

HKEx LISTING DECISION
Cite as HKEx-LD67-1(April 2009)

(Withdrawn in July 2018; superseded by HKEX-GL98-18)

Summary	
Name of Party	Company A – a Main Board listing applicant and its subsidiaries
Subject	Whether Company A’s name was misleading having regard to the nature of its present and future business as disclosed in the prospectus?
Listing Rule	Rule 2.13
Decision	The Exchange strongly encouraged Company A to consider modifying its name to avoid it being potentially misleading.

SUMMARY OF FACTS

1. Company A’s principal business was in the export trading of certain agricultural produce which may be processed into edible ethanol, animal feed, chemical products and ethanol fuel. Its name originally included the words “New Energy”. However, according to its prospectus the principal use of Company A’s produce in the market where it was sold was alcohol production for food, industrial and surgical applications. Only about a quarter of the produce was processed into ethanol fuel.
2. The draft prospectus did not indicate any future plan or intention to engage in the production of ethanol fuel or other kinds of energy. Only a non-substantial part of its revenue during the track record period was attributed to a customer engaged in ethanol fuel production, although it had lined up long-term supplier contracts with other ethanol fuel producers after the track record period.
3. In response to the Exchange’s comment on the appropriateness of its name, Company A submitted that:
 - a. its name would help investors identify the potential investment opportunity and also help it market the produce to customers in the energy sector;
 - b. its name would be reflective of its future prospects as it envisaged increasing purchase orders from bio-fuel producers. Further, it projected a steep sales increase in the next 12 months since the audited accounts were last made up if it were allowed to retain its present name; and
 - c. accordingly, the Exchange should not interfere with how it named itself.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether Company A's name was misleading having regard to the nature of its present and future business as disclosed in the prospectus?

APPLICABLE LISTING RULES OR PRINCIPLE

5. Rule 2.13 requires, among other things, that the information contained in a prospectus must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not :-
 - (a) omit material facts of an unfavourable nature or fail to accord them with appropriate significance;
 - (b) present favourable possibilities as certain or as more probable than is likely to be the case;...

THE ANALYSIS

Standards of review

6. The Exchange ordinarily does not comment on the name of an applicant, which is essentially a commercial matter. After listing, the decision of how an issuer is named is relegated to its shareholders as a name change involves a change to its constitutional document requiring shareholders' approval.
7. The Exchange's influence over an applicant's name is confined to ensuring that the listing document is not misleading under Rule 2.13. The Exchange's experience is that a name could be misleading. For example, during the technology boom in the late 1990's, it was not uncommon to see applicants incorporating holding shells close to hearing date bearing names with words such as 'High-Tech', 'Bio-Tech', notwithstanding that the technology application adopted by them was at the low-end or that their businesses were only remotely related to those fields. Likewise, as global warming is raising increased international concerns, a trend has emerged for a flurry of companies to brand themselves as 'green'. If 'branding' is not within reasonable bounds, there is a risk of unwarranted market conditioning.
8. Accordingly, the Exchange's focus of review is on ensuring that the description of the applicant's business in the prospectus, including its name, appropriately reflects its present and future business engagements. This requires a careful examination of the circumstances of each applicant, including its history and committed development plan and its level of involvement at different stages.

Precedent Cases

9. The Exchange's practice can be illustrated in the following cases:

Case 1

10. The applicant's name was queried as it included the words 'Solar Technologies'

although its current business focus was still materially on traditional curtain wall installation and its production capacity had not yet been fully utilised for solar-related projects. After considering further submissions, the Exchange decided not to raise further comments. In coming to this decision, the Exchange noted that the prospectus disclosed a future plan of diversification into solar-related projects, allocating a substantial part of the IPO proceeds for that purpose. Further, the applicant agreed to disclose in its annual report the application of the IPO proceeds to solar power-related projects.

Case 2

11. The applicant was a mining operator and its name was descriptive of a mineral it mined but had not yet directly derived a profit from. The Exchange commented that its name would have given the impression that it generated its revenue from sales of this particular mineral, although the prospectus disclosed, at a relatively late stage, that its revenue had been from the sales of the product into which the mineral was processed. While the Exchange concluded that the applicant's name was still appropriate given the nature of its operation and the mineral content of the ore it mined, the Exchange recommended it to revise the prospectus to emphasise which product accounted for its principal source of revenue.

Factual Application

12. The Exchange failed to identify in the prospectus that Company A possessed or intended to acquire any proprietary technology in new energy development to justify the use of its present name. At best, there was only an indirect association (through sales to bio-fuel producers) between Company A's business and the new energy sector.
13. The fact that Company A had not been engaged in the production of energy of any kind and that only a small portion of its revenue had been related to sales to customers engaged in the production of ethanol fuel (notwithstanding that Company A projected a growing trend) would have rendered its name potentially misleading having regard to the nature of the Company A's business as disclosed in the prospectus.

THE DECISION

14. The Exchange strongly encouraged Company A to consider modifying its name to avoid it being potentially misleading.

Note: Company A subsequently changed its name having considered the Exchange's comment.