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# HKEx Publishes Consultation Paper On Proposals To Accelerate Rights Issues And Open Offers

## Introduction

HKEx has published a consultation paper (the "**Consultation Paper**") on proposals to shorten the process for rights issues and open offers in order to facilitate fund raisings by listed issuers. HKEx is seeking views on proposals to:

1. reduce the notice period for book closure for rights issues and open offiers from 14 calendar days to 5 business days with at least 2 uninterrupted trading days for trading securities on a cum-rights basis;
2. amend the minimum subscription period from 14 calendar days to 10 business days to provide time when the timetable for fund raising coincides with long public holidays; and
3. make changes to the GEM Rules so that they are consistent with the Main Board Rules as the process for rights issues and open offers for Main Board issuers and GEM issuers are the same in practice.

The Consultation Paper and Questionnaire are available on the HKEx website [*here*](http://www.hkex.com.hk/consul/marketconsultation.htm).

Interested parties should return their completed Questionnaire ([*here*](http://www.hkex.com.hk/eng/newsconsul/mktconsul/documents/cp200907q_e.doc)) to HKEx no later than **30 September 2009**.

## Background

The current timetable for a rights issue or an open offer is at least 5 to 6 weeks from the date of announcement and is significantly longer than that for other fund-raising activities such as placing. It consists of:

1. A 2-week notice period for book closure;
2. Preparation time of approximately one week for the 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;
3. 2 weeks for subscription; and
4. Approximately one week to prepare for the despatch of new share certificates and credit of new shares to CCASS accounts.

Where shareholders' approval is required, the timetable for a rights issue or open offer will be longer, possibly over 2 months, due to the need to prepare a shareholder's circular and the notice period for the shareholders' meeting. Listing Rules 7.19(6) and 7.24(5) require shareholders’ approval for a rights issue or open offer which will increase either the share capital or market capitalisation of the issuer by more than 50% (on its own or when aggregated with rights issues/open offers within the last 12 months).

## Proposed Reduction of Notice Period for Book Closure

The current Listing Rule 13.66 requires a listed issuer to announce closure of its register of members at least 14 days (i.e. 10 business days assuming no public holidays) before the closure (the "**notice period**"). The notice period provides time for shareholders holding shares through nominees or brokers to re-register under their own names. During the notice period of a rights issue or an open offer, shareholders may trade their shares that carry subscription rights ("**cum-rights**"). The last day for trading cum-rights shares is usually 3 business days before the book closure date, to allow time for settlement under the T+2 system. The current 14-day notice period effectively gives shareholders at least 7 clear business days (excluding the announcement date) to trade their cum-rights shares.

HKEx considers that the current allocation of 10 business days for re-registration and 7 clear business days for trading shares cum-rights is excessive. Shortening the notice period will allow rights issues and open offers which do not require shareholders’ approval to be carried out more quickly and will reduce market risks. Market participants consulted on the proposal indicated that no major operational impact would result from the proposed minimum 5 business days’ notice period for book closure.

The Hong Kong 14-day requirement is also more rigorous than that in other markets with a book closure mechanism (i.e. the UK, Australia and Singapore).

HKEx has therefore put forward the following proposals:

* Shorten the notice period for book closure for a rights issue or an open offer from 14 calendar days to 5 business days (i.e. 4 clear business days excluding the announcement date).
* Under the T+2 settlement system, the last day for trading securities cum-rights is usually 3 business days before the book closure date. If the minimum notice period is reduced to 5 business days, shareholders will have 2 days (excluding the announcement date) to trade their cum-rights securities.
* If trading on the Exchange is interrupted during the 2 day trading period (for example because of a typhoon or suspension of trading in the issuer's securities), HKEx proposes that the book closure date should be postponed to extend the notice period in order to ensure a minimum of 2 uninterrupted trading days for the trading of cum-rights securities during the notice period.

## Housekeeping amendments to Rule 13.66

The following changes to Rule 13.66 are proposed:

* Amend the notice period for book closure (other than for rights issues or open offers) from 14 calendar days to 10 business days.
* Amend the notice period for alteration of the book closure date from 6 calendar days to 5 business days.
* Clarify the rule regarding an issuer changing the book closure date, so that the issuer will be required to give notice at least 5 business days before the originally announced closure date or the newly proposed closure date, whichever is earlier.

## Proposals in relation to the Subscription Period

Listing Rules 7.20 and 7.25 require a minimum subscription period of 14 calendar days for a rights issue and an open offer. This provides shareholders with 10 business days (providing it does not coincide with any public holidays) during the 14-day period to decide whether they wish to subscribe for the rights issue or open offer.

Shareholders have more options to consider under a rights issue, namely whether to:

1. fully exercise his/her subscription rights;
2. sell all of them; or
3. partially exercise his/her subscription rights and sell the remainder.

For option (iii) the shareholder will need to split his/her PAL before subscribing and disposing the rights of the remainder in the market.

The present 14 calendar day requirement provides a shareholder with 4 business days to consider splitting his/her entitlement, 6 business days to sell or buy nil-paid rights in the market and 10 business days to subscribe.

HKEx considers the current 14-day subscription period to be appropriate allowing sufficient time for brokers and retail investors to complete the subscription process. In relation to rights issues, shareholders conducting "tail swallowing" (i.e. selling sufficient nil-paid rights to fund the take up of the balance) will have 4 business days to consider whether to split the PAL and 6 business days to trade their nil-paid rights. A reduced subscription period would result in a very short amount of time for the splitting and trading of the nil-paid rights. PAL holders can however also deposit their PAL to CCASS through brokers and perform “tail swallowing” without going through the process of splitting through share registrars.

HKEx proposes to maintain the existing subscription period for rights issues and open offers, but will make the following amendments to provide for greater certainty:

1. amend the minimum subscription period for rights issues and open offers from 14 calendar days to 10 business days; and
2. amend the maximum subscription period for rights issues and open offers (beyond which the issuer must consult the Exchange) from 21 calendar days to 15 business days.

*The purpose of this note is to provide a summary only of information included in the Hong Kong Stock Exchange's "Consultation Paper on Proposals to Accelerate Rights Issues and Open Offers (July 2009)". Its contents do not constitute legal advice and specific advice should be sought in relation to any particular situation.*

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