

HKEx LISTING DECISION

Cite as HKEx-LD43-2 (First Quarter of 2005) (Updated in October 2014 and June 2015)

Summary	
Name of Parties	Company A and its subsidiaries (the “Group”) - a Main Board listing applicant Acquired Group – a group of companies acquired by the Group after the track record period
Subject	Whether the inclusion of unaudited financial information of the Acquired Group (comprising the income statement, balance sheet, statement of changes in equity and cash flow statement) in the listing document of Company A should be allowed?
Listing Rules	Rules 11.16; 11.17
Decision	Based on the Exchange’s analysis of the Listing Rules and the material facts of the case, the Exchange decided that Company A should be allowed to include the proposed unaudited financial information of the Acquired Group in its listing document, provided that:- a. the listing document must contain a warning to investors with respect to the unaudited nature of the information by a relevant risk factor; and b. there must exist a mechanism for the subsequent disclosure of the actual audited information of Acquired Group for the relevant period with which the unaudited information of the Acquired Group could be compared.

SUMMARY OF FACTS

1. Company A had applied for listing by way of introduction which involved a distribution in specie of the shares of Company A (the “Shares”) by its parent, an issuer listed on the Main Board, to its existing shareholders. The listing application of Company A did not involve any fundraising.
2. Company A acquired the businesses of a group of companies (the “Acquired Group”) after the Group’s track record period. Although the Acquired Group had suffered a net loss for the six months after the Group’s track record period, the Exchange had agreed that it was inappropriate to combine the results of the

Acquired Group with that of the Group in considering whether the Group met the track record profit requirement under Rule 8.05.

3. In addition to the financial information that was specifically required to be disclosed under the Listing Rules (see Rule 4.04(2)), Company A had proposed to include in its listing document the unaudited financial information of the Acquired Group (including results, balance sheet, statement of changes in equity and cash flow statement) for six months after the Group's track record period. (Updated in June 2015)
4. Company A submitted that the voluntary disclosure of the Acquired Group's unaudited accounts gave investors further information for assessing the performance of the enlarged group. It was not intended to give the Group a better valuation, as the information contained in the Acquired Group's unaudited accounts did not demonstrate a better than expected financial results. Further, the present listing did not involve any fundraising.
5. It was further submitted that the Acquired Group's unaudited accounts had been reviewed by the reporting accountants under Hong Kong Standard on Review Engagements 2410 "Review of Interim Financial Information performed by the Independent Auditor of the Entity" ~~Statement of Auditing Standards 700~~ issued by the Hong Kong Institute of Certified Public Accountants (the "HKICPA") and they had concluded that the basis used for preparing the financial information was consistent with the accounting policies of the Group. (Updated in June 2015)

THE ISSUE RAISED FOR CONSIDERATION

- 6 Whether the inclusion of unaudited financial information of the Acquired Group (comprising the income statement, balance sheet, statement of changes in equity and cash flow statement) in the listing document of Company A should be allowed?

APPLICABLE LISTING RULES OR PRINCIPLE

7. Rule 11.16 of the Listing Rules provides that:

'A listing document ... must not contain reference (general or particular) to future profits ... unless supported by a formal profit forecast. ...

8. Rule 11.17 of the Listing Rules provides that:

'A "profit forecast" ... includes any profit estimate, being any estimate of profits or losses for a financial period which has expired but for which the results have not yet been audited or published.'

THE ANALYSIS

9. The Exchange, in previous precedents, had rejected the inclusion of unaudited profit estimates in prospectuses as this might encourage other companies in the future to include profit forecasts/estimates rather than audited information for stub periods.
10. In the present case, the Exchange interpreted the provisions in the Listing Rules to refer to only profit forecasts/estimates of listed issuers and listing applicants. Unlike the previous cases considered by the Exchange, the present case did not involve a profit forecast/estimate of a listed issuer or listing applicant. This was because the Acquired Group's unaudited accounts would not be consolidated into those of the Group upon listing and therefore would not form part of the results of the Group. Therefore, the Acquired Group's unaudited accounts did not fall within the ambit of the previous decisions.
11. In this regard, the Exchange considered the following factors in deciding whether to allow the inclusion of unaudited information in the present case:
 - a. the level of assurance regarding the reliability of the information to be presented;
 - b. the materiality of such information to investors; and
 - c. would the inclusion of such information be potentially misleading for investors.

Level of Assurance

12. In the present case, the Exchange noted favourably that the reporting accountants had reviewed the Acquired Group's unaudited accounts in accordance with Statement of Auditing Standard 700-Hong Kong Standard on Review Engagements 2410 "Review of Interim Financial Information performed by the Independent Auditor of the Entity" and had concluded that they were prepared on a basis consistent with the accounting policies of the Group. Therefore, the Exchange was satisfied that the level of assurance would not be lower than the comfort given by reporting accountants with respect to a profit forecast prepared in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 500 "Reporting on Profit Forecasts, Statements of Sufficiency of Working Capital and Statements of Indebtedness" issued by the Hong Kong Institute of Certified Public AccountantsHKICPA (Updated in October 2014 and June 2015).
13. The Exchange was satisfied that the directors of Company A had undertaken to take responsibility for the accuracy and completeness of the unaudited information of the Acquired Group on the strength of the due diligence performed and the representations and warranties given by the management of the Acquired Group.
14. Further, Company A assured the Exchange that there would be a mechanism for subsequent disclosure of the actual results of the Acquired Group with which investors would be able to compare the unaudited information of the Acquired

Group. The disclosure would be in accordance with the prevalent auditing standards and comparable to a case where a profit forecast is included.

The materiality of the information

15. The Exchange determined that the information relating to the performance of the Acquired Group was material as it would have an impact on the subsequent market price of the Shares. Furthermore, given that the Acquired Group's unaudited accounts showed that the Acquired Group was trading at a loss, the Exchange acknowledged that it might be difficult for the directors of Company A to address events after the date of Company A's accountants' report if disclosure of such unaudited information of the Acquired Group in the listing document was unavailable.
16. Based on the above analysis, the Exchange determined that it was appropriate that Company A be allowed to include the proposed unaudited Acquired Group's accounts in its listing document, upon satisfaction of certain conditions mentioned below.

Effect of the inclusion

17. In the present case, the Exchange noted favourably that the inclusion of the Acquired Group's unaudited accounts in a separate appendix to the listing document was neither intended to give the Group a better valuation (because the unaudited information of the Acquired Group showed a loss), nor to add to the attractiveness of the offer (there was no fresh offer of Shares in the present case).
18. In reaching its conclusions, the Exchange also determined that had there been facts or circumstances indicating the financial information would directly or indirectly increase the attractiveness of the proposed transaction, it would have required the listing applicant to demonstrate a higher level of assurance on the accuracy and completeness of such information.

THE DECISION

19. Based on the above analysis of the Listing Rules and the material facts mentioned above, the Exchange decided that Company A should be allowed to include the proposed unaudited information of the Acquired Group in a separate appendix to its listing document provided that:-
 - a. the listing document must contain a warning to investors with respect to the unaudited nature of the information by a relevant risk factor; and
 - b. there must exist a mechanism for the subsequent disclosure of the actual audited information of Acquired Group for the relevant period with which the unaudited information of the Acquired Group could be compared.