one that the Exchange will consider in due course.

Consultation Process

In the final quarter of 2007 we put the finishing touches to the Consultation materials which allowed us to launch the consultation on 11 January 2008. At the same time we issued a letter to the authorised representatives of all, 1,200 plus, listed issuers inviting interested parties to respond before 7 April 2008.

We also distributed copies of the Consultation Paper to professional and industry representative bodies who we thought would take an interest in our proposals.

Then, during the consultation period Exchange staff participated in various public forums to discuss our proposals. Most notably we participated in the Chartered Secretaries Annual Regulatory Update and an HKICPA forum. Several hundred individuals who work for or advise listed companies attended those events. Against this background I find some recent comments that the consultation was a black box exercise, simply quite amazing.

The consultation period formally ended on 7 April but we continued to receive feedback after that date. We posted the initial responses and subsequent submissions on our website during the period from 22 April to 22 May 2008 so that these were available to the public.

In July and September 2008 we submitted various proposals to the Listing Committee for their endorsement and subsequently forwarded the Listing Rule amendments to the SFC for their approval in September 2008.

Our rule amendments addressing Issue 18 were not all accepted when they were first presented to the SFC Board. Whilst the principles behind the amendments were supported by the SFC Board we were asked us to clarify the scope of the new exceptions to dealing and whether if approval to deal had been granted the director was obliged to deal.

As a consequence of these comments we submitted further minor and consequential rule amendments to SFC for approval in late October 2008 and on 18 November received notice of the SFC approval of the amendments to address Issue 18.

Following this notification we then proceeded to finalise the conclusions document and implementation arrangements. As at the start of the consultation process, at the end when we published the consultation conclusions on 28 November 2008 we wrote to the authorised representatives of all listed companies to advised them of the new rules and the additional guidance materials we had published.

Next Steps

Finally I would like to briefly comment on the steps the Exchange is taking later today.

The Listing Committee will meet this afternoon to consider the recent comments from listed issuers, media and Legislative Councillors together with views from the statutory regulator and decide what action or actions the Exchange should take in response to these developments.

I will be pleased to convey to the Listing Committee any comments the Financial Affairs Panel would like the Listing Committee to take into consideration. If there is sufficient time for the Secretariat to prepare a note for the Listing Committee I will ensure that it is tabled at this afternoon's meeting.

Richard Williams
Head of Listing

30 December 2008