

Hong Kong Issues Guidance on Automatic Share Buyback Programs

The SEHK guidance sets out the framework for its assessment in considering a waiver application of the increasingly popular automatic share buyback program.

The Stock Exchange of Hong Kong Limited (the SEHK) has issued a [guidance letter on automatic share buyback programs conducted on behalf of listed issuers \(GL117-23\)](#) (the Guidance Letter). The Guidance Letter provides the framework for granting a waiver to allow an issuer to conduct an automatic share buyback program on the SEHK and continue the program throughout restricted periods.

Share buybacks are a popular way for listed companies and management to provide reassurance and confidence to investors of their long-term vision and commitment in the listed company, particularly when they believe share prices are undervalued. However, on-market share repurchases may raise regulatory concerns of market manipulation if an issuer seeks to influence its share price through the share repurchases.

To safeguard against such potential manipulation, The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules) prohibit an issuer from conducting share repurchases on the SEHK while in possession of undisclosed inside information and during the one month prior to release of financial results (the Restricted Period). Such provisions prevent issuers from implementing an automatic share buyback program that continues throughout the Restricted Period, which are common in other markets such as the US. This is particularly relevant to issuers that are dual-listed in Hong Kong and in the US, as the US rules provide for affirmative defences that would allow share buyback programs to continue through the Restricted Period even if the issuer later comes into possession of material non-public information if the conditions under the affirmative defences are satisfied.

The SEHK therefore published the Guidance Letter to provide guidance on its assessment in considering waiver applications for automatic share buyback programs of issuers. In granting a waiver, the SEHK will consider whether sufficient safeguards are in place to mitigate the risks of abuse of undisclosed inside information and price manipulations.

Safeguards Against Trading With Undisclosed Inside Information

The SEHK will consider the following criteria in assessing the automatic share buyback programs. These criteria are not meant to be exhaustive:

- **Irrevocable non-discretionary arrangement with a single independent broker:** The automatic program should be established *outside* the Restricted Period and cannot be modified or terminated during the Restricted Period. The following restrictions on the appointed broker have to be put in place in order to safeguard against dealing with inside information:
 - **Irrevocable non-discretionary arrangement:** The issuer should enter into a binding contract with a broker (outside the Restricted Period) with parameters for share buybacks that are set before the automatic program begins.
 - **Independent broker:** The appointed broker should be independent of the issuer and its connected persons. Systems and controls should be in place to ensure (i) there is no influence by the issuer/any of its connected persons over the automatic program after its commencement date and the broker makes all the investment decisions independently, and (ii) no non-public information of the issuer and its connected persons is given directly or indirectly to or received by any personnel of the broker involved with the establishment or execution of the automatic program until a reasonable time after its completion or termination.
 - **Single broker:** Only one broker should be appointed to avoid the misconception of widespread interest.
- **Terms of the buyback program:** The terms of the program should not be structured in a way that circumvents the dealing restrictions in the Listing Rules (e.g., the issuer enters into the program just before the blackout period and terminates it shortly after the release of results):
 - **Duration:** Whilst there is no fixed minimum period for an automatic share-buyback program, it should be of sufficient duration that the issuer can justify (e.g., by reference to the proposed size of the program and parameters agreed with the broker).
 - **Cooling-off period:** As best practice, there should be a time gap between the commencement of the share buyback under the program and the Restricted Period to avoid misconceptions that the issuer is potentially benefiting from material non-public information.

Whether both a longer duration and a cooling-off period are required also depends on the specific terms of each automatic share buyback program. For instance, if a program is entered into shortly after the release of financial results, a cooling-off period may not be necessary.

Safeguards Against Price Manipulations

The SEHK will consider the specific circumstances of each issuer when assessing the risk of price manipulations as a result of the automatic share buyback program.

- **Issuer's size and liquidity of its shares:** Waivers may be granted to issuers with a large market capitalisation and sufficient liquidity, as their securities are less susceptible to price manipulation. As a reference, the SEHK would consider (i) market capitalisation of at least HK\$10 billion, and (ii) an average daily turnover volume of at least HK\$10 million in the six months immediately prior to the adoption of the buyback program, as a benchmark for eligibility for the waiver.
- **Dealing restrictions:** A share buyback program allowing dealing within a Restricted Period should be subject to the additional dealing restrictions below:

- **Trading volume limit:** Trading under a share buyback program should be limited to 25% of the average daily trading volume over the immediately preceding 20 trading days as a condition for the SEHK to grant the waiver.
- **Intra-day limit:** Participation in opening and/or closing auctions/ periods should be restricted as market activities at such times are considered a significant indicator of the direction of trading, the strength of demand, and the current market value of the securities.

In addition to the above restrictions, issuers should comply with the price restriction imposed under the Listing Rules for all share repurchases under Rule 10.06(2)(a). This rule prohibits share repurchases on the SEHK at a purchase price higher by 5% or more than the average closing price for the five preceding trading days on which the shares were traded on the SEHK.

Ongoing Obligations

To ensure investors receive sufficient information to make informed investment decisions, issuers should disclose details of their automatic share buyback programs through announcements and any share repurchases conducted thereunder through next day disclosure returns. Issuers must ensure that they are complying with the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong), particularly the provisions on market manipulation.

Conclusion

We have historically received multiple enquiries from dual-listed issuers and their brokers on whether they can structure an automatic share buyback program on the SEHK that continues throughout the Restricted Period, similar to existing plans they have implemented in the UK or the US. We have observed the SEHK granting waivers to such dual-listed companies on a case-by-case basis if the HK program is similar to those that the issuers adopted in the US. With the Guidance Letter, the SEHK now provides official guidance on the parameters in considering a waiver application for automatic share buyback programs. The guidance provided by the SEHK contains similar requirements as programs adopted in the US that comply with the safe harbors under Rule 10b5-1 and Rule 10b-18 of the US Securities Exchange Act of 1934 (as amended). We welcome the additional clarity and expect that it will pave the way for more automatic share buyback programs to be structured on the HK line, especially for dual-listed issuers.

Issuers and market participants considering to adopt automatic share buyback programs are advised to familiarise themselves with the requirements of the relevant listing regimes.

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