

HKEX* GUIDANCE LETTER

HKEX-GL18-10 (June 2010) (Updated in July 2013, and March 2014 and July 2018) – effective for applications submitted on or after 1 October 2013

Summary	
Subject	Guidance on publicity materials and e-IPO advertisements
Listing Rules	Main Board Rule 9.08 GEM Rule 12.10
Related Publications	<ul style="list-style-type: none"> • Guidelines on Use of Offer Awareness and Summary Disclosure Materials in Offerings of Shares and Debentures under the Companies <u>(Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)</u>⁴ issued by the <u>Securities and Futures Commission (“SFC”)</u> in March 2003 (“Offer Awareness Guidelines”) • Guidelines for Electronic Public Offerings issued by the SFC in April 2003 (“ePO Guidelines”) • <u>HKEX-GL13-0998-18 – Guidance on Prospectus Covers Disclosure in Listing Documents</u> • HKEx-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 • HKEx-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 • Sections 38B(1), <u>and (2), Nineteenth Schedule</u> of Companies <u>(Winding Up and Miscellaneous Provisions) Ordinance</u>⁴ (Cap. 32) <u>(“CWUMPO”)</u> • Sections 103(1), (2) and (3), <u>and 105</u> of Securities and Futures Ordinance (Cap. 571) <u>(“SFO”)</u>
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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 ~~Division~~ on a confidential basis for interpretation of the Listing Rules; or this letter.*

⁴ ~~Retitled as the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) with effect from March 2014.~~

1. Purpose

~~1.1 This letter:~~

~~1.2~~

~~1.3 sets out our principles for approving clarifies what publicity materials relating to an issue of securities that require our consent before they can be released; and~~

~~1.4~~

- ~~• sets out our principles for approving them; and~~

~~4.51.1 contains relevant guidance ~~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 materials relating to an issue of securities by a new applicant must comply with all statutory requirements and can only be released after they are reviewed by the Exchange 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 Non-compliance will normally can result in delay of the applicant's an application for the listing of those securities timetable. **(Updated in July 2013)**~~

~~2.2 Main Board Rules 9.08(1)/ and (2) (GEM Rules 12.10(1) and (2)) set out publicity materials and certain documents that do not require the Exchange's prior review provides that publicity material 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 **(Deleted in July 2018)** 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~~

~~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 Ordinance⁴ (CWUMPO) (Updated in March 2014)

2.4 Section 38B(1) of the CWUMPO makes it an offence to publish (i**a**) by way of **advertisement** any extract from or abridged version of a prospectus; or (i**b**) 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 CWUMPO sets out a number of exceptions to the requirements under Section 38(B)(1) of the CWUMPO. (Updated in July 2018), 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:

~~2.6~~ 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

~~2.7~~ 2.5 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

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~~2.8~~ 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.

~~2.9~~ 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 CWUMPO.

Other Regulatory Guidelines

~~2.10~~ 2.8 In March 2003, the SFC issued the Offer Awareness Guidelines were issued by the SFC in March 2003 to clarify SFC's view regarding the treatment of certain types of materials which are issued to the public in Hong Kong in connection with an offer of shares or debentures made by a prospectus. (Updated in July 2018)

~~2.11~~ 2.9 In April 2003, the SFC issued the ePO Guidelines were issued by the SFC in April 2003 to provide guidance to persons who offer electronic public offering services. (Updated in July 2018)

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)**. **(Deleted in July 2018)**~~

3.2 The overriding principle is that material information of an applicant should be included in and released in the form of a prospectus 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.~~ **(Updated in July 2018)**

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 an~~ applicant, its products or business, we normally consider that they relate to an issue of securities and incline not to consent to their publication if they ~~are have the characteristics below, and we will be inclined not to consent to publication.~~

Materials which are:

- (a) 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;~~
- (b) presented in a manner which makes them likely to be read together with information related to the public offering; and/ or;
- (c) likely to condition the market ahead of the issue of the prospectus and affect perceptions of the upcoming offer. **(Updated in July 2018)**

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 compliance with the requirements under the Listing Rules regarding "publicity materials" and CWUMPO, SFO and other statutory requirements regarding "advertisements" 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, and regardless of no matter whether they are in the form of the materials (e.g. 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 CWUMPO, the SFO and other statutory requirements regarding "advertisements".~~ **(Updated in July 2018)**

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 ~~below~~ set out the specific circumstances ~~on whether where we consider no the Exchanges' prior consent to publication~~ is required ~~prior to the publication of certain materials~~ under Main Board Rule 9.08 ~~or~~ (GEM Rule 12.10). (Updated in July 2018)

Publicity Materials which are Offer Awareness Materials

3.9 ~~Pursuant to T~~the Offer Awareness Guidelines, offer awareness materials are publicity materials that, among other things, (a) strictly limit to communicating procedural and administrative information regarding the proposed offer; and (b) do not promote the issuer of the shares, debentures or the offer. ~~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. Offer awareness materials may be released without any vetting by the SFC.~~ (Updated in July 2018)

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 Offer awareness materials under the Offer Awareness Guidelines may overlap with those which are publicity materials relating to an issue of securities under the Listing Rules. If so, both the Listing Rules and the Offer Awareness Guidelines must be complied with.~~ (Updated in July 2018)

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.~~ (Deleted in July 2018)

e-IPO Advertisements

3.12 ~~It is increasingly common for a~~Applicants ~~to may~~ advertise directly or through their e-IPO service providers the electronic methods ~~to subscribe for subscription of 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 and do not require the Exchange's consent before release.~~ (Updated in July 2018)

3.13 However, applicants and sponsors should ~~look out for ensure~~ 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 follow~~ the eIPO Guidelines ~~are followed~~; and

(c) ~~if there are images, photos or pictures in the e-IPO advertisement, whether the relevant guidance in HKEX-GL98-18 regarding listing document cover Guidance on Prospectus Cover (HKEx-GL13-09) published in July 2013 is followed if there are images, photos or pictures in the e-IPO advertisement. Normally, wwe 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. ***(Deleted in July 2018)***~~

~~***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)***. ***(Deleted in July 2018)***~~
