

HKEx LISTING DECISION

Cite as HKEx-LD85-1 (December 2009) (~~Updated in October 2019 (Rule amendments)~~Withdrawn in January 2022)

[This Listing Decision is superseded by new Guidance Letter GL111-22 (Guidance for Overseas Issuers)]

Summary	
Party	Company X - a listing applicant seeking a secondary listing on the Main Board, incorporated in the Cayman Islands and primary listed on Toronto Stock Exchange (TSX)
Subject	Whether to waive Chapter 4 requirements so that Company X need not include in its prospectus: <ul style="list-style-type: none">• an accountants' report• pre-acquisition financial information under Rule 4.05A
Listing Rules	Chapter 4 of the Listing Rules; Rules 4.03, 4.05A, 14.20, 19.35, 19.39
Decision	Having considered the alternative financial information in Company X's prospectus, the Stock Exchange (the Exchange) waived the Chapter 4 requirements.

SUMMARY OF FACTS

1. Company X's trading record period comprised Year 1 to Year 3 and a stub period of nine months. During the trading record period, it acquired a material subsidiary. Rule 4.05A would require it to disclose in its prospectus pre-acquisition financial information on that material subsidiary because the acquisition exceeded the revenue ratio of 25 per cent, the threshold percentage for a major transaction.
2. Company X applied for waiver of the Chapter 4 requirements to enable it to dispense with an accountants' report and pre-acquisition financial information of the material subsidiary under Rule 4.05A.

Dispensation with the accountants' report requirements

3. Company X gave the following reasons to support its waiver application:

- a. Compliance with Chapter 4 requirements would impose onerous obligations in terms of time and cost. Company X was primary listed on TSX and was only applying for a secondary listing on the Exchange. Reproduction of its historical financial statements filed with TSX in its prospectus would provide adequate information to Hong Kong investors. Company X proposed the following alternative financial information in its prospectus:
 - i. audited figures for Year 1 prepared under US GAAP* extracted from its prospectus for its public offering on TSX;
 - ii. audited figures for Year 2 and Year 3 prepared under US GAAP reproduced from its annual filing financial statements to the Canadian securities regulatory authorities;
 - iii. audited figures for the stub period and unaudited comparatives for the prior year stub period prepared under US GAAP; and
 - iv. a reconciliation statement to reconcile the stub period figures and prior year stub period comparatives (prepared under US GAAP) to IFRS** as Company X would early adopt IFRS as its reporting standards commencing from Year 4;
- b. it would appoint its Canadian auditors' firm as the reporting accountants for its proposed secondary listing and they would be assisted by Hong Kong auditors qualified under the Professional Accountants Ordinance from the Hong Kong office of the same Canadian auditors' firm; and
- c. both the sponsor and the reporting accountants confirmed that there was no material difference between the financial statements proposed to be included in its prospectus and an accountants' report prepared under Chapter 4.

Dispensation with Rule 4.05A requirement

4. Company X provided the following reasons in support of its application to waive Rule 4.05A:
 - a. Its business was still under development with limited revenue. The high revenue ratio was not indicative of the importance of the acquisition to it because the material subsidiary was engaged in a different line of business. The revenue ratio test was therefore inappropriate. The Exchange should use other size indicators as permitted under Rule 14.20;

- b. Company X was subject to TSX's continuous disclosure regime. Under the TSX standard tests governing acquisitions, the subject acquisition was not big enough to be a 'significant acquisition' so Company X was not required to disclose pre-acquisition financial information on the acquisition under TSX rules;
- c. Company X should be allowed to apply the TSX rules on disclosure of pre-acquisition financial information since TSX was its primary regulator.

THE ISSUES RAISED FOR CONSIDERATION

5. Whether to waive Chapter 4 requirements so that Company X need not include in its prospectus:
 - an accountants' report
 - pre-acquisition financial information under Rule 4.05A.

APPLICABLE LISTING RULES

Presentation of accountants' report requirements

6. Chapter 4 prescribes the detailed requirements for accountant's reports on the profits and losses, assets and liabilities and other financial information of an issuer for inclusion in the listing document.
7. Rule 4.03 provides that:

All accountants' reports must be prepared by professional accountants who are qualified under the Professional Accountants Ordinance for appointment as auditors of a company...

8. Rule 4.05A provides that:

Where a new applicant acquires any material subsidiary or business during the trading record period ... and such an acquisition if made by a listed issuer would have been classified at the date of application as a major transaction ... or a very substantial acquisition, it must disclose pre-acquisition financial information on that material subsidiary or business from the commencement of the trading record period ... to the date of acquisition. Pre-acquisition financial information on the material subsidiary or business must normally be drawn up in conformity with accounting policies adopted by the new applicant and be disclosed

in the form of a note to the accountant's report or in a separate accountants' report.

Note: For the purpose of determining whether an acquisition is material and falls within the classification of a major transaction or a very substantial acquisition, reference shall be made to total assets, profits or revenue (as the case may be) of the acquired business or subsidiary and this shall be compared to the total assets, profits or revenue (as the case may be) of the new applicant as shown in the most recent financial year of the trading record period.

9. Rule 14.20 states that the Exchange may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and substitute other relevant indicators of size, including industry specific tests.

(Rule 14.20 was amended on 1 October 2019. See Note below.)

Secondary listing

10. Rule 19.35 states that the Exchange may be prepared to permit the omission of information where it considers it appropriate. In considering requests for any omissions, the Exchange will have regard to:
 - a. whether the overseas issuer has its primary listing on a regulated, regularly operating, open stock market recognised for this purpose by the Exchange and conducts its business and makes disclosure according to the accepted standards in Hong Kong; and
 - b. the nature and extent of the regulatory standards and controls to which the overseas issuer is subject on its primary exchange.
11. Rule 19.39 stipulates that accountants' reports are required to conform with accounting standards acceptable to the Exchange which will normally be:
 - a. Hong Kong Financial Reporting Standards; or
 - b. International Financial Reporting Standards (**IFRS**); or
 - c. Generally accepted accounting principles in the United States of America (**US GAAP**).

THE ANALYSIS

Dispensation with the accountants' report requirements

12. Company X's case mirrored a precedent case where the Exchange had granted similar waiver to an applicant who applied for a secondary listing. Having accepted TSX as the applicant's primary listing exchange, the Exchange had allowed it to:
 - a. adopt the generally accepted accounting principles in Canada (**Canadian GAAP**) for preparing its financial statements, subject to including a statement setting out the material differences between Canadian and US GAAP, one of the acceptable accounting standards for secondary issuers under Rule 19.39;
 - b. engage a Canadian audit' firm to act as its reporting accountants for the accountants' report in its initial listing document and subsequent annual and interim accounts; and
 - c. reproduce in its initial listing document the audited financial statements for its primary listing on TSX.

13. The Exchange also took into account:
 - a. TSX, the Company X's primary regulator, is an acceptable exchange for Rule 19.30(1). Reproduction of the proposed historical financial information in its prospectus would provide Hong Kong investors with adequate information to appreciate its financial performance during the trading record period; and
 - d. based on the confirmations of the sponsor and the reporting accountants referred to in paragraph 3c, the Exchange was satisfied that the financial information to be included in Company X's prospectus would be no less than that received by its current shareholders.

Dispensation with Rule 4.05A requirement

14. In determining whether to waive the Rule 4.05A requirement, the Exchange considered Company X's circumstances and considered the revenue test inappropriate to determine the size of the subject acquisition. Further, considering that TSX was Company X's primary regulator, the Exchange agreed that it was acceptable for Company X to follow TSX disclosure requirements.

THE DECISION

15. Having considered the alternative financial information in Company X's prospectus, the Exchange waived the Chapter 4 requirements so that it would not be required to include in its prospectus:

- a. an accountants' report required under Chapter 4; and
- b. the pre-acquisition financial information on the material subsidiary under Rule 4.05A.

Note: On 1 October 2019, Rule 14.20 was amended to clarify that if any calculation of the percentage ratio produces an anomalous results or is inappropriate to the sphere of activities of the issuer, the Exchange (or the issuer) may apply an alternative size test that it considers appropriate to assess the materiality of a transaction under Chapter 14.

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

* Generally Accepted Accounting Principles in the United States

** International Financial Reporting Standards
