

## **HKEX GUIDANCE LETTER**

**HKEX-GL25-11 (October 2011) (Updated in November 2011, March 2012, June 2013, March 2014, September 2015 and July 2016)**

<b>Subject</b>	<b>Conditions for waivers from strict compliance with Main Board Rule 4.04(1) and GEM Rules 7.03(1) and 11.10</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Rule 4.04(1) GEM Rules 7.03(1) and 11.10</b>
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**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules, or this letter.*

### **1. Purpose**

- 1.1 The purpose of this letter is to set out the conditions for the waivers (“**Relevant Rules Waivers**”) from strict compliance with Main Board Rule 4.04(1) and GEM Rules 7.03(1) and 11.10 (together “**Relevant Rules**”). **(Updated in September 2015)**

### **2. Background**

- 2.1 Listing applicants usually experience practical difficulty in producing audited accounts for the latest financial year if they intend to issue listing documents shortly after the year end. It has been our practice to consider the grant of the Relevant Rules Waivers subject to certain conditions. **(Updated in September 2015)**
- 2.2 Main Board Rule 13.46 requires listed issuers to despatch to their shareholders their annual reports no later than four months (GEM Rule 18.03: three months) after the financial year end. With reference to this requirement, the Exchange determines that the Relevant Rules Waivers can be considered only if the applicant’s proposed listing date is not later than one month before the due date on which its first audited report after listing must be despatched. Therefore, a Main Board applicant must list on the Exchange within three months (two months for a GEM applicant) after the latest financial year end as a condition of the waiver. **(Updated in September 2015)**
- 2.3 For example, a Main Board applicant with a track record period of three years ended 31 December 2011 and nine months ended 30 September 2012 will need to dispatch its first annual report for the year ended 31 December 2012 to shareholders by 30 April 2013. It therefore must list on the Exchange on or

before 31 March 2013; a GEM applicant with a track record period of two years ended 31 December 2011 and nine months ended 30 September 2012 will need to dispatch its first annual report for the year ended 31 December 2012 to shareholders by 31 March 2013. It therefore must list on the Exchange on or before 28 February 2013. **(Updated in September 2015)**

- 2.4 Under Main Board Rule 13.49, the deadline for listed issuers to release preliminary results announcements after the end of their financial year is shortened from four to three months effective for accounting periods ended on or after 31 December 2010. Listing applicants which obtained Rule 4.04(1) waivers may be required under Main Board Rule 13.49 to release their preliminary results announcements for the latest financial year shortly after their listing. In these circumstances, it might appear that their financial information for the latest financial year should have been available at the time of publication of the listing documents and thus should have been included in the listing documents. **(Updated in September 2015)**

### **3. Relevant Requirements**

- 3.1 Main Board Rule 4.04(1) requires a listing applicant to include in the accountants' report its consolidated results for each of the three financial years immediately preceding the issue of the listing document (two financial years for GEM applicants under GEM Rules 7.03(1) and 11.10). These rules mirror the requirements of the section 342(1)<sup>1</sup>, paragraphs 27<sup>2</sup> and 31<sup>3</sup> of the Third Schedule to the Companies Ordinance<sup>4</sup> (the "**Companies Ordinance Requirements**"). **(Updated in September 2015)**

### **4. Guidance**

- 4.1 Although each Relevant Rule Waiver application will be considered on a case-by-case basis having regard to all relevant facts and circumstances, we set out the conditions that we would ordinarily expect in a Rule 4.04(1) waiver and a GEM Rules 7.03(1) and 11.10 waiver. We may modify or add to these conditions as we see fit. **(Updated in September 2015)**

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<sup>1</sup> Section 342(1) of the Companies Ordinance<sup>4</sup> requires all prospectuses to include an accountants' report which contains the matters specified in the Third Schedule to the Companies Ordinance<sup>4</sup>. **(Updated in March 2014)**

<sup>2</sup> According to paragraph 27 of Part I of the Third Schedule to the Companies Ordinance<sup>4</sup>, the company is required to include in the prospectus a statement as to the gross trading income or sales turnover (as may be appropriate) of the company during each of the three financial years immediately preceding the issue of the prospectus. **(Updated in March 2014)**

<sup>3</sup> According to paragraphs 31(1) and (3) of Part II of the Third Schedule to the Companies Ordinance<sup>4</sup>, the company is required to include in the prospectus a report by auditors of the company with respect to the financial results of the group for each of the three financial years immediately preceding the issue of the prospectus. **(Updated in March 2014)**

<sup>4</sup> Retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with effect from March 2014.

4.2 The Exchange will not automatically grant a waiver of the Relevant Rules. If a waiver is to be considered, the gap between the applicant's latest financial year-end and the proposed listing date must not exceed three months. **(Added in September 2015)**

4.3 The Exchange will not ordinarily grant the Relevant Rule Waiver if there is a material adverse change in the applicant's performance since the date to which the latest audited accounts of the applicant have been made up to the latest practicable date (or up to the end of the forecast period where a profit/ loss forecast has been prepared under Main Board Rules 11.16 to 11.19 (GEM Rules 14.28 to 14.31)) and/ or a downward trend in an applicant's recent business performance to the extent that it may not meet the minimum profit requirement if such waiver is not granted. In other cases where a waiver has been recommended, the Exchange may impose conditions on the disclosure in the listing document to ensure that there is reasonably sufficient information to enable investors to have an informed assessment of the issuer absent an accountants' report that complies with Rule 4.04(1) (GEM Rules 7.03(1) and 11.10). Enhanced disclosure can include:

- a profit/ loss forecast under MB Rules 11.16 to 11.19 (GEM Rules 14.28 to 14.31);
- a qualitative analysis of the change in the applicant's performance since the date to which the latest audited accounts of the applicant have been made up to the latest practicable date (or up to the end of the forecast period where a profit/ loss forecast has been prepared under Main Board Rules 11.16 to 11.19 (GEM Rules 14.28 to 14.31)) and how it compares with the previous period; and
- the detailed reasons for the change. **(Updated in July 2016)**

#### **Rule 4.04(1) Waivers (Updated in September 2015)**

4.4 In view of the shortened deadline for releasing preliminary results announcements and to enable potential investors to have adequate and timely information, we have revised the existing conditions for granting Rule 4.04(1) waivers as follows:-

- (i) where an applicant issues its listing document within two months after the latest year end, a Rule 4.04(1) Waiver would be subject to the following conditions;
  - (a) the applicant must list on the Exchange within three months after the latest year end;
  - (b) the applicant must obtain a certificate of exemption from the Securities and Futures Commission on compliance with the Companies Ordinance<sup>4</sup> Requirements; **(Updated in March 2014)**
  - (c) a profit estimate for the latest financial year (which must comply with

Main Board Rules 11.17 to 11.19) must be included in the listing document or the applicant must provide justification why a profit estimate cannot be included in the listing document; and

- (d) there must be a directors' statement in the listing document that there is no material adverse change to its financial and trading positions or prospect with specific reference to the trading results from the end of the stub period to the latest financial year end;
- (ii) where an applicant issues its listing document in the third month after the latest year end, a Rule 4.04(1) waiver would be subject to the following conditions:
  - (a) the listing document must include the financial information for the latest financial year and a commentary on the results for the year. The financial information to be included in the listing document must (a) follow the same content requirements as for a preliminary results announcements under Main Board Rule 13.49; and (b) be agreed with the reporting accountants following their review under Practice Note 730 "Guidance for Auditors Regarding Preliminary Announcements of Annual Results" issued by the Hong Kong Institute of Certified Public Accountants;
  - (b) the applicant must list on the Exchange within three months after the latest year end; and
  - (c) the applicant must obtain a certificate of exemption from the Securities and Futures Commission on compliance with the Companies Ordinance<sup>4</sup> Requirements. **(Updated in March 2014)**

#### **GEM Rules 7.03(1) and 11.10 Waivers (Updated in September 2015)**

4.5 The conditions that we would ordinarily expect in GEM Rules 7.03(1) and 11.10 waivers are as follows:-

- (i) the applicant must list on the Exchange within two months after the latest financial year end;
- (ii) the applicant must obtain a certificate of exemption from the Securities and Futures Commission on compliance with the Companies Ordinance<sup>4</sup> Requirements; and **(Updated in March 2014)**
- (iii) a profit estimate for the latest financial year (which comply with GEM Rules 14.29 to 14.31) must be included in the listing document or the applicant must provide justification why a profit estimate cannot be included in the listing document; and there must be a directors' statement in the listing document that there is no material adverse change to its financial and trading positions or prospect with specific reference to the trading results from the end of the stub period to the latest financial year end.

**5. Effective date**

- 5.1 The effective date of compliance with the conditions discussed in paragraphs 4.2 and 4.3 are for listing applicants with annual accounting periods ending on or after 31 December 2011. (*Updated in June 2013*)

**6. Pre-deal research (Repealed in March 2012)**

**7. Preliminary results announcement and annual report (*Added in November 2011 and updated in June 2013*)**

- 7.1 An applicant with a Rule 4.04(1) waiver under paragraph 4.2 or a GEM Rules 7.03(1) and 11.10 waiver under paragraph 4.3 above is still required to publish a preliminary results announcement and an annual report for the last financial year according to Main Board Rules 13.49 and 13.46 or GEM Rules 18.49 and 18.03 respectively. However, if a Main Board applicant has included the preliminary results information in its listing document under paragraph 4.2(ii)(a), the Exchange will consider granting a waiver of the preliminary results announcement requirement under Main Board Rule 13.49 on a case-by-case basis having regard to all relevant facts and circumstances.

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