Listing Decisions Series 7-1 - Rules 14.09 and 14.25(1) - Major and connected transaction (disposal of Company A's entire interest in Company B) (October 1999) (Withdrawn in September 2009)

[This Listing Decision is no longer applicable after the rule amendments in March 2004 to adopt new percentage ratios (except for profits ratios) to classify connected transactions. The relevant rules after the rule amendments are Main Board Rules 14A.10(10), 14A.31(2) and 14A.32.]

<table>
<tr><th colspan="2">Summary</th></tr>
<tr><td>Name of Parties</td><td>Company A - a listed company

Company B - a non wholly owned subsidiary of Company A</td></tr>
<tr><td>Subject</td><td>Major and connected transaction (disposal of Company A's entire interest in Company B):

• determining whether transaction fell within de minimis provisions of Rule 14.25(1)
• discretion to disregard profits test under Rule 14.09</td></tr>
<tr><td>Listing Rules</td><td>Rules 14.09 and 14.25(1)</td></tr>
<tr><td>Decision</td><td>• 100% of net tangible assets of Company B should be taken as value of assets for purpose of de minimis provisions of Rule 14.25(1)
• Company B's "exceptional" performance merely the result of normal business cycle - not appropriate to disregard profits test</td></tr>
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Summary of Facts

Company A proposed to dispose of its entire interest in Company B to a connected person.

Issue 1: Determination of value of transaction for purpose of "four tests"

The proposed transaction constituted a connected transaction for Company A. Company A submitted that, as the sale shares represented only 51% of the issued share capital of Company B, only 51% of the net tangible assets of Company B as disclosed in the latest published audited accounts should be used for the purpose of the "four tests", thereby bringing the transaction within the *de minimis* provisions of Rule 14.25(1). On this basis, the transaction would not be subject to independent shareholders' approval.

Issue 2: Discretion to disregard profits test under Rule 14.09

Based on the result of the profits test, the proposed transaction also constituted a major transaction for Company A. However, Company A submitted that there had been fluctuation in profits due to a change in the business environment. The high percentage on the profits test was exceptional due to the outstanding performance of Company B in that financial year and this was not expected to last. Company A therefore requested the Exchange to disregard the profits test pursuant to Rule 14.09 based on the exceptional fluctuation in profits and not to rule the transaction a major transaction.

Analysis

Issue 1

The acquisition or loss of control of an entity was a matter of considerable importance to the shareholders of a listed issuer. Therefore, where an acquisition or disposal of an interest would result in the subject entity being consolidated or no longer being consolidated in the accounts of the listed issuer (as the case may be), 100% of that entity's net tangible assets needs to be taken as the value of the assets for the purpose of the assets test irrespective of the interest acquired or disposed of. Under Practice Note 13 of the Listing Rules, this principle is applicable to very substantial acquisitions, major transactions and discloseable transactions. As very substantial acquisitions, major transactions, discloseable transactions and connected transactions are all notifiable transactions under Chapter 14, it was logical to apply the same principle for size tests under Practice Note 13 to *de minimis* rules for connected transactions. In this case, as the transaction would result in the assets of Company B no longer being consolidated in the accounts of Company A, 100% of Company B's net tangible assets should be used in the size test calculation for determining whether the transaction fell within the *de minimis* provisions of Rule 14.25(1). On this basis, the transaction did not.

Issue 2

Company B's "exceptional" performance in that financial year was merely the result of a normal business cycle. Fluctuation in profits as part of a normal business cycle did not qualify as an exceptional factor under Rule 14.09. Therefore, it would not be appropriate for the Exchange to exercise its discretion under Rule 14.09 to disregard the profits test.

Decision

The transaction constituted a major and connected transaction for Company A requiring independent shareholders' approval.