

HKE_x LISTING DECISION
HKE_x-LD65-2013 (published in May 2013)

Party	Company A – a Main Board issuer The Target – a company listed on the Toronto Stock Exchange and the New York Stock Exchange
Issue	Whether the Exchange would waive the requirements for Company A to produce a competent person’s report (CPR) and a valuation report (VR) for its proposed acquisition of the Target
Listing Rules	Main Board Rules 18.09(2) and 18.09(3)
Decision	The Exchange waived the requirements

FACTS

1. The Target was a global oil and gas exploration and development company.
2. Under the agreement between Company A and the Target, Company A would acquire all the shares in the Target through a plan of arrangement subject to the court’s approval. Upon completion, the Target would become a subsidiary of Company A.
3. The acquisition was a major transaction for Company A. Under Rules 18.09(2) and 18.09(3), Company A’s circular must include a CPR on the Target’s oil and gas reserves and a VR on its petroleum assets. Company A sought a waiver from these requirements for the following reasons:
 - (a) It would be unduly burdensome to produce a CPR on the Target’s oil and gas reserves because:
 - The Target was an overseas listed company. It had regularly published information on its oil and gas reserves in accordance with the overseas regulatory requirements.
 - The Target’s petroleum assets were extensive and located in various countries around the world. Substantial time and costs would be required to prepare the CPR.
 - Company A had obtained a written approval of the acquisition from its parent company according to Rule 14.44. The circular would be issued to its shareholders for information only.

- (b) Alternatively, the circular would include information on the Target’s reserves estimates contained in its latest annual filings with the overseas stock exchanges (the **Reserves Information**). Company A believed that this would provide sufficient information for its shareholders’ assessment because:
- The Reserves Information was prepared and reported on by technical experts with relevant qualifications and experience.
 - The Target had adopted strict internal procedures for preparing the Reserves Information to ensure compliance with the overseas regulatory requirements. The responsible officer, who prepared the information, possessed relevant qualifications and had extensive experience in the oil and gas industry. He was able to satisfy the eligibility requirements for a Competent Person under Chapter 18 of the Rules.
 - Further, over 90% of the reserves estimates had been reported on by independent reserves evaluators with international names and reputation.
 - The circular would include (i) the qualifications and experience of the responsible officer, and the primary technical persons of the independent reserves evaluators; and (ii) the opinion letters from the independent reserves evaluators.
 - The Reserves Information was disclosed under NI 51-101¹ which was a well recognised international standard adopted by international oil and gas companies.
 - Taking into account the Target’s disclosure since the last annual filings and its recent review on the reserves estimates, Company A confirmed that there had been no material change to the Reserves Information.
- (c) It would also be unduly burdensome to produce a VR on the Target’s petroleum assets because:
- Company A was to acquire the Target’s shares which were listed and traded on two overseas stock exchanges. It believed that the share trading price and market capitalisation of the Target would serve as a reasonable reference in assessing the Target’s market value.

¹ National Instrument 51-101 “Standards of Disclosures for Oil and Gas Activities”, which was implemented in September 2003 by the Canadian Securities Administrators, provides comprehensive rules for reserves disclosure by relevant oil and gas companies in Canada. It requires oil and gas companies to report annually on their reserves and oil and gas activities, and where a material change occurs in a company’s reserves after an annual filing is made, a company is required to disclose the changes to their reserves to the Canadian Securities Administrators and the public before the next required annual filing.

- The consideration for the acquisition was determined with reference to the market price of the Target's shares and Company A's view on the value of the Target's business and assets. The consideration was not based on an asset valuation approach.

APPLICABLE LISTING RULES

4. Rule 18.09 states that

“A mineral company proposing to acquire or dispose of assets which are solely or mainly Mineral or Petroleum Assets as part of a Relevant Notifiable Transaction must:-

- (1) comply with Chapter 14 and Chapter 14A, if relevant;*
- (2) produce a Competent Person's Report, which must form part of the relevant circular, on the Resources and/or Reserves being acquired or dispose of as part of the Relevant Notifiable Transaction;*

Note: ...

- (3) in the case of a major (or above) acquisition, produce a Valuation Report, which must form part of the relevant circular, on the Mineral or Petroleum Assets being acquired as part of the Relevant Notifiable Transaction; and ...*

- (4)*

Note: ...”

5. Rule 18.10 states that:

“A listed issuer proposing to acquire assets which are solely or mainly Mineral or Petroleum Assets as part of a Relevant Notifiable Transaction must comply with rule 18.09.”

ANALYSIS

6. Under the Listing Rules, an issuer must ensure that the information in its circular for a notifiable transaction is accurate and complete in all material respects and not misleading or deceptive. The circular must contain all information necessary to allow the issuer's shareholders to make a proper assessment of the transaction and if voting is required, how to vote.

7. Where the transaction involves an acquisition or disposal of material mineral or petroleum assets, the issuer must comply with the additional disclosure requirements under Chapter 18.
8. When assessing Company A's waiver application, the Exchange noted that:
 - (a) the Target was listed on recognised overseas exchanges, and the Reserves Information was subject to supervision by regulatory authorities;
 - (b) the Reserves Information was prepared and reported on by technical experts with relevant qualifications and experience;
 - (c) NI 51-101 was an acceptable reporting standard for the Target's reserves estimates (see also Listing Decision HKEx-LD51-2013);
 - (d) Company A would provide a no material change statement for the Reserve Information in the circular for the acquisition.
9. The Exchange agreed that compliance with the CPR requirements would be unduly burdensome in this case. The proposed alternative disclosure would provide relevant and reliable information on the Target's oil and gas reserves comparable to that required under Chapter 18 of the Rules.
10. The Exchange also noted that the Target's share price and market capitalisation would represent its fair value, and the consideration for the acquisition was not based on a valuation of the Target's assets. Granting a waiver from the VR requirement would be unlikely to result in undue risks to the shareholders.

CONCLUSION

11. The Exchange granted the waiver to Company A.