

HKEx LISTING DECISION

Cite as HKEx-LD59-3 (August 2007) (Withdrawn in October 2012; Superseded by GL43-12)

Summary	
Name of Parties	Company A – a Main Board listing applicant Investor A – a member of the sponsor group
Subject	Whether the pre-IPO investment in Company A by Investor A would fulfill the requirement under Listing Rule 2.03(4) that all holders of listed securities are to be treated fairly and equally in a case where: (i) the pre-IPO investment agreement was entered into between Investor A and Company A shortly after filing the formal listing application; (ii) the subscription price for the pre-IPO Investment would represent anywhere from a 7% premium to 15% discount to Company A’s proposed IPO offer price, depending upon the final pricing of the offering; and (iii) the completion of the pre-IPO Investment would not take place until shortly before the prospectus date.
Listing Rule	Listing Rule 2.03(4)
Decision	The Exchange determined that in order to comply with the principle laid down in Listing Rule 2.03(4), the pre-IPO investment should only be allowed to proceed provided that the price for the pre-IPO Investment was not less than the final IPO price of the public offer of Company A’s shares.

SUMMARY OF FACTS

1. This matter arose for decision by the Listing Committee in considering a new listing application. Shortly after filing the formal listing application with the Exchange, Investor A entered into an agreement with Company A to subscribe for certain amount of Company A’s new share (the “pre-IPO Investment”). Upon completion of Company A’s share offering and the pre-IPO Investment, the shareholding to be held by Investor A in Company A would be diluted to 3.75% of Company A’s enlarged issued share capital (assuming over-allotment option not being exercised).
2. Based on the representation of the sponsor and Company A, the Exchange noted the following relevant material facts: -

- a. the completion of the pre-IPO Investment would not take place until shortly before the prospectus date, if not later;
- b. the pricing of the pre-IPO Investment was arrived at after an arm's length negotiation process. Based on the then current offer statistics, the subscription price for the pre-IPO Investment would represent anywhere from a 7% premium to 15% discount to Company A's proposed IPO offer price, depending upon the final pricing of the offering;
- c. Investor A would have no right to subscribe for further shares in Company A; would be subject to a lock-up restriction of 6 months from the date of listing; and would merely be a passive minority shareholder without influence or operational control over Company A; and
- d. relevant disclosure as to the major terms of the pre-IPO Investment had been included in the prospectus.

THE ISSUE RAISED FOR CONSIDERATION

- 3. Whether the pre-IPO Investment in Company A by Investor A would fulfill the requirement under Listing Rule 2.03(4) that all holders of listed securities are to be treated fairly and equally where:
 - (i) the pre-IPO investment agreement was entered into between Investor A and Company A shortly after filing the formal listing application;
 - (ii) the subscription price for the pre-IPO Investment would represent anywhere from a 7% premium to 15% discount to Company A's proposed IPO offer price, depending upon the final pricing of the offering; and
 - (iii) the completion of the pre-IPO Investment would not take place until shortly before the prospectus date.

APPLICABLE LISTING RULES OR PRINCIPLES

- 4. Listing Rule 2.03(4) requires that:

all holders of listed securities are treated fairly and equally.

ANALYSIS

- 5. The Exchange considered that Investor A had not yet assumed a real financial and equity risk for the pre-IPO Investment.
- 6. The Listing Decision HKEx-LD36-1 ("HKEx-LD36-1") stated, among other things, that placings of shares shortly before a listing application should be permitted subject to full disclosure in the prospectus. In light of the fact that

the pre-IPO Investment agreement was signed after the filing of the formal listing application and the completion of such investment would not take place until shortly before the prospectus date, the Exchange considered that HKEx-LD36-1 would not be applicable to this case and such issue could not simply be addressed by way of disclosure.

7. While the Exchange noted that there are no Listing Rules prohibiting two different IPO prices at a listing, it considered that setting different IPO prices, as driven by market forces, was highly unusual. Such practice was only adopted in a few precedent cases of offerings by government owned companies in which the proposed discount was demonstrably in the public interest and the ‘cheaper’ prices were afforded to individual investors on the basis of an objective criterion (e.g., investors with HKID cards). In this present case, the potential discounted price was, however, afforded to a private and commercial entity and no identifiable public interest was involved. The Exchange was of the view that several precedent cases were not comparable to the present case.

DECISION

8. Based on the above analysis and having regard to the material facts, the Exchange determined that the pre-IPO Investment should only be allowed to proceed provided that the price for the pre-IPO Investment was not less than the final IPO price of the public offer of Company A’s shares.