From: Lau, Terence [[redacted]]
Sent: Monday, March 26, 2018 5:32 PM
To: response
Subject: Emerging and Innovative Companies CP

1 Pre-revenue/pre-profit biotech companies

The new rules allow the listings of biotech companies that do not satisfy any of the financial eligibility tests (ie profits tests, market capitalisation/revenue MR tests and market capitalisation/revenue/cash flow MRC tests).

Please clarify if biotech companies that have revenue but not profits are eligible for listings under Chapter 18A. If so, such biotech companies with revenue (but not profits) have to monitor if they satisfy the MR tests or MRC tests once the expected market capitalisation is determined by the underwriters and the biotech companies. What happens if, after the submission of listing applications, the biotech companies meet the MR tests or MRC tests?

2 Features

Paragraph 74 of the CP sets out various features of biotech companies.

Please clarify:

(1) the meaning of "durable" patent(s)
(2) if the biotech companies do not own any intellectual property rights with regard to the Core Product(s) and they have licences from third parties for such intellectual property rights, will this meet the requirement?
(3) given that the meaning of "meaningful" third party investment is not defined, biotech companies will want to make pre-A1 submissions to the Stock Exchange confirming whether the investments from third parties are considered to be meaningful for the purposes of the listing. They do not want to see that, during the IPO vetting process, they are then told that the investments from third parties are not considered to be meaningful. All the costs and efforts will be wasted and listing timetable will be affected.

3 Track Record

Given that the biotech companies are pre-revenue/pre-profit, please clarify if the requirements for the biotech companies to be in operation in their current line of business for at least two financial years before the listing under substantially the same management means the core management involved in R&D or other yardsticks. What happens if the R&D personnel has not changed in the two-year period but the executive management has changed?

4 Use of proceeds and costs

If the biotech companies have products that fall under the meaning of Core Products and some are still in development stages, can the proceeds be used for other products in the event that the Core Products as disclosed in the prospectus do not successfully proceed to another stage of clinical trials or commercialisation stage?

If the Core Products have completed their R&D stage and are subject to a later clinical trial or even commercialisation stage, the amount of R&D to be spent may not be significant. In addition, biotech companies may sell or license such products to third parties for production and they do not manufacture the products themselves. Please consider if the requirements as to the costs under Rule 18A.03 provide sufficient flexibility for some biotech companies that have already passed the key R&D stage of their product development or they do not produce the products themselves.

Also, for pre-revenue/pre-profit biotech companies, a large portion of the costs may be listing expenses. Please consider if the requirements as to the costs under Rule 18A.03 are in line with the reality and whether listing expenses fall under the nature of "general, administrative and operating costs".

5 Expert technical assessment

Rule 18A.04(13) refers to the disclosure of expert technical assessment (if any) obtained by the applicant. Please clarify what the expected scope of assessment is (eg commercialisation, side effect etc) even though the obtaining of such an expert technical assessment is not mandatory. Biotech companies may have obtained various assessment reports and it is rather difficult to understand what the disclosure requirements are and which assessment reports have to be disclosed under this rule.

6 Drafting comments

6.1 Scope

Please check the spelling of "market capitalisation" and "market capitalization" for consistency.

6.2 Rule 18A.04(11)(c) and (d)

Please delete "historical" from "historical experience". The drafting is similar to the problem of writing the terms "past history". There are no "future history" and no "future experience".

6.3 Rule 18A.05

Typos "Product Product".

6.4 Rule 18A.06

The rule itself does not specify the lock-up period and only refers to "a restriction". The powerpoint for the CP refers to a six-month lock-up period. Please clarify what "a restriction" means. Cornerstone investors are often subject to a six-month lock-up after listing but this is more a contractual term and the lock-up period is subject to negotiations. The lock-up period (if any) may be less than six months. Does it mean that the "restriction" is whatever lock-up restriction that a cornerstone investor is being bound by the cornerstone investment agreements and the period may be less than six months?

Thank you for the hard work of the Stock Exchange team.

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