

HKEx LISTING DECISION

HKEx-LD18-2011 **(Withdrawn in October 2020)**

[This Listing Decision is superseded by the Rule amendments to Note 1 to Rule 17.03(3) in relation to share option scheme limit of a spin-off subsidiary of a listed issuer. The amended Rule became effective on 1 October 2020.]

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| Parties | Company A – a Main Board issuer Subsidiary B – a subsidiary of Company A, and a new applicant for listing on the Main Board |
| Issue | For the proposed share option scheme of Subsidiary B to be effective after listing, whether the Exchange would grant a waiver to allow the “10 per cent limit” be calculated based on Subsidiary B’s total number of shares in issue at the time of its new listing instead of the date of Company A’s general meeting to approve the scheme |
| Listing Rules | Main Board Rule 17.03(3) – Note (1) |
| Decision | The Exchange granted the waiver |

FACTS

1. Company A proposed to spin off Subsidiary B for listing on the Main Board by way of a public offer and placing of new shares.
2. Subsidiary B would adopt a share option scheme under Chapter 17 of the Rules for granting options over its new shares after listing. The scheme would be conditional on listing of Subsidiary B on the Main Board.
3. As Subsidiary B was a subsidiary of Company A, the share option scheme required approval of Company A’s shareholders in a general meeting (the “EGM”). Under Note (1) to Rule 17.03(3) (the “Note”), the total number of new shares that may be issued by Subsidiary B upon exercise of all options to be granted under the scheme must not exceed 10 per cent of its shares in issue at the date of approval of the scheme, i.e. the EGM date.
4. Company A submitted that it would be unduly burdensome and impractical to set a 10 per cent limit for the scheme as required by the Note because Subsidiary B’s capital reorganisation and initial public offering had yet to complete and it had only one share in issue at the proposed EGM date. Company A therefore sought a waiver from the Note requirement and proposed to set the 10 per cent limit based

on Subsidiary B's shares in issue at the time of new listing instead of the EGM date.

APPLICABLE LISTING RULES

5. Rule 17.01(1) states that:

The following provisions apply, with appropriate modifications, to all schemes involving the grant by a listed issuer or any of its subsidiaries of options over new shares or ... to, or for the benefit of, specified participants of such schemes ...

6. Rule 17.02(1)(a) states that:

The scheme of a listed issuer or any of its subsidiaries must be approved by shareholders of the listed issuer in general meeting. ...

7. Rule 17.03 states that the scheme document must include the following provisions and/or provisions as to the following (as the case may be):

...

- (3) the total number of securities which may be issued upon exercise of all options to be granted under the scheme, ...

Notes: (1) The total number of securities which may be issued upon exercise of all options to be granted under the scheme and any other schemes must not in aggregate exceed 10% of the relevant class of securities of the listed issuer (or the subsidiary) in issue as at the date of approval of the scheme. ...

ANALYSIS

8. The Exchange agreed to waive the Note requirement because:

- The scheme would be effective only upon listing of Subsidiary B. The proposal to calculate the 10 per cent limit based on Subsidiary B's total number of shares in issue at the time of new listing was in line with the rationale of the Note.
- The scheme, including the limit on the options to be granted, would be subject to approval of Company A's shareholders.

CONCLUSION

9. The Exchange considered it appropriate to grant the waiver.