

HKEx GUIDANCE LETTER
HKEx-GL8-09 (July 2009)

Summary	
Subject	Statistics and data quoted in prospectuses
Listing Rules	Main Board Rules 2.13, 3A.15, 11.12 GEM Rules 2.18, 6A.15, 14.23
Related Publications	N/A
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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 can consult the Listing Division on a confidential basis for interpretation of the Listing Rules, or this letter.*

1. Purpose

1.1 This letter discusses the Exchange's approach to the use of cautionary language when including in prospectuses statistics, data or extracts sourced from commissioned or non-commissioned research reports.

2. Background and current practice

2.1 It is common to include in prospectuses statistics, data or extracts from the following three main categories of information:

- information made on the authority of a public official document or statement;
- a report or valuation of a third party expert; and
- commissioned/ non-commissioned research reports

2.2 For public official documents and sources, we ordinarily allow risk factors and other language limiting directors and sponsors' responsibilities in ensuring the accuracy, reliability and/ or completeness of the information. We recognise the difficulty in assessing the competence of the public sources producing the official data, which in some cases may be the only available source of information on a particular topic.

2.3 With respect to information from expert reports, we ordinarily consider the use of cautionary language to limit directors and sponsors' responsibilities to be

inconsistent with their responsibilities under the Rules as they have to, among other things, exercise reasonable care when selecting an expert to prepare a report or valuation for inclusion in a prospectus. Accordingly, we routinely expect such language to be removed from the prospectus.

- 2.4 When it comes to information sourced from commissioned/ non-commissioned research reports, our current practice is similar to that with expert reports where no cautionary language is allowed. However, we reckon that our current practice could bring practical difficulties to directors and sponsors. With the introduction of the sponsor regulatory regime and considering that Practice Note 21 of the Main Board Rules and Practice Note 2 of the GEM Rules now set out clearly responsibilities required of sponsors, we have reviewed our current practice.

3. Applicable Listing Rules

Main Board Rules

- 3.1 Main Board Rule (“**MBLR**”) 2.13 contains guidance on the presentation of information:

“Without prejudice to any specific requirements of the Exchange Listing Rules as to content or responsibility for the document in question, any announcement or corporate communication required pursuant to the Exchange Listing Rules must be prepared having regard to the following general principles:

...(2) the information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not, among other things:-

- (a) omit material facts of an unfavorable nature or fail to accord them with appropriate significance;*
- (b) present favourable possibilities as certain or as more probable than is likely to be the case;*
- (c) present projections without sufficient qualification or explanation; or*
- (d) present risk factors in a misleading way.”*

- 3.2 MBLR 11.12 provides that:

“Issuers are reminded that each of their directors, including any proposed director who is named as such in the listing document, is required to accept responsibility for the information which the listing document contains and that a statement to that effect is required to be incorporated in the listing document...”

3.3 MBLR 3A.15 states that:

“Having made reasonable due diligence inquiries, each sponsor must confirm that it has reasonable grounds to believe and does believe that:

(1) ...

(2) ...

(3) ...

(4) the information in the non-expert sections of the listing document:

(a) contains all information required by relevant legislation and rules;

(b) is true in all material respects, or, to the extent it consists of opinions or forward looking statements on the part of the directors of the new applicant or any other person, such opinions or forward looking statements have been made after due and careful consideration and on bases and assumptions that are fair and reasonable; and

(c) does not omit material information;

(5) ... ”

GEM Rules

3.4 Requirements for the accuracy and completeness of information in listing documents are in the directors’ responsibility statement under GEM Rule (“GLR”) 2.18 that:

“Any listing document, circular or announcement issued by an issuer pursuant to the GEM Listing Rules is required to contain a statement of responsibility and confirmation on the part of the directors of the issuer in the following form:-

‘This [document], for which the directors of the issuer collectively and individually accept full responsibility, includes particulars given in compliance with the Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The directors, having made all reasonable enquiries, confirm that, to the best of their knowledge and belief:-

- 1. the information contained in this [document] is accurate and complete in all material respects and not misleading;*
- 2. there are no other matters the omission of which would make any statement in this document misleading; and*
- 3. all opinions expressed in this document have been arrived at after due and careful consideration and are founded on bases and assumptions that are fair and reasonable.’ ”*

3.5 GLR 14.23 and 6A.15 set out directors and sponsor's responsibilities similar to those in MBLR 11.12 and 3A.15 respectively.

4. Revised practice

4.1 Given the availability of data and research reports from various sources, it is important that directors and sponsors choose what data to use and how to present it in prospectuses having regard to their responsibilities for the accuracy and completeness of information therein.

4.2 However, it is noted that directors and sponsors may face practical difficulties in independently verifying the information even when they have made reasonable enquiries to confirm the accuracy and completeness of the information. To disallow cautionary language in that regard may fail to bring to investors' attention the uncertainties involved. It would therefore be appropriate for investors to be alerted of the fact that the relevant information from commissioned/ non-commissioned research reports is not independently verified by directors and sponsors.

4.3 When there are practical difficulties in independently verifying the accuracy, reliability, and/or completeness of information being included in a prospectus from such sources, the Exchange would ordinarily:

- allow cautionary language calling attention to uncertainties to be included in the prospectus so that it may be reviewed and considered by investors; and
- expect clear disclosure that reasonable care has been exercised in selecting and identifying the named information sources, in compiling, extracting, and reproducing the information, and in ensuring no material omission of the information.

4.4 In this regard, we would expect any cautionary language to be along the following lines: *"We believe that the source[s] of this information [is an/are] appropriate source[s] for such information and have taken reasonable care in extracting and reproducing such information. We have no reason to believe that such information is false or misleading or that any fact has been omitted that would render such information false or misleading. The information has not been independently verified by us, the Sponsor, the Underwriters or any other party involved in the Global Offering and no representation is given as to its accuracy."*

4.5 That said, when discharging their responsibilities under MBLR 2.13, 3A.15, 11.12 and GLR 2.18, 6A.15 and 14.23, directors and sponsors should take steps to ensure that information presented is reasonably represented or that known discrepancies are called to the investors' attention. While directors and sponsors are allowed to alert investors that the subject statistics/ data has not been

independently verified, they still carry responsibilities under the Rules regarding the information being included in the prospectus. Any qualifying language proposed to be included in the prospectus should not violate this standard.
