

## HKEX LISTING DECISION

HKEX-LD83-1 (December 2009) (Updated in May 2018, October 2019 (Rule amendments))

Summary	
<b>Parties</b>	Company X – a Main Board listed company incorporated in the PRC  The Vendor – a substantial shareholder of Company X intending to sell part of its business to Company X
<b>Subject</b>	Whether the Exchange would disregard the consideration ratio for the acquisition and accept the proposed alternative size test
<b>Listing Rules</b>	Main Board Listing Rules 14.07(5), 14.20
<b>Decision</b>	The Exchange disregarded the consideration ratio for the acquisition and accepted the proposed alternative size test

### SUMMARY OF FACTS

1. Company X's H shares were listed on the Exchange. Its A shares were listed on a PRC stock exchange.
2. Company X proposed to acquire a business from the Vendor and settle the consideration by issuing A shares. The acquisition was a connected transaction subject to independent shareholders' approval.
3. The consideration ratio exceeded 100% and the acquisition would be a very substantial acquisition. However, the other percentage ratios indicated that the acquisition was a major transaction only.
4. Company X submitted that the consideration ratio produced an anomalous result and was inappropriate for classifying the acquisition because:
  - a. the consideration ratio was calculated using the market capitalisation of Company X's entire issued share capital (which included A and H shares) based on the market value of its H shares only. It would not fairly reflect Company X's market capitalisation because its H shares represented less than half of its total issued share capital, and had been trading at a significant discount to the trading price of its A shares for a considerable period before the acquisition; and

- b. the consideration for the acquisition would be paid in full by Company X issuing new A shares to the Vendor. The issue price would be determined based on the trading price of its A shares as required under PRC laws and regulations.
5. Company X proposed an alternative size test based on the average market value of its A shares and the average market value of its H-shares for 5 trading days immediately before the transaction date. The alternative consideration test was less than 40%.

## **ISSUE**

6. Whether the Exchange would disregard the consideration ratio for the acquisition and accept the proposed alternative size test.

## **APPLICABLE LISTING RULES OR PRINCIPLES**

7. Rule 1.01 defines “market capitalisation” as:

the market value of the entire size of an issuer, which shall include all classes of securities of the issuer, irrespective of whether any of such class(es) of securities are unlisted, or listed on other regulated market(s).

8. Rule 14.07(5) provides the calculation of a consideration ratio as follows:

the consideration divided by the total market capitalisation of the listed issuer. The total market capitalisation is the average closing price of the listed issuer’s securities as stated in the Exchange’s daily quotations sheets for the five business days immediately preceding the date of the transaction (see in particular rule 14.15);

9. Rule 14.20 provides that:

the Exchange may, where any of the calculations of the percentage ratios produces an anomalous result or is inappropriate to the sphere of activity of the listed issuer, disregard the calculation and substitute other relevant indicators of size, including industry specific tests. The listed issuer must provide alternative tests which it considers appropriate to the Exchange for consideration.

## **ANALYSIS**

10. Rule 14.07 sets out five percentage ratios for assessing the impact of a transaction on an issuer. The consideration ratio provides an indication of the materiality of the transaction by reference to the issuer's size measured by market capitalisation. The market price of the issuer's shares listed on the Exchange should be used to determine its market capitalisation (including securities that are unlisted or listed on other markets).
11. In this case, Company X had a substantial amount of A shares listed on another stock exchange and the consideration for the acquisition would be fully settled by issuing new A shares at a price determined based on its A shares' trading price. Given the substantial difference between the A and H share prices, it was reasonable to compare the consideration with Company X's market value that took into account its share trading activities on both the Exchange and the PRC stock exchange. The Exchange therefore accepted Company X's proposed alternative test in place of the consideration ratio which produced an anomalous result.

## **DECISION**

12. The Exchange disregarded the consideration ratio for the acquisition and accepted the proposed alternative size test.

## **SUBSEQUENT DEVELOPMENT - MODIFICATION TO THE CONSIDERATION RATIO FOR PRC ISSUERS *(added in May 2018)***

13. On 20 April 2018, the Exchange obtained the SFC's consent for the modification of the consideration ratio under Main Board Rule 14.07(4) (or GEM Rule 19.07(4)) for classifying notifiable and connected transactions of PRC listed issuers with A and/or B shares listed on a PRC stock exchange. When an issuer calculates the total market capitalisation for the purpose of the consideration ratio, the market capitalisation of its A and/or B shares is to be determined based on the average closing price of the respective shares for the 5 business days preceding the transaction. (See also FAQ Series 1, No. 49)
14. Where a PRC issuer has issued unlisted domestic shares, the market capitalisation of these unlisted shares is calculated by reference to the average closing price of the H shares for the 5 business days preceding the transaction.

*Note: On 1 October 2019, Rule 14.20 was amended to clarify that if any calculation of the percentage ratio produces an anomalous results or is inappropriate to the sphere of activities of the issuer, the Exchange (or the issuer) may apply an alternative size test that it considers appropriate to assess the materiality of a transaction under Chapter 14.*

*The Rule amendments would not change the analysis and conclusion in this case.*