

HKEx GUIDANCE LETTER

HKEx-GL25-11 (October 2011) (Updated in November 2011, March 2012 and June 2013)

Subject	Conditions for waivers from strict compliance with Main Board Rule 4.04(1) and GEM Rules 7.03(1) and 11.10
Listing Rules and Regulations	Main Board Rule 4.04(1) GEM Rules 7.03(1) and 11.10
Related Publications	Listing Decision HKEx-LD45-3 (superseded by this Guidance Letter)
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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 Division on a confidential basis for an interpretation of the Listing Rules, or this letter.*

1. Purpose

- 1.1 The purpose of this letter is to set out the conditions for the waivers from strict compliance with Main Board Rule 4.04(1) (“**Rule 4.04(1) Waivers**”) and GEM Rules 7.03(1) and 11.10 (“**GEM Rules 7.03(1) and 11.10 Waivers**”) (*Updated in June 2013*).

2. Background

- 2.1 Listing applicants usually experience practical difficulty in producing audited accounts for the latest financial year if they intend to issue prospectuses shortly after the year end. It has been our practice to recommend the grant of a Rule 4.04(1) Waiver and a GEM Rules 7.03(1) and 11.10 Waiver subject to certain conditions (*Updated in June 2013*).
- 2.2 Main Board Rule 13.46 requires listed issuers to despatch to their shareholders their annual reports no later than four months (GEM Rule 18.03: three months) after the financial year end. With reference to this requirement, the Exchange determines that a Rule 4.04(1) Waiver (GEM Rules 7.03(1) and 11.10 Waiver) would be considered only if the applicant’s proposed listing date is not later than one month before the due date on which its first audited report after listing must be despatched. Therefore, a Main Board applicant must list on the Exchange within three months (two months for a GEM applicant) after the latest financial year end as a condition of the waiver (e.g. a Main Board applicant with a track record period of three years ended 31 December 2011 and nine months ended 30 September 2012 will need to dispatch its first annual report for the year ended 31 December 2012 to shareholders by 30 April 2013. It therefore must list on the Exchange on or before 31 March 2013; a GEM applicant with a track record period of two years ended 31 December 2011 and nine months ended 30 September 2012 will need to dispatch its

first annual report for the year ended 31 December 2012 to shareholders by 31 March 2013. It therefore must list on the Exchange on or before 28 February 2013) (*Added in June 2013*).

- 2.3 Under Main Board Rule 13.49, the deadline for listed issuers to release preliminary results announcements after the end of their financial year is shortened from four to three months effective for accounting periods ended on or after 31 December 2010. Listing applicants which obtained Rule 4.04(1) Waivers may be required under Main Board Rule 13.49 to release their preliminary results announcements for the latest financial year shortly after their listing. In these circumstances, it might appear that their financial information for the latest financial year should have been available at the time of publication of the prospectuses and thus should have been included in the prospectuses.

3. Relevant Requirements

- 3.1 Main Board Rule 4.04(1) requires a listing applicant to include in the accountants' report its consolidated results for each of the three financial years immediately preceding the issue of the prospectus (two financial years for GEM applicants under GEM Rules 7.03(1) and 11.10). These rules mirror the requirements of the section 342(1)¹, paragraphs 27² and 31³ of the Third Schedule to the Companies Ordinance (the "**Companies Ordinance Requirements**") (*Updated in June 2013*).

4. Guidance

- 4.1 Although each application will be considered on a case-by-case basis having regard to all relevant facts and circumstances, we set out the conditions that we would ordinarily expect in a Rule 4.04(1) Waiver and a GEM Rules 7.03(1) and 11.10 Waiver. We may modify or add to these conditions as we see fit (*Updated in June 2013*).

Rule 4.04(1) Waivers

- 4.2 In view of the shortened deadline for releasing preliminary results announcements and to enable potential investors to have adequate and timely information, we have revised the existing conditions for granting Rule 4.04(1) Waivers as follows:-
- (i) where an applicant issues its prospectus within two months after the latest year end, a Rule 4.04(1) Waiver would be subject to the following conditions;
 - (a) the applicant must list on the Exchange within three months after the latest year end;

¹ Section 342(1) of the Companies Ordinance requires all prospectuses to include an accountants' report which contains the matters specified in the Third Schedule to the Companies Ordinance.

² According to paragraph 27 of Part I of the Third Schedule to the Companies Ordinance, the company is required to include in the prospectus a statement as to the gross trading income or sales turnover (as may be appropriate) of the company during each of the three financial years immediately preceding the issue of the prospectus.

³ According to paragraphs 31(1) and (3) of Part II of the Third Schedule to the Companies Ordinance, the company is required to include in the prospectus a report by auditors of the company with respect to the financial results of the group for each of the three financial years immediately preceding the issue of the prospectus.

- (b) the applicant must obtain a certificate of exemption from the Securities and Futures Commission on compliance with the Companies Ordinance Requirements;
 - (c) a profit estimate for the latest financial year (which must comply with Main Board Rules 11.17 to 11.19) must be included in the prospectus or the applicant must provide justification why a profit estimate cannot be included in the prospectus; and
 - (d) there must be a directors' statement in the prospectus that there is no material adverse change to its financial and trading positions or prospect with specific reference to the trading results from the end of the stub period to the latest financial year end;
- (ii) where an applicant issues its prospectus in the third month after the latest year end, a Rule 4.04(1) Waiver would be subject to the following conditions:
- (a) the prospectus must include the financial information for the latest financial year and a commentary on the results for the year. The financial information to be included in the prospectus must (a) follow the same content requirements as for a preliminary results announcements under Main Board Rule 13.49; and (b) be agreed with the reporting accountants following their review under Practice Note 730 "Guidance for Auditors Regarding Preliminary Announcements of Annual Results" issued by the Hong Kong Institute of Certified Public Accountants;
 - (b) the applicant must list on the Exchange within three months after the latest year end; and
 - (c) the applicant must obtain a certificate of exemption from the Securities and Futures Commission on compliance with the Companies Ordinance Requirements.

GEM Rules 7.03(1) and 11.10 Waivers (Added in June 2013)

4.3 The conditions that we would ordinarily expect in GEM Rules 7.03(1) and 11.10 Waivers are as follows:-

- (i) the applicant must list on the Exchange within two months after the latest financial year end;
- (ii) the applicant must obtain a certificate of exemption from the Securities and Futures Commission on compliance with the Companies Ordinance Requirements;
- (iii) a profit estimate for the latest financial year (which comply with GEM Rules 14.29 to 14.31) must be included in the prospectus or the applicant must provide justification why a profit estimate cannot be included in the prospectus; and

- (iv) there must be a directors' statement in the prospectus that there is no material adverse change to its financial and trading positions or prospect with specific reference to the trading results from the end of the stub period to the latest financial year end.

5. Effective date

- 5.1 The effective date of compliance with the conditions discussed in paragraphs 4.2 and 4.3 are for listing applicants with annual accounting periods ending on or after 31 December 2011 (*Updated in June 2013*).

6. Pre-deal research (*Repealed in March 2012*)

7. Preliminary results announcement and annual report (*Added in November 2011 and updated in June 2013*)

- 7.1 An applicant with a Rule 4.04(1) Waiver under paragraph 4.2 or a GEM Rules 7.03(1) and 11.10 Waiver under paragraph 4.3 above is still required to publish a preliminary results announcement and an annual report for the last financial year according to Main Board Rules 13.49 and 13.46 or GEM Rules 18.49 and 18.03 respectively. However, if a Main Board applicant has included the preliminary results information in its prospectus under paragraph 4.2(ii)(a), we will consider granting a waiver of the preliminary results announcement requirement under Main Board Rule 13.49 on a case-by-case basis having regard to all relevant facts and circumstances.
