

HKEx LISTING DECISION

Cite as HKEx-LD47-5 (July 2005) (updated in October 2019 (for cross-references to amended Rules))

[Streamlined and incorporated into the Guide for New Listing Applicants in January 2024]

Summary	
Name of Party	Company A – a Main Board listed issuer and a deemed new listing applicant under Rule 14.54(1) and its subsidiaries ('Group')
Subject	Whether the requirements for public float and free float under Listing Rules 8.08(2) and 8.08(3) could be satisfied based on an estimate of the number of shareholders and shareholder groupings at the time of listing?
Listing Rules	Listing Rules 8.08(2) and 8.08 (3)
Decision	In the case of a reverse takeover and deemed new listing of a listed company's shares, for purposes of considering an approval in principle for listing, the Exchange determined that an estimate of the number of shareholders provided by the sponsor was acceptable to demonstrate compliance with Listing Rule 8.08, provided that the sponsor and Company A would demonstrate actual compliance with Listing Rules 8.08(2) and 8.08(3) to the satisfaction of the Exchange at the time of listing.

SUMMARY OF FACTS

1. Company A entered into an agreement with its controlling shareholder ('Parentco') for the acquisition of certain companies held by Parentco. The acquisition constituted a very substantial acquisition and connected transaction. Parentco first obtained control of Company A less than 24 months prior to the date of the acquisition agreement. As such, the acquisition was treated as a reverse takeover under Listing Rule 14.06B and a deemed new listing of Company A's shares. The transaction required the approval of independent shareholders of Company A in a special general meeting. A circular in the form of a listing document was required under the Listing Rules.
2. Company A would neither issue new shares as consideration for the acquisition nor contemplate any issue of new shares before completion of the acquisition.

3. For the purposes of demonstrating that Company A would be able to satisfy the requirements under Listing Rules 8.08(2) and (3) at the time of listing (that is, upon completion of the acquisition), the sponsor submitted as follows:

Compliance with Listing Rule 8.08(2)

- a. according to the list of shareholders as at the latest practicable date prior to the listing hearing provided by the share registrar (the 'Share Registrar Report') and the shareholding report provided by the Central Clearing and Settlement System operated by the Hong Kong Securities Clearing Company Limited (the 'CCASS Report'), Company A had at the material time an aggregate of more than 200 registered shareholders;
- b. of the shareholders listed in the CCASS Report, more than 100 were banks and brokerage houses (the 'Financial Institutions') likely to be holding shares in Company A on behalf of their respective clients;
- c. based on the assumptions made by the directors that each of the Financial Institutions would on average hold shares in Company A on behalf of not less than 2 beneficial owners who were not shareholders under the Share Registrar Report, Company A would be estimated to have not less than 350 shareholders. The sponsor confirmed that the above assumptions made by the directors of Company A in arriving at the total number of shareholders were reasonable;

Compliance with Listing Rule 8.08(3)

- d. according to the Share Registrar Report and the CCASS Report, the largest three registered shareholders of the Company were not connected persons of Company A;
- e. apart from the interest held by Parentco (holding over 70% as at latest practicable date) and certain directors of the Group, Company A had not received any notice of movement of shareholding interest which was required to be disclosed under Part XV of the Securities and Futures Ordinance; and
- f. based on the total number of shares held by the public shortly prior to the listing hearing, the maximum percentage of public shares held by the top three shareholders of Company A would be approximately 40%.

THE ISSUE RAISED FOR CONSIDERATION

4. Whether the requirements for public float and free float under Listing Rules 8.08(2) and 8.08(3) could be satisfied based on an estimate of the number of shareholders and shareholder groupings at the time of listing?

APPLICABLE LISTING RULES OR PRINCIPLES

5. Listing Rule 8.08(2) requires that:

‘at the time of listing there must be an adequate spread of holders of the securities to be listed. The number will depend on the size and nature of the issue, but in all cases there must be a minimum of 300 shareholders.’

6. Listing Rule 8.08(3) requires that:

‘not more than 50% of the securities in public hands at the time of listing can be beneficially owned by the three largest public shareholders.’

THE ANALYSIS

7. The Exchange considers that compliance with Listing Rules 8.08(2) and 8.08(3) are questions of fact and must be demonstrated by facts, not assumptions.
8. In the present case, the Exchange noted that the estimated number of shareholders and shareholder groupings provided by Company A at the time of listing was based on objective interpretation of available data. However, the Exchange required Company A and its sponsor to demonstrate that Company A had put in place procedures and checks by which actual compliance of Listing Rules 8.08(2) and 8.08 (3) could be demonstrated at the time of listing.
9. In this regard, Company A further submitted that in the event that the number of registered shareholders of Company A as shown in the list of shareholders at the date of completion of the acquisition provided by the Share Registrar Report and/or CCASS was less than 300, Company A would send out a letter to each of the brokerage firms listed on the CCASS Report, requesting them to provide the following information to Company A:
 - the number of Shares held by them; and
 - the full list of clients on whose behalf they hold the Shares.
10. The sponsor considered that, based on the replies to be received from the brokerage firms, Company A would be able to produce a sufficiently detailed list

of shareholders for the purposes of demonstrating compliance with the requirements of Listing Rules 8.08(2) and 8.08 (3).

THE DECISION

11. In the case of a reverse takeover and deemed new listing of listed companies shares, for purposes of considering an approval in principle for listing, the Exchange determined that an estimate of the number of shareholders provided by the sponsor was acceptable to demonstrate compliance with Listing Rule 8.08, provided that the sponsor and Company A would demonstrate actual compliance with Listing Rules 8.08(2) and 8.08(3) to the satisfaction of the Exchange at the time of listing.