

HKEx LISTING DECISION

Cite as HKEx-LD61-1 (July 2008) (Updated in April 2014)

Summary	
Name of Party	Company A - a Main Board listing applicant and its subsidiaries (collectively the 'Group')
Subject	Whether and under what conditions would Company A be allowed to revise the indicative offer price downwards after issue of the prospectus but before close of the offer?
Listing Rules	Listing Rules 2.03(2); 9.07; 11.13; Paragraph 2 of Practice Note 6; Paragraph 15(2)(c) of Appendix 1A; Section 44A of Companies Ordinance <u>the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (Updated in April 2014)</u>
Decision	<p>The Exchange decided that the proposed change in the indicative offer price constituted material change of circumstances. Accordingly, the Exchange expected Company A to have taken the following steps prior to granting Company A approval to proceed with its listing on the Exchange:</p> <ol style="list-style-type: none">a. Company A should issue a supplemental prospectus updating investors of the change in the indicative offer price together with an update of all financial and other information in connection with such change;b. Company A should extend the period under which the offer was open for acceptance to allow potential investors sufficient time to consider their subscriptions or reconsider their existing subscriptions; andc. Company A should give potential investors who had applied for Company A's shares the right to withdraw their applications given the change in circumstances.

SUMMARY OF FACTS

1. Company A issued a prospectus on Day 1 in connection with its public offer which would close on Day 4.

2. On the same day after issue of the prospectus, Company A notified the Exchange that it proposed to reduce the lower-end of the indicative offer price range by more than 25% (thereby potentially reducing the net proceeds to be received by Company A accordingly), and issue a supplemental prospectus to make the necessary amendments to the prospectus (the “Proposal”). Company A requested the Exchange to grant approval for the publication of the supplemental prospectus and to enable it to proceed with its listing in accordance with its original timetable without extending the offer period or granting a right of withdraw to applicants who had submitted applications for the Company A’s shares.

3. In support of its Proposal, Company A submitted that:

a. Potential investors had been well informed of potential reduction in the offer price range

Relevant disclosure had already been made in the prospectus regarding the global coordinator’s right, with the consent of Company A (for itself and on behalf of the selling shareholders) to reduce the indicative offer price range to below that was stated in the prospectus at any time prior to close of the public offer, and that the applicant who submitted an application for the offer shares prior to close of the public offer would not be allowed to subsequently withdraw such application even if the offer price was reduced. Based on the disclosure in the prospectus, directors of Company A were of the view that Company A would not need to allow prospective investors to withdraw their applications already made by reason of the downward adjustment of the indicative offer price;

b. No material change in the Company’s financial position as a result of the downward adjustment of the offer price range

The Group would continue to have sufficient working capital for its future requirements as disclosed in the prospectus notwithstanding that the downward adjustment of the offer price would have reduced Company A’s entitlement to the net proceeds of the share offer; and

c. Impact on Company A if the listing timetable was to be delayed

The directors of Company A were of the view that the information would not be sufficiently material to justify an extension of the offer period, nor would it likely affect the decision of a reasonable prospective investor in making an investment decision in respect of the shares of Company A.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether and under what conditions would Company A be allowed to revise the indicative offer price downwards after issue of the prospectus but before close of the offer?

APPLICABLE LISTING RULES OR PRINCIPLE

5. Listing Rule 2.03(2) sets out the general principles of the Listing Rules as follows:

The Exchange Listing Rules reflect currently acceptable standards in the market place and are designed to ensure that investors have and can maintain confidence in the market and in particular that:-

...

- (2) the issue and marketing of securities is conducted in a fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer and, in the case of a guaranteed issue, the guarantor and of the securities for which listing is sought;

6. Listing Rule 11.13 requires that:

If at any time after the issue of the listing document or a supplementary listing document as provided for by this rule and before the commencement of dealings in any securities, the issuer becomes aware that:-

- (1) there has been a significant change affecting any matter contained in the listing document; or
- (2) a significant new matter has arisen, the inclusion of information in respect of which would have been required to be in the listing document if it had arisen before the listing document was issued,

the issuer shall, as soon as practicable, submit to the Exchange for its review and, once the Exchange has confirmed that it has no further comments thereon, issue a supplementary listing document giving details of the change or new matter, unless the Exchange agrees otherwise.

For the purpose “significant” means significant for the purpose of making an informed assessment of the matters mentioned in rule 11.07 above.

7. Paragraph 15(2)(c) of Appendix 1A to the Listing Rules states that:

The following information concerning the terms and conditions of the issue and distribution, public and private, of the securities in respect of which the application for listing is made where such issue or distribution is being effected in conjunction with the issue of the listing document or has been effected within the 12 months preceding the issue of the listing document:-

...

(c) the issue price or offer price of each security, stating the nominal value of each security;

8. Listing Rule 9.07 provides that the listing document must not be issued until the Exchange has confirmed to the issuer that it has no further comments thereon.

9. Paragraph 2 of Practice Note 6 of the Listing Rules states that

The Exchange is concerned to ensure that all statements contained in a listing document are strictly adhered to by the issuer and such statements must not be misleading or inaccurate in any way. In this regard, the Exchange places particular importance on the details relating to an offer period set out in listing documents issued in support of an offer of securities. The Exchange considers the details of an offer period to be a material term of the listing document which must be relied upon by all investors and which should remain the same for all investors. Furthermore, in order to ensure that all investors are treated fairly and equally, and so that there is no confusion or uncertainty surrounding the offer period, the offer period set out in the listing document should not normally be revised or extended.

10. Section 44A(1) of ~~Companies Ordinance~~ the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) provides that no allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus issued generally until the beginning of the 3rd day after that on which the prospectus is first so issued or such later time (if any) as may be

specified in the prospectus. The ~~Companies Ordinance~~ Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) refers ‘the beginning of the said 3rd day or such later time’ to as ‘the time of the opening of the subscription lists’. This requirement applies to the issue of supplemental prospectus or replacement prospectus ***(Updated in April 2014)***.

THE ANALYSIS

11. The Listing Rules envisage that the issue and marketing of securities must be conducted in a fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer. Under this principle, the Exchange expects the issuer, sponsor and underwriting syndicate to have conducted a careful price discovery process for the determination of a realistic price or price-range for the IPO which, in turn, is reflective of the valuation and takes into account of the future development of the issuer.
12. The Exchange considered that the proposed revision of share offer price was a material change of circumstances as it would affect other aspects of Company A, including its market capitalisation and use of proceeds; such change of circumstances was likely to be materially adverse from the perspective of prospective investors.
13. In light of the revised price range and the corresponding additional information in the supplemental prospectus, the Exchange considered that the potential investors should be afforded sufficient time to consider their proposed subscriptions or reconsider existing subscriptions. This is consistent with section 44A of the ~~Companies Ordinance~~ Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) which affords the prospective investor at least 3 days after issue of the prospectus or supplemental/replacement prospectus to make an investment decision ***(Updated in April 2014)***.
14. With respect to those applicants who had submitted their applications prior to Company A communicating its decision to the market to revise the indicative offer price downwards, the Exchange considered that such applicants should be provided a right to withdraw their applications. This provision of the right to withdraw is consistent with Proposal 16 of the Consultation Conclusions on the Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance¹ published by the Securities and Futures Commission in September 2006 regarding the proposal to require the issuer of a prospectus to publish a supplemental or replacement prospectus if it becomes aware of a significant change affecting prospectus disclosures and to grant investors a right to withdraw their applications.

¹ Retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with effect from March 2014 (Updated in April 2014).

THE DECISION

15. The Exchange decided that the proposed change in the indicative offer price constituted material change of circumstances. Accordingly, the Exchange expected Company A to have taken the following steps prior to granting Company A approval to proceed with its listing:
 - a. Company A should issue a supplemental prospectus updating investors of the change in the indicative offer price together with an update of all financial and other information in connection with such change;
 - b. Company A should extend the period under which the offer was open for acceptance to allow potential investors sufficient time to consider their subscriptions or reconsider their existing subscriptions; and
 - c. Company A should give potential investors who had applied for Company A's shares the right to withdraw their applications given the change in circumstances.

NOTES TO ISSUERS AND MARKET PRACTITIONERS

Subsequent to the Exchange's decision in respect of Company A's application, Company A announced to abort the original initial public offer. As a result, Company A had not come back with any proposal on how the offer period would be extended or how potential investors would be allowed to withdraw their applications for the purposes of enabling the issue of the supplemental prospectus.

In light of the Exchange's decision in this case, the Exchange wishes to remind issuers, sponsors and their advisers that subsequent amendments to the listing document after issue may, in certain circumstances, trigger, in addition to the obligation to issue a supplemental listing document, the obligation to extend the offer period and/or grant a right of withdraw to applicants who have submitted in applications based on the information in the original listing document in addition to the obligation to issue a supplemental listing document. Issuers, sponsors and their advisers should make advance planning for putting in place appropriate arrangements to ensure that the issue and marketing of securities is conducted in a fair and orderly manner when they become aware of a significant change affecting any of the disclosures in the listing document or a significant new matter arising which would necessitate disclosure in the listing document.