

HKE_x LISTING DECISION

HKE_x-LD22-2011(Published in December 2011) (Updated in July 2014)

Party	Company A – a Main Board issuer The Manager – an international asset management group and a shareholder of Company A
Issue	Whether the Manager was a core connected person or connected person of Company A because it held shares in Company A for its clients
Listing Rules	Rules 1.01, 8.24, 14A.07
Decision	The Manager was not Company A’s core connected person or connected person

FACTS

1. The Manager managed funds and assets for institutional and private clients around the world. It held about 12 per cent of Company A’s shares (the **Shares**) for two categories of clients:
 - 8 per cent were held under certain funds managed by the Manager (collectively, the **Pooled Funds**). These funds had defined investment objectives and mandates to invest in a wide range of companies. Investors of the funds were required to effectively delegate, without recourse, the investment decisions and voting powers of the Shares to the Manager.
 - 4 per cent were held on behalf of a number of clients under segregated investment accounts and closed-end funds (collectively, the **Segregated Funds**). These clients retained the power to instruct the Manager on how to handle their investments, including investment decisions and voting powers of the underlying securities.

The mandate given by each client to the Manager contained a proxy arrangement under which the Manager was authorised to vote on behalf of the client according to the client’s instruction, and in the absence of a specific voting instruction, the Manager might exercise the voting rights in accordance with its proxy voting policy endorsed by the client. The policy sought to assure that proxies were voted in the best interest of each client.

2. The Manager had no other connection with Company A. It did not have any board seats in Company A or special rights to influence its management.

3. Company A submitted the 4 per cent Shares held under the Segregated Funds should be excluded when assessing whether the Manager was a substantial shareholder of Company A because the voting rights of these Shares rested with the clients. It sought the Exchange's confirmation that the Manager was not Company A's core connected person or connected person.

APPLICABLE LISTING RULES

4. Rule 1.01 defines a "substantial shareholder" in relation to a company as:

a person who is entitled to exercise, or control the exercise of, 10 per cent or more of the voting power at any general meeting of the company.
5. Rule 1.01 states that a "core connected person" in relation to a company includes:

... a director, chief executive or substantial shareholder of the company ...
6. Rule 14A.07 states that a "connected person" includes:
 - (1) a director, chief executive or substantial shareholder of the listed issuer...
 - ...
7. Rule 8.24 states that:

The Exchange will not regard any core connected person of the issuer as a member of the "public" or shares held by a core connected person as being "in public hands". ...

ANALYSIS

8. Under the Rules, a core connected person or connected person includes an issuer's substantial shareholder for the purpose of the public float and connected transaction requirements. These requirements seek to (i) ensure a sufficient amount of listed securities in public hands to maintain an open market for trading; and (ii) safeguard against connected persons taking advantage of their positions to the detriment of the issuer's minority shareholders.
9. In this case, the Exchange noted that:
 - The Manager had control over 8 per cent of the Shares which were held under the Pooled Funds.

- The 4 per cent of the Shares held under the Segregated Funds could be distinguished from other Shares held by the Manager:
 - The clients of the Segregated Funds were the beneficial owners of the underlying Shares. They had control over the investment portfolios including the purchase and sale of these Shares.
 - The exercise of the voting rights attached to the Shares held under the Segregated Funds was always subject to the clients' specific instructions. Although the Manager could exercise the voting rights in the absence of any specific instructions, it must vote in the best interest of the clients, and not itself, under the proxy voting policy endorsed by the clients.
10. As the Manager did not have control over 10 per cent or more of the shares, it was not a substantial shareholder of Company A.

CONCLUSION

11. The Manager was not Company A's core connected person or connected person.