

December 2019



CONSULTATION PAPER

REVIEW OF CHAPTER 37 —
DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

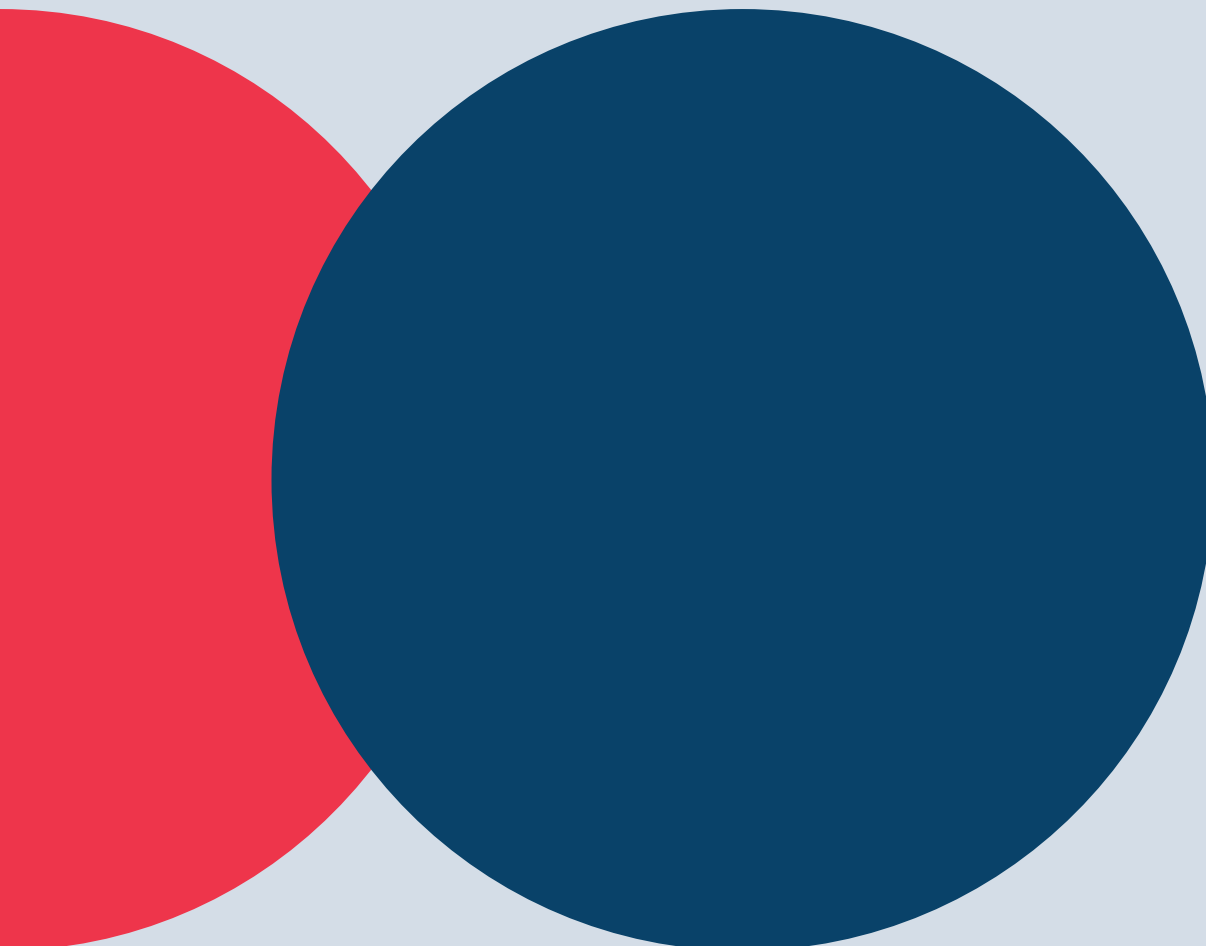


TABLE OF CONTENTS

	Page No.
EXECUTIVE SUMMARY	5
CHAPTER 1: INTRODUCTION	13
CHAPTER 2: BACKGROUND	15
CHAPTER 3: PROPOSALS	23
A. ELIGIBILITY REQUIREMENTS	23
B. ISSUER STATEMENT ON INTENDED INVESTOR MARKET	26
C. PUBLICATION OF LISTING DOCUMENT	29
D. DISCLOSURE AND VETTING	30
E. DEFINITION OF PROFESSIONAL INVESTORS	34
F. OTHER RULES AMENDMENTS	35

APPENDICES

APPENDIX I: DRAFT AMENDMENTS TO THE MAIN BOARD RULES	
APPENDIX II: DRAFT AMENDMENTS TO THE GEM RULES	
APPENDIX III: PRIVACY POLICY STATEMENT	

HOW TO RESPOND TO THIS PAPER

The Exchange, a wholly-owned subsidiary of HKEX, invites written comments on the matters discussed in this paper, or comments on related matters that might have an impact upon the matter discussed in this paper, on or before **Friday 7 February 2020**. You may respond by completing the questionnaire which is available at:

<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2019-Chapter-37-Debt-Issues/Questionnaire/cp201912q.docx>

Written comments may be sent:

By mail or hand delivery to Corporate and Investor Communications Department
Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Re: Review of Chapter 37 – Debt Issues to Professional Investors Only

By fax to (852) 2524 0149

By e-mail to response@hkex.com.hk

Please mark in the subject line:

Re: Review of Chapter 37 – Debt Issues to Professional Investors Only

Our submission enquiry number is (852) 2840 3844.

Respondents are reminded that we will publish responses on a named basis in the intended consultation conclusions. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper. Our policy on handling personal data is set out in **Appendix III**.

Submissions received by **Friday 7 February 2020** will be taken into account before the Exchange decides upon any appropriate further action and a consultation conclusions paper will be published in due course.

DISCLAIMER

HKEX and/or its subsidiaries have endeavoured to ensure the accuracy and reliability of the information provided in this document, but do not guarantee its accuracy and reliability and accept no liability (whether in tort or contract or otherwise) for any loss or damage arising from any inaccuracy or omission or from any decision, action or non-action based on or in reliance upon information contained in this document.

DEFINITIONS

TERM	DEFINITION
“2010 Consultation”	Consultation Paper on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only on 17 December 2010 (here)
“2011 Consultation Conclusions”	Consultation Conclusions on Proposed Changes to Requirements for the Listing of Debt Issues to Professional Investors Only on 21 October 2011 (here)
“CCASS”	Central Clearing and Settlement System
“Chapter 37 Debts”	Debt securities listed on the Exchange under Chapter 37
“CMU”	Central Moneymarkets Unit
“CWUMPO”	Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32 of the Laws of Hong Kong)
“Eligibility Exemption”	The exemption available to supranationals, State corporations, HK Listcos and special purpose vehicles formed for listing asset-backed securities from the Issuer Eligibility Requirements
“EU”	European Union
“Exchange”	The Stock Exchange of Hong Kong Limited
“Exchange Participant”	As defined in the Trading Rules
“GEM”	GEM of the Exchange
“GEM Rules”	The Rules Governing the Listing of Securities on GEM of the Exchange
“HK Listco(s)”	Companies whose equity securities are listed on the Exchange
“HKEX”	Hong Kong Exchanges and Clearing Limited
“HKMA”	Hong Kong Monetary Authority
“HNW Investors”	High net worth corporates, high net worth individuals and others as prescribed by rules made under section 397 of the SFO ¹

¹ Please refer to the Securities and Futures (Professional Investor) Rules (Cap. 571D of the Laws of Hong Kong).

TERM	DEFINITION
“Institutional Investors”	Professional investors as defined under section 1 of Part 1 of Schedule 1 to the SFO, excluding the HNW Investors
“ISE”	Irish Stock Exchange
“Issuer Eligibility Requirements”	NAV Requirement and the requirement to provide audited accounts for the past two years pursuant to Rules 37.05 and 37.06 respectively
“Licensed Intermediary(ies)”	Corporations that are either licensed by the SFC as a licensed corporation, or registered with the SFC as a registered institution, to carry out regulated activities under the SFO
“LSE”	London Stock Exchange
“LUXSE”	Luxembourg Stock Exchange
“Main Board”	Main Board of the Exchange
“MiFID II”	The revised Markets In Financial Instruments Directive of the EU, applicable from 3 January 2018
“MOF”	Ministry of Finance of the PRC
“NAV Exemption”	The exemption available to supranationals, State corporations, HK Listcos, corporations listed on another stock exchange that is a member of the World Federation of Exchanges and special purpose vehicles formed for listing asset-backed securities from the NAV Requirement pursuant to Rule 37.05
“NAV Requirement”	The requirement under Rule 37.05 that an issuer must have minimum net assets of HK\$100 million in order to be eligible for listing its debt securities under Chapter 37
“NDRC”	National Development and Reform Commission of the PRC
“PI Waiver”	In light of Rule 37.58 which provides that a professional investor includes a professional investor as defined in Part 1 of Schedule 1 to the SFO (excluding those prescribed by rules made under section 397 of the SFO), waivers would be granted by the Exchange, if applied by listing applicants, to modify the definition of professional investors under Rule 37.58 such that Chapter 37 Debts may also be marketed to professional investors prescribed by rules made under section 397 of the SFO, i.e. HNW Investors

TERM	DEFINITION
“PRC” or “Mainland”	The People’s Republic of China
“Professional Debt Regime” or “Chapter 37”	Chapter 37 of the Main Board Rules - “Debt Issues to Professional Investors Only”
“Prospectus Regime”	The regime under the CWUMPO where the offering document of any offer of shares or debentures of a company to the public for subscription has to be registered under section 38D(1) of the CWUMPO and to comply with the content requirement in accordance with section 38(1) of the CWUMPO
“REIT”	A real estate investment trust
“REIT Assets”	The assets of a REIT
“REIT Financials”	The audited financials of a REIT
“REIT Guarantor”	A guarantor of Chapter 37 Debts which has recourse against the assets of a REIT for satisfying its guarantee obligations under the relevant Chapter 37 Debts
“REIT Issuer”	An issuer that has recourse against the assets of a REIT for satisfying its obligations under its Chapter 37 Debts
“Relevant Information”	Information relating to the default of one’s obligations under the debt securities that are listed on the Exchange or matters leading to or involving one’s winding up and/or liquidation
“Rules” or “Main Board Rules”	The Rules Governing the Listing of Securities on the Exchange
“SFC”	The Securities and Futures Commission
“SFC Authorisation Regime”	The regime under section 103 of the SFO where no person may issue an advertisement, invitation or document containing an invitation to the public to enter into an agreement to subscribe for securities unless the issue is authorised by the SFC or otherwise exempted
“SFC Code of Conduct”	Code of Conduct for Persons Licensed by or Registered with the SFC, as published by the SFC and updated from time to time
“SFO”	The Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong)

TERM	DEFINITION
“SGX”	Singapore Exchange Limited
“Special Features”	The non-exhaustive list of special features of certain bonds that render such bonds complex as posted on the SFC’s website ² , which include perpetual or subordinated bonds, or those with variable or deferred interest payment terms, extendable maturity dates, or those which are convertible or exchangeable or have contingent write down or loss absorption features, or those with multiple credit support providers and structures
“State”	Includes any agency, authority, central bank, department, government, legislature, minister, ministry, official or public or statutory person of, or of the government of, a state or any regional or local authority thereof
“State corporation(s)”	Any company or other legal person which is directly or indirectly controlled or more than 50 per cent. of whose issued equity share capital (or equivalent) is beneficially owned by, and/or by any one or more agencies of, a State or all of whose liabilities are guaranteed by a State or which is specified as such from time to time by the Exchange
“Suitability Obligation”	The obligation of Licensed Intermediaries to ensure the suitability of a recommendation or solicitation for a client is reasonable in all the circumstances under the SFC Code of Conduct
“Trading Rules”	The Rules of the Exchange relating to the trading of securities on the Exchange

Exchange rates used in this paper for calculating the Hong Kong dollar equivalent amounts are based on the weighted average month-end rates for 2018 sourced from the HKMA’s website.

² <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/non-exhaustive-list-of-examples-of-non-complex-and-complex-products/>

EXECUTIVE SUMMARY

Introduction

1. This paper outlines the Exchange's proposal to review and explore enhancements to the Professional Debt Regime.

Overview

2. In contrast to the listing of debts offered to retail investors which is subject to extensive disclosure requirements and vetting, Chapter 37 offers an expedient and streamlined listing process for debt securities offered to professional investors only³. It has no prescribed disclosure requirements⁴ while vetting is limited to the fulfilment of eligibility requirements and the inclusion of the prescribed disclaimer and certain statements in the listing documents. Once listed, the trading in Chapter 37 Debts is currently predominantly conducted off-exchange and mostly cleared through overseas clearing systems.⁵
3. The current Professional Debt Regime with its streamlined approach was introduced in 2011 following a public consultation. Prior to 2011, Chapter 37 referred to debts offered to professional investors only as "selectively marketed securities"⁶. Listing is generally sought under Chapter 37 so that investors who may only invest in listed securities can subscribe for the relevant issuance. At that time, the listing process was longer (compared to the current Chapter 37 regime) as the Exchange reviewed listing documents to ensure that they complied with the detailed disclosure requirements. There were market views expressed at that time on the competitiveness of the pre-2011 Chapter 37 regime, in particular, its document intensive process and prescriptive disclosure approach which resulted in a longer vetting period.
4. In response to the market views expressed at the time, the Exchange conducted the 2010 Consultation with the view to bringing Hong Kong in line with the requirements of other comparable stock exchanges in relation to the listing of debt securities offered to professional investors⁷ only. With market support and on the basis that securities listed under Chapter 37 are issued to professional investors⁸ only, the 2011 Consultation Conclusions concluded, among other things, that the Exchange would adopt a "light-touch approach" under the Professional Debt Regime, which has no prescribed disclosure requirements and vetting by the Exchange is limited to fulfilment

³ For details on the Professional Debt Regime, please refer to paragraphs 35 to 43.

⁴ Instead Rule 37.29 requires the listing document to contain "information that the investors an issuer is offering the securities to would customarily expect it to contain".

⁵ Please refer to paragraphs 31 to 34 and 39 to 45 below for further details on the current Professional Debt Regime and Hong Kong regulatory framework applicable for primary offering and secondary sale of Chapter 37 Debts.

⁶ These refer to debt securities which "because of their nature, would normally be purchased and traded by a limited number of investors who are particularly knowledgeable in investment matters".

⁷ In the 2010 Consultation, the original proposal was to add a new definition of "professional investor" which would reference the same definition used in the SFO (i.e. include both Institutional Investors and HNWI Investors). The 2011 Consultation Conclusions subsequently concluded that the definition of "professional investor" should include only Institutional Investors.

⁸ Please refer to paragraphs 32 to 36, 41 to 45 of the 2010 Consultation for details.

of eligibility requirements and the inclusion of the prescribed disclaimer and certain statements⁹.

The current Professional Debt Regime has been in place since November 2011 following the 2011 Consultation Conclusions. Please refer to paragraphs 31 to 43 below for further details on the development of the Chapter 37 regime and other regulatory background.

Market developments since 2011

- Chapter 37 Debts have grown significantly both in terms of the number of issuances¹⁰ and issuance amount since the Professional Debt Regime was streamlined in 2011. The continued development of the bond market in Hong Kong and the maintenance of Hong Kong's competitiveness in the debt markets remain key initiatives of the Hong Kong Government. Key initiatives launched by the Hong Kong Government in 2018 include extending the relevant tax exemption to include debt securities listed on the Exchange¹¹, the pilot bond grant¹² and the green bond grant¹³. Hong Kong's role as an international hub for bond trading has been strengthened by the launch of the Northbound Bond Connect in July 2017. The Southbound trading link, which is to be developed, will foster further development of the bond market in Hong Kong.

Other similar platforms for listing of debt securities offered to professional investors have been developed in other stock exchanges, such as SGX, LUXSE, ISE and LSE¹⁴.

Please refer to paragraphs 46 to 50 below for more details on the Hong Kong and overseas market development.

- Recently, the Exchange noted views that the Chapter 37 eligibility requirements may require enhancement. In addition, the Exchange understands that there are instances where retail investors have had access to Chapter 37 Debts in the secondary market despite the fact that such debts are intended for professional investors only.
- In any offer of Chapter 37 Debts to investors in the secondary market, Licensed Intermediaries are required to properly discharge their Suitability Obligation under certain circumstances¹⁵. The Exchange notes that compliance with the Suitability

⁹ Please refer to Rules 37.27, 37.28 and 37.31 for the statements required.

¹⁰ Please refer to paragraph 46 below.

¹¹ Under the scheme, a concessionary profits tax rate is applied to the interest income and profits derived from certain types of "qualifying debt instruments". Further information can be found on the website of the Inland Revenue Department (<https://www.ird.gov.hk/eng/faq/qdi.htm>).

¹² <https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20180510-3.shtml>. Under this 3-year pilot bond grant scheme, eligible issuers will be eligible for a grant of up to a maximum of HK\$2.5 million to cover their issuance expenses.

¹³ <https://www.info.gov.hk/gia/general/201806/15/P2018061500373.htm>. Under the scheme, eligible green bond issuers will be eligible for a grant of up to a maximum of HK\$800,000 to offset the cost of obtaining certification for their green bonds.

¹⁴ These respectively refer to debts listed on the Euro Multilateral Trading Facility of the LUXSE, the Global Exchange Market of the ISE and the International Securities Market of the LSE.

¹⁵ In this case, the Suitability Obligation will be triggered when a solicitation or recommendation is involved or when its client purchases a complex product on an unsolicited basis (e.g. execution-only sale). For the definition of "complex" products, please refer to the SFC's website: <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/non-complex-and-complex-products/>

Obligation requires a Licensed Intermediary to engage in an examination of the suitability of a specific product for a specific customer, in light of the investment objectives and financial circumstances of that customer¹⁶. The Exchange has very limited regulatory oversight in the off-exchange secondary market trading of Chapter 37 Debts since the Rules do not apply to nor bind the Licensed Intermediaries in such secondary sales and the vast majority of Chapter 37 Debts are currently traded off-exchange¹⁷.

8. Certain debts listed on Chapter 37 have Special Features, which has in recent years raised the question on the appropriateness of disclosure in the listing document relating to these Chapter 37 Debts (carrying Special Features), in view of the current light-touch disclosure and vetting approach. It has also been suggested that such an approach may require a re-consideration particularly given that the target investors of Chapter 37 Debts include HNW Investors as the PI Waiver is granted to most Chapter 37 Debts issuances.
9. As stated in Main Board Rule 2.03, the Rules are intended to reflect currently acceptable standards in the market place. The Professional Debt Regime has been in operation for eight years following the 2011 Consultation Conclusions. As highlighted in paragraphs 5 to 8 above, there have been significant developments in the market during this time. Accordingly, the Exchange considers that it is now appropriate to seek market views again on the Professional Debt Regime to ensure that the Rules and the regulatory approach continue to be supported by the market and to explore measures to enhance market quality.

Proposals

10. Taking into account the market developments since the 2011 Consultation Conclusions as well as the preliminary feedback of a number of stakeholders, the Exchange is putting forward a number of proposals for market consultation which seek to balance the need to safeguard investors whilst maintaining an effective and appropriate listing platform for the continued development of the bond market in Hong Kong.

Eligibility requirements

11. The Exchange proposes to increase the NAV Requirement for issuers from HK\$100 million to HK\$1 billion. While the net asset level of an issuer is not a direct indication of its financial health or the quality of the debt securities it issues, the Exchange believes that a higher NAV Requirement would help to ensure that only issuers with larger asset pools could list debts on the Exchange under Chapter 37.

¹⁶ Please refer to the SFC's statement of disciplinary action respectively published on [19 July 2018](#) and [18 March 2019](#) in relation to two Licensed Intermediaries for, among other things, failing to discharge the Suitability Obligation in selling Chapter 37 Debts to their clients.

¹⁷ It is the current position that Chapter 37 Debts are predominantly traded off the Exchange as a matter of market practice even though Chapter 37 Debts are securities technically capable of being traded on the Exchange. In the event Chapter 37 Debts are more widely traded on the Exchange in future and settled through CCASS, the Exchange would be able to exercise more regulatory oversight over secondary trading of Chapter 37 Debts to the extent these trades are conducted on the Exchange and settled through CCASS.

12. The Exchange proposes to maintain the current Eligibility Exemption available for State corporations given that the Eligibility Exemption is based on whether corporations are majority owned by, and/or by agencies of, a State, rather than the financial support or backing provided by a State in case of default of its payment obligations.
13. The Exchange also proposes to introduce a minimum issuance size requirement of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts (excluding tap issuances). A minimum issuance size requirement should help to enhance the Professional Debt Regime by ensuring that only issuers with financial capacity and a proven track-record of supporting debt issuances of significant amounts would be eligible. The proposed approach is in line with other key professional debt listing markets in Singapore and the EU¹⁸.
14. The Exchange believes that the increase in NAV Requirement and the introduction of minimum issuance size requirement are expected to improve the quality of listings. In developing these proposals, the Exchange has also considered whether other financial thresholds (such as gearing ratio, cash flow or profitability) could be used for determining eligibility. However, the feasibility of these alternative thresholds would depend on, and need to be considered in the context of, the relevant industry, sector and position in a relevant business cycle, and it would be difficult to adopt a “one-size-fits-all” approach to set a meaningful threshold that would be applicable across all issuers. Accordingly, the Exchange has not proposed using other financial thresholds to determine eligibility.

Please refer to the Exchange’s proposals on eligibility requirements in paragraphs 54 to 72 below.

Issuer statement on intended investor market

15. Debts listed on the Exchange under Chapter 37 are intended to be offered in the primary market to professional investors only. To alert investors and intermediaries, the Rules require a number of statements to be included in the listing document and a “Professionals Only” data field is disseminated by the Exchange to information vendors for screen display¹⁹. However, the Exchange understands that there have been instances where retail investors have had access to Chapter 37 Debts in the secondary market.
16. The vast majority of Chapter 37 Debts are currently traded off-exchange by non-Exchange Participants and deposited and cleared through overseas clearing systems. Further, the Rules do not apply to, nor bind the conduct of, Licensed Intermediaries in the secondary sale of Chapter 37 Debts. Lastly, the Rules regulate issuers of Chapter 37 Debts; however, they would have no control in the secondary market sale once the primary distribution is completed. As such, the Exchange has very limited regulatory oversight in the off-exchange secondary market trading of Chapter 37 Debts²⁰.

¹⁸ See paragraph 72 below.

¹⁹ In this regard, the Exchange notes that the vast majority of Chapter 37 Debts are traded off-exchange and hence, potential investors may not be alerted to this screen display in practice.

²⁰ Please refer to footnote 17.

17. Recognising the Exchange’s very limited ability to ring-fence the sale of Chapter 37 Debts in the off-exchange secondary market as mentioned above, the Exchange proposes to require an issuer to state explicitly on the front cover of the listing document that the intended investor market in Hong Kong for its Chapter 37 Debts are professional investors²¹ only to better alert retail investors in Hong Kong that they are not the intended class of investors for Chapter 37 Debts. Together with the Exchange’s proposal to make listing documents for Chapter 37 Debts publicly available on the Exchange’s website on the listing date (see paragraph 18 below), the Exchange believes that this should help facilitate suitability assessments by Licensed Intermediaries and complement the SFC’s actions in tackling the mis-selling of Chapter 37 Debts in the secondary market.

Please refer to paragraphs 73 to 84 below for a discussion on this issue (including the Exchange’s limited ability in ring-fencing the off-exchange secondary market sale of Chapter 37 Debts to professional investors only) and the relevant proposal.

Publication of listing documents

18. The Exchange proposes to require the publication (on the listing date) of listing documents for Chapter 37 Debts. The Exchange considers that the publication would benefit both Licensed Intermediaries and potential investors as they will have access to the necessary information on the relevant Chapter 37 Debts (for example, business description and financial position of issuers and/or guarantors, structure, terms and conditions and associated risks) and be alerted to the caution statements included in the listing documents highlighting the nature of the securities which target professional investors only.

Please refer to paragraphs 85 to 91 below for details of this proposal.

Disclosure and vetting

19. Following the adoption of the “light-touch” approach after the 2011 Consultation Conclusions, the Exchange only vets listing applications for fulfilment of eligibility criteria and the inclusion of the required statements and disclaimers in listing documents. In recent years, there have been comments that such an approach may require a re-consideration in view that certain Chapter 37 Debts have Special Features and the target investors may include not only Institutional Investors but also HNW Investors (if a PI Waiver had been granted).
20. The Exchange considered various alternative approaches to the current “light-touch” approach²². After having considered the following factors, the Exchange proposes to maintain the current disclosure and vetting approach for Chapter 37 Debts, notwithstanding that the intended investors would continue to include HNW Investors:

²¹ This would mean Institutional Investors and/or HNW Investors, on the basis that the PI Waiver will be codified as proposed (see paragraphs 105-108 below).

²² See paragraphs 97 to 99 below.

- (a) The current Hong Kong legal framework imposes no mandatory content requirements on offering documents for offers to professional investors. Adopting a prescriptive disclosure approach under Chapter 37 could result in regulatory inconsistency and different disclosure requirements for Hong Kong listed securities compared with other securities (e.g. overseas listed or unlisted debt securities) where the same class of professional investors may be targeted for securities with potentially the same structure and features;
 - (b) the current Hong Kong legal framework does not differentiate disclosure standards between Institutional Investors and HNW Investors; and
 - (c) a listing status is normally obtained for Chapter 37 Debts so that investors who may only invest in listed securities can subscribe for the relevant issuance. As such, an issuer's choice of listing venue often depends on ease and length of time in completing the listing process. Any proposal lengthening the listing timetable may potentially impact an issuer's decision on listing venue, thereby undermining the Hong Kong Government's initiatives to continue developing Hong Kong's bond market and maintain its competitiveness.
21. To address comments on the appropriateness of disclosure for certain Chapter 37 Debts with Special Features and the fact that HNW Investors may become target investors of Chapter 37 Debts, the Exchange considers that it is appropriate, and that it would promote the quality and consistency of disclosures, to issue market guidance on what would be customarily expected by target investors to be included in the listing documents relating to disclosures of specified Special Features. The proposed guidance will:
- (a) Discuss disclosures in offering documents which are customarily expected by professional investors (i.e. Institutional Investors and HNW Investors) in respect of Chapter 37 Debts that contain Special Features and include suggestions on how to draw investors' attention to these Special Features and the associated risks;
 - (b) remind issuers generally that disclosures in the listing document should be commensurate with the customary expectation of their intended investors; and
 - (c) remind issuers to generally highlight in the summary of terms and conditions section of the offering documents the structure and features of the debts as well as any key terms affecting the rights of the investors.

Definition of professional investors

22. Rule 37.58 defines "professional investors" in Hong Kong to mean Institutional Investors only (i.e. HNW Investors are being excluded). Following strong market feedback after the 2011 Consultation Conclusions, the Exchange has agreed (with the consent of the SFC) to grant waivers on a case-by-case basis since late November 2011 and since May 2013, a general waiver was granted such that Chapter 37 Debts

may be marketed to HNW Investors.²³ The Exchange proposes to codify the PI Waiver to streamline the Rules and alleviate the unnecessary administrative burden on issuers.

Other Rules amendments

23. The Exchange also proposes to make a number of other amendments to Chapter 37 to improve the operation of the Rules. These proposals relate to:
- (a) An amendment to allow an eligibility assessment referencing REIT Assets and REIT Financials if the REIT Assets will be applied for satisfying obligations under the debt securities issued by a REIT Issuer (or guaranteed by the REIT Guarantor, as the case may be). Further, if the REIT is listed on the Exchange, a REIT Issuer (or the REIT Guarantor, as the case may be) will enjoy the Eligibility Exemption (as afforded to HK Listcos);
 - (b) the inclusion of a specific obligation for an issuer and a guarantor of Chapter 37 Debts to respond promptly to the Exchange's enquiries;
 - (c) the inclusion of a specific obligation for issuers and guarantors to announce Relevant Information (i.e. default of its debt securities listed on the Exchange, winding-up and/or liquidation);
 - (d) the inclusion of a requirement for issuers and/or guarantors to publish quarterly announcement of its developments after trading suspension of Chapter 37 Debts to improve transparency;
 - (e) an amendment to allow the announcement of information to avoid a false market or information that may materially affect guarantor's obligations under Chapter 37 Debts it guarantees to be made "as soon as reasonably practicable" rather than "immediately";
 - (f) an amendment to require an issuer to announce information which may have material effect on its ability to meet obligations under its Chapter 37 Debts;
 - (g) an amendment to clarify guarantors' continuing obligations;
 - (h) an amendment to clarify the scope of debt securities with respect to the continuing obligations;
 - (i) the replacement of the obligation for issuers (and the guarantors, as the case may be) to submit copies of constitutional documents and resolutions authorising, among other things, the issuance of debt securities with a written confirmation of due incorporation, capacity and authorisation;

²³ For further information on the PI Waiver, please refer to paragraphs 44 to 45.

- (j) the clarification of the requirements for issuers and guarantors to submit audited financial statements (instead of last published financial statements) to establish the fulfilment of the Issuer Eligibility Requirements (so that submission of audited financial statements is only necessary for the issuer or the guarantor that an issuer relies on in fulfilling the Issuer Eligibility Requirements, and no such submission is necessary where the issuer (or the guarantor, as the case may be) is exempted from the Issuer Eligibility Requirements, or if the financial information is already included in the listing document);
- (k) an amendment to clarify that reference to supplementary listing document includes a pricing supplement; and
- (l) the making of housekeeping changes to improve Rules clarity and to correct any typographical errors.

General

- 24. The Exchange invites public comments on the proposals and the draft Rules changes that would give effect to the proposals. When providing your comments please give reasons for your views.
- 25. Response to this paper should be submitted to us by Friday 7 February 2020. The Exchange will take into account these responses and comments before publishing the conclusions paper with the final Rules amendments.

CHAPTER 1: INTRODUCTION

26. In contrast to the listing of debts offered to retail investors which is subject to extensive disclosure requirements and vetting, Chapter 37 offers an expedient and streamlined listing process for debt issued to professional investors only. It has no prescribed disclosure requirements²⁴ and with vetting by the Exchange that is limited to the fulfilment of eligibility requirements and the inclusion of the prescribed disclaimers and certain statements²⁵ in the listing documents. The current Professional Debt Regime was introduced following the 2011 Consultation Conclusions, where the market²⁶ supported the adoption of a “light-touch” approach by the Exchange premised on the basis that the securities listed under Chapter 37 would be issued to professional investors only (rather than retail investors) with a view of enhancing the competitiveness of the Professional Debt Regime in Hong Kong.

Once listed, secondary market trades are currently predominantly conducted “over the counter” and mostly cleared through overseas clearing systems.²⁷

The development of the Professional Debt Regime and other background information is set out in more detail in **Chapter 2**.

27. As stated in Main Board Rule 2.03, the Rules are intended to reflect currently acceptable standards in the market place. The Professional Debt Regime has been in operation for eight years following the 2011 Consultation Conclusions. As highlighted in paragraphs 46 to 53 below, there have been significant market developments during this time. Accordingly, the Exchange considers that it is now appropriate to seek market views again on the Professional Debt Regime to ensure that the Rules and the regulatory approach continue to be supported by the market and to explore measures to enhance market quality.
28. Taking into account the market developments since the 2011 Consultation Conclusions as well as the preliminary feedback of a number of stakeholders, the Exchange is putting forward a number of proposals for market consultation which seek to balance the need to safeguard investors whilst maintaining an effective and appropriate listing platform for the continued development of the bond market in Hong Kong. The Exchange welcomes views on the proposals and any alternative suggestions from respondents.
29. The proposals cover the following areas:
- A. Eligibility requirements
 - B. Issuer statement on intended investor market
 - C. Publication of listing document

²⁴ Instead Rule 37.29 requires the listing document to contain “information that the investors an issuer is offering the securities to would customarily expect it to contain”.

²⁵ Please refer to Rules 37.27, 37.28 and 37.31 for the statements required.

²⁶ The Exchange received six submissions from professional and industry associations, market practitioners and an individual in response to the 2010 Consultation.

²⁷ Please refer to footnote 17.

- D. Disclosure and vetting
- E. Definition of professional investors
- F. Other Rules amendments

The proposals and the rationale for them are discussed in more detail in **Chapter 3**.

30. Unless the context specifies otherwise, all Rule references in this paper are to the Main Board Rules. Whilst this paper focuses on the Main Board Rules, equivalent proposed amendments apply to the GEM Rules (to the extent equivalent GEM Rules exist). Draft amendments to the Main Board Rules and the GEM Rules are set out in **Appendix I** and **Appendix II** respectively.

CHAPTER 2: BACKGROUND

Regulatory framework for debt securities offering to professional investors

31. In a primary market offering of debentures²⁸ (whether listed or unlisted) by a company (whether incorporated in Hong Kong or overseas) to the public for subscription or purchase, the offering document has to comply with the registration and contents requirements of prospectuses under the Prospectus Regime²⁹. However, certain types of offers of debentures are specified to be exempt from the registration and prescribed disclosure requirements under the Prospectus Regime and one of these exemptions covers offers to professional investors (as defined in the SFO and which includes both Institutional Investors and HNW Investors)³⁰.
32. Where the Prospectus Regime does not apply, for example because the issuer is not a company³¹, then the SFC Authorisation Regime applies. However, an exemption from the SFC Authorisation Regime may also be available in certain circumstances, such as when the relevant offering document complies with the relevant Rules³² or where an offer is made only to professional investors (including both Institutional Investors and HNW Investors)³³.
33. In relation to the secondary market trading of Chapter 37 Debts, any advertisement, invitation or document used and issued by Licensed Intermediaries during the secondary market sale of securities does not require authorisation from the SFC under the SFC Authorisation Regime, provided that these Licensed Intermediaries are licenced or registered for “Type 1”, “Type 4” or “Type 6” regulated activity under the SFO³⁴ and where the securities concerned are listed securities (e.g. Chapter 37 Debts).³⁵ In the selling process, Licensed Intermediaries have to comply with the SFC Code of Conduct which requires them to discharge the Suitability Obligation (if triggered³⁶), in which they must ensure the suitability of their recommendation or solicitation for that client is reasonable in all the circumstances, when making a recommendation or solicitation³⁷. The Suitability Obligation requires the Licensed

²⁸ In relation to a company, includes debenture stock, bonds and any other debt securities of the company, whether or not constituting a charge on the assets of the company. See section 2 of CWUMPO.

²⁹ Where the Prospectus Regime applies to the primary market offering, the SFC Authorisation Regime does not apply. See Sections 103(2)(ga) and 103(3)(a) of the SFO.

³⁰ If the offering document relates to an offer specified in Part 1 of the Seventeenth Schedule of the CWUMPO (e.g. an offer to professional investors (as defined in the SFO)), it will fall outside the definition of “prospectus” under the CWUMPO (see such definition in section 2 of CWUMPO) and therefore, the registration and content requirements under the Prospectus Regime does not apply to the relevant offering document which is not a “prospectus”.

³¹ For example, a sovereign, a multi-lateral treaty organisation, or some state corporations or statutory bodies.

³² See Section 103(3)(h) of the SFO.

³³ See Section 103(3)(k) of the SFO.

³⁴ Namely, Type 1 - Dealing in securities, Type 4 - Advising on securities and Type 6 – Advising on corporate finance.

³⁵ See section 103(2)(a)(i) of the SFO.

³⁶ The Suitability Obligations are triggered under the SFC Code of Conduct when (i) there is solicitation or recommendation or (ii) the product involved is a “complex product” when there is no solicitation or recommendation. In practice, there may be situations where the Suitability Obligations are not applicable.

³⁷ With effect from 6 July 2019, Licensed Intermediaries are required to ensure that a transaction in a complex product is suitable for the client in all circumstances even when no solicitation or recommendation is made. Licensed Intermediaries will also be required to provide information and warning statements about the complex products to the client. These requirements are set out in paragraph 5.5 of the SFC Code of Conduct.

Intermediaries to take into account the circumstances of the individual customer in assessing the suitability for that customer of the specific investment products. The conduct of Licensed Intermediaries in offering securities for sale in the secondary market is subject to the supervision of the SFC, or in the case of registered institutions, the HKMA.

34. The requirements which the Licensed Intermediaries are required to discharge under the Suitability Obligation (owed to a professional investor) depends on the classification of the client as an “Institutional Professional Investor”, a “Corporate Professional Investor” or an “Individual Professional Investor” (each term as defined in the SFC Code of Conduct)³⁸. If the client is an “Institutional Professional Investor”, the Licensed Intermediaries may be exempted from a number of requirements relating to the Suitability Obligation. If the client is a “Corporate Professional Investor” and assessed as sophisticated, Licensed Intermediaries are able to rely on certain exemptions similar to those available in the context of dealing with “Institutional Professional Investors”. Licensed Intermediaries are required to comply with all suitability related requirements under the SFC Code of Conduct (including the Suitability Obligation) when dealing with HNW Investors, particularly HNW Investors that are individuals, regardless of whether the relevant offering is exempt from the Prospectus Regime or the SFC Authorisation Regime.

Listing regime for debt issues to professional investors only

Pre-2011

35. Since its introduction in June 1994, Chapter 37 governed the listing of debt securities that were “selectively marketed securities” which would normally have been purchased and traded by a limited number of investors who were particularly knowledgeable in investment matters. These were debt securities offered to professional investors only and not to retail investors in Hong Kong.
36. Trading in these selectively marketed debt securities was mostly conducted off-exchange and listing status was generally sought under Chapter 37 so that investors with investment mandates that are limited to listed securities or with relevant portfolio requirements could subscribe for the relevant issuance. In light of this, the pre-2011 listing regime under Chapter 37 had less stringent listing requirements, compared to those applicable to equity securities and debt securities offered to retail investors.
37. In 2008, the Exchange engaged a consultant to review the then Chapter 37 listing regime and to identify possible means of improving the competitiveness of the Exchange as an international venue for listing, taking full account of the need to maintain market quality. The consultant took the view that Hong Kong had “lost an opportunity” to become the premier location for debt listing in Asia, losing out principally to Singapore which had become the de facto stock exchange of choice for debt listings in Asia. The feedback from various market practitioners at the time was that

³⁸ For the purpose of this paper, “Institutional Professional Investors” means “Institutional Investors” as referred to in this paper, “Individual Professional Investors” and “Corporate Professional Investors” mean “HNW Investors” as referred to in this paper.

compared with the listing requirements and processes of SGX for debts issued to “sophisticated and institutional investors” (i.e. similar type of investors as “professional investors” in Hong Kong), the listing process under the pre-2011 Chapter 37 regime was more document-intensive and the prescriptive disclosure approach in relation to the content of listing documents resulted in a longer vetting period.

38. In light of the consultant’s feedback and market views and given that, at the time, Chapter 37 had been in operation for over sixteen years since its introduction in 1994, the Exchange conducted the 2010 Consultation to formally elicit views from the market on possible enhancements to Chapter 37 with a view to bringing Hong Kong in line with the requirements of other stock exchanges in relation to listing of debt securities to professional investors only.

2010 Consultation and 2011 Consultation Conclusions

39. In the 2010 Consultation, the Exchange proposed the adoption of a light-touch approach to the Professional Debt Regime as Chapter 37 Debts were issued to professional investors only.
40. As part of the light-touch approach, the Exchange sought to remove in the 2010 Consultation, among others, the following requirements in the then Chapter 37 that aimed to protect retail investors for the reasons below:
- (a) *Prescribed disclosure requirements for listing documents* – for professional investors³⁹, the listing document serves to record the terms and conditions and relevant disclosures agreed through negotiation between the issuer and the professional investors, whereas for retail investors the listing document serves to reflect the terms and conditions that they are being offered so that they can decide whether to accept them and subscribe accordingly. In an offer to professional investors only, it was therefore considered appropriate to leave the contents to be determined between the issuers and professional investors without prescribing any disclosure requirements; and
 - (b) *detailed vetting of listing documents* – the contents of a listing document may have been influenced by the professional investors to whom it is directed. The issuer and its advisers are attuned to the requirements of the professional investors. Detailed vetting of listing documents by the Exchange is not essential to ensure content quality but would add time to the overall listing process.
41. Further, there was no definition of “professional investors” in the pre-2011 listing regime under Chapter 37, which merely referred to the investors of the then Chapter 37 Debts as “a limited number of investors who are particularly knowledgeable in investment matters”. In the 2010 Consultation, the Exchange proposed to state clearly that the investors targeted were in fact professional investors which should

³⁹ In the 2010 Consultation, this was discussed in the context of the then original proposal to adopt the same definition of “professional investor” as that used in the SFO (i.e. includes both Institutional Investors and HNWI Investors). The 2011 Consultation Conclusions subsequently concluded that the definition of “professional investor” should include only Institutional Investors.

follow the definition as set out in the SFO (i.e. Institutional Investors and HNW Investors).

42. With the market support of the light-touch approach, the 2011 Consultation Conclusions concluded, among other things, that:
- (a) The Professional Debt Regime would have no prescribed disclosure requirements and listing documents would only need to contain the information that the investors an issuer is offering the securities to would customarily expect such documents to contain⁴⁰. In this regard, the Exchange noted in the 2011 Consultation Conclusions that the issuer and the underwriters would be liable under common law, Hong Kong laws and relevant securities laws such as the US laws, if the offering documents omitted material information or contained untrue or misleading statements of material facts;
 - (b) the Exchange would only vet listing applications for fulfilment of eligibility criteria and the inclusion in the listing documents of the standard disclaimers and statements required by the Rules; and
 - (c) despite the fact that the market supported the proposal to introduce a definition of “professional investors” under Chapter 37 tracking those under the SFO (i.e. Institutional Investors and HNW Investors), the 2011 Consultation Conclusions concluded that the Rules should be amended to include a new definition of “professional investor” to mean a person prescribed as such in Part 1 of Schedule 1 to the SFO only (i.e. Institutional Investors only), but exclude those prescribed by rules made under section 397 of the SFO (i.e. exclude HNW Investors from the target investors of Chapter 37 Debts). See further details in paragraphs 44 to 45 below for subsequent development.
43. The current Professional Debt Regime has been in effect since November 2011 following the 2011 Consultation Conclusions.

Post-2011 Consultation Conclusions development on definition of “professional investors”

44. Shortly after the new Professional Debt Regime came into effect in November 2011, there was strong market feedback that the definition of “professional investors” should not have carved out HNW Investors from the Professional Debt Regime and that the definition should be aligned with the definition in the SFO⁴¹. The Exchange revisited the issue in consultation with the SFC at the time and has agreed to grant waivers on a case-by-case basis since late November 2011 such that Chapter 37 Debts may be marketed to HNW Investors⁴².

⁴⁰ This requirement is set out in Rule 37.29.

⁴¹ The market commented that strict compliance is impractical and outside general market practice. If an issuer was to comply with the Rules, the classes of persons to whom the offering can be made will be narrower than what is permitted under the SFO. Issuers whose debt securities are offered in Hong Kong but are not listed on the Exchange will have a wider range of investors, causing competitive disadvantages to issuers which choose to list the debt securities on the Exchange.

⁴² The Exchange informed the market on 30 March 2012 clarifying the change of policy standpoint in relation to the definition of “professional investors” under Chapter 37, which shall include both Institutional Investors and

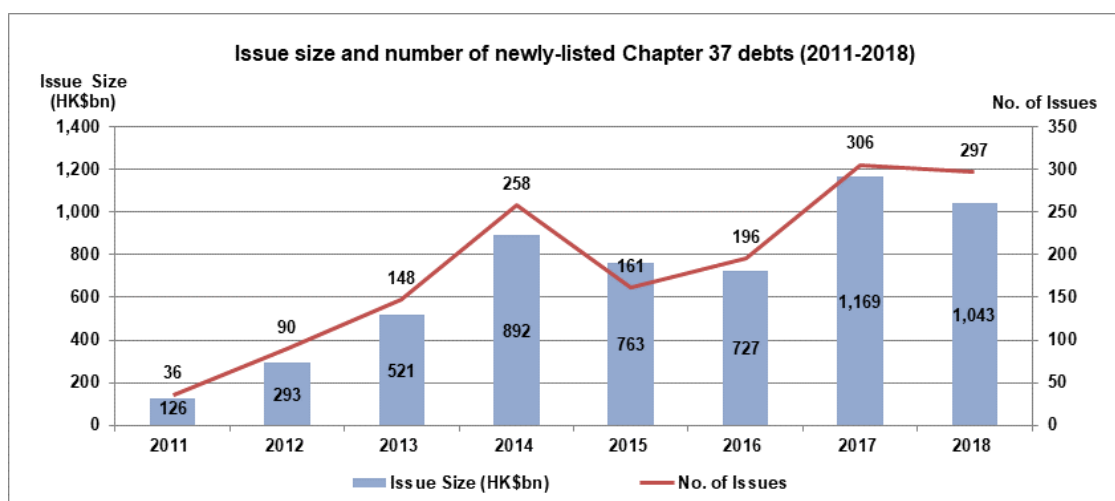
As the waiver had general effect under Rule 2.04, the Exchange subsequently requested in May 2013 that the SFC give its consent to grant such waiver as a general waiver. With the SFC's consent, the Exchange has been granting the PI Waiver as a general waiver since May 2013.

45. The effect of the granting of the PI Waiver is that the definition of professional investors under Chapter 37 is in full alignment with the SFO. Similar to the SFO (as well as the CWUMPO) which makes no distinction between Institutional Investors and HNWI Investors when applying the rules and exemptions applicable to professional investors under the Prospectus Regime and/or the SFC Authorisation Regime, the Exchange has been applying the same Rules to Chapter 37 Debts whether they are offered to Institutional Investors or HNWI Investors.

Market developments since 2011

Listings on Chapter 37

46. Chapter 37 Debts have grown significantly both in terms of the number of issuances and issuance amount since the adoption of the current light-touch Professional Debt Regime in 2011. In 2018, there were over 297 Chapter 37 Debts which raised approximately HK\$1,043 billion (2011: 36 debt listings raised approximately HK\$126 billion). As of 31 December 2018, the principal outstanding amount of Chapter 37 Debts amounted to HK\$4,500 billion (31 December 2011: HK\$500 billion). The chart below shows the number of issuances and issuance amount since 2011 under Chapter 37.



47. The Professional Debt Regime does not prescribe the type of debt securities that could be listed. Accordingly, both plain vanilla bonds and bonds with different features (including Special Features⁴³) are listed under the Professional Debt Regime.

HNWI Investors and as a result of which, the Exchange will grant the PI Waiver. See <https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Debt-Securities/20120330.pdf?la=en>

⁴³ In 2018, debts with these Special Features account for 27% of the total Chapter 37 Debts.

Bond market policy initiatives

48. The Exchange notes that the continued development of the bond market in Hong Kong and the maintenance of Hong Kong's competitiveness in the debt markets remain key initiatives of the Hong Kong Government⁴⁴. Recent initiatives include the pilot bond grant⁴⁵ and the green bond grant⁴⁶ launched in 2018 with the aim to promote more corporate bond and green bond issuances in Hong Kong. Furthermore, to attract more investors to participate in the bond market in Hong Kong, the Hong Kong Government also enhanced its qualifying debt instrument scheme⁴⁷ in late 2018 by extending the relevant tax exemption to include debt securities listed on the Exchange.
49. The role of Hong Kong as an international hub for bond trading has been further strengthened with the launch of the Northbound Bond Connect in July 2017, allowing overseas investors to invest in the China interbank bond market via the Hong Kong market infrastructure. The Southbound trading link, which is to be developed, under which investors from the Mainland may invest in Hong Kong's bond (including Chapter 37 Debts), will foster further development of the bond market in Hong Kong⁴⁸.

Other similar overseas professional debt listing platforms

50. Other similar platforms for listing of debt securities offered to professional investors have been developed in other stock exchanges, such as SGX, LUXSE, ISE and LSE⁴⁹. Such platforms are regulated by the respective stock exchanges and are characterised by a less stringent regulatory regime compared to the platforms operated by these stock exchanges for listing of debt securities offered to the public. In addition, similar to the Professional Debt Regime, the offering documents for debt securities listed on these platforms are not required to be prepared in accordance with the standard required in a public offer (e.g. the Prospectus Regulation in the EU). None of these platforms draws a distinction between Institutional Investors and HNW Investors. Given the similarities shared by these overseas debt listing platforms, the Exchange has, where relevant, conducted a review and compared the Rules against those of SGX, LUXSE, ISE and LSE, in developing its proposals set out in this paper⁵⁰.

⁴⁴ In the 2018-2019 Budget Speech (https://www.budget.gov.hk/2018/eng/pdf/e_budget_speech_2018-19.pdf), the Financial Secretary announced a series of measures with the view to "encourage more investors and issuers from the Mainland, Asia and along the Belt and Road to participate in the Hong Kong bond market" and to "enhance [Hong Kong's] competitiveness, including attracting corporate bond issuance, facilitating investors participation and broadening investment platform".

⁴⁵ <https://www.hkma.gov.hk/eng/key-information/press-releases/2018/20180510-3.shtml>. Under this 3-year pilot bond grant scheme, eligible issuers will be eligible for a grant of up to a maximum of HK\$2.5 million to cover their issuance expenses.

⁴⁶ <https://www.info.gov.hk/gia/general/201806/15/P2018061500373.htm>. Under the scheme, eligible green bond issuers will be eligible for a grant of up to a maximum of HK\$800,000 to offset the cost of obtaining certification for their green bonds.

⁴⁷ Under the scheme, a concessionary profits tax rate is applied to the interest income and profits derived from certain types of "qualifying debt instruments". Further information can be found on the website of the Inland Revenue Department (<https://www.ird.gov.hk/eng/faq/qdi.htm>).

⁴⁸ In the 2019-2020 Budget Speech (https://www.budget.gov.hk/2019/eng/pdf/e_budget_speech_2019-20.pdf), it was stated that "[Hong Kong has] been actively promoting mutual access with the Mainland" and that the Hong Kong Government would continue its efforts to "expand the scope of mutual access as well as extend the Bond Connect to cover southbound trading".

⁴⁹ These respectively refer to debts listed on the Euro Multilateral Trading Facility of the LUXSE, the Global Exchange Market of the ISE and the International Securities Market of the LSE.

⁵⁰ In respect of the relevant proposal, please refer to paragraphs 62, 64, 72, 84, 91, 97 to 98 below regarding the positions in these overseas debt listing platforms.

Recent discussion on the Professional Debt Regime

51. Recently, there have been views expressed that Chapter 37 may require enhancement in respect of its listing eligibility requirements which have not changed since their introduction in 1994 and also in light of market developments. The Exchange's proposals on eligibility requirements are set out in paragraphs 54 to 72 below.
52. The Exchange also understands that notwithstanding that Chapter 37 Debts are intended for professional investors only⁵¹, there are instances where retail investors have had access to Chapter 37 Debts in the secondary market.⁵² The Exchange notes that Licensed Intermediaries are required to properly discharge their Suitability Obligation in any offer of Chapter 37 Debts to investors in the secondary market under certain circumstances⁵³. Compliance with the Suitability Obligation requires a Licensed Intermediary to engage in an examination of the suitability of a specific product for a specific customer, in light of the investment objectives and financial circumstances of that customer⁵⁴. Please refer to paragraphs 73 to 84 for a discussion on this issue (including the Exchange's limited ability in ring-fencing the off-exchange secondary market sale of Chapter 37 Debts to professional investors only) and the Exchange's proposal to address this issue.
53. Certain debts listed on Chapter 37 have Special Features, which has in recent years raised the question on the appropriateness of disclosure in the listing document relating to these Chapter 37 Debts (carrying Special Features), particularly as to the description of, and the risks relating to, the Special Features, in view of the fact that the Exchange adopts a light-touch approach in relation to disclosure and vetting for the Professional Debt Regime.

It has also been suggested that the light-touch approach may require a re-consideration particularly given that the target investors of Chapter 37 Debts include not only Institutional Investors but also HNW Investors as the PI Waiver is granted to most Chapter 37 Debts issuances. In this regard, a comparison has been drawn with the more prescriptive disclosure framework of LUXSE, ISE and LSE under their equivalent debt listing platforms for listing of debt securities offered to professional investors, with the comment that the Exchange may consider whether Chapter 37 should move away from the current light-touch approach in relation to disclosure and vetting and follow instead the more prescriptive disclosure framework adopted by these EU stock exchanges.

⁵¹ In the HKMA's letter dated 30 October 2018 in relation to "[Sale and Distribution of Debt Instruments with Loss-absorption Features and Related Products](#)", it states that the debt instruments with loss-absorption features are generally not suitable for retail investors. It further sets out the restrictions on sales of these products to retail investors and the obligations on registered institutions in Hong Kong to conduct robust know-your-client and investor suitability checks.

⁵² See the SFC's circular on "[Distribution of bonds listed under Chapter 37 of the Main Board Listing Rules and local unlisted private placement bonds](#)" issued on 31 March 2016.

⁵³ In this case, the Suitability Obligation will be triggered when a solicitation or recommendation is involved or when its client purchases a complex product on an unsolicited basis (e.g. execution-only sale). For the definition of "complex" products, please refer to the SFC's website: <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/non-complex-and-complex-products/>

⁵⁴ See the SFC's circular on "[Compliance failures in the distribution of fixed-income and structured products](#)" issued on 25 January 2018.

Discussion on the Exchange's consideration of these comments and the relevant proposals on the disclosure and vetting approach under Chapter 37 are set out in paragraphs 92 to 104 below.

CHAPTER 3: PROPOSALS

A. Eligibility Requirements

54. Chapter 37 currently has bright-line eligibility criteria to determine an issuer's qualification to list its debt securities on the Exchange⁵⁵. Similarly, debt securities have to meet certain requirements before they are eligible for listing⁵⁶. Maintaining an appropriate and up-to-date listing standard is key to ensure that the Professional Debt Regime continues to be a quality debt listing platform in the region. As such, the Exchange has reviewed the current eligibility requirements to explore potential enhancements that could be made to the Professional Debt Regime.
55. The Exchange has identified a couple of areas which can potentially be enhanced in relation to the NAV Requirement and the minimum issuance size for Chapter 37 Debts, which are discussed in detail below. Further, we propose to maintain the current Eligibility Exemption for State corporations.

(a) NAV Requirement

Current Rules

56. An issuer, unless certain exemptions apply, must fulfil the NAV Requirement in order to be eligible for listing its debt securities on the Exchange under Chapter 37. Issuers that are exempted from the NAV Requirement include, for example, State corporations and HK Listcos⁵⁷.

Issues

57. The current NAV Requirement has been in place and remained unchanged for over fifteen years. The minimum net asset level should be reviewed with a view to raising the listing standard.

Proposal

58. The Exchange proposes to raise the NAV Requirement from HK\$100 million to HK\$1 billion.
59. While the net asset level of an issuer is not a direct indication of its financial health or the quality of the debt securities it issues, it provides a clear and objective criterion to determine an issuer's listing eligibility. Furthermore, setting a higher NAV Requirement would help to ensure only issuers with larger asset pools could list debts on the Exchange under Chapter 37. In determining the proposed NAV Requirement, the Exchange has taken into consideration that setting the NAV Requirement beyond

⁵⁵ Please refer to Rules 37.03 to 37.08.

⁵⁶ These requirements are set out in Rules 37.09 to 37.12.

⁵⁷ Under Rule 37.05, supranationals, corporations listed on a stock exchange that is a member of the World Federation of Exchanges and special vehicles formed for listing asset-backed securities are also exempted from the NAV Requirement.

HK\$1 billion may exclude quality issuers with a low net asset level seeking to list under the Professional Debt Regime, such as affiliates and subsidiaries of sizable or prominent HK Listcos.

60. In developing this proposal, the Exchange has also considered whether other financial thresholds (such as gearing ratio, cash flow or profitability) could be used for determining eligibility. However, the feasibility of these alternative thresholds would depend on and need to be considered in the context of the relevant industry, sector and position in a relevant business cycle, so it would be difficult to adopt a “one-size-fits-all” approach to set a meaningful threshold that would be applicable across all issuers. Accordingly, the Exchange does not propose using other financial thresholds to determine eligibility.
61. The Exchange does not propose any changes to the NAV Exemption. See paragraphs 63 to 65 below for further discussion on the Eligibility Exemption available to State corporations.
62. In comparison to Hong Kong, LUXSE, ISE and LSE impose no asset requirement or other financial thresholds for determining an issuer’s eligibility under their equivalent listing platform. An asset requirement is one of the alternative eligibility criteria on SGX.

Question 1: Do you agree with the proposed increase of the NAV Requirement from HK\$100 million to HK\$1 billion? Please give reasons for your views.

(b) Eligibility Exemption for State corporations

Current Rules

63. Under Rules 37.05(b) and 37.06(b), State corporations, the definition of which covers corporations majority owned by a State including any regional or local authority thereof, are exempted from compliance with the Issuer Eligibility Requirements. Accordingly, entities that meet such definition of “State corporations” are not required to fulfil the Issuer Eligibility Requirements for such entities to list their debt securities on the Exchange under Chapter 37.

Issues

64. The Exchange has received comments on whether financial support or backing will be provided by a State to its State corporations in case of default of the State corporations’ payment obligations. Some of these comments were made with reference to risk disclosures in some recent listing documents of Chapter 37 Debts issued by State corporations, stating that the repayment obligations under their Chapter 37 Debts remain the sole obligation of the issuer.⁵⁸ This has raised the question of the

⁵⁸ Such risk disclosures also referred to recent official notices issued by the PRC government, namely, “Circular on the Regulation on the Financing Activities Conducted by Financial Institutions for Local Governments and State-owned Enterprises (財政部關於規範金融企業對地方政府和國有企業投融資行為有關問題的通知)” issued by the MOF on 28 March 2018, the “Circular on Improvement of Market Regulatory Regime and Strict Prevention

appropriateness of the current Eligibility Exemption for State corporations. The Exchange notes that there is no equivalent eligibility exemption available in SGX, LUXSE, ISE and LSE.

Proposal

65. The Exchange proposes to maintain the current Eligibility Exemption available for State corporations, given that the Eligibility Exemption is based on whether corporations are majority owned by, and/or by agencies of, a State rather than financial support or backing provided by a State.

Question 2: (a) Do you agree that the Exchange should maintain the current Eligibility Exemption available for State corporations? Please give reasons for your views.

(b) If not, which type of State corporations should comply with Issuer Eligibility Requirements? Please give reasons for your views.

(c) Minimum Issuance Size

Current Rules

66. There is currently no minimum issuance size requirement for Chapter 37 Debts.⁵⁹

Issues

67. The Exchange notes that other key professional debt listing markets generally have a minimum issuance size requirement (see paragraph 72 below). Requiring a minimum issuance size for Chapter 37 Debts will assist in maintaining the quality of the Professional Debt Regime by allowing access only to issuers that are capable of raising sizable funds in the market.

Proposal

68. The Exchange proposes to introduce a minimum issuance size of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts. The proposal will not apply to tap issuances.
69. A minimum issuance size requirement should help to enhance the Professional Debt Regime by ensuring that only issuers with financial capacity and a proven track-record of supporting debt issuances of a significant amount would be eligible.

of Foreign Debt Risks and Local Government Indebtedness Risks (國家發展改革委財政部關於完善市場約束機制嚴格防範外債風險和地方債務風險的通知)” issued by the MOF and the NDRC on 11 May 2018 and the “Circular on the Registration Requirements on Offshore Bond Issuance of Entities Owned by Local Government (國家發展改革委辦公廳關於對地方國有企業發行外債申請備案登記有關要求的通知)” issued by the NDRC on 6 June 2019.

⁵⁹ In the 2010 Consultation, the minimum issuance size requirement (i.e. HK\$50 million) was removed from the Professional Debt Regime on the basis that it was a requirement to protect retail investors and not applicable to a regime for professional investors.

70. The Exchange does not propose to extend the minimum issuance size requirement to tap issuances. As a tap issuance is performed by an issuer who has fulfilled the minimum issuance size requirement in the original issuance, it is not necessary for the same issuer to satisfy the minimum issuance size requirement again for tap issuances.
71. The Exchange considers that the proposed minimum issuance size is appropriate as the Exchange considers that setting a level beyond HK\$100 million could result in the exclusion of smaller issuances under medium term notes programme.
72. Save in the case of tap issuances, LUXSE, ISE and LSE impose minimum issuance size requirements of EUR 200,000 (HK\$1.85 million) (in the case of LUXSE and ISE) and GBP 200,000 (HK\$2.09 million) (in the case of LSE) respectively. SGX imposes a minimum issuance size requirement of S\$5 million (HK\$29.05 million) for each series issued under a medium term notes programme but not for standalone issuances⁶⁰ or tap issuances.

Question 3: (a) Do you agree with the proposed introduction of a minimum issuance size of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts?

(b) Do you agree that such minimum issuance size shall not apply to tap issuances?

Please give reasons for your views.

B. Issuer Statement on Intended Investor Market

Current Rules and Measures

73. Rule 37.31 requires that listing documents for Chapter 37 Debts must contain a statement limiting its distribution to professional investors only⁶¹.
74. To alert investors and intermediaries that Chapter 37 Debts are intended to be offered to professional investors only, a “Professionals Only” data field is disseminated by the Exchange to information vendors for screen display⁶².
75. In recent years, to further reinforce the message that Chapter 37 Debts are intended to be offered to professional investors only, the Exchange has required issuers to include on the front cover of the listing document a caution statement stating that *“Investors should not purchase the bonds in the primary or secondary markets unless they are Professional Investors and understand the risks involved. The bonds are only suitable to Professional Investors”*.

⁶⁰ The SGX has no general minimum issuance size requirement for standalone issuances but for certain types of standalone issuances, for example, debt securities issued by domestic corporations and local bodies, the issuance has to reach a minimum size of S\$750,000 (HK\$4.36 million).

⁶¹ The requirement is set out in Rule 37.31.

⁶² In this regard, the Exchange notes that the vast majority of Chapter 37 Debts is traded off-exchange and hence, potential investors may not be alerted to this screen display in practice.

Issues

76. The Exchange understands that there have been instances where Chapter 37 Debts have in fact been sold to retail investors in the secondary market (despite that they are intended for professional investors (i.e. Institutional Investors and/or HNW Investors) only).⁶³
77. As the primary regulator in relation to listing of Chapter 37 Debts on the Exchange, the Exchange vets listing applications for compliance with the eligibility requirements and inclusion of prescribed disclaimers and certain statements⁶⁴ in the listing documents. After listing, the Exchange monitors an issuer's and if relevant, a guarantor's compliance of the continuing obligations imposed by the Rules⁶⁵. In terms of the secondary market sale of Chapter 37 Debts, however, the Exchange's role needs to be considered in light of the following factors:
- (a) The vast majority of Chapter 37 Debts are currently traded off-exchange by non-Exchange Participants and deposited with and cleared through overseas clearing systems (or CMU) rather than CCASS⁶⁶. As a result, Trading Rules or any mechanical trading restrictions in the Exchange's system could not effectively regulate the off-exchange secondary trading of Chapter 37 Debts after primary distribution⁶⁷. Furthermore, overseas clearing systems (or CMU) will not permit (or police) any transfer restrictions in their systems such as contractual undertakings from a purchaser of Chapter 37 Debts to limit on-sale to professional investors only;
 - (b) the Rules do not apply to nor bind the conduct of Licensed Intermediaries in any secondary market sale of Chapter 37 Debts; and
 - (c) the Rules regulate issuers of Chapter 37 Debts, however, the issuers would have no control in the secondary market sale once the primary distribution is completed and would have difficulty in applying or enforcing contractual recourse in respect of any standard selling restriction in the listing document beyond primary distribution.
78. Accordingly, the Exchange has a very limited regulatory oversight in the off-exchange secondary market to ensure Chapter 37 Debts are sold only to professional investors in the secondary market.

⁶³ Please refer to the SFC's circular "[Distribution of bonds listed under Chapter 37 of the Main Board Listing Rules and local unlisted private placement bonds](#)" published on 31 March 2016.

⁶⁴ Please refer to Rules 37.27, 37.28 and 37.31 for the statements required.

⁶⁵ See Rules 37.44 to 37.53.

⁶⁶ Trading Rules require that all transactions (including over-the-counter transactions) executed by the Exchange Participants must be reported to the Exchange (by inputting the transaction details into the trading system) even if the counterparty of the transaction is a non-Exchange Participants. As a result, there may be transactions reflected in the Exchange's system even though those trades have been conducted by the parties off-exchange on over-the-counter basis.

⁶⁷ Please refer to footnote 17.

79. In the secondary market sale of Chapter 37 Debts, the Exchange notes that Licensed Intermediaries are required to discharge the Suitability Obligation under certain circumstances⁶⁸. When the Suitability Obligation is triggered, before any Chapter 37 Debts can be sold to clients, Licensed Intermediaries are required to assess if the investment is suitable for that specific investor⁶⁹.

Proposal

80. Recognising that the Exchange has a limited ability to ring-fence the off-exchange secondary market sale of Chapter 37 Debts to professional investors only, the Exchange proposes to require an issuer to state explicitly on the front cover of the listing document that the intended investor market in Hong Kong for its Chapter 37 Debts are professional investors⁷⁰ only. The proposed statement is additional to the existing legend mentioned in paragraph 73 above. See below an example of such statement:

***“Notice to Hong Kong investors:** The Issuer confirms that the [Bonds] are intended for purchase by professional investors only (as defined in the Securities and Futures Ordinance (Cap 571) and Rules made thereunder) and have been listed on The Hong Kong Stock Exchange Limited on that basis. Accordingly, the Issuer confirms that the [Bonds] are not appropriate as an investment for retail investors in Hong Kong. Investors should carefully consider the risks involved.”*

81. It is the Exchange’s intention that the proposed statement on intended investor market to be included on the front cover of the listing document will replace the current legend mentioned in paragraph 75 above.
82. The proposed statement, together with the proposal to publish listing documents (see paragraphs 85 to 91 below), will serve to alert retail investors in Hong Kong that they are not the intended class of investors in relation to the relevant Chapter 37 Debts. The proposed statement should help facilitate the suitability assessments by the Licensed Intermediaries when the listing documents become available in the secondary market (with the proposed publication of the listing documents on the Exchange’s website on the listing date, see paragraphs 85 to 91 below) and also complement the SFC’s actions in tackling mis-selling of Chapter 37 Debts in the secondary market.
83. The Exchange wishes to highlight its understanding that the proposed statement may not completely remove the possibility of retail participation in Chapter 37 Debts in the secondary market due to the issues discussed in paragraphs 76 to 77 above.

⁶⁸ In this case, the Suitability Obligation will be triggered when a solicitation or recommendation is involved or when its client purchases a complex product on an unsolicited basis (e.g. execution-only sale). For the definition of “complex” products, please refer to the SFC’s website: <https://www.sfc.hk/web/EN/rules-and-standards/suitability-requirement/non-complex-and-complex-products/>

⁶⁹ In general, where the Suitability Obligation is triggered, Licensed Intermediaries are required to discharge the Suitability Obligation in respect of all clients (i.e. not only retail clients) subject to exemptions permitted under paragraphs 15.4 and 15.5 of the SFC Code of Conduct (e.g. dealing with Institutional Investors).

⁷⁰ This would mean Institutional Investors and/or HNW Investors, on the basis that the PI Waiver will be codified as proposed (see paragraphs 105 to 108 below).

84. There are no listing rules requirements in SGX, LUXSE, ISE and LSE for including similar statements of intended market; however, both the EU and Singapore have promulgated legislation recently to require a product manufacturer to explicitly state the target market for its investment product or classify the nature of its products.⁷¹

Question 4: Do you agree with the proposal to require issuers to state explicitly on the front cover of the listing document the intended investor market in Hong Kong (i.e. professional investors only) for its Chapter 37 Debts, in addition to the existing legend required under Rule 37.31? Please give reasons for your views.

C. Publication of Listing Document

Current Rules

85. Issuers of Chapter 37 Debts are not currently required to publish their listing documents.

Issues

86. Chapter 37 currently does not require publication of listing documents of Chapter 37 Debts because they are issued to professional investors only and not generally available to the public. However, not publishing the listing document means that investors may not be alerted to the caution statements in the listing document and may not have the benefit of all of the information in the listing document when determining whether to purchase Chapter 37 Debts unless a copy of the listing document is specifically provided to them.
87. It was found in the SFC's recent enforcement action against two Licensed Intermediaries⁷² that materials used by Licensed Intermediaries for product due diligence purposes were insufficient to assist them to thoroughly understand all distinctive features and risks of Chapter 37 Debts, and to enable them to properly assess whether the investment is suitable, and/or to disclose and explain such features to their clients.

Proposal

88. The Exchange proposes to require the publication of listing documents of Chapter 37 Debts on the listing date on the Exchange's website.

⁷¹ In the EU, MiFID II imposes product governance obligations requiring a product manufacturer to identify a target market for investment products it manufactures. In Singapore, section 309B of the Securities and Futures (Capital Markets Products) Regulations requires an issuer of products (e.g. debentures) offered in Singapore to classify its products which classification would determine whether additional steps are required by intermediaries in the selling process.

⁷² Please refer to the SFC's statement of disciplinary action respectively published on [19 July 2018](#) and [18 March 2019](#) in relation to two Licensed Intermediaries for, among other things, failing to discharge the Suitability Obligation in selling Chapter 37 Debts to their clients.

89. The publication would benefit both Licensed Intermediaries and potential investors as they will have access to the necessary information on the relevant Chapter 37 Debts (for example, business description and financial position of issuers and/or guarantors, structure, terms and conditions and associated risks) and be alerted to the statements (including those as proposed in paragraph 80 above) included in the listing documents highlighting the nature of the securities which target professional investors only.
90. In view that the publication is intended to be made on the listing date (where primary distribution would have been completed by such time) and with appropriate disclaimers, the Exchange understands that such publication would not amount to a public offer of the relevant Chapter 37 Debts.
91. LUXSE, ISE, LSE and SGX all require the publication of listing documents.

Question 5: Do you agree with the proposal to require publication of listing documents for Chapter 37 Debts on the Exchange's website on the listing date? Please give reasons for your views.

D. Disclosure and Vetting

Current Rules

92. Rules 37.27, 37.28 and 37.31 respectively require a listing document to contain the standard disclaimers, responsibility statement and a statement limiting its distribution to professional investors⁷³ only. No detailed content requirement is prescribed for listing documents under the Professional Debt Regime. Instead, a general requirement is imposed under Rule 37.29 to require listing documents to contain information the investors an issuer is offering securities to would customarily expect.
93. The Exchange only vets listing applications for fulfilment of eligibility criteria and reviews listing documents to ensure inclusion of the standard disclaimers and statements mentioned above.

Issues

94. In recent years, the Exchange has received comments that the light-touch approach in relation to disclosure requirements and vetting adopted by the Exchange for Chapter 37 may require a re-consideration by requiring enhanced disclosures in listing documents in view of the following:
- (a) Certain Chapter 37 Debts have different features (e.g. Special Features). This has in recent years raised the question on the appropriateness of disclosure in the listing document relating to these Chapter 37 Debts, particularly as to the description of, and the risks relating to, the Special Features, in view of the fact that the Exchange adopts a light-touch approach in relation to disclosure requirements and vetting for the Professional Debt Regime; and

⁷³ This means Institutional Investors, and if a PI Waiver is granted for the relevant issuance, it would also include HNW Investors.

(b) the target investors of Chapter 37 Debts include not only Institutional Investors, but also HNW Investors (if a PI Waiver had been granted⁷⁴). In this regard, reference is made to the approach taken under the SFC Code of Conduct requiring Licensed Intermediaries to treat HNW Investors (particularly those that are individuals) differently from Institutional Investors at the point of sale on the basis that all individual investors (i.e. individual HNW Investors and retail investors) merit the highest degree of protection when being served by Licensed Intermediaries at the point of sale (see also paragraph 34 above).

95. In this regard, a comparison is drawn with the prescriptive disclosure framework adopted for similar listing platforms in the EU (e.g. LUXSE, ISE and LSE), with the comment that the Exchange may consider whether it is appropriate for Chapter 37 to move away from the current light-touch approach in relation to disclosure requirements and follow instead the prescriptive disclosure framework adopted by these EU stock exchanges.

Proposal

96. The Exchange proposes to:

- (a) maintain the current disclosure and vetting approach in relation to listing documents for Chapter 37. Please refer to paragraphs 97 to 100 below for further discussion of this proposal; and
- (b) issue market guidance in relation to disclosures of specified Special Features and other disclosure-related matters. Please refer to paragraphs 101 to 104 below for a discussion of this proposal.

Proposal to maintain current disclosure and vetting approach

97. The Exchange notes that LUXSE, ISE and LSE have prescribed disclosure requirements, such as issuer's/guarantor's business description, financial information and terms of the issuance. We understand that as part of the listing process, LUXSE, ISE and LSE provide comments on listing documents.

98. The Exchange notes further that SGX adopts an approach similar to that of Hong Kong as both exchanges only require listing documents to contain information which investors in those debts would customarily expect. Similar to Hong Kong, SGX does not vet listing documents other than to ensure the inclusion of certain standard legend/language.

99. In light of the issues discussed in paragraphs 94 to 95 above, the Exchange has considered whether an approach similar to the one adopted in the EU is appropriate for the Professional Debt Regime.

⁷⁴ See also the Exchange's proposal to codify the PI Waiver in paragraphs 105 to 108 below.

The Exchange has also considered whether disclosure requirements under Chapter 37 warrant any enhancement in view of the fact that HNW Investors are also the target investors for Chapter 37 Debts (with the granting of the PI Waiver currently and in future, as a result of the proposed codification of the PI Waiver (subject to market's feedback)) (see paragraphs 105 to 108 below).

For the following reasons, the Exchange proposes to maintain the current disclosure and vetting approach notwithstanding that the intended investors would continue to include HNW Investors:

- (a) In a primary offering of debt securities in Hong Kong to professional investors (i.e. both Institutional Investors and HNW Investors) only, the offering document is exempted from, among other things, the prescribed disclosure requirements under the Prospectus Regime. In addition, the requirement for authorisation by the SFC under the SFC Authorisation Regime does not apply to the issue of any advertisement, invitation or document to professional investors only to subscribe for securities.

The current Hong Kong legal framework imposes no mandatory content requirements on offerings to professional investors⁷⁵. Adopting a prescriptive disclosure approach under Chapter 37 could result in regulatory inconsistency and different disclosure requirements for Hong Kong listed securities compared with other securities (e.g. overseas listed or unlisted debt securities) where same class of professional investors may be targeted for securities with potentially the same structure and features⁷⁶;

- (b) given that the current Hong Kong legal framework does not differentiate disclosure standards between Institutional Investors and HNW Investors, the Exchange considers that the current legal framework does not support a change of existing disclosure and vetting approach under Chapter 37 for the sole reason that HNW Investors are also the target investors for Chapter 37 Debts; and
- (c) a listing status is normally obtained for Chapter 37 Debts so that investors who may only invest in listed securities can subscribe for the relevant issuance. As such, an issuer's choice of listing venue often depends on ease and length of time in completing the listing process. In the 2010 Consultation, the market supported the move away from a prescriptive disclosure approach (with pre-vetting by the Exchange) to the present light-touch approach as this allows Hong Kong to maintain a competitive position in the debt market and, in particular, offers a listing process time comparable with that of its key competitor in the region. Any reversal of the approach lengthening the listing timetable may potentially impact issuers' decision on listing venue, thereby undermining the Hong Kong

⁷⁵ A proposal to exclude HNW Investors from the exemption of professional investors for the purposes of the Prospectus Regime and the SFC Authorisation Regime was made in the SFC's consultation on "Proposed Amendments to the Professional Investor Regime and Further Consultation on the Client Agreement" in 2014. The proposal reflected the then concerns at that time that HNW Investors should be included in the disclosure and other protections afforded by those regimes, but in light of market feedback was not implemented.

⁷⁶ This is on the basis that a PI Waiver is granted for the relevant issuance, or when the PI Waiver is codified as proposed (see paragraphs 105 to 108 below).

Government's initiatives to continue developing Hong Kong's bond market and maintain its competitiveness.

100. In short, the Exchange considers that maintaining the current disclosure and vetting approach under Chapter 37 is appropriate for a professional-investors-only market under the Professional Debt Regime and represents the correct balance between investor protection and continued development of the bond market in Hong Kong. Notwithstanding the Exchange's proposal to maintain the current disclosure and vetting approach, please refer to the discussion in paragraphs 101 to 104 below in relation to the Exchange's proposal to issue market guidance on disclosures of specified Special Features and other disclosure-related matters for the purpose of promoting disclosure quality and consistency.

Proposal to issue market guidance on disclosures of specified Special Features and other disclosure-related matters

101. To address comments on the appropriateness of disclosure for certain Chapter 37 Debts with Special Features and the fact that HNW Investors may become target investors of Chapter 37 Debts, the Exchange considers that it is appropriate and would promote the quality and consistency of disclosures to issue market guidance on what target investors (i.e. Institutional Investors and HNW Investors) would customarily expect to be included in the listing documents relating to disclosures of specified Special Features, rather than to amend the Rules to set prescribed disclosures for Chapter 37 Debts containing specified Special Features.
102. The proposed market guidance will:
- (a) Discuss disclosures in offering documents which are customarily expected by professional investors (i.e. Institutional Investors and HNW Investors) in respect of Chapter 37 Debts that contain Special Features and include suggestions on how to draw investors' attention to these Special Features and the associated risks (e.g. by a warning statement on the front page of the offering document);
 - (b) remind issuers generally that disclosures in the listing document should be commensurate with the customary expectation of their intended investors; and
 - (c) remind issuers to generally highlight in the summary of terms and conditions section of the listing documents⁷⁷ the structure and features of the debts as well as any key terms affecting the rights of the investors.
103. The proposed guidance is intended to promote disclosure quality and consistency in the market by providing guidance on disclosures that investors would customarily expect to be included in listing documents, rather than attempting to mandate disclosures for Chapter 37 Debts or define complex features or structures of Chapter 37 Debts.

⁷⁷ The Exchange notes that it is a market practice for offering documents to incorporate a summary of the debt at the outset.

104. The market guidance will be updated from time to time to reflect changing market conditions.

Question 6: (a) Do you agree that the Exchange's current disclosure and vetting approach in relation to listing documents for Chapter 37 should remain unchanged, notwithstanding that the intended investors would include HNW Investors? Please give reasons for your views.

(b) For the purpose of Rule 37.29, should there be a different standard with specific disclosure requirements in respect of Chapter 37 Debts that are offered to HNW Investors, compared to those that are offered to Institutional Investors, for example, the manner of presenting information such as the terms and conditions and financial information of issuer and any credit support provider (even though the current Hong Kong legal framework does not differentiate disclosure standards between Institutional Investors and HNW Investors)? If so, what should those specific disclosure requirements be? Please give reasons for your views.

Question 7: (a) Do you agree that the Exchange should publish disclosure guidance to the market on specified Special Features found in certain Chapter 37 Debts and other disclosure-related matters? Please give reasons for your views.

(b) Do you have other suggestions on any additional or alternative proposals that the Exchange may implement to promote disclosure quality and consistency for Chapter 37 Debts? Please give reasons for your views.

E. Definition of Professional Investors

Current Rules

105. Rule 37.58 defines "professional investors" in Hong Kong to mean those investors as defined under Part 1 of Schedule 1 to the SFO (i.e. Institutional Investors)⁷⁸ excluding, HNW Investors as prescribed by rules made under section 397 of the SFO. As a result, "professional investors" defined under Chapter 37 is not currently aligned with those under the SFO.

106. In view of strong market feedback shortly after the new Professional Debt Regime came into effect in November 2011, the Exchange revisited the definition of professional investors and (in consultation and with the consent of the SFC) agreed to grant the PI Waiver. See also paragraphs 44 to 45 above for more details on the PI Waiver.

⁷⁸ These professional investors are mainly institutional investors such as authorised financial institutions, banks, insurers, collective investment scheme, intermediaries providing investment services and government bodies.

Issues

107. Since the Exchange's agreement to grant the PI Waiver in November 2011, almost all issuers apply for the PI Waiver in the listing process to provide themselves with flexibility in marketing the securities. However since the PI Waiver is not codified in the Rules, potential issuers may be less informed of such flexibility. The need to apply for the grant of the waiver application also creates an additional administrative burden on issuers which is inconsistent with the light touch regulatory approach of the Professional Debt Regime.

Proposal

108. The Exchange proposes to codify the PI Waiver by revising the definition of "professional investors" under Chapter 37 to include HNW Investors to streamline the Rules and alleviate the administrative burden on issuers by removing the need to apply for the PI Waiver.

Question 8: Do you agree with the proposal to codify the PI Waiver by revising the definition of "professional investors" under Chapter 37 to include HNW Investors?

F. Other Rules Amendments

109. The Exchange proposes the following amendments to the Rules with the aim of improving the operation of Chapter 37, to enhance the regulatory oversight over issuers and guarantors' in terms of their continuing obligations and to further streamline the listing application process which may otherwise be burdensome and unnecessary.

(1) Issuer's or guarantor's eligibility concerning issuance by REIT

110. Currently, in respect of a REIT Issuer (or a REIT Guarantor, as the case may be), its eligibility assessment under Rules 37.05 and 37.06 respectively is based on the issuer's (or the guarantor's, as the case may be) own assets and audited financials, rather than the REIT Assets or the REIT Financials.
111. Given that REIT Assets will be applied for satisfying the obligations under the Chapter 37 Debts issued by the REIT Issuer (or guaranteed by the REIT Guarantor, as the case may be), this essentially means that the REIT is a "de facto" issuer of such debt securities. Further, if the REIT is listed on the Exchange, the REIT Issuer (or the REIT Guarantor, as the case may be) should be allowed to rely on the listing status of such REIT (being the "de facto" issuer) and be able to rely on the Eligibility Exemption afforded to HK Listcos under Rules 37.05 and 37.06.
112. The Exchange proposes to amend Rules 37.05 and 37.06 to allow eligibility of a REIT Issuer (or a REIT Guarantor, as the case may be) to be assessed by reference to the REIT Assets and REIT Financials respectively, provided that the REIT Issuer (or the REIT Guarantor, as the case may be) has recourse to the REIT Assets to satisfy the obligations under its Chapter 37 Debts.

113. Further, if the relevant REIT is listed on the Exchange, a REIT Issuer (or a REIT Guarantor, as the case may be) should be qualified as a HK Listco and therefore, be exempted from the Issuer Eligibility Requirements.

Question 9: (a) Do you agree with the proposal to allow eligibility of a REIT Issuer (or a REIT Guarantor) to be assessed by reference to the REIT Assets and REIT Financials respectively, provided that it has recourse to the REIT Assets to satisfy the obligations under the relevant Chapter 37 Debts? Please give reasons for your views.

(b) Do you agree that if the relevant REIT is listed on the Exchange, a REIT Issuer (or a REIT Guarantor) should be qualified as a HK Listco and therefore, be exempted from the Issuer Eligibility Requirements? Please give reasons for your views.

(2) Enhancement of continuing obligations of issuers and guarantors under Chapter 37

(a) To require prompt response to the Exchange's enquiries

114. Currently, there is no specific requirement under Chapter 37 requiring issuers and/or guarantors to respond to the Exchange's enquiries promptly. Such requirement is, however, imposed on an issuer of equity securities listed on the Exchange⁷⁹.

115. The Exchange expects all listed issuers to promptly respond to enquiries made by the Exchange. In case of listed debt securities, this expectation extends to the guarantor (if any) of such debt securities.

116. The Exchange proposes to introduce a new requirement in Chapter 37 to require the issuer and/or the guarantor to respond to enquiries made by the Exchange promptly.

(b) To require announcement of default or matters leading to or involving winding up and/or liquidation

117. Currently, there is no specific requirement under Chapter 37 requiring issuers and/or guarantors to make an announcement on Relevant Information⁸⁰. By comparison, an issuer of equity securities listed on the Exchange is subject to a specific requirement to publish breach of loan agreements for loans which are significant to its operations⁸¹ and inform the Exchange of its winding up and/or liquidation⁸².

118. The Exchange considers that timely disclosure of the Relevant Information would enable holders to make an informed investment decision or facilitate holders to

⁷⁹ See Rule 13.10.

⁸⁰ Under Rule 37.47B(a), an issuer must announce simultaneously inside information that is required to be disclosed under Part XIVA of the SFO. In addition, Rule 37.47A requires a guarantor to announce information which may have a material effect on its ability to meet the obligations under Chapter 37 Debts.

⁸¹ See Rule 13.19.

⁸² See Rule 13.25.

exercise their rights under the Chapter 37 Debts.⁸³

119. The Exchange proposes to introduce a new requirement in Chapter 37 to require issuers and/or guarantors to announce the Relevant Information as soon as reasonably practicable upon default on its debt securities that are listed on the Exchange. This includes (but not limited to) cross-default of its Chapter 37 Debts triggered by a default on other debt obligations of the issuer or guarantor, as the case may be) or matters leading to or involving its winding up and/or liquidation.

(c) To require announcement on developments after trading suspension of Chapter 37 Debts

120. Currently, there is no requirement in Chapter 37 to require periodic publication of an announcement by the issuer and/or the guarantor to update the market of its developments after trading in its Chapter 37 Debt (or Chapter 37 Debt it guarantees) is suspended. By comparison, issuers of equity securities listed on the Exchange are required to publish quarterly announcements following suspension of trading of their equity securities⁸⁴.

121. The Exchange considers that it would enhance information transparency and be beneficial to holders of debt securities to receive periodic updates on suspended Chapter 37 Debts.

122. The Exchange proposes to introduce a new requirement in Chapter 37 requiring the issuer and/or the guarantor to publish quarterly announcements regarding its developments after trading suspension of its Chapter 37 Debts (or Chapter 37 Debts it guarantees) on the Exchange. These developments may include (but not limited to) the developments on the events leading to the trading suspension of the Chapter 37 Debts.⁸⁵

(d) To clarify the timing of making an announcement of information to avoid a false market or information having material effect on a guarantor's ability to meet its obligations under debt securities

123. Currently under Rule 37.47(b), an issuer is required to "immediately", after consultation with the Exchange, announce any information which is necessary to avoid a false market in its listed debt securities. By comparison, an issuer of equity securities listed on the Exchange is required to make such announcements "as soon as reasonably practicable" after consultation with the Exchange.

124. Further, Rule 37.47A requires a guarantor to immediately announce any information which may have a material effect on its ability to meet the obligations under the debt securities.

⁸³ Per SFC's "[Corporate Regulation Newsletter Issue No. 4](#)" issued in December 2016, issuers of Chapter 37 Debts are reminded that they are required to comply with the inside information disclosure regime and issue any inside information announcements in a timely manner in accordance with the SFO.

⁸⁴ See Rule 13.24A.

⁸⁵ Issuer of Chapter 37 Debts should also note its continuing obligation under Rule 37.47B(a) to announce simultaneously inside information that is required to be disclosed under Part XIVA of the SFO.

125. The Exchange appreciates that issuers and guarantors may need time to gather sufficient details to conduct an internal assessment and/or seek professional advice before publishing such announcements.

126. The Exchange proposes to amend Rules 37.47(b) and 37.47A to require such announcements to be made “as soon as reasonably practicable”, as opposed to “immediately”.

(e) To require issuer to announce information having a material effect on its ability to meet its obligations under listed debt securities

127. Currently, Rule 37.47A only requires a guarantor to immediately announce any information which may have a material effect on its ability to meet the obligations under the debt securities. There is no equivalent announcement obligation specifically imposed on the issuer, other than its general obligation to announce any information which is necessary to avoid a false market under Rule 37.47(b) and to announce inside information disclosable under the SFO in accordance with Rule 37.47B(a).⁸⁶

128. In practice, the Exchange expects that where there is any information which may have a material effect on an issuer’s ability to meet its obligations under its Chapter 37 Debts, the issuer should announce such information as soon as reasonably practicable.

129. The Exchange proposes to state clearly its expectation by amending Rule 37.47A to require an issuer (in addition to a guarantor) to announce as soon as reasonably practicable any information which may have a material effect on its ability to meet its obligations under its Chapter 37 Debts.

(f) To clarify which entities need to comply with the continuing obligations

130. Currently, Rules 37.44 to 37.53 set out the continuing obligations that apply to issuers.

131. In practice, in case of guaranteed issues, the Exchange also expects (and has been requiring) the guarantors to comply with the continuing obligations where applicable.

132. The Exchange proposes to state clearly its expectation by amending Rule 37.44 to specify which continuing obligations apply to guarantors.

(g) To clarify the scope of debt securities with respect to the continuing obligations

133. Currently, there are a number of references to “debt securities” in the section on continuing obligations. Confusion may arise as to whether “debt securities” refer to debt securities listed on the Exchange or any other debt securities of the issuer or guarantor.

⁸⁶ Per SFC’s “[Corporate Regulation Newsletter Issue No. 4](#)” issued in December 2016, issuers of Chapter 37 Debts are reminded that they are required to comply with the inside information disclosure regime and issue any inside information announcements in a timely manner in accordance with the SFO.

134. In practice, the Exchange expects issuers and guarantors to discharge their continuing obligations only with respect to their debt securities that are listed on the Exchange.
135. The Exchange proposes to replace the references to “debt securities” in Rules 37.47A, 37.48(b), 37.49(c), 37.50(c) and 37.51 with “listed debt securities”. The Exchange also proposes to add a defined term “listed debt securities” to mean “debt securities that are listed on the Exchange”.

Question 10: Do you have any comments on the proposed enhancements relating to the continuing obligations of the issuer and guarantor under Chapter 37?

(3) Streamlining the listing application process

(a) Constitutional documents and resolutions submitted to Exchange

136. Currently, Rules 37.35(e)(1) and 37.35(f)(1) respectively require an issuer (or a guarantor, as the case may be) that is not listed on the Exchange to submit to the Exchange its memorandum and articles of association, certificate of incorporation or equivalent to show that the it is validly incorporated or established.
137. Rules 37.35(h) and 37.35(i) respectively require an issuer (or a guarantor, as the case may be) to provide a copy of resolutions by its governing body authorising the issue and allotment of the debt securities, application for listing and issuing the listing document.
138. Rules 37.35(g) requires a copy of the shareholders’ resolution if the debt securities are so authorised.
139. The Exchange considers that it is not its role to review these constitutional documents or resolutions. Due incorporation, capacity and authorisation would generally be confirmed by the issuer’s (or the guarantor’s, as the case may be) legal counsel in a standard bond issuance process.
140. The Exchange proposes to delete the requirements in Rules 37.35(e)(1), 37.35(f)(1), 37.35(g), 37.35(h) and 37.35(i) and replace them with a requirement to provide written confirmation by the issuer (or the guarantor, as the case may be) in relation to its due incorporation, capacity and authorisation.

Question 11: Do you agree with the proposal to replace the existing requirements to submit copies of constitutional documents and resolutions as part of the listing application documents with a requirement to provide written confirmation by the issuer (or guarantor, as the case may be) in relation to its due incorporation, capacity and authorisation? Please give reasons for your views.

(b) Last published financials submitted to Exchange

141. Currently, Rules 37.35(e)(2) and 37.35(f)(2) respectively requires an issuer (or a guarantor, as the case may be) that is not listed on the Exchange to submit to the Exchange its last published financial statements in the listing application process.
142. Financial statements are received for the purpose of ascertaining fulfilment of the Issuer Eligibility Requirements. As such, the Exchange proposes to revise the Rules to require submission of audited financial statements (instead of last published financial statements), which will better clarify the requirements for an issuer (or a guarantor, as the case may be) to provide evidence for the Exchange's assessment of its fulfilment of the Issuer Eligibility Requirements.
143. Further, in cases where the issuer or the guarantor is exempted from the Issuer Eligibility Requirements, it may be unnecessary for the Exchange to receive a copy of its audited financial statements. In other cases and in practice, the Exchange only requires submission of the audited financial statements of the issuer or the guarantor that an issuer relies on in fulfilling the Issuer Eligibility Requirements pursuant to Rule 37.08.
144. In practice, where the audited financial statements are disclosed in the listing document, the issuer (or the guarantor, as the case may be) is not required to separately submit its audited financial statements to the Exchange.
145. The Exchange proposes to replace the existing requirement to submit its last published financial statements under Rules 37.35(e)(2) and 37.35(f)(2) with a new requirement for an issuer (or the guarantor that an issuer relies on in fulfilling the Issuer Eligibility Requirements pursuant to Rule 37.08) to submit its audited financial statements to evidence its fulfilment of the Issuer Eligibility Requirements. Such submission is however not required if the issuer (or the guarantor, as the case may be) is exempted from the Issuer Eligibility Requirements or if the required audited financial statements are disclosed in the listing document.

Question 12: (a) Do you agree with the proposal to replace the existing requirement to submit last published financial statements with a new requirement for an issuer (or the guarantor that an issuer relies on in fulfilling the Issuer Eligibility Requirements) to submit its audited financial statements to evidence its fulfilment of the Issuer Eligibility Requirements? Please give reasons for your views.

(b) Where the issuer (or the guarantor) is exempted from the Issuer Eligibility Requirements or where the required audited financial statements are disclosed in the listing document, do you agree that such issuer (or guarantor) should not be required to separately submit financial statements to the Exchange? Please give reasons for your views.

(4) Clarify the scope of supplementary listing document

146. Currently, Rules 37.26 to 36.33 set out requirements relating to listing documents, which in the context of a debt issuance programme, include the base listing document and the supplementary listing document for each issue under the programme under Rule 37.26.
147. However, Rule 37.26 does not state that the supplementary listing document includes the pricing supplement. In practice, the Exchange has been treating the pricing supplement as the supplementary listing document and applying the Rules 37.26 to 37.33 to the pricing supplement.
148. The Exchange proposes to amend Rule 37.26 to clarify that the supplementary listing document includes a reference to the pricing supplement.

Question 13: Do you agree with the proposal to amend Rule 37.26 to clarify that supplementary listing document includes a pricing supplement? Please give reasons for your views.

(5) Other housekeeping changes

149. We propose to make various housekeeping amendments to Chapter 37. The amendments are essentially to improve clarity of the Rules and to correct any typographical errors. We welcome comments on whether the drafting of the proposed amendments will give rise to any ambiguities or unintended consequences.

APPENDIX I: DRAFT AMENDMENTS TO THE MAIN BOARD RULES

Chapter 37

DEBT SECURITIES

DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

Introduction

37.01 This Chapter deals with debt issues to Professional Investors only. It sets out the qualifications for listing, application procedures, contents of listing documents and the obligations that apply after listing.

Listing Approval

37.02 A listing application may be approved by

- (a) A member of the Listing Division to whom the Executive Director – Listing has delegated authority;
- (b) The Executive Director – Listing (who may also delegate approval authority within the Listing Division); or
- (c) The Listing Committee.

Applicants' Qualifications for Listing

37.03 An issuer must be a State, Supranational, body corporate (including a State corporation) or trust.

37.04 If an issuer is a body corporate it must be validly incorporated or established in its place of incorporation or establishment. If an issuer is a trust it must be validly established. An issuer must provide ~~evidence~~ confirmation of this if it applies for listing.

37.05 If an issuer is a body corporate or trust it must have net assets of HK\$~~100 million~~ 1 billion unless:

- (a) It is a Supranational; or
- (b) It is a State corporation; or
- (c) Its shares are listed on the Exchange; or
- (d) Its shares are listed on another stock exchange; or

- (e) ~~it is a special purpose vehicle formed for listing asset backed securities;~~ or
 - (f) it has recourse to the assets of a real estate investment trust which units are listed on the Exchange in respect of the obligations under the debt securities.
- 37.06 If an issuer is a body corporate or trust it must have produced audited accounts for the two years before the listing application made up to a date at most 15 months before the intended date of the listing document unless:
- (a) ~~it is a Supranational;~~ or
 - (b) ~~it is a State corporation;~~ or
 - (c) ~~its shares are listed on the Exchange;~~ or
 - (d) ~~it is a special purpose vehicle formed for listing asset backed securities;~~ or
 - (e) it has recourse to the assets of a real estate investment trust which units are listed on the Exchange in respect of the obligations under the debt securities.
- 37.07 If an issuer proposes to issue asset-backed securities:
- (a) ~~it must be a single purpose undertaking.~~
 - (b) ~~it may add further assets to the pool of assets whilst its securities are listed.~~
 - (c) ~~it may list further classes of securities backed by separate pools of assets.~~
- 37.08 If an issuer does not meet the eligibility criteria above it is eligible for a listing of guaranteed debt securities if:
- (a) ~~it is a body corporate that is validly incorporated or established;~~ and
 - (b) ~~it is wholly owned by a State,~~ a Supranational or by a body corporate ~~(including a State corporation)~~ that meets the eligibility criteria above; and
 - (c) ~~its owner guarantees its obligations;~~ and
 - (d) ~~it and its owner agree to comply with the Listing Rules.~~

Securities' Qualifications for Listing

- 37.09 The debt securities must be freely transferable with a denomination of at least HK\$500,000 (or equivalent in other currencies).
- 37.09A Except in the case of a tap issue, the debt securities must be of a principal amount

of at least HK\$100 million (or equivalent in other currencies).

- 37.10 The debt securities must have been validly authorised.
- 37.11 If an issuer is a body corporate (including a State corporation) its debt securities:
- (a) must comply with the law of the place where it is incorporated or established; and
 - (b) must comply with its memorandum and articles of association or equivalent documents.
- 37.12 If an issuer is issuing guaranteed debt securities under rule 37.08 the guarantee:
- (a) ~~M~~must have been validly authorised;
 - (b) ~~M~~must comply with the guarantor's memorandum and articles of association or equivalent documents, if the guarantor is a body corporate (including a State corporation); and
 - (c) ~~M~~must comply with the law of the place where the guarantor is incorporated or established.

Asset-backed Securities

- 37.13 This section sets out additional requirements that apply if debt securities are asset-backed securities.
- 37.14 If the asset backed securities are backed by equity securities or depositary receipts:
- (a) ~~T~~the equity securities or depositary receipts must represent minority interests and must not confer legal or management control of the issuer of the equity securities; and
 - (b) ~~T~~they must be listed on the Exchange or another stock exchange.
- 37.15 If asset backed securities are backed by options or conversion rights relating to equity securities then rule 37.18 applies to the securities resulting from the exercise of the option or conversion rights.
- 37.16 There must be a trustee or appropriate independent party to represent the interests of the holders of the asset-backed securities. It must have a right of access to information relating to the assets.

Convertible Debt Securities

- 37.17 This section sets out additional requirements that apply if debt securities are

convertible.

- 37.18 If debt securities are convertible they must be convertible into:
- (a) ~~S~~ shares listed or to be listed on the Exchange or another stock exchange; or
 - (b) ~~D~~ depositary receipts listed or to be listed on the Exchange or another stock exchange; or
 - (c) ~~O~~ other assets that the Exchange has agreed in writing are acceptable.
- 37.19 If debt securities are convertible into shares that have not yet been issued:
- (a) ~~T~~ the issuance of the shares must have been validly authorised; and
 - (b) ~~T~~ the listing of the shares must have been validly authorised.
- 37.20 If debt securities are convertible into shares (or into depositary receipts) the terms of the issue must provide for appropriate adjustments to the conversion terms if there is a change in the capital of the issuer of those shares or a change in the capital of the issuer whose shares underlie the depositary receipts.
- 37.21 The Exchange treats debt securities with non-detachable warrants to subscribe for equity securities or other assets as convertible securities.

Options, Warrants and Similar Rights

- 37.22 This section sets out additional requirements that apply to options, warrants or similar rights.
- 37.23 The securities underlying the options, warrants or similar rights must be:
- (a) ~~D~~ debt securities that are listed or to be listed on the Exchange;
 - (b) ~~D~~ debt securities listed or to be listed on another stock exchange; or
 - (c) ~~O~~ other debt security that the Exchange has agreed in writing is acceptable.
- 37.24 If the underlying debt securities have not yet been issued:
- (a) ~~T~~ their issuance must have been validly authorised; and
 - (b) ~~A~~ any listing of them must have been validly approved.
- 37.25 If options, warrants or similar rights are convertible into debt securities, the terms of the issue must provide for appropriate adjustments to the conversion terms if there is a change in those debt securities.

Listing Document

- 37.26 This section sets out the information that an issuer must disclose in its listing document and other requirements relating to the listing document. For debt issuance programmes these requirements apply to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue under the programme.
- 37.27 A listing document must contain a disclaimer statement:
- “Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”
- The disclaimer must be legible and appear on the front cover or inside cover of the listing document.
- 37.28 A listing document must contain a responsibility statement:
- “This document 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 accepts full responsibility for the accuracy of the information contained in this document and confirms, having made all reasonable enquiries, that to the best of its knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”
- The Exchange may require appropriate modification to the statement if an issue is guaranteed. The Exchange may allow others to make the statement but an issuer must seek prior consent for this.
- 37.29 A listing document must contain the information that the investors an issuer is offering the securities to would customarily expect it to contain. It needs not comply with Appendix 1, part C.
- 37.30 A listing document must contain any additional information that the Exchange requires.
- 37.31 A listing document must contain a statement limiting its distribution to Professional Investors only.
- 37.31A The front cover of a listing document must contain a statement on the intended investor market in Hong Kong (i.e. Professional Investors only) for the debt securities.

37.32 A listing document must be in English or Chinese.

37.33 A listing document may be in printed or electronic form.

Application Procedures

37.34 This section sets out the procedures that an issuer must follow to apply for listing of securities or listing of a debt programme. An application involves determining whether an issuer is eligible for listing and whether securities are eligible for listing. The Exchange will use the information that an issuer supplies to make these assessments. The documents an issuer submits must be in English or Chinese or translated into one of these languages.

37.35 An issuer must submit the following:

(a) ~~C~~ompleted application form. If an issue is guaranteed the guarantor must also complete the application form. This is set out in Appendix 5, part C.

(b) ~~L~~isting fee as provided in Appendix 8.

(c) ~~D~~raft listing document.

(d) ~~D~~raft formal notice of listing.

(e) ~~[Repealed [●]]~~ If an issuer is not listed on the Exchange a copy of

(1) ~~[Repealed [●]]~~ Its memorandum and articles of association, certificate of incorporation or equivalent (for example, trust deed) to show that the issuer is validly incorporated or established; and

(2) ~~[Repealed [●]]~~ Its last published financial statements. These financial statements are not required if an issue is guaranteed.

(f) ~~[Repealed [●]]~~ If the issue is guaranteed by a body corporate that is not listed on the Exchange a copy of the guarantor's

(1) ~~[Repealed [●]]~~ Memorandum and articles of association, certificate of incorporation or equivalent, to show that the guarantor is validly incorporated or established; and

(2) ~~[Repealed [●]]~~ Last published financial statements.

(g) ~~[Repealed [●]]~~ If debt securities have been authorised by shareholders then a copy of the resolution.

(h) ~~[Repealed [●]]~~ A copy of the resolutions by the issuer's governing body (for example, its board of directors or trustees) authorizing

- ~~(1) the issue and allotment of the debt securities~~
- ~~(2) the application for listing; and~~
- ~~(3) issuing the listing document.~~
- (i) ~~[Repealed [●]]If an issue is guaranteed, a copy of the resolutions by the guarantor's governing body authorizing~~
 - ~~(1) the listing application; and~~
 - ~~(2) issuing of the listing document.~~
- (j) ~~if an issue is convertible into shares a copy of the approvals authorising the issue and listing of those shares.~~
- (k) a written statement by the issuer's duly authorised representative confirming:
 - (1) where the issuer is not listed on the Exchange, the issuer has been validly incorporated or established; and
 - (2) the issuer has obtained all necessary internal authorisation to issue and allot the debt securities, make an application for listing and issue the listing document.
- (l) if an issue is guaranteed, a written statement by the guarantor's duly authorised representative confirming:
 - (1) where the guarantor is not listed on the Exchange, the guarantor has been validly incorporated or established; and
 - (2) the guarantor has obtained all necessary internal authorisation to approve the listing application and the issuing of the listing document.
- (m) if an issuer (or a guarantor on which the issuer relies in eligibility assessment pursuant to rule 37.08) is not exempted from rules 37.05 and 37.06, a copy of the audited financial statements of an issuer (or the guarantor on which the issuer relies in eligibility assessment pursuant to rule 37.08) to evidence its fulfilment of rules 37.05 and 37.06.

Where the required financial statements are disclosed in the listing document, it is not necessary to separately submit them to the Exchange.

An issuer may submit drafts of the application form in (a) and the ~~authorisations and resolutions confirmation~~ in ~~(g)~~, ~~(hk)~~ and (il) to enable the Exchange to consider whether an issue and issuer are eligible for listing. The final ~~resolutions and~~

authorisations confirmation in (g), (hk) and (il) may be submitted after the listing application but before listing.

- 37.36 After the Exchange has considered an application it will issue a Listing Eligibility letter. In this letter it will advise an issuer whether it and its debt securities are eligible for listing. The Exchange will also indicate whether it requires inclusion of additional information in the listing document. The letter is valid for three months from the date of issue. For routine applications the Exchange aims to issue this letter 5 business days after it receives the application.
- 37.37 An issuer must not issue the listing document in final form until the Exchange has confirmed that the issuer may issue it. A draft may be circulated for the purpose of arranging underwriting, syndication and marketing of the offering to Professional Investors.
- 37.38 In the period from when the listing document is issued to the date of listing an issuer must advise the Exchange of any material event that it would have disclosed in the listing document if it had been aware of the event before the listing document was finalised.
- 37.39 An issuer must publish a formal notice before listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 11.
- 37.39A An issuer must also publish on the Exchange's website the listing document (in English or Chinese) on the listing date. For debt issuance programmes this requirement applies to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue under the programme.

Programmes

- 37.40 This section sets out the procedures for listing securities under a programme that the Exchange has approved.
- 37.41 A debt programme that the Exchange has approved is valid for issuing debt securities for one year after the date it is published.
- 37.42 An issuer must submit the pricing supplement for an issue under a programme before 2:00 pm of the business day before listing is required to become effective. It must not issue the pricing supplement until the Exchange has confirmed that the issuer may issue it.
- 37.43 The Exchange will approve the listing of all securities issued under a valid programme subject to the issuer:
- (a) Notifying it of the final terms of each issue;

- (b) ~~C~~confirming that the securities have been issued; and
- (c) ~~P~~aying the appropriate listing fee before listing.

Continuing Obligations

37.44 This section sets out the obligations that apply to an issuer if the Exchange agrees to list its securities. If the securities are guaranteed then the guarantor must also comply with ~~the these~~ obligations set out in rules 37.45, 37.46, 37.46A, 37.47, 37.47A, 37.47D, 37.47E and 37.53 and accordingly, references in these rules to “issuer” shall be construed accordingly to mean the “guarantor” and references to “issuer’s listed debt securities” shall be construed accordingly to mean the listed debt securities guaranteed by the guarantor. An issuer (and a guarantor, if any) must comply with these obligations

- (a) until the securities expire; or
- (b) until they are withdrawn from listing.

37.45 If an issuer is required to announce information then

- (a) it must do so by an announcement under rule 2.07C, except that the announcement may be in English or Chinese only; and
- (b) ~~T~~he announcement must include the following disclaimer:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this announcement, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

37.46 An issuer must comply with the Listing Rules in force from time to time.

37.46A Where the Exchange makes enquiries concerning unusual movements in the price or trading volume of an issuer’s listed debt securities, the possible development of a false market in its listed debt securities, or any other matters, the issuer must respond promptly as follows:

- (a) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or
- (b) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed debt securities, or information necessary to avoid a false

market, or any inside information which needs to be disclosed under the Inside Information Provisions, and if requested by the Exchange, make an announcement containing a statement to that effect.

37.47 An issuer must as soon as reasonably practicable ~~immediately~~, after consultation with the Exchange, announce any information which

(a) [Repealed 1 January 2013]

(b) is necessary to avoid a false market in its listed debt securities where in the view of the Exchange there is or there is likely to be a false market in its listed debt securities.

Note: If an issuer believes that there is likely to be a false market in its listed debt securities, it must contact the Exchange as soon as reasonably practicable.

(c) [Repealed 1 January 2013]

37.47A ~~The issuer~~ ~~If the securities are guaranteed, the guarantor~~ must as soon as reasonably practicable ~~immediately~~ announce any information which may have a material effect on its ability to meet the obligations under the listed debt securities.

37.47B (a) Where an issuer is required to disclose inside information under the Inside Information Provisions, it must also simultaneously announce the information.

(b) An issuer must simultaneously copy to the Exchange any application to the Commission for a waiver from disclosure under the Inside Information Provisions, and promptly upon being notified of the Commission's decision copy it to the Exchange.

37.47C An issuer must, as soon as reasonably practicable, apply for a trading halt or a trading suspension where there is information under rule 37.47 or rule 37.47A, or inside information which must be disclosed under the Inside Information Provisions, or inside information which is the subject matter of an application to the Commission for a waiver but its confidentiality has been lost, and the information cannot be announced promptly.

37.47D An issuer must, after trading in its listed debt securities has been suspended, publish quarterly announcements of its developments.

37.47E An issuer must as soon as reasonably practicable announce any information which relates to:

(a) the default on its listed debt securities;

(b) the appointment of a receiver or manager either by any court having jurisdiction or any application to any court having jurisdiction for the appointment of a

receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer;

(c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer;
or

(d) the passing of any resolution by the issuer that it be wound up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment.

37.48 An issuer must announce as soon as possible:

(a) ~~if~~ aggregate redemptions or cancellations exceed 10% and every subsequent 5% interval of an issue; or

(b) ~~A~~ny public disclosure made on another stock exchange about its listed debt securities.

37.49 An issuer must notify the Exchange in advance of any proposal to

(a) ~~R~~replace a trustee for bondholders; or

(b) ~~A~~mend the trust deed; or

(c) ~~A~~mend the terms of convertible listed debt securities unless that amendment occurs automatically in accordance with their ~~the~~ terms of ~~the~~ debt securities.

An issuer must not proceed with any proposed change until the Exchange has advised whether it will impose conditions for the change.

37.50 An issuer must notify the Exchange as soon as possible if

(a) ~~it~~ has repurchased and cancelled all of an issue of its listed debt securities; or

(b) ~~it~~ has redeemed all of an issue of its listed debt securities prior to the maturity date; or

(c) ~~A~~ll of an issue of convertible listed debt securities has been fully converted.

The Exchange will then formally delist the debt securities.

37.51 An issuer must notify the Exchange as soon as possible if its listed debt securities are listed on another stock exchange.

37.52 An issuer must provide the Exchange with a copy of any circular that is sent to bondholders or to any trustee. If the circular is published on a website and the issuer notifies the Exchange when it is published on that site it does not have to send it a printed copy.

37.53 If an issuer is a body corporate it must provide the Exchange with its annual accounts and any interim report when they are issued. An issuer is exempt from this requirement if its securities are guaranteed by a body corporate in which case it must provide the guarantor's annual accounts and interim report. The Exchange will accept a printed or electronic copy. If the annual accounts or interim report are published on a website and the issuer notifies the Exchange when they are published on that site it does not have to send it a printed copy.

Authorised Representatives

37.54 An issuer must appoint two authorised representatives to communicate with the Exchange and must notify the Exchange of any change of representative. The representatives do not have to be resident in Hong Kong.

Other

37.55 If an issuer or its debt securities does not comply with these requirements the Exchange will not list them unless it agrees to modify these requirements.

37.56 The Exchange may accept or reject a listing application or make listing subject to additional conditions.

37.57 The Exchange may impose additional obligations on an issuer or guarantor. The Exchange will allow an issuer or guarantor to make representations before imposing requirements on it that are not imposed on issuers or guarantors of debt securities generally.

Definitions

37.58 In this Chapter the following definitions apply:

“asset-backed securities” debt securities backed by financial assets which, at the time of the relevant issues, are evidenced by agreements and intended to produce funds to be applied towards interest payments due on the securities and repayment of principal on maturity, except those debt securities which are directly secured, in whole or in part, on real property or other tangible assets

“bearer securities” securities transferable to bearer

“convertible debt securities”	debt securities convertible into or exchangeable for equity securities or other property and debt securities with non-detachable options, warrants or similar rights to subscribe or purchase equity securities or other property attached-
“debt issuance programmes”	issues of debt securities where only part of the maximum principal amount or aggregate number of securities under the issue is issued initially and a further tranche or tranches may be issued subsequently
“debt securities”	debenture or loan stock, debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing and convertible debt securities-
<u>“listed debt securities”</u>	<u>debt securities that are listed on the Exchange</u>
“Professional Investor”	(a) For a person in Hong Kong a professional investor as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (excluding those prescribed by rules made under section 397 of that Ordinance) ; or (b) For a person outside Hong Kong, a professional investor is a person to whom securities may be sold in accordance with a relevant exemption from public offer regulations in that jurisdiction-
“State”	Includes any agency, authority, central bank, department, government, legislature, minister, ministry, official or public or statutory person of, or of the government of, a state or any regional or local authority thereof
“State corporation”	any company or other legal person which is directly or indirectly controlled or more than 50 per cent. of whose issued equity share capital (or equivalent) is beneficially owned by, and/or by any one or more agencies of, a State or all of whose liabilities are guaranteed by a State or which is specified as such from time to time by the Exchange
“stock exchange”	Any stock exchange that is a member of the World Federation of Exchanges
“Supranational”	any institution or organisation at a world or regional level which is specified from time to time by the Exchange

APPENDIX II: DRAFT AMENDMENTS TO THE GEM RULES

Chapter 30

DEBT SECURITIES

DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

Introduction

30.01 This Chapter deals with debt issues to Professional Investors only. It sets out the qualifications for listing, application procedures, contents of listing documents and the obligations that apply after listing.

Listing Approval

30.02 A listing application may be approved by:

- (a) A member of the Listing Division to whom the Executive Director – Listing has delegated authority;
- (b) The Executive Director – Listing (who may also delegate approval authority within the Listing Division); or
- (c) The GEM Listing Committee.

Applicants' Qualifications for Listing

30.03 An issuer must be a company whose equity securities are listed on GEM or will be listed on GEM before any debt securities are listed.

30.04 If an issuer does not meet the eligibility criteria above it is eligible for a listing of guaranteed debt securities if:

- (a) It is a body corporate that is validly incorporated or established; and
- (b) It is wholly owned by a body corporate that meets the eligibility criteria above; and
- (c) Its owner guarantees its obligations; and
- (d) It and its owner agree to comply with the GEM Listing Rules.

Securities' Qualifications for Listing

30.05 The debt securities must be freely transferable with a denomination of at least

HK\$500,000 (or equivalent in other currencies).

30.05A Except in the case of a tap issue, the debt securities must be of a principal amount of at least HK\$100 million (or equivalent in other currencies).

30.06 The debt securities must have been validly authorised.

30.07 The debt securities:

- (a) must comply with the law of the place where the issuer is incorporated or established; and
- (b) must comply with the issuer's memorandum and articles of association or equivalent documents.

30.08 If an issuer is issuing guaranteed debt securities under rule 30.04 the guarantee:

- (a) ~~M~~must have been validly authorised;
- (b) ~~M~~must comply with the guarantor's memorandum and articles of association or equivalent documents, if the guarantor is a body corporate; and
- (c) ~~M~~must comply with the law of the place where the guarantor is incorporated or established.

Convertible Debt Securities

30.09 This section sets out additional requirements that apply if debt securities are convertible.

30.10 If debt securities are convertible they must be convertible into:

- (a) ~~S~~shares listed or to be listed on the Exchange or another stock exchange; or
- (b) ~~D~~depository receipts listed or to be listed on the Exchange or another stock exchange; or
- (c) ~~O~~ther assets that the Exchange has agreed in writing are acceptable.

30.11 If debt securities are convertible into shares that have not yet been issued:

- (a) ~~T~~he issuance of the shares must have been validly authorised; and
- (b) ~~T~~he listing of the shares must have been validly authorised.

30.12 If debt securities are convertible into shares (or into depository receipts) the terms of the issue must provide for appropriate adjustments to the conversion terms if there is

a change in the capital of the issuer of those shares or a change in the capital of the issuer whose shares underlie the depositary receipts.

- 30.13 The Exchange treats debt securities with non-detachable warrants to subscribe for equity securities or other assets as convertible securities.

Options, Warrants and Similar Rights

- 30.14 This section sets out additional requirements that apply to options, warrants or similar rights.

- 30.15 The securities underlying the options, warrants or similar rights must be:

- (a) ~~D~~ebt securities that are listed or to be listed on the Exchange;
- (b) ~~D~~ebt securities listed or to be listed on another stock exchange; or
- (c) ~~O~~ther debt security that the Exchange has agreed in writing is acceptable.

- 30.16 If the underlying debt securities have not yet been issued:

- (a) ~~T~~heir issuance must have been validly authorised; and
- (b) ~~A~~ny listing of them must have been validly approved.

- 30.17 If options, warrants or similar rights are convertible into debt securities, the terms of the issue must provide for appropriate adjustments to the conversion rights if there is a change in those debt securities.

Listing Document

- 30.18 This section sets out the information that an issuer must disclose in its listing document and other requirements relating to the listing document. For debt issuance programmes these requirements apply to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue under the programme.

- 30.19 A listing document must contain a disclaimer statement:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this document, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

The disclaimer must be legible and appear on the front cover or inside cover of the listing document.

30.20 A listing document must contain the following statement:

“Characteristics of GEM of The Stock Exchange of Hong Kong Limited (the “Exchange”)

GEM has been positioned as a market designed to accommodate small and mid-sized companies to which a higher investment risk may be attached than other companies listed on the Exchange. Prospective investors should be aware of the potential risks of investing in such companies and should make the decision to invest only after due and careful consideration. The greater risk profile and other characteristics of GEM mean that it is a market more suited to professional and other sophisticated investors.

Given that the companies listed on GEM are generally small and mid-sized companies, there is a risk that securities traded on GEM may be more susceptible to high market volatility than securities traded on the Main Board and no assurance is given that there will be a liquid market in the securities traded on GEM.”

30.21 A listing document must contain a responsibility statement:

“This document 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 accepts full responsibility for the accuracy of the information contained in this document and confirms, having made all reasonable enquiries, that to the best of its knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”

The Exchange may require appropriate modification to the statement if an issue is guaranteed. The Exchange may allow others to make the statement but an issuer must seek prior consent for this.

30.22 A listing document must contain the information that the investors an issuer is offering the securities to would customarily expect it to contain. It needs not comply with Appendix 1, part C.

30.23 A listing document must contain any additional information that the Exchange requires.

30.24 A listing document must contain a statement limiting its distribution to Professional Investors only.

30.24A The front cover of a listing document must contain a statement on the intended investor market in Hong Kong (i.e. Professional Investors only) for the debt securities.

30.25 A listing document must be in English or Chinese.

30.26 A listing document may be in printed or electronic form.

Application Procedures

30.27 This section sets out the procedures that an issuer must follow to apply for listing of securities or listing of a debt programme. An application involves determining whether an issuer is eligible for listing and whether securities are eligible for listing. The Exchange will use the information that an issuer supplies to make these assessments. The documents an issuer submits must be in English or Chinese or translated into one of these languages.

30.28 An issuer must submit the following:

- (a) ~~C~~ompleted application form. If an issue is guaranteed the guarantor must also complete the application form. This is set out in Appendix 5, part C.
- (b) ~~L~~isting fee as provided in Appendix 9.
- (c) ~~D~~raft listing document.
- (d) ~~D~~raft formal notice of listing.
- (e) ~~[Repealed [●]] If an issuer is not listed on GEM a copy of its memorandum and articles of association, certificate of incorporation or equivalent to show that the issuer is validly incorporated or established.~~
- (f) ~~[Repealed [●]] If debt securities have been authorised by shareholders then a copy of the resolution.~~
- (g) ~~[Repealed [●]] A copy of the resolutions by the issuer's board of directors authorizing—~~
 - ~~(1) the issue and allotment of the debt securities~~
 - ~~(2) the application for listing~~
 - ~~(3) issuing the listing document.~~
- (h) ~~[Repealed [●]] If an issue is guaranteed, a copy of the resolutions by the guarantor's board of directors authorizing~~
 - ~~(1) the listing application~~
 - ~~(2) issuing of the listing document.~~
- (i) ~~I~~f an issue is convertible into shares a copy of the approvals authorising the issue and listing of those shares.

- (i) a written statement by the issuer's duly authorised representative confirming:
 - (1) where the issuer is not listed on the Exchange, the issuer has been validly incorporated or established; and
 - (2) the issuer has obtained all necessary internal authorisation to issue and allot the debt securities, make an application for listing and issue the listing document.

- (k) if an issue is guaranteed, a written statement by the guarantor's duly authorised representative confirming:
 - (1) where the guarantor is not listed on the Exchange, the guarantor has been validly incorporated or established; and
 - (2) the guarantor has obtained all necessary internal authorisation to approve the listing application and the issuing of the listing document.

An issuer may submit drafts of the application form in (a) and the ~~authorisations and resolutions confirmation~~ in (f), (gj) and (hk) to enable the Exchange to consider whether an issue and issuer are eligible for listing. The final ~~resolutions and authorisations confirmation~~ in (f), (gj) and (hk) may be submitted after the listing application but before listing.

- 30.29 After the Exchange has considered an application it will issue a Listing Eligibility letter. In this letter it will advise an issuer whether it and its debt securities are eligible for listing. The Exchange will also indicate whether it requires inclusion of additional information in the listing document. The letter is valid for three months from the date of issue. For routine applications the Exchange aims to issue this letter 5 business days after it receives the application.

- 30.30 An issuer must not issue the listing document in final form until the Exchange has confirmed that the issuer may issue it. A draft may be circulated for the purpose of arranging underwriting, syndication and marketing of the offering to Professional Investors.

- 30.31 In the period from when the listing document is issued to the date of listing an issuer must advise the Exchange of any material event that it would have disclosed in the listing document if it had been aware of the event before the listing document was finalised.

- 30.32 An issuer must publish a formal notice before listing. The notice must be in English or Chinese. A model form of notice is set out in Appendix 10.

- 30.32A An issuer must also publish on the Exchange's website the listing document (in English or Chinese) on the listing date. For debt issuance programmes this

requirement applies to the base listing document and the supplementary listing document (including but not limited to the pricing supplement) for each issue under the programme.

Programmes

- 30.33 This section sets out the procedures for listing securities under a programme that the Exchange has approved.
- 30.34 A debt programme that the Exchange has approved is valid for issuing debt securities for one year after the date it is published.
- 30.35 An issuer must submit the pricing supplement for an issue under a programme before 2:00 pm of the business day before listing is required to become effective. It must not issue the pricing supplement until the Exchange has confirmed that the issuer may issue it.
- 30.36 The Exchange will approve the listing of all securities issued under a valid programme subject to the issuer:
- (a) ~~N~~otifying it of the final terms of each issue;
 - (b) ~~C~~onfirming that the securities have been issued; and
 - (c) ~~P~~aying the appropriate listing fee before listing.

Continuing Obligations

- 30.37 This section sets out the obligations that apply to an issuer if the Exchange agrees to list its securities. If the securities are guaranteed then the guarantor must also comply with the these obligations set out in rules 30.38, 30.39, 30.39A, 30.40, 30.40A, 30.40D, 30.40E and 30.46 and accordingly, references in these rules to “issuer” shall be construed accordingly to mean the “guarantor” and references to “issuer’s listed debt securities” shall be construed accordingly to mean the listed debt securities guaranteed by the guarantor. An issuer (and a guarantor, if any) must comply with these obligations
- (a) until the securities expire or
 - (b) until they are withdrawn from listing.
- 30.38 If an issuer is required to announce information then
- (a) it must do so by an announcement under rules 16.17 and 16.18, except that the announcement may be in English or Chinese only; and
 - (b) ~~T~~he announcement must include the following disclaimer:

“Hong Kong Exchanges and Clearing Limited and The Stock Exchange of Hong Kong Limited take no responsibility for the contents of this announcement, make no representation as to its accuracy or completeness and expressly disclaim any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this document.”

30.39 An issuer must comply with the GEM Listing Rules in force from time to time.

30.39A When the Exchange makes enquiries concerning unusual movements in the price or trading volume of an issuer’s listed debt securities, the possible development of a false market in its listed debt securities, or any other matters, the issuer must respond promptly as follows:

(a) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or

(b) if, and only if, the directors of the issuer, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any matter or development that is or may be relevant to the unusual trading movement of its listed debt securities, or information necessary to avoid a false market, or any inside information which needs to be disclosed under the Inside Information Provisions, and if requested by the Exchange, make an announcement containing a statement to that effect.

30.40 An issuer must as soon as reasonably practicable ~~immediately~~, after consultation with the Exchange, announce any information which

(a) [Repealed 1 January 2013]

(b) is necessary to avoid a false market in its listed debt securities where in the view of the Exchange there is or there is likely to be a false market in its listed debt securities.

Note: If an issuer believes that there is likely to be a false market in its listed debt securities, it must contact the Exchange as soon as reasonably practicable.

(c) [Repealed 1 January 2013]

30.40A ~~The issuer~~ ~~If the securities are guaranteed, the guarantor~~ must as soon as reasonably practicable ~~immediately~~ announce any information which may have a material effect on its ability to meet the obligations under the listed debt securities.

30.40B (a) Where an issuer is required to disclose inside information under the Inside Information Provisions, it must also simultaneously announce the information.

(b) An issuer must simultaneously copy to the Exchange any application to the

Commission for a waiver from disclosure under the Inside Information Provisions, and promptly upon being notified of the Commission's decision copy it to the Exchange.

30.40C An issuer must, as soon as reasonably practicable, apply for a trading halt or a trading suspension where there is information under rule 30.40 or rule 30.40A, or inside information which must be disclosed under the Inside Information Provisions, or inside information which is the subject matter of an application to the Commission for a waiver but its confidentiality has been lost, and the information cannot be announced promptly.

30.40D An issuer must, after trading in its listed debt securities has been suspended, publish quarterly announcements of its developments.

30.40E An issuer must as soon as reasonably practicable announce any information which relates to:

(a) the default on its listed debt securities;

(b) the appointment of a receiver or manager either by any court having jurisdiction or any application to any court having jurisdiction for the appointment of a receiver or manager, or equivalent action in the country of incorporation or other establishment, in respect of the business or any part of the business of the issuer or the property of the issuer;

(c) the presentation of any winding-up petition, or equivalent application in the country of incorporation or other establishment, or the making of any winding-up order or the appointment of a provisional liquidator, or equivalent action in the country of incorporation or other establishment, against or in respect of the issuer;
or

(d) the passing of any resolution by the issuer that it be wound up by way of members' or creditors' voluntary winding-up, or equivalent action in the country of incorporation or other establishment.

30.41 An issuer must announce as soon as possible:

(a) ~~if~~ aggregate redemptions or cancellations exceed 10% and every subsequent 5% interval of an issue; or

(b) ~~A~~ny public disclosure made on another stock exchange about its listed debt securities.

30.42 An issuer must notify the Exchange in advance of any proposal to

(a) ~~R~~eplace a trustee for bondholders; or

(b) ~~A~~mend the trust deed; or

- (c) ~~A~~amend the terms of convertible listed debt securities unless that amendment occurs automatically in accordance with their ~~the terms of the debt securities~~.

An issuer must not proceed with any proposed change until the Exchange has advised whether it will impose conditions for the change.

- 30.43 An issuer must notify the Exchange as soon as possible if
- (a) ~~it~~ has repurchased and cancelled all of an issue of its listed debt securities; or
 - (b) ~~it~~ has redeemed all of an issue of its listed debt securities prior to the maturity date; or
 - (c) ~~A~~all of an issue of convertible listed debt securities has been fully converted.

The Exchange will then formally delist the debt securities.

- 30.44 An issuer must notify the Exchange as soon as possible if its listed debt securities are listed on another stock exchange.
- 30.45 An issuer must provide the Exchange with a copy of any circular that that is sent to bondholders or to any trustee. If the circular is published on a website and the issuer notifies the Exchange when it is published on that site it does not have to send it a printed copy.
- 30.46 If an issuer is a body corporate it must provide the Exchange with its annual accounts and any interim report when they are issued. An issuer is exempt from this requirement if its securities are guaranteed by a body corporate in which case it must provide the guarantor's annual accounts and interim report. The Exchange will accept a printed or electronic copy. If the annual accounts or interim report are published on a website and the issuer notifies the Exchange when they are published on that site it does not have to send it a printed copy.

Authorised Representatives

- 30.47 An issuer must appoint two authorised representatives to communicate with the Exchange and must notify the Exchange of any change of representative. The representatives do not have to be resident in Hong Kong.

Other

- 30.48 If an issuer or its debt securities does not comply with these requirements the Exchange will not list them unless it agrees to modify these requirements.
- 30.49 The Exchange may accept or reject a listing application or make listing subject to additional conditions.

30.50 The Exchange may impose additional obligations on an issuer or guarantor. The Exchange will allow an issuer or guarantor to make representations before imposing requirements on it that are not imposed on issuers or guarantors of debt securities generally.

Definitions

30.51 In this Chapter the following definitions apply:

“bearer securities”	securities transferable to bearer
“convertible debt securities”	debt securities convertible into or exchangeable for equity securities or other property and debt securities with non-detachable options, warrants or similar rights to subscribe or purchase equity securities or other property attached-
“debt issuance programmes”	issues of debt securities where only part of the maximum principal amount or aggregate number of securities under the issue is issued initially and a further tranche or tranches may be issued subsequently
“debt securities”	debenture or loan stock, debentures, bonds, notes and other securities or instruments acknowledging, evidencing or creating indebtedness, whether secured or unsecured and options, warrants or similar rights to subscribe or purchase any of the foregoing and convertible debt securities-
<u>“listed debt securities”</u>	<u>debt securities that are listed on the Exchange</u>
“Professional Investor”	(a) For a person in Hong Kong a professional investor as defined in Part 1 of Schedule 1 to the Securities and Futures Ordinance (excluding those prescribed by rules made under section 397 of that Ordinance); or (b) For a person outside Hong Kong, a professional investor is a person to whom securities may be sold in accordance with a relevant exemption from public offer regulations in that jurisdiction-
“stock exchange”	Any stock exchange that is a member of the World Federation of Exchanges

APPENDIX III: PRIVACY POLICY STATEMENT

Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

Purpose

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;

2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("Regulatory Functions");
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

Direct marketing

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

Identity Card Number

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

Transfers of personal data for direct marketing purposes

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

Other transfers of your personal data

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

How we use cookies

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

Session Cookies: temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

Persistent Cookies: cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

Compliance with laws and regulations

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

Corporate reorganisation

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or

a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

Access and correction of personal data

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link <https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

Termination or cancellation

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

General

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

Contact us

By Post:

Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
8/F., Two Exchange Square
8 Connaught Place
Central
Hong Kong

By Email:

DataPrivacy@HKEX.COM.HK

Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square, 8 Connaught Place,
Central, Hong Kong

info@hkex.com.hk
電話：+852 2522 1122 傳真：+852 2295 3106
hkexgroup.com | hkex.com.hk