HKEx LISTING DECISION
Cite as HKEx-LD60-1 (May 2008)

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

Summary	
Name of Party	Company A - a Main Board listing applicant
Subject	Under what circumstances would the Exchange consider modifying the minimum public subscription requirement under Practice Note 18 of the Listing Rules ('PN 18 Waiver') in an IPO?
Listing Rules	Paragraphs 4.1 and 4.2 of Practice Note 18 of the Listing Rules (the 'PN 18')
Decision	The Exchange concluded that: a. the proposed initial allocation of 15% of the shares offered in the IPO to the Hong Kong public subscription tranche would enable Company A to offer more shares to the retail public at the initial stage as compared with the 10% initial allocation under PN18 or the 5% initial allocation permitted under a typical PN18 Waiver considered by the Exchange; b. the proposed offering structure had earlier oversubscription clawback-trigger multiples as compared with those under PN18 or those under a typical PN18 Waiver considered by the Exchange; c. in all cases, the number of shares allocated to Hong Kong retail investors under the proposed offering structure would be larger than or equal to the number of shares (depending on the size of the offering) permitted under a typical PN18 Waiver considered by the Exchange; and d. the trigger points were easy to understand and implement. On the above basis, the Exchange granted a PN 18 Waiver to Company A. The Exchange assesses every application for a waiver or modification of the Listing Rules on a case by case basis. The present decision of the Exchange was based on the specific facts and circumstances of the case and should not be treated as a binding precedent for future cases.

SUMMARY OF FACTS

1. Company A proposed to list its shares by way of an international placing tranche and a Hong Kong public subscription tranche.

2. Company A applied for a modification of the application of PN18 (i.e. a PN 18 Waiver) on the basis of the following proposed offering structure:

   a. at the time Company A applied for a PN 18 Waiver, the proposed total offering size was expected to be less than HK$10 billion; and

   b. the clawback structure for allocation of shares to the public subscription tranche would be revised to:

      (i) 15% initially;

      (ii) 17.5% if the public subscription tranche was oversubscribed between 10 and less than 20 times;

      (iii) 20% if the public subscription tranche was oversubscribed between 20 and less than 40 times, and

      (iv) a percentage range from not lower than 20% to not higher than 40% if the public subscription tranche was oversubscribed by 40 or more times. The applicable allocation percentage to the pubic subscription tranche would be fixed according to a sliding scale depending on the size of the actual offer.

3. The proposed offering structure mentioned in paragraph 2 was designed with regard to the then Exchange's practices in granting PN 18 Waivers which is more specifically discussed in paragraph 13 below ('Typical PN 18 Waiver').

4. Company A submitted that it would ensure that the proposed offering structure would at all times afford local retail investors a larger number of shares than would have been the case under a Typical PN 18 Waiver.

5. Company A's proposed offering structure as compared with (a) the clawback requirement under PN 18; and (b) a Typical PN 18 Waiver is shown in table format as follows:

	Offer size (HK$ billion)	Public allocation % *versus* the number of times (x) of oversubscription in the public subscription			
		Initial	15x to <50x	50x to <100x	>100x
(a) PN18 requirements	Not specified	10%	30%	40%	50%
(b)Typical PN 18 Waiver	10	5%	7.5%	10%	20%
Proposed offering structure of Company A	**Less than 10**	**15%**	*** ≥10x: 17.5%; ≥20x: 20%; ≥40x: a range from not lower than 20% to not higher than 40%**		

* *See paragraph 2b for proposed trigger points for oversubscription clawback*

THE ISSUE RAISED FOR CONSIDERATION

6. Under what circumstances would the Exchange consider modifying the minimum public subscription requirement under Practice Note 18 of the Listing Rules ('PN 18 Waiver') in an IPO?

APPLICABLE LISTING RULES OR PRINCIPLE

7. Paragraph 4.1 of Practice Note 18 states that:

> Issuers are reminded that in accordance with paragraph 7.10 of the Exchange Listing Rules, the Exchange may not permit a new applicant to be listed by way of placing if there is likely to be significant public demand for the securities. A key factor the Exchange will consider in reaching such a determination is the size of the offering.

8. Paragraph 4.2 of Practice Note 18 of the Listing Rules:-

> Where an IPO includes both a placing tranche and a public subscription tranche, the minimum allocation of shares to the subscription tranche shall be as follows:
>
> - an initial allocation of 10% of the shares offered in the IPO;
> - a clawback mechanism that increases the number of shares to 30% when the total demand for shares in the subscription tranche is 15 times but less than 50 times the initial allocation;
> - a clawback mechanism that increases the number of shares to 40% when the total demand for shares in the subscription tranche is 50 times but less than 100 times the initial allocation; and
> - a clawback mechanism that increases the number of shares to 50% when the total demand for shares in the subscription tranche is 100 times or more the initial allocation.
>
> Shares may be transferred from the subscription tranche to the placing tranche where there is insufficient demand in the subscription tranche to take up the initial allocation.

THE ANALYSIS

Background

9. In view of a significant decrease in the size of subscription tranches from 1994 and a number of IPOs significantly oversubscribed in the bull market in 1996/1997, the Securities and Futures Commission (the ‘SFC’) and the Exchange jointly issued a Consultation Paper on Offer Mechanisms on 25 June 1997. That Consultation Paper sought views on, among others, the minimum size for the public subscription tranche and the allocation of shares between the public subscription tranche and the placing tranche.

10. Commentators to the Consultation Paper were supportive of the use of a clawback mechanism to increase the size of the public subscription tranche where such tranche is oversubscribed. However, commentators also suggested that the clawback levels should depend on the total value of the IPOs and there was a wide divergence of views as to what would constitute a large IPO.

11. In response to the comments the SFC and the Exchange concluded in their Offer Mechanisms Consultation Conclusion issued in February 1998 that it would be more appropriate to have a single structure providing a benchmark minimum allocation to the subscription trance for all IPOs than to have a scaled structure based on size of the IPO. Further, the Exchange would consider allowing a smaller allocation to the subscription tranche than the benchmark formula and would treat the size of an IPO as a factor that may justify a deviation from the benchmark[1].

12. In mid 1998, the Exchange introduced PN 18 into the Listing Rules to reflect the above recommendations. Since the introduction of PN 18, the Exchange has, upon applications, granted PN 18 Waivers with regard to the applicants' initial public offerings. One key consideration for granting such modifications was the size of the relevant offer under consideration. This approach is consistent with the policy position reached at the Offer Mechanisms Consultation Conclusion.

13. In October 2005, the Exchange reviewed the application of the clawback mechanism under PN 18. The Exchange noted that the policy consideration underlying PN 18 is to balance between ensuring a sufficient supply of shares to satisfy the demand of Hong Kong retail investors at IPOs and allowing issuers and underwriters a sufficient degree of commercial liberty to decide on their offer structures. Taking into consideration the then practices for granting PN 18 Waivers, the Exchange generalised certain typical parameters underlying such waivers, i.e. Typical PN 18 Waiver, as follows:

    a. the size of an issuer's total offering (including any over-allotment option or sale of existing shares by shareholders) should be big. It was noted that the majority of the previous applications for PN 18 Waivers had been for offerings with a size of over HK$10 billion; and

    b. where the size of offering was considered sufficiently big to warrant a modification of the PN 18 requirements, the following trigger points for oversubscription clawback, which had formed the basis of the majority of applications for PN 18 Waivers, had been accepted:-

	Number of times (x) of oversubscription in the public subscription tranche			
	Initial	15x to <50x	50x to <100x	>100x
Minimum share allocation % to public subscription tranche	5%	7.5%	10 %	20%

1 Paragraph 7 of the Offer Mechanisms Consultation Conclusion

Current Case

14. The Exchange noted that Company A's proposed offering structure deviated from the previous considerations for granting PN 18 Waivers in that:

    a. the proposed offering size was less than the minimum offering size against which the Exchange had ever granted a PN 18 Waiver; and

    b. the initial allocation level and clawback percentages deviated from the typical parameters under a Typical PN 18 Waiver.

15. The Exchange also made the following observations:

    a. the HK$10 billion benchmark for granting a Typical PN 18 Waiver had intended only to be a reference point for consideration and not an absolute condition; and

    b. the Exchange noted that a flexible policy on the clawback requirements under PN 18 in warranted cases would allow issuers and their sponsors to more effectively tailor the offering in order to accommodate demands from different pools of investors.

16. After taking account the then applicable practices and the facts and circumstances of Company A's case, the Exchange was of the view that:

    a. in light of the fast-moving market conditions, it would be impractical for the Exchange for the time being to fix all the parameters, including the minimum and maximum percentages of shares to be allocated to the public subscription tranche, and

    b. in order to provide maximum flexibility to issuers to determine its own offering mechanism, the Exchange considered that it was not appropriate to set a fixed value for the purposes of determining the trigger points for oversubscription clawback.

17. The Exchange was minded to give the following guidelines to Company A with respect to its stance on granting PN 18 Waivers:

    a. <u>Due regard must be had to the interest of local investors</u> – when finalising the offering mechanism, the underwriters and listing applicants must give due regard to the interests of Hong Kong retail investors, given that it was anticipated that there would be significant public demand for the applicant's securities.

    b. <u>Availability of earlier trigger points for oversubscription clawback</u> – the clawback mechanism should be brought in as early as possible, i.e. the trigger multiples for oversubscription clawback should be as low as possible.

c. Availability of more share allocations to local retail investors than a Typical 18 Waiver – the number of shares that Hong Kong retail investors would obtain under the actual offering structure should not be less than the number of shares that they would have got under a Typical PN 18 Waiver.

d. Understandability- the trigger points for oversubscription clawback should be easy to implement and easy for an average retail investor to understand.

THE DECISION

18. Based on the above analysis and the specific facts of the case, the Exchange concluded that:

    a. the proposed initial allocation of 15% of the shares offered to the Hong Kong public subscription tranche would enable Company A to offer more shares to the retail public at the initial stage as compared with the 10% initial allocation under PN18 or the 5% initial allocation permitted under a Typical PN18 Waiver;

    b. the proposed offering structure had earlier oversubscription clawback-trigger multiples as compared with those under PN18 or those under a Typical PN18 Waiver (1st trigger:10x vs 15x; 2nd trigger 20x vs 50x; 3rd trigger: 40x vs 100x);

    c. in all cases, the number of shares allocated to Hong Kong retail investors under the proposed offering structure would be larger than or equal to the number of shares (depending on the size of the offering) permitted under a Typical PN18 Waiver; and

    d. the trigger points were easy to understand and implement.

19. On the basis of the particular features of the proposed offering structure, the Exchange granted a PN18 Waiver to Company A.

20. The Exchange assesses every application for a waiver or modification of the Listing Rules on a case by case basis. The present decision of the Exchange was based on the specific facts and circumstances of Company A's case and should not be treated as a precedent for future cases.