HKEx LISTING DECISION
HKEx-LD70-2013 (published in May 2013)

Summary	
Parties	Company A – a Main Board listed issuer
Issue	Whether Company A's arrangements to dispose of the excess rights shares would comply with Rule 7.21(1)
Listing Rules	Main Board Rule 7.21(1)
Decision	The Exchange considered that the arrangements would comply with the Rule

FACTS

1. Company A announced a rights issue on the basis of one rights share for every two existing shares. The issue price represented a substantial discount to the recent trading price of its shares.

2. According to Company A's announcement and listing document for the rights issue, qualifying shareholders would be entitled to apply for any excess rights shares not subscribed by the allottees under the provisional letters of allotment or their renouncees. The board of directors would allocate the excess rights shares being applied for at its discretion and on a fair and equitable basis under the following principles:

   (i) preference will be given to applications to top-up holdings to board lots ("**Top-up Applications**") where it appears to the directors that the applications are not made with the intention to abuse such mechanism; and

   (ii) if any excess shares are available after allocation under principle (i), they will be allocated to other applicants based on a sliding scale with reference to the number of the excess shares applied for by them.

3. The rights issue was over-subscribed. Company A noted unusual patterns of excess applications and had reasons to believe that certain applications might have been made with the intention to abuse the mechanism to top-up holdings to board lots. The number of shareholders had increased significantly after the rights issue announcement, and there were over 10,000 excess applications for rights shares representing about 20 times the total number of rights shares available under the rights issue. It appeared that certain shareholders had split their shareholdings into odd lots to enable them to submit multiple Top-up Applications.

4. After reviewing the excess applications and related shareholding changes, Company A's board of directors found that only a small portion of the Top-up Applications did not appear to be made with an intention to abuse the mechanism to top-up holdings to board lots. The board decided to exercise its discretion to allocate the excess rights shares in full only to these Top-up Applications. The remaining excess rights shares would then be allocated to other applicants based on a sliding scale with reference to the number of excess rights shares applied by them.

5. Company A enquired if the arrangements to dispose of the excess rights shares would comply with Rule 7.21(1).

APPLICABLE LISTING RULES

6. Rule 7.21(1) states that:

"In every rights issue the issuer may make arrangements to:—

(a) dispose of securities not subscribed by allottees under provisional letters of allotment or their renouncees by means of excess application forms, in which case such securities must be available for subscription by all shareholders and allocated on a fair basis; or

(b) …

The offer of such securities and the basis of allocation of the securities available for excess applications must be fully disclosed in the rights issue announcement, listing document and any circular."

ANALYSIS

7. An issuer is required to treat its shareholders fairly and equally. In the case of a rights issue, Rule 7.21(1) requires that if there is an arrangement to dispose of any excess rights shares through excess application forms, the directors must allocate the excess rights on a fair basis. If the issuer has identified any problems which may indicate a possible abuse of the mechanism for allocating the excess rights shares, it must look into the problems and take appropriate steps to avoid the abuse and to ensure fair treatment of shareholders. The Rule also requires the issuer to fully disclose the intended basis of allocation to ensure that sufficient information is provided to shareholders to make an informed decision before they apply for the rights shares.

8. Here Company A had disclosed the intended basis of allocation of excess rights shares in its announcement and listing document, including that preference will be given to Top-up Applications where it appears to the directors that the applications are not made with the intention to abuse such mechanism. The Exchange noted the special circumstances of this case and was satisfied that Company A had taken reasonable steps to ensure the excess shares were allocated to its shareholders on a fair basis. It considered the allocation was made consistent with the principles disclosed in the company's documents.

CONCLUSION

9. The Exchange considered that Company A's arrangements to dispose of the excess rights shares complied with Rule 7.21(1).