



香港上市公司商會  
THE CHAMBER OF HONG KONG LISTED COMPANIES

## **The Chamber of Hong Kong Listed Companies Expresses Concerns about Extended Black Out Period for Directors Dealing**

**(December 22, 2008)** The Chamber of Hong Kong Listed Companies (the Chamber) noted the Hong Kong Exchanges and Clearing Limited's (the Exchange) decision to amend the Listing Rules governing directors dealing where the "black out" period is extended to commence from the listed issuer's financial period end to the date on which the issuer publishes the relevant results announcement. The Chamber received feedback from some of its members expressing their concerns about the impact this new rule would have on our market. These are summarized as follows:

1) The new requirement is more restrictive than the provisions applicable in other relevant jurisdictions including the U.S. In Australia and Singapore, there is no "specified" black out periods, and the rules leave it to the companies to set their own. The Securities and Futures Commission observed that these markets essentially rely on a mixture of insider dealing laws and market forces that result in companies setting tight internal controls. However it was argued that neither of these factors may work sufficiently well in Hong Kong and therefore it is necessary to set a formal benchmark by tightening the Listing Rules for companies to follow. In our view this argument does not stand because Hong Kong does have insider dealing laws which subject those who contravene them to criminal liability.

2) The extended "black out" period would hamper liquidity especially in the current market situation. Listed securities are liquid assets like near cash. Under the new rule, the liquidity of listed securities held by the substantial shareholders who are usually also members of the Board would be greatly affected. The new rule prejudices major shareholders who would not be able to trade in their shares for most of the year. A lot of listed companies in Hong Kong are controlled by a parent or major shareholder and they account for a big portion of the total market capitalization in Hong Kong. If their shareholdings are rendered illiquid for most of the year, trading volume would shrink.

3) An extended black out period also have ill implications to company directors who have been issued share options. The inability for directors to trade in the company shares means they cannot exercise the share options freely and timely as desired. This is another form of prejudice as the directors might be deprived of the chance of realizing gains that they are entitled to. The spirit of the law and rules should be to put everyone on a level playing field without bias to any particular group of investors.



4) There is also a growing trend that more independent investors such as long-term equity funds who has a significant stake will wish to participate in the management and have presence on the board, the new rule will inappropriately increase these investors' liquidity risk and eventually impair the growth of the Hong Kong financial market.

5) Under certain circumstances, the inability for major / significant shareholders to trade its securities may give rise to risk of market disruption / disorders for example in case of a possible hostile takeover.

6) In view of the above, members of the Chamber are concerned that the new rule would negatively affect the competitive edge of Hong Kong as a listing venue, and deter companies from seeking listing in Hong Kong and ultimately adversely affect Hong Kong's position as an international financial centre.

7) Regarding the concern about abuse of insider information, members of the Chamber believe existing laws and rules have sufficient safeguard. The statutory requirements governing market conduct and insiders dealing are clearly set out in the Securities and Futures Ordinance. If a director possesses certain price sensitive information, he is by law not allowed to deal in any securities of the company. The imposition of further restriction on the same issue via the Listing Rules would be onerous and inappropriate.

8) Rule 13.09 of the Listing Rules governs the prompt disclosure of information by listed companies. In light of the extensive laws and rules, it is not necessary to further refrain the directors from dealing in the securities of the company for an undue prolonged period.

The Chamber suggests the HKEx reconsiders its decision and resort to imposing obligations on the board of directors to set out internal control procedures to ensure (1) price sensitive information is properly disclosed in accordance with Rule 13.09 and (2) the board of directors shall set up its own "Black out" period which shall form part of the Codes on Corporate Governance Practices.

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