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Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
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Central
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By Hand/By Email (response@hkex.com.hk)

19 October 2012

Dear Sirs

Consultation Paper on Rule Changes Consequential on the Enactment of the Securities and Futures (Amendment) Ordinance 2012 (the “Consultation Paper”)

We are grateful for the opportunity to comment on the Consultation Paper and apologize that we are late in responding. We hope nevertheless that our views can be factored in.

The scope of our review is limited to the proposed changes to Chapters 15A and 37 and Appendix 7H so far as the rules affect issues of structured products and debt securities listed on the Exchange. The views expressed below are our own and do not necessarily reflect the views held by any of our clients.

Chapters 15A and Appendix 7H – Structured Products

The current disclosure obligations in paragraph 2(1) of the Listing Agreement in Appendix 7H are restricted entirely by reference to “any information relating to the Issuer’s and/or the Guarantor’s group”. This makes it clear that the disclosure obligation relates only to information which is properly within the knowledge of the Issuer or Guarantor as being about themselves. Specifically, it clearly does not require ongoing publication of information relating to the reference securities or reference company. The safeguard for investors is provided by the Listing Rule requirements that the reference securities must be listed either on the Exchange or on another regulated, regularly operated, open exchange recognized by the Exchange (Listing Rules 15A.30 and 31).

Under the proposed changes, the restriction to information relating to the Issuer’s and/or Guarantor’s group will be removed. Instead, the disclosure obligation will import the new requirements under Part XIVA of the Securities and Futures Ordinance (“**Part XIVA SFO**”) which extend to information about the Issuer/Guarantor and their listed securities – i.e. the listed structured products.

What constitutes information “about the listed securities” in the context of a listed structured product referencing a third party company’s shares? It is possible to view the information narrowly: information is “about the listed securities” if it relates for example to a change in the terms and conditions or liquidity

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provision arrangements. A wider view though would be that information is “about the listed securities” if it could be material to the price at which the listed securities trade – and this could clearly include information about the reference securities or the reference issuer.

Could the Exchange clarify its view on this question? The wider interpretation presents a significant extension of the disclosure obligations of Issuers and Guarantors of listed structured products, and an extension which presents serious difficulties both because it relates to third party entities and because those entities will also be under disclosure obligations either in Hong Kong or in their own listing jurisdictions which a structured products issuer should not be expected to second guess.

We appreciate this issue arises out of the application of the new Part XIVA SFO regime to structured products which the proposed changes to the Listing Rules are intended to accommodate – we are seeking the view of the Securities and Futures Commission on this point too. A copy of our letter is attached for reference.

Against this background, these are our comments below on certain specific proposals put forward in the Consultation Paper:

Proposed Listing Rules	Comments
Appendix 7H sections 2(1)(b), 2(d)(i), 26(1), 26(2) and 26A	For the reasons given above, could the Exchange clarify whether the obligations to make an announcement, to respond to Exchange queries and to apply for a trading halt cover information relating to the reference issuers or reference securities.
Appendix 7H sections 2(1)(e), (f) and (g)	These provisions of the Listing Agreement seek to regulate insider dealing and should be removed. Parts XIII and XIV of the SFO contain the statutory insider dealing regimes. For the Exchange to also regulate insider dealing not only duplicates supervisory efforts but also risks confusing the market by the Exchange potentially applying different standards from the SFC in regulating the same misconduct.
Appendix 7H section 2(2)	<p>The proposed wording of this provision makes its scope too broad. We suggest that this section should only capture information that is:</p> <ol style="list-style-type: none"> 1. relevant to those structured products of the issuer that are listed on the Exchange (and not all information that is released on another stock exchange by the issuer regardless of its relevance to investors in the Hong Kong market); and 2. publicly released to the other stock exchange (as distinct from information given to the other stock exchange on a confidential basis).
Appendix 7H sections 2(1)(b) and 2A	The word “debt” should be removed from “debt securities” in each of these provisions as they should apply to all listed structured products and not limited to those that are debt securities.

Chapter 37 - Debt Issues to Professional Investors Only

We would like to make some general comments in relation to the proposed rule changes in Chapter 37. Chapter 37 regulates debt securities which are offered and sold to “professional investors” as defined in

that Chapter. The investors are sophisticated and require less protection than those investing in equity securities. The debt securities are invariably not traded on the Exchange but only traded on the OTC market for settlement through the relevant clearing systems. The listing on the Exchange is not intended to provide liquidity, a trading market nor a price quotation system for the debt securities but to satisfy the portfolio requirements of certain institutional investors (for example, insurance companies and pension funds) which may be subject to portfolio restrictions under which they are not allowed to invest in unlisted securities. Our understanding is that the listing of the debt securities on the Exchange is purely to enable them to qualify for such portfolio requirements. In addition, we think that in the context of the Exchange's stated goal to attract debt listings of companies with equity listings outside Hong Kong, the proposed rule changes need to be analysed from the perspective of an issuer which only has debt securities listed on the Exchange and is not subject to the rules governing equity securities.

Against this background, our comments on the proposed amendments to Chapter 37 are as follows:

Proposed Listing Rules	Comments
Rule 37.47	<p>We shall be grateful for the Exchange's confirmation that "a false market in its securities" is in fact a false market in its listed debt securities. As the Exchange has stated in the Consultation Paper, the Exchange has a statutory obligation to maintain an orderly, informed and fair market for the trading of securities listed on the Exchange under Section 21 of the SFO. We respectfully submit that the scope of the Exchange's regulation should be over listed debt securities in the context of Chapter 37. Appendix 7 Part C 2(b) (the Listing Agreement for Debt securities other than States etc and Chapter 37 securities) refers to listed debt securities and it follows that Chapter 37 obligations should mirror this. We respectfully request that the Exchange make the same amendments to this rule to reflect that.</p>
Rule 37.47B (a)	<p>Under Section 307B of the SFO "a listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public"</p> <p>"Inside information" is defined as specific information that is about the corporation, a shareholder or officer of the corporation or the listed securities of the corporation or their derivatives and is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities.</p> <p>As the Chapter 37 securities may be offered and sold to professionals only, we believe the disclosure obligation should only be triggered if the relevant information is not generally known to such professionals rather than the general public and would be likely to materially affect the price of the listed securities (ie the Chapter 37 securities). As professional investors generally have access to wide ranging sources of market information eg Newswire, Bloomberg, Reuters etc. and will check overseas announcements, we generally believe that if the information is available to those investors through these sources, the disclosure obligation under Part XIVA and consequently Chapter 37 will not be triggered. We shall be grateful for the Exchange's confirmation that Rule</p>

37.47B(a) only requires an announcement of information when it is specific information not generally known to the professional investors to whom the Chapter 37 securities have been offered and sold and would if generally known to them be likely to materially affect the price of the Chapter 37 securities.

Rule 37.47D

We note that this was formerly Guidance to Rule 13.09(1) applying to equity securities and has now been promoted to a rule in Chapter 37. We do not think it is appropriate here. As mentioned above, dealing in these securities does not generally take place on the Exchange. Moreover, investors who may buy the securities are professional investors and so reference to "any person or class or category of persons" is too wide, professional investors already being a class of investor. In addition, as mentioned above in relation to Appendix 7H Sections 2(1)(e), (f) and (g), this rule seeks to regulate insider dealing and should be removed to avoid duplication with Parts XIII and XIV of the SFO and to avoid confusing the market if the Exchange were to apply a different standard from the SFC in regulating the same misconduct. For example, it is unclear whether Rule 37.47D would affect an underwriter that was provided with inside information and the confidentiality of such information was maintained within such institution pursuant to Chinese Wall procedures.

We recommend that Rule 37.47D be removed.

Rule 37.47E

The same analysis as for Rule 37.47D applies here and we recommend that Rule 37.47E be removed.

Rule 37.47F

As mentioned above, trading in these securities does not generally occur on the Exchange and therefore we do not consider this rule on trading halts to be relevant to Chapter 37 securities. We recommend that Rule 37.47F should be removed.

Thank you for your time in reviewing our comments. Should you have any queries about our comments, please do not hesitate to contact our _____ or _____ (whose contact details are set out at the top of this letter) and we will be very happy to provide any clarification required.

Yours faithfully



Linklaters

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Attn: Charles Grieve/Terry Deng

By Fax/By Hand

19 October 2012

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Our Ref 我所文號

Dear Sirs

Part XIVA of the SFO and Listed Structured Products

We have been reviewing the proposed changes to the Listing Rules in connection with the coming into effect of Part XIVA of the SFO, specifically in relation to listed structured products. A typical example of a listed structured product might be a derivative warrant issued by an international bank which references the shares of an unrelated company, often referred to as the reference shares and reference company.

Inside information of which Part XIVA may require disclosure will include information that "is about ... the listed securities" of a corporation, here the issuer bank of the listed structured product. The question which is troubling us is whether information about the reference securities or the reference company could be information which is "about" the listed securities, where the listed securities are structured products over the reference share.

Information about the reference shares

It is quite clear that information concerning the reference shares and/or the reference company may have a material effect on the price of the listed structured product. To this extent, it would be desirable that inside information concerning the reference shares or the reference company should be disclosed to the market for the listed structured products. Imposing this obligation on the issuer of the listed structured products, however, puts it in a very difficult position. The issuer has, in most cases (but subject to the next paragraph), no special access to information about the reference shares or reference company. Under the present regime, reflected in the Listing Rules and the Listing Agreement (Appendix 7H, paragraph 2(1)), this is recognized in that the disclosure obligations are limited to information relating to the issuer (and/or

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guarantor) of the structured products. Investor protection in relation to the reference share and reference company is provided because structured products referencing those shares will not be permitted unless the reference shares are traded on a market with acceptable information disclosure obligations (see LR 15A.30 and 31).

It is quite possible that in the course of its business, an issuer bank may get inside information relating to reference shares or a reference company. It could, for example, be advising the company on a major capital raising or on a possible takeover; or in connection with a routine securities issue it could come into possession of inside information during its due diligence investigations. Information about, or gained from, these activities should be contained within the bank behind appropriate information barriers – in the context of a bank which lists structured products over the reference company this is recognized in LR 15A.29. However, Part XIVA SFO contains no similar provision or safe harbour. In this case, the primary disclosure obligation would of course fall on the reference company (either under Part XIVA if it is listed in Hong Kong or under similar provisions in its home jurisdiction), but if this kind of information is information “about” the listed structured products then the issuer of structured products would also be under a disclosure obligation. This would put it in the very difficult position of effectively having to second guess the compliance of the reference company. Even worse, the issuer could be under a disclosure obligation under Part XIVA when the reference company is not required to make disclosure to its domestic market under rules in its home jurisdiction which could be less rigorous than the new Part XIVA.

Information about the securities themselves

A possible alternative view is that information “about...the listed securities” is to be interpreted much more narrowly. On this view, information about listed securities which are structured products would extend only to information about the listed securities themselves. So, for example, a correction to the terms and conditions of the securities, or perhaps a change in the arrangements for the provision of liquidity, would be information which is about the listed securities. On this view, information about the reference shares or the reference company, while clearly relevant to the listed securities and their trading price, would not be information which is “about” the listed securities themselves so as to constitute discloseable inside information under Part XIVA.

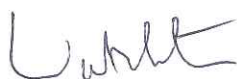
Views of SFC and Stock Exchange

Structured products are not mentioned in Part XIVA and are not dealt with in the useful Guidelines on Disclosure of Inside Information published by the SFC. We would be very grateful for the SFC’s views on how the new Part XIVA should be interpreted in relation to listed structured products.

We have also raised this issue with the Stock Exchange in the context of the proposed changes to the Listing Rules, which import the Part XIVA requirements, and have given the Exchange a copy of this letter for their reference.

We would be very happy to discuss the matter further if that would be helpful.

Yours faithfully



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