

Whether the Exchange would grant listing approval for new shares to be issued by a listed issuer upon conversion of convertible notes that could result in the listed issuer's public float falling below the minimum requirement

Parties

- **Company A** – a Main Board issuer
- **Company B** – an investor who agreed to subscribe for new shares and convertible notes to be issued by Company A

Facts

1. Company A proposed to issue certain new shares (**Subscription Shares**) and convertible notes to Company B under a subscription agreement. The convertible notes would be convertible into new shares of Company A (**Conversion Shares**) after the issue date according to the terms of the notes.
2. The proposed issue was conditional on approval of Company A's shareholders –and the Exchange giving listing approval for the Subscription Shares and the Conversion Shares.
3. Upon completion of the subscription agreement, Company B would become a substantial shareholder of Company A, and the public float of Company A's shares would still meet the 25% requirement. However, based on the shareholding structure of Company A at that time, the public float would fall below 25% if Company B exercised its rights to convert some or all of the convertible notes.
4. Company A proposed to undertake to the Exchange that it would take appropriate measures to ensure the compliance with the public float requirement at all times. For example, it would consider placing new shares to independent third parties to maintain a 25% public float as a result of any conversion of the convertible notes, or redeeming some of the convertible notes.
5. Alternatively, Company A proposed to limit the maximum number of Conversion Shares that it might issue to Company B to be 25% of Company A's issued share capital at the time of completion of the subscription agreement.

Relevant Listing Rules

6. Rule 8.08(1)(a) provides that

“at least 25% of the issuer’s total number of issued shares must at all times be held by the public.”

(Rule 8.08(1)(a) was amended on 11 June 2024. See Note below.)

7. Rule 13.32(1) states that

“Issuers shall maintain the minimum percentage of listed securities as prescribed by rule 8.08 at all times in public hands...”

Analysis

8. The public float requirement seeks to ensure an open market in the securities for which listing is sought. The Exchange would not give listing approval for an issue of new shares which would cause or facilitate a breach of the requirement.
9. In this case, the issue of the convertible notes to Company B could possibly result in the public float of Company A’s shares falling below the minimum 25% requirement. The Exchange did not consider that Company A’s undertaking to use reasonable endeavours to meet the requirement would adequately address its concern. Without any concrete arrangements to ensure a minimum 25% public float for Company A upon conversion of the convertible notes, the Exchange was not prepared to give listing approval until the issue was addressed.
10. The Exchange also did not consider the alternative proposal acceptable as it only took into account the shareholding structure of Company A at the time of the completion of the subscription agreement and not the conversion of the notes. It would be possible for Company A to issue Conversion Shares resulting in a breach of minimum public float requirement, as a result of changes to Company A’s share capital (e.g. share repurchase) after the completion of the subscription agreement.
11. To address the Exchange’s concern, Company A and Company B agreed to revise the terms of the convertible notes so that a conversion of the notes could not take place if it would result in Company A failing to meet the minimum public float requirement under the Rules.

Conclusion

12. The Exchange accepted that the action taken by Company A in paragraph 11 above addressed the issue of possible insufficient public float upon completion of the subscription agreement.

Note: Rule 8.08(1)(a) was amended on 11 June 2024 to exclude treasury shares in the calculation of issued shares for the purpose of determining the public float of the issuer. The Rule amendments would not change the analysis and conclusion in this case.