

## HKE<sub>x</sub> LISTING DECISION

HKE<sub>x</sub>-LD67-2013 (published in May 2013)

Summary	
<b>Parties</b>	Company A – a Main Board listed issuer The Borrower – a company independent from Company A
<b>Issue</b>	Whether the Exchange would waive the requirements for disclosing certain information relating to a loan provided by Company A to the Borrower
<b>Listing Rules</b>	Main Board Rules 13.13, 13.15 and 14.58
<b>Decision</b>	The Exchange waived the requirements

### FACTS

1. Company A was a financing service provider. It operated a pawn loan business in the Mainland and a money lending business in Hong Kong.
2. It proposed to provide a secured entrusted loan to the Borrower (the “**Loan Transaction**”) on normal commercial terms. The Loan Transaction was a discloseable transaction for Company A under Chapter 14, and an advance to the Borrower subject to the disclosure requirement under Rule 13.13.
3. Under Rules 14.58(4) and (8), the announcement for a notifiable transaction must disclose the aggregate value of the consideration and the benefits which are expected to accrue to the issuer as a result of the transaction. In the case of an advance to an entity, Rule 13.15 requires the issuer to disclose the identity of the debtor group and the interest rate.
4. Company A applied for a waiver from disclosing the identity of the Borrower, the interest rate and the amount of interest and service fee receivable from the Borrower under the Loan Transaction. It submitted the following reasons:
  - Provision of financing service was the principal business of Company A. Disclosing the actual interest rates and service fees for its loan transactions

with customers might undermine its competitiveness in the market.

- Company A’s customers would be unwilling to allow it to disclose their identities in public documents as it might create unnecessary negative impact on their business operations.
  - It would be unduly burdensome and impractical for Company A to strictly comply with the disclosure requirement.
5. Company A proposed to provide the following alternative disclosure in the announcement:
- the Borrower’s principal activity, its business relationship with Company A, and any default in the past;
  - the range of interest rates and service fees payable by the Borrower for the Loan Transaction;
  - details of the collateral and other terms of the Loan Transaction; and
  - Company A’s assessment of the credit risk relating to the Loan Transaction.

## **APPLICABLE LISTING RULES**

6. Main Board Rule 13.13 states that:

“Where the relevant advance to an entity exceeds 8% under the assets ratio defined under rule 14.07(1), the issuer must announce the information in rule 13.15 as soon as reasonably practicable. For the avoidance of doubt, an advance to a subsidiary of the issuer will not be regarded as an advance to an entity.”

7. Main Board Rule 13.15 states that:

“Under rule 13.13 or 13.14, issuers must announce details of the relevant advance to an entity, including details of the balances, the nature of events or transactions giving rise to the amounts, the identity of the debtor group,

interest rate, repayment terms and collateral.”

8. Main Board Rule 14.58 states that

“The announcement for a share transaction, discloseable transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover must contain at least the following information:-

...

(4) the aggregate value of the consideration, how it is being or is to be satisfied and details of the terms of any arrangements for payment on a deferred basis. If the consideration includes securities for which listing will be sought, the listed issuer must also include amounts and details of the securities being issued;

...

(8) the reasons for entering into the transaction, the benefits which are expected to accrue to the listed issuer as a result of the transaction, and a statement that the directors believe that the terms of the transaction are fair and reasonable and in the interests of the shareholders as a whole; and

...”

## **ANALYSIS**

9. Chapter 14 governs an issuer’s transactions having material impacts on its financial position. It seeks to ensure that shareholders are informed of these transactions and, if they are material, have an opportunity to vote on them. Rules 13.13 to 13.15A require an issuer to make proper disclosure to allow investors to assess the risks and exposure of its material advances to other entities.
10. When deciding whether to grant a waiver, the Exchange will take into account the circumstances and reasons outlined in the waiver application and all other relevant information supplied by the issuer.

11. In this case, the Exchange noted the practical difficulties which Company A might encounter if it was required to strictly comply with the specific disclosure requirements. When assessing the waiver application, the Exchange considered the following:

- (i) The Loan Transaction was a discloseable transaction only and was not significant to Company A. If the Loan Transaction constituted a major transaction, Company A should make full disclosure of the transaction and comply with the shareholders' approval requirement.
- (ii) The Loan Transaction was collateralised, and there would be meaningful alternative disclosure to allow investors to assess the creditworthiness of the Borrower and the risks and exposure of the Loan Transaction. If the Loan Transaction was unsecured, Company A would need to produce a satisfactory credit agency report on the Borrower to the Exchange and disclose the Borrower's credit rating in the announcement.

## **DECISION**

12. The Exchange granted the waiver to Company A.