

HKEx LISTING DECISION

Cite as HKEx-LD48-4 (December 2005) (Updated in September 2010 and December 2012)

Summary	
Name of Party	Company A – a Main Board listing applicant
Subject	Whether, and under what circumstances, the Exchange should allow a new listing applicant to dispense with the filing of placee lists with respect to its IPO shares sold in public offers outside Hong Kong?
Listing Rules	Listing Rule 9.16(6)(b)[<i>Now Rule 9.11(35)(b)</i>] and Paragraph 11 of Appendix 6 of the Listing Rules
Decision	<p>The Exchange determined to grant the waiver requested on the basis that the following conditions (as set out in paragraph 8) were satisfied:</p> <ul style="list-style-type: none">a. the shares would be sold in a public offer governed by rules and regulations of the relevant jurisdiction to ensure independence of the investors;b. the applicant and sponsor(s) made a demonstrable effort to comply with the placee list requirement in good faith and full compliance would not be practicable;c. the sponsor(s), underwriters or placing brokers would confirm in writing that the investors obtaining the shares sold in the public offers are independent of the sponsors/underwriters/brokers, the applicant's connected persons or their associates or any existing shareholders of the applicant, including nominee(s) of the foregoing; andd. each placing broker would be required to submit to the Exchange a list setting out details of all institutional placees and the number of shares taken up by each of them as required under Rule 9.11(35)(b) and paragraph 11 of Appendix 6 to the Rules (condition added in December 2012- see paragraph 10).

SUMMARY OF FACTS

1. The international offering of Company A included a public offering without listing in Japan (hereinafter referred to as 'POWL'). The sponsor applied with respect to the IPO shares sold under POWL for a waiver from strict compliance with Listing Rule 9.16(6)(b) [*Now Rule 9.11(35)(b)*] and Paragraph 11 of Appendix 6 of the Listing Rules requiring submission to the Exchange a list from each of the placing brokers setting out details of and the amounts taken up by each placee.
2. The sponsor submitted its waiver application on the following grounds:
 - a. Japanese regulations in general prohibit agents from disclosing clients' details (including but not limited to the name, address, age of clients and details of assets) to third parties;
 - b. information given by placees under standard market practice in Japan are insufficient for completing the information required under Listing Rule 9.16(6)(b) [*Now Rule 9.11(35)(b)*];
 - c. the POWL was expected to involve over 10,000 investors. Further, all information relating to placees would need to be translated into English. It would be unduly burdensome and near impossible to submit to the Exchange before commencement of dealings the required information relating to POWL placees; and
 - d. the Japanese agents would confirm in writing the independence of each placee from any director of the Company or their respective associates or any existing shareholder or nominee of the Company.

THE ISSUE RAISED FOR CONSIDERATION

3. Whether, and under what circumstances, the Exchange should allow a new listing applicant to dispense with the filing of placee lists in connection with IPO shares sold in public offers outside Hong Kong?

APPLICABLE LISTING RULES OR PRINCIPLES

4. Listing Rule 9.16(6)(b) [*Now Rule 9.11(35)(b)*] requires that in the case of a placing of securities by a new applicant, the following document should be provided to the Exchange:

a list from each placing broker setting out the names, addresses and identity card or passport numbers (where individuals) and the

names, addresses and business registration numbers (where companies) of all its placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each of its placees.

5. Paragraph 11 of Appendix 6 of the Listing Rules also provides that:

Dealings in the securities cannot commence until the Exchange has been supplied with and approved a listing setting the names, addresses and identity card or passport numbers (where individuals) and the names, addresses and business registration numbers (where companies) of all placees, the names and addresses of the beneficial owners (in the case of nominee companies) and the amounts taken up by each placee (see rule 9.16(6)) [*Now Rule 9.11(35)(b)*]. The Exchange reserves the right to require submission of such further information ... on the placees as it may consider necessary for the purpose of establishing their independence, including without limitation details of beneficial ownership.

THE ANALYSIS

6. The rationale behind the rules governing placing of shares is to ensure that shares are placed to independent and genuine investors, rather than connected persons of the issuers or related parties of the underwriters/ brokers.
7. Previously, the Exchange had not required the submission of placee lists in respect of public offer of shares sold under POWL in Japan and US, if it was reasonably satisfied that the investors were independent to the extent required under applicable foreign regulations.
8. As such, the Exchange resolved that the present application for waiver should be considered favourably if the following were satisfied:
 - a. the shares would be sold in a public offer governed by rules and regulations of the relevant jurisdiction to ensure independence of the investors;
 - b. the applicant and sponsor(s) made a demonstrable effort to comply with the placee list requirement in good faith and full compliance would not be practicable;
 - c. the sponsor(s), underwriters or placing brokers would confirm in writing that the investors obtaining the shares sold in the public offers are independent of the sponsors/underwriters/brokers, the applicant's

connected persons or their associates or any existing shareholders of the applicant, including nominee(s) of the foregoing; and

- d. each placing broker would be required to submit to the Exchange a list setting out details of all institutional placees and the number of shares taken up by each of them as required under Rule 9.11(35)(b) and paragraph 11 of Appendix 6 to the Rules (condition added in December 2012- see paragraph 10).
9. The above conditions are not binding on the Exchange for future cases. They are neither meant to be exhaustive nor jurisdiction specific. Future waiver applications will be considered on a case-by-case basis and the Exchange reserves its right to require submission of such further information on the placees as it may consider necessary.

DECISION IN A SUBSEQUENT CASE (Added in December 2012)

10. In a subsequent case where the applicant requested for the same waiver, it then came to the Exchange's attention that the relevant Japanese regulations prohibiting members of the Japanese Securities Dealers' Association from disclosing customers' information to any third party only applied to individual customers but not institutional customers. Therefore, in addition to the conditions as set out in paragraph 8(a) to (c) above, the waiver was granted to this applicant provided that each placing broker would be required to submit to the Exchange a list setting out details of all institutional placees and the number of shares taken up by each of them as required under Rule 9.11(35)(b) and paragraph 11 of Appendix 6 to the Rules.

THE DECISION

11. Based on the above analysis and the facts of two cases, the Exchange considered that the conditions set out in paragraphs 8 and 10 respectively were satisfied and on this basis granted the waiver requested.