

HKE_x LISTING DECISION
HKE_x-LD15-2011 (July 2011)

Party	Company A – a Main Board listing applicant seeking a listing on the Exchange
Issue	Whether the Interim Guidance on Pre-IPO Investments applied to an issue of shares upon exercise of warrants which formed an integral part of a loan agreement between the warrant holder and Company A
Listing Rules and Regulations	Main Board Listing Rule 2.03(2) and (4) Interim Guidance on Pre-IPO Investments issued on 13 October 2010 (Interim Guidance)
Decision	The Exchange decided that the Interim Guidance was applicable to the warrant issue

FACTS

1. Company A entered into a loan agreement with independent third parties (**Lenders**). The loan was conditional on the controlling shareholders issuing Warrants A and Warrants B (**Warrants**) to the Lenders.
2. The terms of the Warrants enabled the Lenders to:
 - exercise Warrants A in whole or in part to purchase up to an aggregate of 12% of Company A's enlarged issued share capital at a pre-determined price upon listing.
 - exercise Warrants B to acquire up to an aggregate of less than 1% of Company A's enlarged issued share capital for free once the IPO price of Company A's shares was finalised.
 - opt for cash settlement in lieu of Company's shares.
3. More than 28 days before Company A submitted its listing application, the loan had been fully drawn down but the Warrants remained exercisable on the date of the listing application.

APPLICABLE RULES, REGULATIONS AND PRINCIPLES

4. Rule 2.03 requires the issue and marketing of securities to be conducted in a fair and orderly manner and all holders of listed securities be treated fairly and equally.
5. Under the Interim Guidance, pre-IPO investments must be completed either (a) at least 28 clear days before the date of the first submission of the first listing application form or (b) 180 clear days before the first day of trading of the applicant's securities, except in very exceptional circumstances. Pre-IPO investments are considered completed when the funds are irrevocably settled and received by the applicant.

ANALYSIS

6. The Exchange considered that:
 - a. the Warrants which would entitle the Lenders to Company A's shares shortly before its listing was a pre-IPO investment under the scope of the Interim Guidance;
 - b. the loan and the Warrants were separate transactions, although the issue of the Warrants was one of the conditions precedent to the loan agreement;
 - c. the injection of the loan was not a settlement of the consideration for the shares under the Warrants; and
 - d. as the Lenders had not settled the consideration for the shares under the Warrants more than 28 days before Company A submitted its listing application, the pre-IPO investment in Company A was not considered completed as the funds were not irrecoverably settled and received by Company A.

CONCLUSION

7. The Exchange requested Company A to adjust the terms of the pre-IPO investment to comply with Rules 2.03(2) and (4) or defer its listing date to six months after the payment date to comply with the Interim Guidance.
8. The Lenders and the controlling shareholders cancelled the Warrants, with the latter compensating the Lenders with cash.
9. As Company A would not be the party to compensate the Lenders for the cancellation of the Warrants, the Exchange considered that the interests of the investing public were not prejudiced.
10. Since an interest expense arising from the Warrants had been recognised and was reflected in the Company A's profit forecast, the Exchange requested Company A to make prominent disclosure of the expense in its prospectus, including a subsequent event disclosure in the accountants' report.