

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010122.pdf>

Where there is insufficient space provided for your comments, please attach additional pages

A. Presentation

1: Do you prefer the style in Appendix I or in Appendix II?

- Appendix I
- Appendix II

Please explain your reasons.

We prefer Appendix II in that it adopts a plainer language yet at the same time retains the references to the "Exchange" and the "Applicant" which we find to be more appropriate. The applicant seldom makes the application itself and would often appoint another party to act on its behalf. Accordingly references to "you" may be confusing to such party.

2: Do you agree that the expression "debt issues to professional investors only" should replace "selectively marketed securities" to more clearly indicate the intended scope of the Rules?

- Yes
- No

Please explain your reasons.

We prefer the expression "debt issues to professional investors only" since market participants (e.g. issuers, underwriters, lawyers, accountants and investors) are familiar with such expression as such expression or expressions similar to it are commonly used in Hong Kong and other jurisdictions and by other stock exchanges. Moreover, the expression "selectively marketed securities" does not give a guiding indication as to the scope it relates to. One would have to have a close look at the definition to understand what the phrase is getting at.

B. Eligibility Requirements

3: Do you agree that professional investors should be defined by reference to the SFO as proposed?

Yes

No

Please explain your answer.

We agree with the Exchange that the definition of professional investors as set out in the SFO should be adopted, as far as debt issuance in Hong Kong is concerned. Obviously, where the debt securities will also be offered in other jurisdictions, similar but different terminology under the relevant rules will be used to govern those offers. Having two definitions (but effectively referring to the same thing) would cause confusion to the market participants. Accordingly, we are of the view that the definitions should be aligned and one unified definition of professional investor should be used across the board.

4: Do you agree with the eligibility standards in proposed Rules 37.03 to 37.25?

Yes

No

If not, please explain how you would change them.

We agree with the proposed rules in Rules 37.03 to 37.25 with the exception of the following rules. Our comments are set out below:

(1) The current drafting of Rule 37.04 is not clear as to whether the issuer can be incorporated or established in any jurisdiction, although this is clarified by Rule 37.11. We would suggest that the words "in its place of incorporation or establishment" should be added to Rule 37.04. Also, we query whether it is necessary to provide evidence that an issuer is validly incorporated or established. By way of comparison, there is no such requirement under the rules of the Singapore Exchange (SGX).

(2) We query whether the minimum net assets requirement as set out in Rule 37.05 is necessary. Again, by way of comparison, there is no such requirement under the rules of the SGX if the debt securities are offered to sophisticated or institutional investors.

(3) We are of the view that Rule 37.06 is too restrictive. Under the rules of the SGX, there is no similar requirement to produce audited accounts for the two years (or any period) before the listing application or in the offer document. Bearing in mind that Rule 37.29 (that the listing document should contain information that investors would customarily expect to see) is in place, we would appreciate if the Exchange could consider removal of this requirement or provide some flexibility for companies that are newly set up (and hence impossible to meet the two years requirement).

(4) We are of the view that Rule 37.08(b) is too restrictive. There is no need for the issuer to be wholly owned or for the guarantor to be a shareholder or have any beneficial interest in the issuer so long as there is a guarantor and it fulfils the eligibility criteria applicable to the issuer.

(5) There is a typo in Rule 37.08(b) – the word "a" before "by a body corporate" should be deleted.

(6) We refer to the term of "conversion rights" in Rule 37.20 when dealing with convertible securities. We believe that a better reference here should be to "conversion price" as the conversion rights themselves would not be adjusted where there is a change in the capital of the issuer of the shares.

5: Should applicants be required to deposit their issues into overseas settlement systems to further ensure that they will not be acquired by retail investors in the secondary market?

Yes

No

Please explain your answer.

We do not think that the Rules should be amended as suggested. We note that many Hong Kong dollar and, to date, all offshore RMB denominated bond issues are cleared through the Central Moneymarkets Unit (CMU). To make it a requirement that the applicants must deposit their issues into overseas settlement systems would be too prescriptive.

6: Should there be a minimum board lot size for products?

Yes. The minimum board lot size should be

HK\$1,000,000

HK\$500,000

Other amount (*please specify*): HK\$ _____

- No. Kindly note that bonds sold to professional investors are not typically exchange traded. Trades are normally done electronically through the clearing systems. Therefore, setting a minimum board lot size is not really relevant.

C. Listing Approval

7: Do you agree with the proposed listing approval authority discussed in paragraph 31 of the Consultation Paper?

- Yes
 No

If not please explain how you would revise the approval authority.

D. Listing Documents

8: Do you agree with the proposed content requirements in proposed Rules 37.26 to 37.33?

- Yes
 No

Please explain your answer.

We agree with the Exchange that the listing document serves a different purpose from one that is for retail investors and hence the content requirements can be shortened. These changes will also bring Hong Kong more in line with the requirements of certain other stock exchanges and will likely shorten the time it takes for applicants and their advisers to prepare the listing document and also shorten the processing time. Accordingly, the proposed changes will likely enhance the competitiveness of the Exchange as a listing venue.

We have some specific comments which we set out below.

(1) Rule 37.28 states that an issuer may make this statement on a corporate basis. Issuers and their directors will certainly choose the corporate liability option over the personal liability option which the current prescribed language entails. Accordingly, a corporate responsibility statement should be set out as the prescribed pro forma instead. We suggest the following statement should be used as the pro forma statement instead:

"This document, for which the issuer accepts full responsibility, includes particulars given in compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. The issuer, having made all reasonable enquiries, confirms that to the best of its knowledge and belief the information contained in this document is accurate and complete in all material respects, and there are no other matters the omission of which would make any statement in this document misleading in any material respect."

(2) Rule 37.29 – We propose that the following wording should replace the current proposed wording instead:

"A listing document must contain all the information that the investors would customarily expect to see in the listing documents for similar debt issues."

9: Should we retain any of the current disclosure requirements we propose to delete?

Yes

No

If you answered no please provide details.

E. Application Vetting

10: Do you agree with our proposal to continue vetting applications for compliance with listing eligibility standards?

Yes

No

Please explain your answer.

We agree with the Exchange's proposal to continue vetting applications for compliance with listing eligibility standards. We note from the consultation paper that such vetting process is generally not time consuming and hence should not hinder the processing time of the applications. In our opinion, the current method acts as a good check and balance against non-compliance than having to rely on certification from an applicant or its advisers.

We would also like to refer to the timing of the issuance of the listing letter in Rule 37.36. It would provide greater confidence and certainty to market participants if the rule could be amended to say that the Exchange would issue the letter no later than 5 business days after it receives the application, particularly as other exchanges are now processing applications within two or three business days from receipt of the application. Timing is a major consideration of market participants in the selection of listing venue.

- 11: Do you agree with our proposal to vet listing documents to ensure they include responsibility and disclaimer statements in prescribed forms, statements limiting distribution to professional investors and any other information required by the Exchange?

- Yes, subject to our comments below.
- No.

Please explain your answer.

We agree with the Exchange's proposal. It will not be time consuming to review those responsibility and disclaimer statements and any other additional information required by the Exchange. Again this will shorten the processing/listing time and give market participants greater confidence and certainty.

Please refer to our comments on the responsibility statement (Rule 37.28) under Question 8 above.

- 12: Do you agree with our proposal not to vet the other detailed contents of listing documents?

- Yes
- No

Please explain your answer.

We support the Exchange's proposal here. Issuers, underwriters and their advisers are more attuned to the specific requirements of professional investors (as each issue is different depending on the type of issuance, the appetite in the market and the specific professional investors in question for that particular deal) and hence the information expected by the investors for each deal will vary. Therefore, the issuers and their advisers are best placed to know what kind of information a professional investor would customarily expect for the specific deal. Also, it is customary for debt issuances to professional investors that the content is agreed through negotiation and we believe that it should continue to work this way. In addition, investors should be able to take comfort from the fact that, regardless of the content requirement of the Exchange, under Hong Kong ordinances (including the SFO and the Misrepresentation Ordinance), common law and the relevant securities law including for example the federal securities law of the United States and the securities law of the jurisdictions where the securities are being offered, the issuer and the underwriters would be liable if the offering circular omits material information or contains untrue or misleading statements of material facts.

F. Application Procedures

13: Do you agree with the proposals in respect of application procedures?

Yes

No

If you do not agree please indicate how you would change them.

We agree with the application procedures as set out in Rule 37.34 to Rule 37.43, with the exception of the following rules. We set out our comments below.

(1) We refer to Rule 37.35 and query whether some of these documents are required to be submitted. In particular, we respectfully ask that the following documents as set out in Rule 37.35 should not be required to be submitted by the issuer when it applies for listing: items (e)(1), (f), (g), (h)(1) and (i). We note that market practice is to state that the issuer/guarantor has obtained internal approval in the "General Information" section of the offering circular. Moreover, the underwriters of the debt securities would typically ask for a legal opinion on the issuer's obligation to issue the notes as constituting legal, valid and binding obligations. In addition, please note that the SGX does not require the documents that we have suggested to be deleted.

(2) We note that in relation to Rule 37.43, the rule is silent on the timing of approval for takedowns. We suggest this should be included and that approval be given not more than 3 business days after receipt of the necessary notification/documents.

(3) It would also be extremely helpful if the Exchange could upload all the required forms and their updates on their website. Currently, it is quite time consuming that participants have to check each time with their Exchange's contact to obtain the most up-to-date version.

G. Continuing Obligations

14: Do you agree with the proposed continuing obligations set out in proposed Rules 37.44 to 37.57?

Yes

No

Please explain your answer.

15: Should we retain any of the current continuing obligations that we propose to delete?

Yes. Please provide details of the requirements

No

H. Other Issues

16: Should eligibility under the GEM Rules be limited to companies already listed on GEM?

Yes

No

Please explain your answer.

We are of the view that eligibility under the GEM Rules should be limited to companies already listed on GEM. GEM Rules are particularly designed/catered for growth enterprises and they should continue to govern those companies no matter if they are listing equities or debt securities. If eligibility was expanded to include other types of companies (e.g. companies listed on the main board), an undesired consequence could be "market shopping" which would not be appropriate (as GEM rules are normally more relaxed).

17: Should any other provisions in the Listing Rules be included in Chapter 37?

Yes. Please provide details of the requirements

No

18: Should any other consequential changes be made to the Rules?

Yes. Please provide details of the requirements

No

19: Are there are any other comments you would like to make?

Yes

No

If your answer is "Yes" please elaborate your views.

Rule 37.39 requires an issuer to publish a formal notice of listing. Is such a requirement necessary or beneficial if the debt securities are offered to professional investors only? We do not see the rationale behind this requirement and would appreciate if the Exchange could consider the removal of it. There does not appear to be a similar requirement under the rules of the SGX.