

**HKE<sub>x</sub> LISTING ENFORCEMENT GUIDANCE LETTER**  
Cite as HKE<sub>x</sub>-LEGL07-08 (December 2008)

Summary	
<b>Listing Rule</b>	GEM Listing Rules 17.11 and 17.56(2)
<b>Subject</b>	Guidance on replying to unusual trading movement enquiries from the Stock Exchange of Hong Kong and ensuring accuracy in the subsequent announcements when there are ongoing business negotiations relating to intended acquisitions or realizations
<b>Contents</b>	Extracts of a No Further Action (Guidance) letter from the authorised signatory of the Stock Exchange of Hong Kong

[\*Date]

[Name and Address of Listed Issuer]

Dear Sirs,

**[Name of Listed Issuer] (the “Company”, together with its subsidiaries, the “Group”)**  
**No Further Action: Guidance**

The Listing Division ("Division") refers to earlier correspondence concerning the captioned matter resting with your letter dated [\*day \*month \*year]. Capitalized terms used in this letter have the same meanings as they are defined in the Company's announcements dated [\*day \*month \*year] and [\*day \*month \*year], unless otherwise stated.

**Materials Reviewed**

The Division refers to the following materials which have been reviewed:

1. the Company's announcement dated [\*day \*month \*year] ("First Announcement");
2. the Company's announcement dated [\*day \*month \*year] ("Second Announcement");
3. letters from [\*name of solicitors] on behalf of the Company and the Relevant Directors to the Division dated [\*day \*month \*year], [\*day \*month \*year], [\*day \*month \*year], [\*day \*month \*year], [\*day \*month \*year] and [\*day \*month \*year]; and
4. letters from [\*name of solicitors] on behalf of the Company and the current Directors to the Division dated [\*day \*month \*year] and [\*day \*month \*year].

Thank you for the information and materials provided by the Company and the Relevant Directors which enable the Division to have a clearer understanding of the matter.

## **Facts**

1. On [*\*day \*month \*year (day 1)*], in response to the Division's enquiries at around [*\*time*] on unusual trading price and volume movements in the Company's shares, the Company published the First Announcement pursuant to Rule 17.11 of the GEM Listing Rules ("GLR") after the market closed, which stated inter alia that the Directors were not aware of any reason for the unusual movements, and that there were no negotiations or agreements relating to intended acquisitions or realizations which were discloseable under Chapters 19 to 20 of the GLR.
2. On [*\*day \*month \*year (day 6)*], being the next business day after publication of the First Announcement, the Company informed the Division that an independent third party had approached the Relevant Directors in early [*\*month \*year*] for a possible acquisition of a majority interest in the Company, which if implemented would result in a change in control of the Company as well as a consequential general offer for the outstanding shares. The Company requested a suspension of trading from [*\*time*] on [*\*day \*month \*year (day 6)*].
3. On [*\*day \*month \*year (day 7)*], the Company published a clarification announcement disclosing the Proposal, i.e. the Second Announcement, before the market opened. Trading resumed on the same day. In the Second Announcement, the Company stated that it had inadvertently omitted to disclose information which may be discloseable under GLR17.10, and that subsequent to the issue of the First Announcement, the Board was informed by the Relevant Directors that they had been approached by an independent third party in early [*\*month*] regarding the possible acquisition.

## **Comment**

The submissions from the Company and the Relevant Directors referred to above received during the course of our investigation into this matter revealed that the Relevant Directors had been in negotiation with an independent third party regarding different forms of business cooperation since early [*\*month \*year*]. In early [*\*month*], the independent third party made a unilateral Proposal, in draft form, to the Relevant Directors in relation to the acquisitions of a majority interest in the Company. As the Proposal had yet to be discussed between the parties concerned, the Relevant Directors considered the Proposal to be preliminary and that the Company was not under any obligation to disclose the Proposal in the First Announcement.

Based on the materials available, the Division is of the view that there is prima facie evidence that the First Announcement was not accurate and complete in all material respects as required by GLR17.56(2) because it contained a confirmation that there were no negotiations relating to intended acquisitions or realizations which were discloseable under Chapters 19 to 20 of the GLR which does not appear to have been the case.

## **Action**

Having reviewed the materials made available to the Division, the Division is of the view that the inaccurate and incomplete disclosure in the First Announcement may in other circumstances have led to disciplinary action against the Company and the Relevant Directors.

Further, the Relevant Directors remain liable for actions they took as directors of the Company despite their subsequent resignation from the Board, and disciplinary action could be taken against them subsequent to their resignation.

However, the Division has decided not to take any further disciplinary action. In coming to this decision the Division has taken into account the following factors and conduct subsequent to the events in question.

The Division notes that in respect of what we believe to be the inaccurate and incomplete disclosure in the First Announcement, the Relevant Directors were prompt in taking remedial actions, including the request for suspension in trading of the Company's shares pending publication of a clarification announcement, and the publication of the Second Announcement. As a result, there was no trading in the Company's shares between the publication of the First Announcement and the Second Announcement and in the circumstances the First Announcement made may not have impacted on shareholders to a significant degree.

The Division has also noted the subsequent change in control and complete change in Board composition of the Company since the conduct covered by our investigation. We note however that the information available to us indicates that the Relevant Directors (i.e. those in office at the material time) are still currently occupying management positions within the Group.

It should be noted that our decision is not and should not be interpreted as an agreement on the Company's assessment of the price-sensitivity of the relevant matters or an endorsement in any way of the Company's conduct in this case. Please also note that our decision in this case is based on the facts and circumstances prevailing at the material time, and does not serve as a precedent for other cases or apparently similar factual scenarios which given the passage of time or difference in circumstances may be treated differently.

## **Guidance**

1. A fundamental principle underlying listed issuers' announcements and other disclosures made under the GLR is that they must be timely, accurate and complete, and not misleading or deceptive. In the context of responding to enquiries made of listed issuers by the Division concerning unusual movements in trading of the relevant listed securities, notwithstanding the standard form wording given in Note 2 of GLR17.11, issuers and their directors should exercise great caution before giving a blanket negative confirmation relating to the presence of negotiations or agreements referred to under GLR17.11. Failure to do so may result in a breach of GLR17.56(2). We would also draw your attention to the Exchange's announcement of 11 September 2006 which provides guidance on timeliness and accuracy of disclosure of price-sensitive information.
2. In responding to price alert enquiries from the Division, while the Division appreciates confidentiality concerns regarding ongoing business negotiations, where there is unusual trading movement triggering enquiries from the Division under GLR17.11, the Company is required, in addition to giving confirmations about directors' dealings and matters discloseable under GLR17.10, to also notify the Division of ongoing business negotiations relating to intended acquisitions or realizations discloseable under Chapters 19 to 20 of the GLR. This obligation is

separate and distinct from the wider continuing disclosure obligations to shareholders and the market contained in Chapter 17 of the GLR.

3. If there is doubt regarding whether there is an obligation to make public disclosure of any negotiation or agreement, the Company and its Directors are encouraged to consult the Division and/or seek professional advice as to the Company's disclosure obligations in the circumstances. Towards this end and for good corporate governance, the Company and its Directors are also encouraged to actively record their deliberations on disclosure obligations and GLR applicability regarding each particular set of circumstances.
4. The Division also notes from the submissions that in this case what we believe to be the inaccurate and incomplete disclosure in the First Announcement appears to have at its root a lack of, or in any event inadequate or ineffective, communication amongst members of the Board at the material time. To improve corporate governance and GLR compliance, the management of the Company is encouraged to create and implement (if they have not already done so), an internal management process which facilitates timely and effective communication amongst members of the Board, access to external professional advice, as well as regular internal training on GLR compliance and corporate governance, in particular with respect to assessment of price-sensitive information.

### **Invitation**

We invite the board of Directors of the Company and the Relevant Directors to comment on this letter if they wish. Your submission, together with this letter, will be placed on the compliance files of the Company and the Relevant Directors. No further action will be taken in respect of this matter which is now considered closed.

### **Publicity**

We wish to inform you that, at an appropriate time, the Division may, in the discharge of its regulatory function, publicize certain facts and guidance given in this letter. This would be done on an anonymous and redacted basis, to explain our views on the issues raised by this case for the benefit of the market as a whole. If such disclosure is made it may be published on our website and in our quarterly publication "Exchange".

Yours faithfully,  
For and on behalf of  
The Stock Exchange of Hong Kong Limited

*[Signed]*

*[Authorised Signatory]*