Whether the Exchange would grant listing approval for new shares to be issued by a listed issuer to an investor that could result in the listed issuer's public float falling below the minimum requirement

Parties

- **Company A** – a Main Board issuer
- **Investor** – a party independent of Company A

Facts

1. Company A had financial difficulties. It proposed:

    a. to issue new shares to the Investor (**Subscription Shares**) under a subscription agreement; and

    b. a rights issue, fully underwritten by the Investor.

2. These transactions were conditional on approval of Company A's shareholders and the Exchange giving listing approval for the new shares.

3. The Investor would be Company A's controlling shareholder upon completion of the subscription. If no shareholder took up the rights shares and the Investor fulfilled its underwriting obligation, the public float of Company A's shares would fall below the 25% requirement under Rules 8.08(1)(a) and 13.32(1).

4. Company A stated in its announcement regarding the proposal that it would undertake to the Exchange that it would use reasonable endeavours to meet the minimum public float requirement upon completion of the transaction. However, no arrangement was put in place to ensure compliance with the requirement.

Relevant Listing Rules

5. Rule 8.08(1)(a) states that:

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

(a) at least 25% of the issuer's total number of issued shares must at all times be held by the public.

…

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

6. Rule 13.32 states that:

(1) Issuers shall maintain the minimum percentage of listed securities as prescribed by rule 8.08 at all times in public hands. …

Analysis

7. The public float requirement seeks to ensure an open market in the securities for which listing is sought. The Exchange would not give listing approval for an issue of new shares which would cause or facilitate a breach of a requirement under the Rule. It is the Exchange's practice to require the issuer to put in place adequate arrangements to prevent a breach of the Rules, for example, by entering into an irrevocable arrangement to place a sufficient number of shares to meet the minimum public float requirement.

8. Here, the Investor's subscription and underwriting obligations could possibly result in the public float of Company A's shares being below the minimum public float requirement. The Exchange did not consider that Company A's undertaking to use reasonable endeavours to meet the requirement would adequately address its concern. Without any concrete arrangements to ensure a minimum 25% public float for Company A upon completion of the proposal, the Exchange was not prepared to give listing approval until the issue was addressed.

9. To address the Exchange's concern, the parties took the following measures:

a. The Investor and Company A agreed to limit the Investor's underwriting obligation so that it would not cause Company A to breach the requirement.

b. Professional underwriters would underwrite the rights shares not underwritten by the Investor to avoid the issue of insufficient public float.

Conclusion

10. The Exchange accepted that the measures in paragraph 9 above addressed the issue of possible insufficient public float upon completion of the proposal.

Note: 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 Rule amendments would not change the analysis and conclusion in this case.