HKEX Listing Decision
HKEX- LD71-2013

May 2013 (Last updated in ~~July 2018~~June 2024)

Whether a proposed rights issue that would increase the listed issuer's market capitalisation by more than 50 per cent required independent shareholders' approval

Facts

1. A Main Board issuer (**Company A**) signed an underwriting agreement for a proposed rights issue and published the announcement after the market closed on Day X. It had not conducted any other rights issue or open offer in the past 12 months.

2. The rights issue would be made on the basis of one rights share for every two existing shares. It would increase Company A's issued share capital by 50%.

3. The issue price for the rights shares was determined by Company A and the underwriter with reference to the recent market price of Company A's shares. It represented a small discount to the average closing price of the shares in the five trading days ended on Day X, and a premium of about 10% to the closing price on Day X.

4. There was an issue whether the rights issue would increase Company A's market capitalization by more than 50% and therefore require independent shareholder approval under Rule 7.19A(1). Company A submitted that the rights issue would not exceed the 50% threshold based on its market capitalisation calculated using the average closing price of its shares in the five trading days ended on Day X.

Relevant Listing Rules

5. Rule 7.19A(1) states that:

   A proposed rights issue must be made conditional on minority shareholders' approval in the manner set out in rule 7.27A if the proposed rights issue would increase either the number of issued shares or the market capitalisation of the issuer by more than 50% (on its own or when aggregated with any other rights issues or open offers announced by the issuer (i) within the 12 month period immediately preceding the announcement of the proposed rights issue or (ii) prior to such 12 month period where dealing in respect of the shares issued pursuant thereto commenced within such 12 month period, together with any bonus securities, warrants or other convertible securities (assuming full conversion) granted or to be granted to shareholders as part of such rights issues or open offers).

   (Rule 7.19A(1) was amended on 11 June 2024. See Note below.)

6. Rule 7.27A states that:

   Where minority shareholders' approval is required for a rights issue … under rule 7.19A … :

   (1) the rights issue … must be made conditional on approval by shareholders in general meeting by a resolution on which any controlling shareholders and their associates or, where there are no controlling shareholders, directors (excluding independent non-executive directors) and the chief executive of the issuer and their respective associates shall abstain from voting in favour;

   …

Analysis

7. The purpose of Rule 7.19A(1) is to protect minority shareholders' interests when the potential dilution effect of a proposed rights issue (individually or together with any similar fund raising exercise(s) made in the previous 12 months) is material.

8. Under the Rule, a proposed rights issue that would increase the issuer's market capitalisation by more than 50% is subject to independent shareholder approval. The assessment should be made with reference to the issuer's market capitalisation at the time of the proposed rights issue. For this purpose, the Exchange generally considers it acceptable for the issuer to calculate its market capitalisation using the closing price of its shares on the date on which the terms of the rights issue are finalised.

9. Here the rights issue would exceed the 50% threshold based on Company A's market capitalisation calculated using the closing price of its shares on Day X.

Conclusion

10. The rights issue required independent shareholder approval under Rule 7.19A(1).

Note:- Rule 7.19A(1) was amended on 11 June 2024 to exclude treasury shares from the issuer's number of issued shares in determining whether the rights issue requires minority shareholders' approval. The Rule amendments would not change the analysis and conclusion in this case.