HKEx LISTING DECISION
HKEx-LD78-1 (October 2009)

Summary	
Party	Company A – a Main Board listing applicant and its subsidiaries
Subject	Whether to waive Rules 4.04(2) and 4.04(4)(a) so that Company A's accountants' report need not include the three-year financial statements of the businesses it had acquired after the latest audited balance sheet date.
Listing Rules	Rules 4.04(2), 4.04(4)(a)
Decision	The Exchange granted Company A a waiver from including in its accountants' report the financial results and balance sheets of the newly acquired businesses for each of the three financial years. Company A must disclose the waiver in the prospectus.

SUMMARY OF FACTS

1. Company A applied for a waiver from Rules 4.04(2) and 4.04(4)(a) in respect of the inclusion of the three financial years audited results and balance sheets of three businesses it had acquired after the latest audited balance sheet date.

2. It gave the following reasons:

   a. **Non-availability of financial information –** It had acquired the businesses in its ordinary and usual course of business from independent third parties. The acquisitions were priced on fair values, taking into account factors such as location and customer flow. Company A had difficulties in obtaining all the necessary information from the previous owner and management.

   b. **Immateriality** – It considered the businesses were immaterial. The total consideration for the acquisitions was less than 1% of its total market capitalisation, and the total assets acquired were less than 1% of its total assets.

   c. **Alternative Disclosure –** It would provide in its prospectus alternative information about the acquired businesses to make up for the non-inclusion of their audited results and balance sheets. This included:

      (i) full addresses, net assets, gross floor area and trading volumes (for the last year of the track record period); and

      (ii) fair values of their identifiable principal assets and liabilities.

THE ISSUE RAISED FOR CONSIDERATION

3. Whether to waive Rules 4.04(2) and 4.04(4)(a) so that Company A's accountants' report need not include the three-year financial statements of the businesses it had acquired after the latest audited balance sheet date?

APPLICABLE LISTING RULES

4. Rules 4.04(2) and 4.04(4)(a) require that the accountants' report of a new listing applicant must include the results and the balance sheets of any business or subsidiary acquired since the date to which the latest audited accounts of the issuer have been made up in respect of each of the three financial years immediately preceding the issue of the listing document.

THE ANALYSIS

5. Rules 4.04(2) and 4.04(4)(a) do not have a materiality threshold. This means that irrespective of the sizes of the businesses acquired after the latest balance sheet date, the applicant must include in its accountants' report three years financial information of these businesses.

6. Rules 4.04(2) and 4.04(4)(a) do not prescribe how the accounts of newly acquired businesses must be presented. They may be disclosed by way of a note to the main accountants' report or a separate accountants' report. The general principle is that the information presented must be accurate and complete and in plain language. The Exchange may recommend a presentation method.

7. The Exchange recognises that an applicant may encounter difficulties in disclosing the historical financial information of acquired businesses in some situations:

   a. it acquired a carved-out business where separate books and records for the acquired business are not available or not practical to reconstruct; or

   b. it acquired a business from a third party who allows limited access to the books and records of the business.

8. Applicants who have difficulties in complying with Rules 4.04(2) or 4.04(4)(a) may apply for waivers by the Listing Committee.

9. As rule waivers are discretionary, the Exchange may reject an application. Examples of rejections are briefly stated below.

Case 1

10. The applicant had acquired a controlling interest in a company after the latest balance sheet date. The Exchange noted that the total assets acquired represented about 10% of the applicant's total assets. The draft accountants' report originally accounted for the newly acquired interest as if it had been a subsidiary of the applicant's group throughout the track record period.

11. The Exchange rejected this basis of accounting and required the prospectus to include (a) an accountants' report for the group, and (b) a separate accountants' report for the acquired company for the relevant track record period.

Case 2

12. The applicant was a GEM issuer seeking a new listing on the Main Board under the pre-2007 rules. It applied for a waiver of Rule 4.04(2) for all acquisitions it would enter between the latest audited accounts date and the issue of its listing document. It listed its proposed acquisition targets for this period, none of which would go beyond the discloseable transaction threshold.

13. The Exchange rejected the application because:

    a. although as a GEM issuer the applicant was not required to disclose details of acquisitions below the discloseable transaction threshold, it should be treated in the same way as any new Main Board listing applicant; and

    b. the applicant's active acquisition strategy was not a valid reason to relieve it from including information about the proposed acquisitions in its accountants' report. The Exchange did not accept the applicant's argument that it was not practical for it to do so. It could obtain accountants' reports as part of its due diligence for the proposed acquisitions and the relevant information should be available for inclusion in the listing document.

Factual Application

14. The Exchange took into account the following factors:

    a. **Immateriality** - applying the size tests in Rule 14.07 to the acquisitions in question would produce a ratio of less than 1% for each test. The acquisitions would not trigger the discloseable transaction requirement (requiring a 5% threshold). Further, the acquisitions were not significant enough to require Company A to prepare pro-forma accounts under Rule 4.28.

    b. **Alternative Disclosure –** Company A would make alternative disclosures in the prospectus. These disclosures covered all aspects required of a discloseable transaction, except for the disclosure of the net profit of the acquisition targets for the preceding two financial years (as required under Rule 14.58(7)) due to unavailability of the information.

    c. **Reasons for non-availability of information –** Company A had genuine difficulties in obtaining the historical financial information of the acquired businesses as they were bought from independent third parties.

    d. **Case 2 can be distinguished** - the applicant in Case 2 had applied for a waiver to cover all potential acquisitions since the latest audit accounts date up to the issue of the listing document. This would include acquisition targets that it had not yet identified when the Exchange considered the waiver application. Company A was seeking a waiver in relation to completed acquisitions only.

THE DECISION

15. Taking all factors into account, the Exchange granted Company A a waiver from including in its accountants' report the financial results and balance sheets of the newly acquired businesses for each of the three financial years. Company A must disclose the waiver in the prospectus.