

HKE_x LISTING DECISION
Cite as HKE_x-LD44-2 (First Quarter of 2005)

Summary	
Name of Parties	Company A – a Main Board listed issuer and its subsidiaries (the “Group”) Shareholder X – an existing shareholder of Company A
Subject	Whether Shareholder X could purchase shares pursuant to an anti-dilution provision where it was also a connected client of one of the distributors of the shares in the initial public offering of Company A?
Listing Rules	Listing Rules 10.03, 10.04; Paragraphs 5 and 13 of Appendix 6 of the Listing Rules
Decision	The Exchange determined that, subject to full disclosure of the details of the proposed placing to Shareholder X in the prospectus and in the announcement of the allotment results, a. a waiver of Listing Rule 10.04 would be granted to permit the proposed placing of Shares to Shareholder X at the IPO price; and b. the Exchange's written consent would be given in respect of the proposed placing of Shares to Shareholder X.

SUMMARY OF FACTS

1. Company A applied for a waiver of Listing Rule 10.04 and for the Exchange's written consent under paragraph 5 of Appendix 6 to enable an existing shareholder of Company A (“Shareholder X”) to subscribe for a certain number of shares of Company A (“Shares”) upon their listing on the Exchange. The proposed placing of Shares to Shareholder X would be conducted on the same terms as those offered to other investors under the initial share offer of Company A, including subscription at the IPO price.
2. Shareholder X was an insurance company whose normal course of business included investing in Hong Kong listed shares. Shareholder X and one of the distributors involved in the placing of Shares were both members of a same group of companies.

3. The existing version of Company A's articles of association contained an anti-dilution provision which conferred upon all shareholders the right to purchase or subscribe for such number of additional securities to be issued by Company A in order to maintain their respective proportionate shareholdings. The existing shareholders of Company A, other than Shareholder X, had waived their right under the anti-dilution provision. A new set of articles of association without any anti-dilution provision would be adopted upon the listing of Company A.
4. Company A proposed to include in its prospectus a statement that Shareholder X had served a notice pursuant to the anti-dilution provision on Company A that it intended to subscribe for a number of shares in the IPO sufficient to enable it to maintain its proportionate shareholdings in Company A.

THE ISSUE RAISED FOR CONSIDERATION

5. Whether Shareholder X could purchase shares pursuant to an anti-dilution provision where it was also a connected client of one of the distributors of the shares in the initial public offering of Company A?

APPLICABLE LISTING RULES OR PRINCIPLE

6. Listing Rule 10.04 provides that:

'A person who is an existing shareholder of the issuer may only subscribe for or purchase any securities for which listing is sought which are being marketed by or on behalf of a new applicant either in his or its own name or through nominees if the conditions in rules 10.03(1) and (2) are fulfilled.'
7. Appendix 6 of the Listing Rules sets out the placing guidelines for new listing applicants.
8. Paragraph 5(1) of Appendix 6 states that no allocations will be permitted to "connected clients" of the lead broker or of any distributors without the prior written consent of the Exchange.
9. Paragraph 13 of Appendix 6 sets out the various categories of persons that may be defined as a "connected client" of an Exchange Participant. This includes but not limited to, in the case of the Exchange Participant being a company, any client of the Exchange Participant which is a member of the same group of companies as such Exchange Participant.

THE ANALYSIS

10. The principal regulatory rationale for Listing Rule 10.04 and the Placing Guidelines set out in Appendix 6 of the Listing Rules is to ensure that shares are placed to independent and genuine investors, rather than to existing shareholders of the new listing applicants or related parties of the lead brokerages.
11. In considering the issues in the present case, the Exchange took into account the following:-
 - a. the placing of Shares to Shareholder X was in accordance with the existing provisions of the articles of association of Company A;
 - b. the proposed placing of Shares would be at the IPO price; and
 - c. Shareholder X had agreed to a lock-up period in respect of the Shares allotted to it under the IPO of Company A for a period longer than that required under Listing Rule 10.07.
12. Consequently, the Exchange determined that it would grant a waiver of Listing Rule 10.04 and give the required written consent under paragraph 5 of Appendix 6 of the Main Board Listing Rules subject to the conditions that there would be full disclosure of the details of the proposed placing to Shareholder X in the prospectus and in the announcement of the allotment results.

THE DECISION

13. Based on the above facts and the circumstances of the case and the Exchange's analysis of the Listing Rules, the Exchange determined that, subject to full disclosure of the details of the proposed placing to Shareholder X in the prospectus and in the announcement of the allotment results,
 - a. a waiver of Listing Rule 10.04 would be granted to permit a proposed placing of Shares to Shareholder X at the IPO price; and
 - b. the Exchange's written consent would be given in respect of the proposed placing of Shares to Shareholder X.