

**Listing Decisions Series 4-3 - Rule 14.07(3) - A very substantial acquisition resulting in the Exchange treating it as a new listing application (July 1999) (Withdrawn in September 2009)**

***[This Listing Decision is no longer applicable after the rule amendments in March 2004 to change the definition of "very substantial acquisition" and introduce requirements for reverse takeovers in Chapter 14 of Main Board Rules.]***

Summary	
Name of Parties	Company A - a listed company Company B - an independent third party Company C - a private company held by Company B Company D - a private company held by Company C
Subject	Whether a very substantial acquisition by Company A should result in it being treated as a new listing applicant
Listing Rule	Rule 14.07(3)
Decision	Company A should be treated as a new listing applicant

**Summary of Facts**

Company A intended to enter into an acquisition agreement with Company B. The assets to be acquired were 100% of Company C which in turn held a 37% interest in Company D and the acquisition was to be satisfied by the issue of new shares in Company A to Company B. The profit test and issued equity test both resulted in percentages greater than 100%, thereby constituting the transaction a very substantial acquisition for Company A.

As consideration for the acquisition, Company A would issue new shares to Company B representing approximately 53% of its enlarged issued share capital, resulting in a material change in control and a significant change in the composition of its board of directors for the purpose of Rule 14.07 (3)(e) and (f).

The reason for the acquisition was to broaden the range of products and customer base of the merged group, thereby increasing profitability.

**Shareholding structure**

\*Related to the directors of Company A (and their family)

**Analysis**

Rule 14.07(3) provides that, unless certain conditions are satisfied, the issuer will be treated as if it were a new listing applicant. The conditions are:—

"(a)	the business, company or companies to be acquired is not or are not substantially larger than the issuer;
(b)	the business, company or companies to be acquired is or are in a similar line of business to the issuer
(c)	there is no intention to make a major change in the business of the issuer after the acquisition;
(d)	the enlarged group is suitable for listing;
(e)	there will be no significant change in the composition of the board of directors; and
(f)	there will be no material change in control of the issuer or the persons who control the composition of a majority of the board of directors."

The Exchange's analysis was as follows:

(a)	Based on the "4 tests" for the acquisition, the percentage under the assets test was 86.9% and the percentage under the consideration test was 80.1%. The percentages under the profit test and issued equity test were both greater than 112%. The Exchange's view was that the businesses of Company C and Company D taken together were not substantially larger than that of Company A.
(b)	Company C was principally engaged in the manufacture and export of jacket, coats, sportswear and suits. Company D was principally engaged in the manufacture and export of ladies' suits, dresses, jackets and sportswear. Both companies had main markets in the USA and Europe. On that basis, Company C and Company D were principally engaged in the manufacture and trading of garments. As such, the businesses to be acquired were in a similar line of business to that of Company A.
(c)	There was no intention to make any major change in the business of Company A after the acquisition.
(d)	The Exchange was of the view that the enlarged group was suitable for listing. In particular, the combined group comprising Company C and Company D appeared to meet the listing requirements of Chapter 8 of the Listing Rules.
(e)	There would be a significant change in the composition of the board of directors, as the issue of shares to Company B would result in Company B appointing six new directors on the board of Company A.
(f)	There would be a material change in control of Company A, as the consideration shares would represent approximately 53% of the enlarged issued share capital of Company A.

### Decision

As the acquisition would result in a change in control of Company A, the conditions set out in (e) and (f) of Rule 14.07(3) could not be satisfied and Company A was to be treated as a new listing applicant.