

HKEx LISTING DECISION

Cite as HKEx-LD39-3 (August 2004) (Updated in September 2010)

[Withdrawn in April 2019; Superseded by HKEX-GL45-12]

Summary	
Name of Party	Company A - a Main Board listing applicant
Subject	Whether Company A could publish a prospectus in which the latest financial period reported on by the reporting accountants ended more than six months before the date of the prospectus in light of a revised hearing date established by the Exchange
Listing Rules	Rule 8.06; Rule 9.04
Decision	The waiver application of Company A for relief from the requirements of Rule 8.06 was rejected.

Summary of Facts

Company A applied for a waiver of Rule 8.06 pursuant to which the latest financial period reported on by the reporting accountants in Company A's prospectus must not have ended more than six months from the date of its prospectus.

The Exchange required Company A to revise its hearing date pursuant to Rule 9.04, which revision resulted in a consequent revision to Company A's listing time table. Based on the revised time table, Company A's prospectus would be made available to the public 6 days after the expiry of the 6-month period from the end of the latest audited financial period that was reported on in its prospectus.

Question Presented

Should Company A be granted a waiver of Rule 8.06 in light of the revised hearing date established by the Exchange?

Applicable Listing Rules

Rule 8.06 provides that:-

“In the case of a new applicant the latest financial period reported on by the reporting accountants must not have ended more than six months before the date of the listing documents.”

Rule 9.04 provides that:-

“In order to maintain an orderly new issues market the Exchange reserves the right to refuse a booking¹ or to change the time table.”

Analysis

Pursuant to Rule 9.04 the Exchange has the right to refuse a booking¹ or to change the time table in order to maintain an orderly new issues market. Given that the Exchange is required to process a significant number of listing applications, it must in some circumstances prioritise the hearing dates for the listing applications in order to appropriately allocate its resources. The Exchange will consider, amongst other criteria, the age of the applications when determining the order in which the cases are to be considered by the Listing Committee.

It was not disputed that Company A had not intentionally delayed its listing application and had responded promptly to the Exchange’s requests for information. However, the Exchange considered that it was reasonable to expect Company A to foresee that changes in a proposed listing time table are possible which, in some circumstances, would cause its financial information in the prospectus to be more than 6 months old as of the date of the prospectus.

The Exchange also considered that any waiver of Rule 8.06 should only be granted in exceptional circumstances. When considering the waiver application of Company A, the Exchange took into consideration that Company A’s listing application was relatively new as compared to the other applications that the Exchange was considering at the material time and the Exchange had delayed the hearing of Company A’s application by the Listing Committee by one week from the originally proposed time table. However, the Exchange did not consider, based on the facts of the case, that there were exceptional circumstances warranting a grant of a Rule 8.06 waiver to Company A.

Decision

Based on the facts and circumstances of the case and the Exchange’s analysis of Rule 8.06, the waiver application of Company A for relief from the requirements of Rule 8.06 was rejected.

Note:

1. *The term “booking” has been replaced by “listing application” after the rule amendments in November 2009. (Added in September 2010)*