

In a reverse takeover where the listed issuer was deemed to be a new listing applicant, whether the minimum public float requirement could be satisfied by placing of new shares and/or existing shares by the listed issuer and/or its controlling shareholder prior to the completion of the transaction

Facts

1. A Main Board listed issuer and a deemed new listing applicant under Listing Rule 8.21C (**Company A**) entered into an agreement with its controlling shareholder (**Parentco**) for the acquisition of certain target companies held by Parentco (**asset injection transaction**). As the asset injection transaction constituted a very substantial acquisition involving a change in control of Company A, it was treated as a reverse takeover transaction under the Listing Rules. Consequently, the asset injection transaction was deemed a new listing of Company A's shares pursuant to Listing Rule 8.21C. It follows that the asset injection transaction required the issue to shareholders of Company A a circular in the form of a listing document and the transaction required the approval of independent shareholders of Company A in a special general meeting.
2. In order to maintain the minimum public float requirement upon completion of the asset injection transaction, Company A and Parentco proposed the following three options:-
 - Option 1 – Parentco placing existing shares;
 - Option 2 – Company A placing new shares;
 - Option 3 – A combination of placing existing and new shares by Parentco and Company A.

Relevant Listing Rules

3. Listing Rule 7.11 provides that:

'The Exchange may be prepared to allow preliminary arrangements and placings to be made to dispose of securities before the start of dealings where necessary to comply with the requirement in rule 8.08(1) that a minimum prescribed percentage of any class of listed securities must at all times be held by the public.'

4. Listing Rule 8.08(1) provides that:

‘There must be an open market in the securities for which listing is sought. This will normally mean that: –

- (1) (a) *at least 25% of the issuer’s total issued share capital must at all times be held by the public...’*

(Listing Rule 8.08(1)(a) was amended on 11 June 2024. See Note below.)

5. Listing Rule 8.21C provides that:

‘Without prejudice to the generality of other applicable provisions of the Exchange Listing Rules, a listed issuer that is treated as if it were a new applicant must meet all the basis conditions set out in this Chapter 8, unless otherwise waived by the Exchange. In particular, where there are assets to be injected into or acquired by the listed issuer, the assets to be injected or acquired or the enlarged group must meet the requirements under rule 8.05, and the enlarged group must meet all the other basic conditions set out in this Chapter 8. In cases of doubt, issuers and advisers should consult the Exchange at an early stage.’

6. Listing Rule 10.07(1)(a) provides that a person or group of persons shown by the listing document issued at the time of the issuer’s application for listing to be controlling shareholders of the issuer shall not dispose of shares in the issuer *‘in the period commencing on the date by reference to which disclosure of the shareholding of the controlling shareholders is made in the listing document and ending on the date which is 6 months from the date on which dealings in the securities of a new applicant commence on the Exchange’*.

Analysis

Public float requirement under Listing Rule 8.08

7. The Exchange stated in paragraph 118 of the *Consultation Conclusions on Proposed Amendments to the Listing Rules relating to Initial Listing and Continuing Listing Eligibility* issued in January 2004 (**Consultation Conclusions**) that with regard to the treatment of new listing applications arising from reverse takeover transactions, and in particular, with regard to asset injections, the same set of initial listing eligibility criteria should be consistently and fairly applied in order to ensure a level playing field for all listing applicants seeking a listing on the Exchange.
8. The Exchange concluded in paragraph 123 of the *Consultation Conclusions* that the Main Board Listing Rules should be amended such that in a case of “reverse takeover” transaction including asset injection in a rescue situation, the enlarged group (or where appropriate, the NewCo, or assets to be injected) would be required to comply with the initial listing eligibility criteria. This would mean that the enlarged group of the existing issuer, or the NewCo, must meet the public float requirements and the spread of shareholders requirements under Listing Rule 8.08.
9. Pursuant to the *Consultation Conclusions*, Listing Rule 8.21C was adopted and took effect on 31 March 2004.

10. In light of its recent statements in the Consultation Conclusions, the Exchange ordinarily will not entertain a proposal to waive the requirements of Rule 8.08 to allow time for the restoration of public float after the completion of a deemed new listing transaction. Accordingly, the Exchange required strict compliance with Listing Rule 8.08 in this case. The Exchange would regard the date of completion of the asset injection transaction as the date of the deemed new listing of the shares of Company A. Consequently, Company A was required to demonstrate to the Exchange that the requirements under Listing Rule 8.08 would be satisfied on or before the completion of the asset injection transaction.

Consequential waiver of Listing Rule 10.07

11. In the event of placings under proposed Option 1 and Option 3 mentioned in paragraph 2 above, Listing Rule 10.07(1) would operate to prohibit Parentco from disposing of Company A's shares within the prescribed restricted period. Therefore, the Exchange was asked to consider a waiver of Listing Rule 10.07(1) to afford Company A greater flexibility when acting to comply with Listing Rule 8.08.
12. Listing Rule 7.11 provides that the Exchange may be prepared to allow preliminary arrangements and placings to be made to dispose of shares of an issuer before the start of dealings where necessary to comply with the requirements of Listing Rule 8.08(1). The Exchange noted that the proposed placing arrangements were consistent with the spirit of Listing Rule 7.11. However, the Exchange also noted that one of the purposes of Listing Rule 10.07 is intended to ensure that controlling shareholders are committed to an issuer during its initial stage of listing, as a means to ensure the protection of investors.
13. In the present case, the Exchange noted that the proposed placings formed part of the asset injection transaction. This conferred sufficient protection on the shareholders of Company A as the asset injection transaction would be subject to approval by independent shareholders. The proposed placing arrangements would also be disclosed in Company A's circular to the shareholders prior to the special general meeting. In view of the above safeguards, the Exchange concluded that it was appropriate to grant a waiver of Listing Rule 10.07 for the purpose of facilitating the placings by Parentco under the above proposed Option 1 or Option 3.

Conclusion

14. Based on the above facts and circumstances and the Exchange's analysis of the Listing Rules, the Exchange determined that:-
 - a. the proposed placing arrangements by the Company and/or Parentco to maintain the minimum public float under Listing Rule 8.08 before completion of the aAsset injection were arrangements acceptable to the Exchange;
 - b. the Exchange would grant a waiver of Listing Rule 10.07 so that Parentco, a controlling shareholder, would be able to place down its shares as contemplated under the proposed placing arrangements within the restricted period.

Note: Listing Rule 8.08(1)(a) was amended on 11 June 2024 to exclude treasury shares in the

calculation of issued shares for the purpose of determining the public float of the issuer. The Listing Rule amendments would not change the analysis and conclusion in this case.