

HKEX GUIDANCE LETTER

HKEX-GL21-10 (October 2010) updated in July 2013 and March 2017

Subject	Sponsor's due diligence on non-disclosure of confidential information in the listing document
Listing Rules	Main Board Listing Rules 2.03(2), 2.13(2), 3A.13 and Appendix 19 GEM Rules 2.06(2), 17.56(2), 6A.13 and Appendix 7G
Related Publications	Corporate Finance Adviser Code of Conduct (" CFA Code "); Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (" Code of Conduct ")
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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 Department on a confidential basis for an interpretation of the Listing Rules or this letter.*

1. Purpose

- 1.1 This letter provides guidance on the due diligence procedures that a listing applicant and its sponsor must follow when requesting non-disclosure of confidential information in a listing document.

2. The Relevant Requirements

Listing Rules (Updated in March 2017)

- 2.1 Main Board Rule 2.03(2) (GEM Rule 2.06(2)) provides that:

The Listing Rules are designed to ensure that investors have and can maintain confidence in the market and in particular that:—

- (2) the issue and marketing of securities is conducted in a fair and orderly manner and that potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer and, in the case of a guaranteed issue, the guarantor and of the securities for which listing is sought.

- 2.2 Main Board Rule 2.13(2) (GEM Rule 17.56(2)) provides that:

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 unfavourable 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.

2.3 Main Board Rule 3A.13 (GEM Rule 6A.13) provides that:

As soon as practicable after the Listing Committee/ Department's hearing of the new applicant's listing application but on or before the date of issue of the listing document, each sponsor must submit to the Exchange the declaration set out in Appendix 19 of Main Board Rules (Appendix 7G of GEM Rules).

- 2.4 Appendix 19 of Main Board Rules (Appendix 7G of GEM Rules) provides for the sponsor giving a confirmation after having made reasonable due diligence inquiries that it has reasonable grounds to believe that the applicant complies with, among other things, the Listing Rules and that its listing document is true, accurate and complete in all material respects and contains sufficient particulars and information to enable a reasonable person to assess the financial condition and profitability of the issuer.
- 2.5 Paragraph 4 of Practice Note 21 to the Main Board Rules (Paragraph 4 of Practice Note 2 of GEM Rules) provides that sponsors are expected to document their due diligence planning and significant deviations from their plans.
- 2.6 Main Board Rule 3A.05 (GEM Rule 6A.05) provides that a new applicant and its directors must assist the sponsor to perform its role. The sponsor engagement agreement must contain an obligation for the applicant and its directors to fully assist the sponsor to perform its due diligence work and to enable the sponsor to gain access to all relevant records in connection with the listing application.

3. Guidance (*Updated in March 2017*)

- 3.1 The content requirement for listing documents is to ensure that potential investors are given sufficient, true and accurate information to enable them to make a properly informed assessment of an issuer and of the securities for which listing is sought.
- 3.2 The Exchange has, in a number of very special situations, accepted non-disclosure of sales and price statistics which are generally regarded as material information. Applicants must show very good cause why they should be excused from the disclosure. All instances of non-disclosure will be considered on their own merits and on a case by case basis. For instance, the Exchange previously allowed omitting sales volume and price in the listing document when the issuer's key customer objected to the disclosure and the issuer provided alternative information, including its production capacity and annual utilization rates.
- 3.3 In determining whether to allow an applicant to leave out certain information in a listing document the Exchange mainly takes into account the following:
 - whether the inconvenience caused to the applicant by the disclosure outweighs the investors' information needs;

- whether, notwithstanding the non-disclosure of the information, a listing document taken as a whole still provides investors with sufficient, true and accurate information to enable them to make a properly informed assessment of the issuer and its securities. In this regard, the Exchange always considers the quality of the alternative information in a listing document; and
 - applicant's directors' views and the sponsor's declaration under Main Board Rule 3A.13 (GEM Rule 6A.13) and Appendix 19 of Main Board Rules (Appendix 7G of GEM Rules) on whether a listing document contains all material information to enable a reasonable investor to make a properly informed assessment of an issuer and its securities.
- 3.4 While the Exchange does not prescribe the due diligence procedures for sponsors under Practice Note 21 of Main Board Rules (Practice Note 2 for GEM Rules), it expects sponsors to have access to all information of the applicant, including highly confidential information, necessary to enable them to complete their due diligence process. In the event that a sponsor is prevented from access to information by law ("**Restricted Information**"), the sponsor must demonstrate the steps taken by it to fulfill its obligations in its sponsor's declaration and under the CFA Code and the Code of Conduct despite not having access to the Restricted Information. Sponsors must properly document their due diligence steps, including any additional/ alternative steps taken to address the issue of Restricted Information.
- 3.5 The Exchange reminds applicants of their obligation under the Listing Rules and in the sponsor engagement agreement to fully assist the sponsor to perform its due diligence work and to enable the sponsor to gain access to all relevant records in connection with the listing application.
- 3.6 An applicant's internal policy restricting access to confidential information to directors, auditors and reporting accountants only does not justify refusing sponsor's access to such information. The Exchange will also not accept a sponsor confirming completion of the due diligence process with a qualification that it is not provided access to the applicant's confidential information even if alternative due diligence work has been performed. The Exchange ordinarily expects at least one senior officer of the sponsor to be allowed access to the applicant's confidential information. An applicant may protect its interests by requiring the responsible officer of the sponsor to provide a confidentiality undertaking not to disclose the information to any third party.
