

HKEx LISTING DECISION

Cite as HKEx-LD41-2 (November 2004) (Withdrawn in July 2015)

[See Main Board Rule Board Rule 4.05A/GEM Rule 7.04A]

Summary	
Category	Listing Decisions Series 41-2 (LD41-2)
Name of Party	Company A and its subsidiaries (the “Group”) - a Main Board listing applicant
Subject	Whether pre-acquisition financial information of the acquired companies was required to be presented in Company A’s prospectus in a case where the Exchange accepted a shorter trading period under substantially the same management under Rule 8.05A?
Listing Rules	Rules 4.04(1); 4.08(3); 8.05(3)(a) and (b); 8.05A
Decision	Pre-acquisition financial information of the acquired companies was required to be presented in Company A’s prospectus to enable investors to form an informed view of the acquired business even if a shorter trading record period under substantially the same management was accepted by the Exchange pursuant to Rule 8.05A.

SUMMARY OF FACTS

1. Company A applied for listing pursuant to Rule 8.05(3) which sets out the market capitalisation/revenue test as an alternative quantitative test for assessing the eligibility of a listing applicant. Company A and its subsidiaries did not have a trading record of three financial years nor did it have management continuity for three financial years. Company A, therefore, applied for a waiver of such requirements pursuant to Rule 8.05A. Based on the facts and circumstances of the case, the Exchange considered that Company A qualified for a waiver under Rule 8.05A.
2. The reason for Company A not being able to meet the three-year trading record under substantially the same management requirement was because several related companies (the “Acquired Group”) were acquired by Company A’s predecessor (the acquisition is referred to as the “Acquisition”) by cash consideration from an independent third party during the first year of the slightly less than three-year trading record of Company A. In other words, the Acquisition involved a change in the ownership and management of and in the Acquired

- Group. Under the applicable accounting standards, the accountants' report of the Group was only permitted to present the results of the Group from the date of the Acquisition. The period presented in the prospectus would be less than three financial years.
3. The Acquired Group, however, was a major subsidiary of Company A and had a trading record of more than three financial years immediately preceding the issue of the prospectus of Company A. The Acquisition would have been classified at the date of Company A's listing application, if Company A were a listed issuer, as a major transaction under any of the percentage ratios as defined under Rule 14.04(9) for classifying notifiable transactions. In connection with the Acquisition, Company A ensured that it received access to audited financial information of the Acquired Group from and after the beginning of three-year trading record of the Group.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether pre-Acquisition financial information of the Acquired Group was required to be presented in Company A's prospectus in a case where the Exchange accepted a shorter trading period under substantially the same management under Rule 8.05A?

APPLICABLE LISTING RULES

5. Rule 4.04(1) provides that the accountants' report must include "*the results of the issuer or, if the issuer is a holding company, the consolidated results of the issuer and its subsidiaries in respect of each of the three financial years immediately preceding the issue of the listing document or such shorter period as may be acceptable to the Exchange (see rules 8.05A, 8.05B and 23.06)*".
6. Rule 4.08(3) states that "*the accountants' report must state that it has been prepared in accordance with the Auditing Guideline – Prospectuses and the reporting accountant (Statement 3.340) issued by the Hong Kong Society of Accountants [now known as Hong Kong Institute of Certified Public Accountants].*"
7. Appendix 3 of Auditing Guideline 3.340, "Prospectus and the Reporting Accountants" issued by the Hong Kong Institute of Certified Public Accountants ("Auditing Guideline 3.340") provides that where an acquisition for cash during the period reported upon is made, "*consideration should also be given to disclosing separately the results of the acquired business for the periods prior to acquisition*".
8. Rule 8.05(3) provides that:-

“To meet the market capitalisation/revenue test, a new applicant must satisfy each of the following, unless otherwise waived by the Exchange under rule 8.05A:

(a) a trading record of less than three financial years;

(b) management continuity for at least the three preceding financial years;..”

9. Rule 8.05A provides that *“[I]n the case of the market capitalisation/revenue test, the Exchange will accept a shorter trading period under substantially the same management as required under rule 8.05(3)(a) and (b) if the new applicant is able to demonstrate to the satisfaction of the Exchange the following...”*.

ANALYSIS

10. The Exchange ordinarily interprets Rule 8.05 as an eligibility standard, while requirements of Chapter 4 of the Listing Rules relate to the contents of accountants’ report. The requirements of Chapter 4 are therefore considered separately. Under Rule 4.08(3) and Appendix 3 of Auditing Guideline 3.340, where historical accounts of the applicant and its subsidiaries for the three financial years are available, they should be presented. When planning for proposed acquisitions, companies anticipating a listing are expected to organize the acquisitions to ensure access to necessary financial information as in this case.
11. Based on the facts and circumstances of the case and the Exchange’s analysis of the Main Board Listing Rules, in particular, in view of the fact that the Acquired Group was a major subsidiary of Company A and the size of the Acquisition was material, the Exchange considered that the pre-Acquisition financial information of the Acquired Group was required to be presented in Company A’s prospectus even if a shorter trading record period under substantially the same management was accepted by the Exchange pursuant to Rule 8.05A.
12. As regards the manner of presentation of such financial information, the Exchange decided that a separate accountants’ report on the Acquired Group for the period commencing from and after the beginning of the three-year trading record of the Group to the date of Acquisition was required to be included in the prospectus as a separate appendix, in addition to the financial information showing the shortened trading record period of the Group.

DECISION

13. In view of the above, considering the grant of the Rule 8.05A waiver to Company A and the inclusion of the pre-Acquisition results of the Acquired Group in Company A’s prospectus in addition to the financial information of the Group in

respect of the shortened trading record period, the Exchange considered the financial periods reported on in the Accountants' Report of the Group acceptable and in accordance with Rule 4.04.