

**HKE<sub>x</sub> GUIDANCE LETTER****HKE<sub>x</sub>-GL18-10 (June 2010) (Updated in July 2013 and March 2014) – effective for applications submitted on or after 1 October 2013**

<b>Summary</b>	
<b>Subject</b>	<b>Guidance on publicity materials and e-IPO advertisements</b>
<b>Listing Rules</b>	<b>Main Board Rule 9.08 GEM Rule 12.10</b>
<b>Related Publications</b>	<ul style="list-style-type: none"><li>• <b>Guidelines on Use of Offer Awareness and Summary Disclosure Materials in Offerings of Shares and Debentures under the Companies Ordinance<sup>1</sup> issued by the SFC in March 2003 (Offer Awareness Guidelines)</b></li><li>• <b>Guidelines for Electronic Public Offerings issued by the SFC in April 2003 (ePO Guidelines)</b></li><li>• <b>HKE<sub>x</sub>-GL13-09 – Guidance on Prospectus Covers</b></li><li>• <b>HKE<sub>x</sub>-GL56-13 – Guidance on (i) disclosure requirements for substantially complete Application Proofs for vetting; (ii) a 3-day checklist for disclosure matters that the Exchange will check in Application Proofs for vetting prior to acceptance; and (iii) publication of Application Proofs on Exchange’s website</b></li><li>• <b>HKE<sub>x</sub>-GL57-13 – Guidance on Logistical Arrangements for Publication of Application Proofs, Post Hearing Information Packs (“PHIPs”) and related materials on the Exchange’s Website for Main Board and GEM cases</b></li><li>• <b>Sections 38B(1), (2), Nineteenth Schedule of Companies Ordinance<sup>1</sup> (Cap. 32)</b></li><li>• <b>Sections 103(1), (2) and (3), 105 of Securities and Futures Ordinance (Cap. 571)</b></li></ul>
<b>Author</b>	<b>IPO Transactions Department</b>

<sup>1</sup> Retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with effect from March 2014.

**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 interpretation of the Listing Rules, or this letter.*

## **1. Purpose**

### 1.1 This letter:

- clarifies what publicity materials relating to an issue of securities require our consent before they can be released;
- sets out our principles for approving them; and
- contains a note on offer awareness materials and electronic initial public offering (e-IPO) advertisements.

## **2. Relevant Rules and Laws**

### *The Listing Rules*

- 2.1 Under Main Board Rule 9.08/ GEM Rule 12.10, no publicity material on an issue of securities by a new applicant can be released in Hong Kong by a new applicant or its agents unless and until the Exchange has reviewed it and confirmed to the applicant that it has no comments. In addition, the publicity material must comply with all statutory requirements. If the Exchange believes that a new applicant or its advisers have permitted information on the listing of the new applicant's securities to leak, the Exchange will normally delay an application for the listing of those securities (***Updated in July 2013***).
- 2.2 Main Board Rule 9.08(1)/ GEM Rule 12.10(1) provides that publicity materials do not relate to an issue of securities if the purpose is to promote the new listing applicant or its products or business and not the securities to be issued (***Updated in July 2013***).
- 2.3 Main Board Rule 9.08(2)/ GEM Rule 12.10(2) provides that certain documents need not be submitted for prior review before release:
- a. an Application Proof published on the Exchange's website under Main Board Rule 12.01A/ GEM Rule 16.01A;
  - b. a Post Hearing Information Pack published on the Exchange's website under Main Board Rule 12.01B/ GEM Rule 16.01B;

- c. any statement by a new applicant published on the Exchange's website stating that no reliance should be placed on any media reports about the new applicant subsequent to the publication of the Application Proof or the Post Hearing Information Pack, as the case may be; and
- d. the invitation or offering document (or its equivalent) and documents that consist of, or are drafts of, or relate to, agreements to be entered into in connection with the issue of the securities. This is provided that any obligations created by these agreements to issue, subscribe, purchase or underwrite the securities are conditional on listing being granted (*Updated in July 2013*).

***Companies Ordinance<sup>1</sup> (CO) (Updated in March 2014)***

- 2.4 Section 38B(1) of the CO makes it an offence to publish (i) by way of advertisement any extract from or abridged version of a prospectus; or (ii) an advertisement relating to a prospectus or proposed prospectus, relating to shares or debentures of a company whether incorporated in or outside Hong Kong.
- 2.5 Section 38B(2) of the CO sets out a number of exceptions, including authorisation by the SFC under section 105 of the Securities and Futures Ordinance ((section 38B(2)(c)); publication that complies with the content requirements (mandatory and discretionary particulars) in Nineteenth Schedule of the CO, the guidelines published by the SFC and any information specified by the SFC (section 38B2(e)). The mandatory particulars in Nineteenth Schedule include:
  - a warning statement that potential investors should read the prospectus for detailed information about the company and the proposed offering before deciding whether or not to invest in the shares or debentures concerned; and
  - a statement that the advertisement does not constitute an offer or an invitation to induce an offer by any person to acquire, subscribe for or purchase the shares or debentures concerned.

***Securities and Futures Ordinance (SFO)***

- 2.6 Section 103 of the SFO makes it an offence, unless SFC's authorisation for issue is obtained under section 105 of the SFO, to issue any advertisement, invitation or document which to the issuer's knowledge is or contains an invitation to the public to enter into or offer to enter into an agreement to deal in securities.
- 2.7 Sections 103(2) and (3) of the SFO contain a number of exceptions to the general prohibition. Section 103(3)(a)(iii) exempts a publication falling under section 38B(2) of the CO.

### ***Other Regulatory Guidelines***

2.8 In March 2003, the SFC issued the Offer Awareness Guidelines.

2.9 In April 2003, the SFC issued the ePO Guidelines.

### **3. Guidance**

3.1 The Listing Rules provide (except for materials falling under Main Board Rule 9.08(2)/ GEM Rule 12.10(2)) that no publicity material on an issue of securities by a new applicant can be released in Hong Kong by a new applicant or its agents unless and until the Exchange has reviewed it and confirmed to the applicant that it has no comments (*Updated in July 2013*).

3.2 The overriding principle is that material information which is necessary to enable an investor to make an informed assessment of an applicant's activities, assets and liabilities, financial position, management and prospects should be included in and released in the form of a prospectus.

3.3 Accordingly, we adopt a purposive approach to assess whether publicity materials relate to an issue of securities and whether to consent to them.

3.4 Even though certain publicity materials may on their face appear to be for the purpose of promoting the applicant, its products or business, we normally consider that they relate to an issue of securities if they have the characteristics below, and we will be inclined not to consent to publication.

Materials which are:

- not commensurate with the particular nature of the applicant's business, products, customers or markets, e.g. that place disproportionate emphasis on the applicant's name rather than its products and business;
- presented in a manner which makes them likely to be read together with information related to the public offering and;
- likely to condition the market ahead of the prospectus and affect perceptions of the upcoming offer.

3.5 In assessing whether the information in question may condition the market, we will consider all relevant circumstances, including the nature of the applicant's business, its advertising history, the form of the publicity materials and the way they are presented.

3.6 Applicants and sponsors should ensure that Main Board Rule 9.08 or GEM Rule 12.10 is observed, especially where materials are issued shortly before or during the offer period, no matter whether they are in the form of advertisements; news articles; or editorials based on interviews with the applicant's senior management and designed to look like objective stories, etc.

In addition, applicants and sponsors should ensure compliance with the CO, the SFO and other statutory requirements regarding “advertisements”.

- 3.7 We will take strict measures against unauthorised publicity materials. These may include suspending vetting until all unauthorised publicity materials are withdrawn and delaying the listing timetable so that the influence of unauthorised promotion has “cooled-off”.
- 3.8 Paragraphs 3.9 to 3.14 set out the specific circumstances where we consider no prior consent to publication is required under Main Board Rule 9.08 or GEM Rule 12.10.

***Publicity Materials which are Offer Awareness Materials***

- 3.9 The Offer Awareness Guidelines describe how the SFC exercises its functions where publicity and/ or disclosure materials are to be used in a case relating to prospectus authorisation. The SFC considers that publicity materials which are designed only to raise awareness of the occurrence of a public offer of shares (offer awareness materials) will not constitute a prospectus or an extract from or abridged version of a prospectus or a prohibited advertisement. Accordingly, offer awareness materials may be issued prior to the issue of a prospectus without any pre-vetting by the SFC. The Guidelines also set out criteria for determining offer awareness materials.
- 3.10 Publicity materials which relate to an issue of securities under our Listing Rules may contain only information on procedural and administrative arrangements for the proposed offer. Those materials possibly overlap with those which are offer awareness materials under the Offer Awareness Guidelines. If so, both the Listing Rules and the Offer Awareness Guidelines must be complied with.
- 3.11 We treat publicity materials which qualify as offer awareness materials under the Offer Awareness Guidelines as approved under Main Board Rule 9.08/ GEM Rule 12.10. Practitioners need not submit to us for review publicity materials which fully meet the criteria of offer awareness materials.

***E-IPO Advertisements***

- 3.12 It is increasingly common for applicants to advertise electronic methods to subscribe for IPO shares either by themselves or through their e-IPO service providers. We normally consider these e-IPO advertisements to be typical offer awareness materials which need not be submitted to us for clearance.
- 3.13 However, applicants and sponsors should look out for the following items when determining whether e-IPO advertisements require our consent before release:
- a. whether they fully meet the criteria for offer awareness materials under the Offer Awareness Guidelines;

- b. whether the ePO Guidelines are followed; and
  - c. if there are images, photos or pictures in the e-IPO advertisement, whether the Guidance on Prospectus Cover (HKEx-GL13-09) published in July 2013 is followed. Normally, we will not object to e-IPO advertisements using the same design used on prospectus front covers (*Updated in July 2013*).
- 3.14 This guidance applies only to issuer-authorised e-IPO advertisements. E-IPO advertisements prepared by intermediaries who are not appointed by an applicant for this purpose are not regulated by the Exchange. However, these intermediaries are also subject to the ePO Guidelines. They should consult the SFC if they have any questions on implementation.

***Application Proof/ PHIP/ Statement under Main Board Rule 9.08(2)(c)/ GEM Rule 12.10(2)(c)***

- 3.15 HKEx-GL56-13 and HKEx-GL57-13 provide guidance on publication of Application Proofs, PHIPs and statements under Main Board Rule 9.08(2)(c)/ GEM Rule 12.10(2)(c). In particular, these two Guidance Letters provide specific guidance on the contents and format requirements of these documents (*Added in July 2013*).

\*\*\*\*\*