

## HKE<sub>x</sub> LISTING DECISION

Cite as HKE<sub>x</sub>-LD53–2 [April 2006] (Withdrawn in October 2019)

*[This Listing Decision is superseded by the new requirement in Rule 14.04(1)(g) that become effective on 1 October 2019. The amended Rule 14.04(1)(g) defines purchases and sales of securities as transactions unless they are conducted by banking companies, insurance companies or securities houses within the issuer's group.]*

Summary	
<b>Name of Party</b>	Company A - a Main Board listed company  The Group – Company A and its subsidiaries  Subsidiary X – a wholly owned subsidiary of Company A
<b>Subject</b>	Whether the appointment of and the grant of a mandate to external professional fund manager to manage and invest the Group's surplus cash reserves under the terms of a fund management agreement and the transactions contemplated under such agreement constituted notifiable transactions?
<b>Listing Rule</b>	Listing Rules 13.09(1), 14.04(1)(a) and 14.04(1)(g)
<b>Decision</b>	The Exchange determined that the fund management agreement Subsidiary X entered into and the transactions contemplated under such agreement would be exempted under Listing Rule 14.04(1)(g) and Company A would not be required to comply with the requirements for notifiable transactions under Chapter 14 of the Listing Rules.

### SUMMARY OF FACTS

1. The Group was principally engaged in the marketing and distribution of electronic components, and the design and manufacture of electronic products. The Group had maintained a robust cash position over the past year.
2. For treasury management purposes, Subsidiary X entered into a discretionary management agreement (the "Fund Management Agreement") and appointed an external professional investment banker (the "Fund Manager") to manage and invest the Group's surplus cash reserves and other liquid investments. For this purpose, Subsidiary X transferred a sum of US\$10 million into the portfolio

- account opened with and maintained by the Fund Manager representing surplus funds in excess of the Group's working capital requirement with a view to obtaining a better return thereon (the "Portfolio").
3. The Fund Manager and its ultimate beneficial owner were independent third parties.
  4. The Fund Management Agreement conferred upon the Fund Manager the full authority to invest in and realize any investments authorised under the investment guideline as agreed by Subsidiary X (the "Authorised Investments"). Although Subsidiary X would have the right to give special written instructions to the Fund Manager requiring it to alter the holdings or investment positioning of the Portfolio that would not normally have been done under the Fund Manager's normal discretion or under the existing agreed upon strategic asset allocation, the Fund Manager's acceptance of such instructions must be obtained.
  5. The scope of the Authorised Investments would comprise a balanced mix of fixed income, equity and alternative investments. Fixed income instruments could include, but are not limited to, fixed income instruments of investment and below investment grade bonds, money market investments, other bond-like vehicles and derivatives thereof. Alternative investments could also include, but are not limited to, funds, securities, notes or other instruments linked to commodities, real estates, hedge funds, fund of hedge funds and other alternative investments.
  6. Company A sought guidance from the Exchange on the applicability of the relevant Listing Rules to the Fund Management Agreement, in particular, whether the transactions contemplated under such agreement would constitute notifiable transactions under Chapter 14 of the Listing Rules.

#### **THE ISSUE RAISED FOR CONSIDERATION**

7. Whether the appointment of and the grant of a mandate to external professional fund manager to manage and invest the Group's surplus cash reserves under the terms of a fund management agreement and the transactions contemplated under such agreement constituted notifiable transactions?

#### **APPLICABLE LISTING RULE OR PRINCIPLE**

8. Rule 14.04(1)(a) states that for the purposes of Chapter 14 (Notifiable Transactions), any reference to a "transaction" by a listed issuer includes the acquisition or disposal of assets, including deemed disposals as referred to in rule 14.29.

9. Rule 14.04(1)(g) provides that "to the extent not expressly provided in rules 14.04(1)(a) to (f), excludes any transaction of a revenue nature in the ordinary and usual course of business (as referred to in rule 14.04(8)) of the listed issuer".
10. Rule 13.09(1) which imposes a general disclosure obligation on issuers provides as follows:

Generally and apart from compliance with all the specific requirements in this Chapter, an issuer shall keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:—

- (a) is necessary to enable them and the public to appraise the position of the group; or
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.

## **ANALYSIS**

11. The Exchange notes that treasury activities such as the grant of mandate and allocation of surplus cash or other liquid assets to external fund manager or the reallocation of externally managed assets from one external fund manager to another are prima facie "transactions" that would fall within the ambit of Chapter 14 of the Listing Rules. Depending on the terms of the Fund Management Agreement entered into between Company A and the Fund Manager, and on where control/ownership of the funds rests pursuant to the agreement, a transfer of assets to or from the Fund Manager for treasury purposes could constitute an acquisition or disposal of assets under Listing Rule 14.04(1)(a).
12. The Exchange takes the view that legitimate short-term investments for treasury management purposes are not intended to fall within the ambit of the Chapter 14 rules. The Exchange also notes that given this position transactions could be devised to appear to be for treasury purposes in an attempt to defeat or circumvent the purpose of the notification and shareholder approval requirements in Chapter 14. Therefore an analysis would be required on a case by case basis to differentiate transactions and arrangements caught by the scope of Chapter 14 of the Listing Rules from those exempt.

13. The Exchange considered that legitimate treasury activities should be treated as bona fide transactions for the purpose of utilizing surplus cash reserves. In general, investments for treasury purposes should be in liquid stocks and short-term in nature. Listing Rule 14.04(1)(g) excludes any transaction of a revenue nature in the ordinary and usual course of business from the scope of Chapter 14 of the Listing Rules. The Exchange considered that Listing Rule 14.04(1)(g) should be interpreted to exempt treasury activities where the listed issuer has a clearly stated and established a treasury policy and transactions contemplated are conducted in accordance with such treasury policy.
14. Where it would be necessary to determine whether transactions should be treated as treasury activities, the Exchange would consider them on a case by case basis and require information from the issuer regarding its established treasury policy, treatment of previous transactions and purpose of the activities.
15. However, an issuer must continuously review the circumstances and consider whether the other disclosure obligations that may be relevant and need to be complied with, such as the general disclosure obligation under Listing Rule 13.09(1), to keep the market informed of all price-sensitive information.

## **DECISION**

16. Having considered the facts of the case and an analysis of the purpose of the relevant Listing Rules, the Exchange determined that the Fund Management Agreement entered into between Subsidiary X and the Fund Manager and the transactions contemplated under such agreement would be exempted under Listing Rule 14.04(1)(g), subject to the guidance set out in paragraph 13, and Company A would not be required to comply with the requirements for notifiable transactions under Chapter 14 of the Listing Rules.