

HKEX LISTING DECISION HKEX-LD9-2011 (Updated in October 2020 and January 2023 (Rule amendments, Rule reference) and withdrawn in January 2024)

[This listing decision is withdrawn.]

Parties	Company A – a PRC issuer, also listed on a Mainland exchange
Issue	Whether the Exchange would waive the requirement on the exercise price of share options for Company A’s share option scheme involving issue of new A shares
Listing Rules	Main Board Rule 17.03E
Decision	The Exchange waived the requirement

FACTS

1. Company A announced (i) its proposal to adopt a share option scheme involving issue of new A shares; and (ii) details of the proposed grant of options under it (including the names of the grantees, the number of options to be granted, and other terms of the options) (the **Announcement**). No further options would be granted under the scheme.
2. Both the scheme and the grant required approval by Mainland regulatory authorities and shareholders. The scheme would be effective from the date of shareholder approval. The board would formally grant the options within 30 days of the shareholder approval.
3. To comply with the Mainland law, Company A determined the exercise price of the options based on the higher of:
 - a. the closing price of A Shares on the last trading day before the Announcement; and
 - b. the average closing price of A shares during the last 30 trading days before the Announcement.
4. This price fixing mechanism was different from those under Note (1) to Rule 17.03(9) (the **Note**). The Note requires the use of the higher of the share price on the grant date and the 5 day average of the share price before the grant date to determine the exercise price. The grant date is the date on which the terms of the grant were fixed.

5. Company A sought to waive the Note requirement.

APPLICABLE LISTING RULES

6. Rule 17.03(9) states that the scheme document must include the following provisions and/or provisions as to the following (as the case may be):

...

- (9) the basis of determination of the exercise price;

Notes: (1) ... the exercise price must be at least the higher of: (i) the closing price of the securities as stated in the Exchange's daily quotations sheet on the date of grant, which must be a business day; and (ii) the average closing price of the securities as stated in the Exchange's daily quotations sheets for the five business days immediately preceding the date of grant. For the purpose of calculating the exercise price where an issuer has been listed for less than five business days, the new issue price shall be used as the closing price for any business day falling within the period before listing.

(Rule 17.03(9) was amended on 1 January 2023. See Note 1 below.)

ANALYSIS

7. The Exchange agreed to waive the Note requirement because:
 - a. The securities under the scheme were A shares. The scheme must comply with the Mainland law and obtain approvals by Mainland regulatory authorities.
 - b. The exercise price determined under paragraph 3 above reflected the market price of the A Shares at the time the terms of the grant were fixed. This was in line with the rationale of the Note.
 - c. The scheme was subject to shareholder approval.

CONCLUSION

8. The Exchange considered it appropriate to waive the Note requirement.

SUBSEQUENT DEVELOPMENT (added in October 2020 and last updated in January 2023)

9. The Exchange codified the waiver of the exercise price requirement for issuers dually listed on the Exchange and a PRC exchange by adding a new Main Board Rule 19A.39C, which became effective on 1 October 2020.

10. Rule 19A.39C states that:

“The Exchange may waive the exercise price requirement under rule 17.03E for a share option scheme of a PRC issuer dually listed on the Exchange and a PRC stock exchange, provided that: (i) the scheme involves only shares listed on the PRC stock exchange; and (ii) the scheme contains provisions to ensure that the exercise price of the options is no less than the prevailing market price of the relevant shares on the PRC stock exchange at the time of grant of the options.”

Notes:

1. Chapter 17 was amended on 1 January 2023. The requirements on the exercise price of options under Note 1 to the old Rule 17.03(9) were moved to the new Rule 17.03E.
2. The Rule amendments would not change the analysis and conclusions in this case.