

HKEX GUIDANCE LETTER

HKEX-GL29-12 (January 2012) (Updated in March 2017)

Subject	Interim Guidance on Pre-IPO Investments
Listing Rules and Regulations	Main Board Rules 2.03(2) and (4) GEM Rules 2.06(2) and (4)
Related Publications	HKEX News Release (updated: 13/10/2010)
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Important note: *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for an interpretation of the Listing Rules, or this letter.*

1. Purpose

- 1.1 This is a reproduction of the HKEX News Release regarding Interim Guidance on Pre-IPO Investments given by the Listing Committee on 13 October 2010.

2. The Interim Guidance

- 2.1 “The Listing Committee of The Stock Exchange of Hong Kong Limited (the “**Exchange**”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, announces today (Wednesday) its interim guidance on pre-IPO investments pending consultation on possible amendments to the Listing Rules.
- 2.2 The Listing Committee notes that some market practitioners have expressed concern that recent decisions about pre-IPO investments may have caused some uncertainty about the principles to be applied and the Exchange’s practice. The interim guidance is aimed to provide the market with more clarity.
- 2.3 Recently, the Listing Committee considered two cases where the pre-IPO investment agreements were signed on the date of submission of the listing application forms with settlement taking place later and close to the Listing Committee hearing date. The prices were at a deep discount to the IPO price. The pre-IPO investors would have received much more favourable terms than investors at the IPO stage.
- 2.4 In both cases, the Listing Committee decided, after carefully considering the terms and circumstances of the pre-IPO investments, that they contravened the Listing Rule principles that the issue and marketing of securities must be conducted in a fair and orderly manner and all holders of

securities must be treated fairly and equally. The Listing Committee considered that either the investments should be retracted or the listing timetable extended so that the pre-IPO investors would be exposed to risks significantly different from those assumed by investors investing at the IPO stage.

- 2.5 In 2008, the HKEX Board engaged a consultant to conduct a strategic review of the Listing Rules and their application. The consultant noted that market practitioners find it difficult to identify consistent requirements on pre-IPO investments. The consultant also recommended a review of the placing guidelines in view of current market practice. The Exchange aims to start consultation in the near future on whether and if so, how the placing guidelines and relevant Listing Rules should be amended.
- 2.6 Under the interim guidance, the Exchange will generally delay, except in very exceptional circumstances, the first day of trading of the applicant's securities until 120 clear days after the later of the completion or divestment of the last pre-IPO investments if (a) the applicant has a pre-IPO investment completed within 28 clear days before the date of the first submission of the first listing application form ("**28 Clear Days**") and the relevant pre-IPO investor remains as a shareholder at the date of the first submission of the first listing application form or (b) the pre-IPO investment is completed on or after the date of the first submission of the first listing application form and before the date of the listing. Pre-IPO investments are considered completed when the funds for the underlying shares are irrevocably settled and received by the applicant. For clarity, clear days exclude the day of the pre-IPO investment completion, the day of the submission of the listing application form and the first day of trading of securities. (*Updated in March 2017*)
- 2.7 Pre-IPO investors who divest prior to the date of the first submission of the first listing application form do not disrupt the listing process nor affect the equal treatment of shareholders post listing. Therefore, there will be no penalty to the applicant for pre-IPO investors who divest prior to the date of the first submission of the first listing application form regardless of when the pre-IPO investment was made or whether the divestment is pursuant to a contractual right. (*Updated in March 2017*)
- 2.8 Divestments on or after the date of the first submission of the first listing application form is highly disruptive to the listing process and will be subject to a 120 day delay regardless of when the pre-IPO investment was made or whether the divestment is pursuant to a contractual right. (*Updated in March 2017*)
- 2.9 Pre-IPO investments completed prior to 28 Clear Days are not subject to the interim guidance. (*Updated in March 2017*)
- 2.10 The Listing Committee recognises that there may be circumstances where pre-IPO investments on terms more favourable than those offered to investors at the IPO may be justifiable, e.g. where the applicant is in severe financial distress. Each case will need to be considered based on its own facts and circumstances.

2.11 Potential applicants are encouraged to consult the Listing Department before submission of listing applications if they have any questions.”

Notes:

1. Over the years, the Listing Committee has been asked to consider matters relating to pre-IPO investments on terms more favourable than those available at the IPO stage. It has based its decisions on the principles in Main Board Listing Rules 2.03(2) and (4)/GEM Rules 2.06(2) and (4), which state that the Listing Rules are designed to ensure that investors have and can maintain confidence in the market and in particular that:-

(2) *the issue and marketing of securities is conducted in a fair and orderly manner...;*

and

(4) *all holders of listed securities are treated fairly and equally,*

2. The Exchange has published Listing Decision Series **36**, **55** and **59** relating to pre-IPO investments, which can be found on the HKEX website. In addition, the Listing Committee commented on how it dealt with pre-IPO investments issues in its annual reports for **2006** and **2007**, which can also be found on the HKEX website.
