

**Joint Consultation Paper on the Proposal to
allow a Companies Ordinance (CO) Offeror to issue
a CO Paper Application Form for Shares in or
Debentures of a Company to be listed on SEHK,
and a Collective Investment Scheme (CIS) Offeror
to supply a CIS Paper Application Form for
Interests in an SFC-authorized
CIS to be listed on SEHK,
with a Listing Document Displayed
on Certain Websites**

**Hong Kong
April 2008**



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Foreword

The Securities and Futures Commission (“SFC”) and The Stock Exchange of Hong Kong Ltd. (“SEHK”), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Ltd. (“HKEx”), invite market participants and interested parties to submit written comments on the proposal discussed in this paper and on related matters that impact upon the proposal, by no later than **30 May 2008**. Any persons wishing to comment on the proposal should provide details of any organization whose views they represent.

Please note that the names of the commentators and the contents of their submissions may be published on the SFC website and/or the HKEx website and in other documents to be published by the SFC and/or SEHK. In this connection, please read the Personal Information Collection Statement of the SFC and the Personal Information Collection and Privacy Policy Statement of HKEx on pages ii and iv respectively.

You may not wish your name and/or submission to be published by the SFC and/or HKEx. If this is the case, please state that you wish your name and/or submission to be withheld from publication when you make your submission.

Written comments may be sent to the SFC:

By mail or hand delivery to: Corporate Finance Division
Securities and Futures Commission
8/F Chater House
8 Connaught Road Central
Hong Kong
Attn: Consultation on Mixed Media Offers
By fax to: (852) 2810-5385
By online submission at: <http://www.sfc.hk>
By e-mail to: cfconsult@sfc.hk

Written comments may also be sent to HKEx:

By mail or hand delivery to: Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong
Re: Consultation on Mixed Media Offers
By fax to: (852) 2524-0149
By e-mail to: mmo@hkex.com.hk

Additional copies of this Joint Consultation Paper may be obtained from the above addresses. This Joint Consultation Paper is also available on the SFC website at <http://www.sfc.hk> and the HKEx website at <http://www.hkex.com.hk>.

SFC's Personal Information Collection Statement

1. This Personal Information Collection Statement (“**PICS**”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data¹. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data, and your rights under the Personal Data (Privacy) Ordinance, Cap. 486 (“**PDPO**”).

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Joint Consultation Paper may be used by the SFC for one or more of the following purposes:
 - to administer the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - in performing the SFC's statutory functions under the relevant provisions;
 - for research and statistical purposes; and
 - for other purposes permitted by law.

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere, as part of the public consultation which is the subject of this Joint Consultation Paper. The names of persons who submit comments on this Joint Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC website and in documents to be published by the SFC during the consultation period or following its conclusion.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this Joint Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance.

² Defined in Schedule 1 to the SFO and subsidiary legislation made under it; and provisions of Parts II and XII of the CO so far as those Parts relate directly or indirectly to the performance of functions relating to prospectuses, the purchase by a corporation of its own shares, or a corporation giving financial assistance for the acquisition of its own shares etc..

Retention

5. Personal Data provided to the SFC in response to this Joint Consultation Paper will be retained for such period as may be necessary for the proper discharge of functions of the SFC.

Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this Joint Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer
Securities and Futures Commission
8/F Chater House
8 Connaught Road Central, Hong Kong

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

HKEx's Personal Information Collection and Privacy Policy Statement

Provision of Personal Data

1. Your supply of Personal Data to HKEx is on a voluntary basis. "Personal Data" in these statements has the same meaning as "personal data" in the Personal Data (Privacy) Ordinance, Cap 486.

Personal Information Collection Statement

2. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. It sets out the purposes for which your Personal Data will be used after collection, what you are agreeing to in respect of HKEx's use, transfer and retention of your Personal Data, and your rights to request access to and correction of your Personal Data.

Purpose of Collection

3. HKEx may use your Personal Data provided in connection with this Joint Consultation Paper for purposes relating to this consultation and for one or more of the following purposes:
 - for performing or discharging HKEx's functions and those of its subsidiaries under the relevant laws, rules and regulations;
 - for research and statistical purposes;
 - for any other lawful purposes.

Transfer of Personal Data

4. Your Personal Data may be disclosed or transferred by HKEx to its subsidiaries and/or regulator(s) for any of the above stated purposes.
5. Your Personal Data may also be disclosed or transferred to members of the public in Hong Kong and elsewhere as part of the public discussion of this paper, including but not limited to disclosing your name to the public together with the whole or part of your comments by posting them on HKEx website, publishing them in documents or by other means. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper.

Access to or Correction of Data

6. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. Any such request for access to and/or correction of your Personal Data should be addressed to the Personal Data Privacy Officer of HKEx in writing by either of the following means:

By mail to: Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street
Central
Hong Kong

By email to: pdpo@hkex.com.hk

Retention of Personal Data

7. Your Personal Data will be retained for such period as may be necessary for the carrying out of the above-stated purposes.

Privacy Policy Statement

8. HKEx is firmly committed to preserving your privacy in relation to Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, addresses, e-mail addresses, login names, etc, which may be used for the stated purposes when your Personal Data is collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law.
9. HKEx has security measures in place to protect against the loss, misuse and alteration of Personal Data supplied to HKEx. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the stated purposes and for the proper discharge of the functions of HKEx and those of its subsidiaries.

Joint Consultation Paper on the Proposal to allow a CO Offeror to issue a CO Paper Application Form for Shares in or Debentures of a Company to be listed on SEHK, and a CIS Offeror to supply a CIS Paper Application Form for Interests in an SFC-authorized Collective Investment Scheme to be listed on SEHK, with a Listing Document Displayed on Certain Websites

PART A - EXECUTIVE SUMMARY

Introduction

1. We, the SFC and SEHK, a wholly-owned subsidiary of HKEx, invite comments from the public on our joint proposal (“**Proposal**”) to exempt, subject to certain conditions:-

- a. any company (“**CO Offeror**”) which issues a prospectus, pursuant to which a public offer of shares in or debentures of a company to be listed on SEHK is made, from strict compliance with the requirement not to issue a paper application form unless it is issued with a prospectus in the same format (“**CO Accompaniment Requirement**”) as contemplated by section 38(3) or 342(3) of the Companies Ordinance (“**CO**”), as the case may be; and
- b. any SFC-authorized collective investment scheme (“**CIS Offeror**”) which issues an offering document, pursuant to which a public offer of its interests to be listed on SEHK is made, from strict compliance with the requirement not to supply any person not a holder with a paper application form unless accompanied by an offering document in the same format (“**CIS Accompaniment Requirement**”) as contemplated by Chapter 6.4 of the Code on Unit Trusts and Mutual Funds (“**Unit Trusts Code**”) or paragraph B32 of Appendix B to the Code on Real Estate Investment Trusts (“**REITs Code**”), as the case may be.

2. There are three major limbs to the Proposal:-

- a. subject to negative vetting by the legislative council of the government of the Hong Kong Special Administrative Region (“**Legislative Council**”), a class exemption notice is proposed to be issued by the SFC pursuant to sections 38A(2) and 342A(2) of the CO to exempt any CO Offeror which issues a paper application form (“**CO Paper Application Form**”) from strict compliance with the CO Accompaniment Requirement as contemplated by section 38(3) or 342(3) of the CO, as the case may be, so that such CO Paper Application Form does not need to be issued with a paper prospectus where the public offer is in relation to shares in or debentures of a company to be listed on SEHK provided that (i) an electronic copy of the relevant prospectus (“**e-Prospectus**”) is displayed on (x) the company’s website and (y) the official website designated by the HKEx for issuer information (“**Exchange website**”) or the internet website operated by HKEx for the purposes of the Growth Enterprise Market (“**GEM website**”) (either or both the Exchange website and the GEM website, “**HKEx website**”), as the case may be, for access and downloading free of charge at the same time as CO Paper Application Forms are made available to the public and (ii) other specified conditions designed to ensure that the proposed exemption will not prejudice the interests of the investing public, including the requirement to make available copies of the paper prospectus for collection at specified locations, free of charge, upon request by any member of the public, throughout the period during which the shares in or debentures of the company are offered pursuant to the prospectus (“**Offer Period**”), are met;
- b. the SFC intends to grant waivers to exempt any CIS Offeror which supplies a paper application form (“**CIS Paper Application Form**”) to any person not a holder from strict compliance with the CIS Accompaniment Requirement as contemplated by Chapter 6.4 of the Unit Trusts Code or paragraph B32 of Appendix B to the REITs Code, as the case may be, so that such CIS Paper Application Form does not need to be accompanied by an offering document published in printed form where the public offer is in relation to interests in a collective investment scheme to be listed on SEHK (“**SFC-authorized listed**

CIS”) provided that specified conditions³ designed to ensure that the proposed waiver will not prejudice the interests of the investing public are met; and

- c. SEHK intends to amend the Rules Governing the Listing of Securities on SEHK (“**Main Board Listing Rules**”) and the Rules Governing the Listing of Securities on the Growth Enterprise Market of SEHK (“**GEM Listing Rules**”) (Main Board Listing Rules and GEM Listing Rules together, the “**Exchange Listing Rules**”) such that, amongst other things:-
- (i) instead of requiring all listing documents published by a new applicant to be in paper form, it suffices if such listing documents include copies made available in paper form. For avoidance of doubt, copies may still be made available to the public in electronic format on CD ROM as provided under the Exchange Listing Rules;
 - (ii) all listing documents issued by a CIS Offeror must be in paper form or such other format of publication as may be approved by the SFC in compliance with all applicable laws, regulations and rules;
 - (iii) any announcement that is required to be published by an issuer who intends to make a Mixed Media Offer (see definition in paragraph 3 below) must be published in accordance with rule 2.07C of the Main Board Listing Rules or rules 16.17 and 16.18 of the GEM Listing Rules, as the case may be, and that no prior approval will be required from SEHK before publication; and
 - (iv) reference in rules 12.04(3) and 25.17(4) of the Main Board Listing Rules and rules 16.09(3) and 29.19(3) of the GEM Listing Rules to “*the address(es) at which copies of the listing document (if any) are available to the public*” in the formal notice that is required to be published by an

³ It is envisaged that these specified conditions will be substantially similar to the conditions to the class exemption proposed to be granted to CO Offerors (with necessary changes being made) – see paragraph 56 below.

issuer be substituted with prescribed statements that are applicable to Mixed Media Offers.

The proposed amendments to the Exchange Listing Rules are set out in **Appendix 1**.

3. Following implementation of the Proposal, a CO Offeror may issue CO Paper Application Forms with an e-Prospectus in relation to a public offer of shares in or debentures of a company to be listed on SEHK, subject to compliance with specified conditions. A CIS Offeror may also supply CIS Paper Application Forms with a listing document published in printed form or such other format as may be approved by the SFC in relation to its public offer of interests therein provided that specified conditions attached to the grant of the necessary waiver are satisfied. The method of offering shares in or debentures of a company or interests in an SFC-authorized listed CIS, in each case with a listing document displayed on certain websites shall hereinafter be referred to as the “**Mixed Media Approach**” and a public offer using the Mixed Media Approach shall hereinafter be referred to as a “**Mixed Media Offer**”.

Background

Public offers of shares and debentures

4. The law relating to public offers of shares and debentures in Hong Kong is contained in Parts II and XII of the CO.
5. Section 38(3) of the CO provides, inter alia, that it shall not be lawful to issue any form of application for shares in or debentures of a company incorporated under the CO unless the form is issued with a prospectus that complies with the requirements of section 38 of the CO.
6. Similarly, section 342(3) of the CO provides, inter alia, that it shall not be lawful to issue to any person in Hong Kong a form of application for shares in or

debentures of a company incorporated outside Hong Kong unless the form is issued with a prospectus which complies with Part XII of the CO.

Public offers of interests in SFC-authorized listed CISs

7. Chapter 6.4 of the Unit Trusts Code provides, inter alia, that no application form may be supplied to any person not a holder unless accompanied by the offering document. Paragraph B32 of Appendix B to the REITs Code also contains an identical provision applicable to public offers of interests in SFC-authorized real estate investment trusts.
8. Although neither the CO, the Unit Trusts Code nor the REITs Code prescribes the medium to be used for issuing and/or supplying application forms, prospectuses and other offering documents, these documents have traditionally been distributed in paper form.

ePO Guidelines

9. The SFC issued the “Guidelines for Electronic Public Offerings” (“**ePO Guidelines**”) in April 2003 to enable electronic public offering (“**ePO**”) to take place. The ePO method is an additional rather than an alternative offering method to the existing paper-based approach.
10. The SFC stressed in the ePO Guidelines⁴ that persons offering electronic facilities to distribute and/or collect applications or application instructions should ensure that the application forms or facilities enabling the collection of application instructions (e.g. in the case of the Internet, the application input screen) are accompanied by a copy of the relevant prospectus.
11. Two fundamental policies underpinning sections 38(3) and 342(3) of the CO, Chapter 6.4 of the Unit Trusts Code, paragraph B32 of Appendix B to the REITs Code and the ePO Guidelines are that (1) an investor should be given an

⁴ See paragraph 1.3 of the ePO Guidelines.

opportunity to access the offering document before being given access to an application form and (2) an investor should apply for shares in or debentures of a company, or interests in an SFC-authorized listed CIS, as the case may be, on the basis of the offering document on which the offer is solely made.

Reasons for the Proposal

Increased personal computer ownership and widespread use of the Internet

12. The main driver for the Proposal has been the rapid growth in the penetration and usage of personal computers, the widespread use of the Internet and the need for increased flexibility and practicality.
13. The penetration and usage of personal computers and the Internet in both domestic households and the business sector in Hong Kong have been increasing incrementally over the past years. According to survey results issued by the Hong Kong Census and Statistics Department, the number of domestic households in Hong Kong that have personal computers at home that can be connected to the Internet has grown significantly by almost 93% between 2000 and 2007⁵. The number of business establishments that have personal computers that can be connected to the Internet has also grown by more than 60% during such period⁶.
14. Currently, the Exchange website and the GEM website release, amongst other information, issuers' announcements, circulars and other corporate communications including annual reports and prospectuses and provide search facilities on such information. Statistics reveal that "Investment Service Centre" and "Listing Matters and Listed Companies" have been amongst the most frequently visited of all the available categories of information on these websites. This demonstrates a continuous demand for and interest in issuers' information obtained via such websites.

⁵ See the 2000 and 2007 "Household Survey Report on Information Technology Usage and Penetration" published by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region ("C&SD") on 22 November 2000 and 6 December 2007 respectively.

⁶ See the 2000 and 2007 "Report on Annual Survey on Information Technology Usage and Penetration in the Business Sector" published by C&SD on 22 November 2000 and 6 December 2007 respectively.

15. Hong Kong has maintained its position as one of the leading cities with personal computers penetration and Internet service usage at a consistently high level⁷. According to the Internet World Statistics⁸, Hong Kong's Internet penetration rate ranks number 1 in Asia. Continuing advances in electronic commerce and information technology, coupled with the market impetus for increased flexibility and practicality, raise the question whether it would be overly restrictive from a policy perspective to mandate application forms and prospectuses to be issued using the same medium of communication.
16. The SFC conducted an informal survey in early 2007 to ascertain the respective take up rates of paper prospectuses and paper application forms by local retail investors relating to initial public offerings in Hong Kong in 2006. The findings in this survey suggest that on average, only one paper prospectus was taken up by retail investors for every ten paper application forms distributed. The study also shows that at least one-third of paper prospectuses that were made available to the public were not taken up in general.
17. We are therefore of the view that the law should focus on the information to be communicated and ensuring investors' access to such information, rather than the means for its conveyance. Therefore, the broad regulatory approach should ensure that sufficient particulars and information are given, whether in paper and/or electronic forms, to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares in or debentures of a company being offered and the financial condition and profitability of the company at the time of the issue of the prospectus, taking into account the nature of the shares or debentures being offered, the nature of the company and the nature of the persons likely to consider acquiring them⁹. The same regulatory approach should also apply to regulation of SFC-authorized listed CISs.

⁷ See press release on the 2007 "Household Survey Report on Information Technology Usage and Penetration" published by C&SD on 6 December 2007.

⁸ The statistics were updated in September 2007.

⁹ See the overall disclosure standard as set out in paragraph 3 of the Third Schedule to the CO.

Strict adherence to the CO Accompaniment Requirement or CIS Accompaniment Requirement not necessarily conducive to prospective investors reading the offering document

18. Under the existing framework, an application form must be issued with an offering document as briefly discussed in paragraphs 5, 6 and 7 above.
19. In order to satisfy the CO Accompaniment Requirement or the CIS Accompaniment Requirement in the paper environment, it has been market practice to place CO Paper Application Forms and paper prospectuses or CIS Paper Application Forms and offering documents published in printed form, as the case may be, in adjacent piles at designated distribution points.
20. We are mindful that this practice, albeit satisfying the statutory or code requirement, may not necessarily encourage prospective investors to obtain and read the offering documents before submitting their applications. At best, it affords a prospective investor with the opportunity to collect an offering document published in printed form together with a paper application form.

Focus on Access

21. For the reasons set out in paragraphs 12 to 20 above and in order to fulfil the social responsibility of protecting the environment without compromising investor protection and information dissemination, we believe that our regulatory approach should concentrate on access as opposed to the medium of delivery. We consider the proposed class exemption and waiver should refocus CO Offerors and CIS Offerors on accessibility to listing documents. The exemption and waiver would also facilitate the development of a more efficient and competitive business environment.
22. We believe that there are likely to be real benefits if CO Offerors and CIS Offerors adopt the Mixed Media Approach. These benefits include:-

- advantages generally associated with using electronic rather than paper documents such as improved time and cost efficiencies in the dissemination of information to prospective investors, advisers and the securities market as a whole;
- significant savings in printing, posting and handling costs;
- increased competitiveness of Hong Kong as a capital market since the class exemption and waiver should encourage more companies and collective investment schemes to engage the Hong Kong capital market for their fundraising needs due to reduction in costs which in turn results in a lower barrier of market entry; and
- increased protection of the environment.

*Consistent with the consultation conclusions on the consultation paper on possible reforms to the prospectus regime in the CO (“**Conclusions on the 2005 Consultation Paper**”)*

23. We note that one of the 21 proposals set out in the consultation paper on possible reforms to the prospectus regime in the CO published by the SFC in August 2005 (“**2005 Consultation Paper**”) raised the question whether the scope of regulation regarding the distribution of application forms for shares or debentures should be extended to any type of application form or application process and to any person engaging in their distribution or implementation¹⁰.

24. In the *Conclusions on the 2005 Consultation Paper* published by the SFC in September 2006, it was commented¹¹ that with the introduction of the transaction-based approach, intermediaries should not be responsible for delivering paper prospectuses to prospective investors once a compliant prospectus is issued.

¹⁰ See paragraphs 35 and 36 of the 2005 Consultation Paper.

¹¹ See paragraphs 70 and 71 of the *Conclusions on the 2005 Consultation Paper* and the SFC’s response thereon.

25. We note that the Proposal, that a CO Offeror should not be required to issue a CO Paper Application Form together with a paper prospectus provided that a compliant e-Prospectus is displayed on the company's website and the HKEx website for access and downloading, coupled with the availability of copies of the paper prospectus for collection at specified locations, free of charge, upon request by any member of the public, are consistent with the SFC's approach set out in the Conclusions on the 2005 Consultation Paper.
26. Despite the Proposal, it is expected that the existing practice of issuing offering documents and application forms both in printed form will continue to some extent until such time as the electronic media becomes universally accessible and accepted.

PART B – THE CLASS EXEMPTION

Statutory ground for exemption

27. Subject to negative vetting by the Legislative Council, the SFC is empowered under section 38A(2) and 342A(2)¹² of the CO to exempt, subject to such conditions (if any) as it thinks fit, CO Offerors from strict compliance with the CO Accompaniment Requirement as contemplated by sections 38(3) and 342(3) of the CO provided that the exemption will not prejudice the interests of the investing public and compliance with such requirement would be irrelevant, unduly burdensome, or is otherwise unnecessary or inappropriate.
28. The SFC is of the view that, given the popularity of the world-wide-web and its ease of access by the investing public, it is no longer necessary from a policy perspective to mandate strict compliance with the CO Accompaniment Requirement provided that prospective investors can contemporaneously access both documents.

¹² "Relevant provisions" for the purposes of sections 38A(2) and 342A(2) of the CO include sections 38(3) and 342(3) of the CO – see sections 38A(4)(a) and 342A(4)(a) of the CO.

29. Provided that the conditions specified in paragraph 30(a) to (h) below are met, the SFC believes that the proposed exemption would not prejudice the interests of the investing public.

Question 1

Do you agree with the Proposal? If not, please explain your reasons for disagreement.

Proposed conditions to granting the class exemption

30. The SFC intends to impose the following as conditions to granting the proposed class exemption:-

- a. during the period of 5 business days prior to the commencement of the Offer Period (“**Relevant Period**”), adequate disclosure is made to the public that a CO Paper Application Form will be issued without a Paper Prospectus (as defined below);
- b. throughout the Offer Period, copies of the paper prospectus (i) that complies with all applicable Exchange Listing Rules; (ii) that complies with Part II or XII of the CO, as the case may be, and (iii) that has been registered at the Companies Registry (“**Paper Prospectus**”) are made available for collection at specified locations, free of charge, upon request by any member of the public;
- c. throughout the Offer Period, the e-Prospectus is displayed on the company’s website and the HKEx website;
- d. throughout the Offer Period, the e-Prospectus is readily accessible and capable of being downloaded by the public free of charge from the company’s website and the HKEx website;

- e. the typeface¹³, format and contents of the e-Prospectus are identical to those of the Paper Prospectus except to the extent that any differences are permitted or required by SEHK;
 - f. the CO Offeror shall, prior to the commencement of the Offer Period, confirm with SEHK in writing that the typeface, format and contents of the e-Prospectus are identical to those of the Paper Prospectus except to the extent that any differences are permitted or required by SEHK;
 - g. the e-Prospectus contains, in a prominent place on the face of it, a statement in a clear and legible form (i) that its contents are identical to those of the Paper Prospectus except to the extent that any differences are permitted or required by SEHK; (ii) that throughout the Offer Period, copies of the Paper Prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public and (iii) of the particulars of the specified locations; and
 - h. the CO Paper Application Form is to state in a prominent place (i) that the e-Prospectus is displayed on the company's website and the HKEx website; (ii) the address of the company's website; (iii) the address of the HKEx website; (iv) that throughout the Offer Period, copies of the Paper Prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public; (v) the particulars of the specified locations and (vi) that prospective investors should read the prospectus prior to submitting an application.
31. A copy of the proposed Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2008 (“**Class Exemption Notice**”) is attached at **Appendix 2** and the SFC invites representations from the public thereon¹⁴.

¹³ This includes both the size and style of the letter or character.

¹⁴ Sections 38A(7) and 342A(7) of the CO require a public consultation be conducted on any proposed class exemption notice.

32. We discuss below each of the conditions in turn.

(a) Adequate disclosure prior to the commencement of the Offer Period

33. In order to ensure retail investors, the majority of whom are accustomed to the existing paper-based approach, are not prejudiced following implementation of the Proposal, a CO Offeror who intends to make a Mixed Media Offer will be required to ensure that adequate disclosure is made during the Relevant Period to inform the public of such intention.

34. For purposes of this condition, adequate disclosure will be regarded as having been made if the CO Offeror publishes via the electronic publication system of HKEx (“**HKEx-EPS**”) in accordance with the requirements of the Exchange Listing Rules, an announcement on at least one business day during the Relevant Period informing the public that it intends to make a Mixed Media Offer. We note that this is consistent with the method of communication issuers are required to adopt after 24 June 2008 for purposes of publishing any announcement or notice¹⁵.

35. The announcement should contain the following information:-

- a. that the CO Offeror proposes to offer shares in or debentures of a company by a prospectus issued generally;
- b. that the shares or debentures are the subject of an application to SEHK for listing;
- c. that the CO Offeror intends to rely on the Class Exemption Notice and issue a CO Paper Application Form for the shares or debentures without a Paper Prospectus;
- d. that throughout the Offer Period, the e-Prospectus will be displayed on the company’s website and the HKEx website;

¹⁵ See rule 2.07C(6) of the Main Board Listing Rules.

- e. that throughout the Offer Period, the e-Prospectus will be readily accessible and capable of being downloaded by the public free of charge from the company's website and the HKEx website free of charge;
 - f. the address of the company's website;
 - g. the address of the HKEx website;
 - h. that throughout the Offer Period, copies of the Paper Prospectus will be made available for collection at the specified locations, free of charge, upon request by any member of the public; and
 - i. particulars of the specified locations.
36. Where the CO Offeror is the company whose shares or debentures are the subject of the public offer, it will be able to publish the required offer awareness or publicity materials pursuant to section 38B(2)(e) of the CO without any authorisation as long as the relevant materials comply with the requirements of the Nineteenth Schedule to the CO ("**Schedule 19**").
37. SEHK intends to amend the Exchange Listing Rules that any announcement that is required to be published by an issuer under the Class Exemption Notice will not require any prior approval of SEHK before publication¹⁶.

¹⁶ See paragraph 63 below for further information.

Question 2

Do you agree:-

(a) that adequate disclosure can be regarded as having been made if an announcement the contents of which are as set out in paragraph 35 above is published by a CO Offeror? and

(b) with the timetable on and the frequency and method of making such disclosures?

(b) Availability of copies of the Paper Prospectus free of charge

38. It is important that a prospective investor has genuine access to a prospectus. Specifically, a prospective investor should have the option of retaining the Paper Prospectus for his own record as a public offer is made solely on the basis of the information set out in the prospectus.

39. We are mindful that some investors may not be able to access all the information contained in an e-Prospectus in the same manner as they would have been able to under a Paper Prospectus. For instance, an investor may have a black-and-white monitor only which means that he will not be able to distinguish colour information. Similarly, an investor with a black-and-white printer will not be able to print colour information.

40. Recognising that some investors may have technological limitations in their computers or other similar electronic mechanisms, we determine that CO Offerors must, as a necessary precaution, make available copies of the Paper Prospectus for collection so that these investors are not disadvantaged and/or prejudiced as a result of the limitations.

41. Accordingly, the SFC will require, as a condition to granting the proposed class exemption, that throughout the Offer Period, copies of the Paper Prospectus be

made available for collection at specified locations, free of charge, upon request by any member of the public.

42. Specified locations mean:-

- a. in the case of a public offer of shares in a company, (i) where some of such company's equity securities are already listed on SEHK, the depository counter of Hong Kong Securities Clearing Company Limited (“**HKSCC**”), the designated branches¹⁷ of the receiving banks¹⁸ specified in the prospectus, if any, and the place of business of the company's approved share registrar¹⁹ in Hong Kong; or (ii) where none of such company's equity securities are listed on SEHK, the depository counter of HKSCC and the designated branches of the receiving banks specified in the prospectus, if any, and the principal place of business of the sponsors²⁰ acting in respect of the application for listing of the shares; or
- b. in the case of a public offer of debentures in a company, the depository counter of HKSCC, the designated branches²¹ of the placing banks specified in the prospectus and the principal place of business of the co-ordinator for the offer specified in the prospectus.

Question 3A

Do you agree that copies of the Paper Prospectus should be made available for collection throughout the Offer Period, free of charge, upon request by any member of the public? If not, please provide suggestions on how to assure that those prospective investors who do not have access to the Internet and those

¹⁷ These designated branches should, to the extent practicable, be evenly distributed within Hong Kong.

¹⁸ Issuers are reminded of their obligations under rules 12.07 and 25.19 of the Main Board Listing Rules and rules 16.12 and 29.21 of the GEM Listing Rules to make sure that there are sufficient copies of the listing document available to the public.

¹⁹ See the definition of an “approved share registrar” in section 2 of the Securities and Futures (Stock Market Listing) Rules.

²⁰ Sponsors are reminded of their obligations under paragraph 5.4(a) of the corporate finance adviser code of conduct (“**CFA Code of Conduct**”) to ensure that there are sufficient prospectuses for distribution.

²¹ See footnote 17 above.

who face technological limitations can obtain copies of the Paper Prospectus before submitting an application.

Question 3B

Do you agree with the locations at which copies of the Paper Prospectus should be made available?

(c) Electronic display

43. Our focus on access is one of the core principles underpinning this Joint Consultation Paper.
44. In our opinion, access to a document is adequate if all of its contents are accessible to all users. In the paper environment, this could be satisfied by requiring a CO Offeror to make available copies of the Paper Prospectus and CO Paper Application Form for collection at the specified locations set out in paragraph 42 above.
45. In the electronic environment, this means that the technology used must permit prospective investors to access and download or print documents for retention easily and quickly. We are of the view that the current methodology and technology HKEx adopts for displaying prospectuses on and downloading prospectuses from the HKEx website and their related navigation menus effectively allow prospective investors to access and download electronic documents. Until electronic media becomes universally accepted in Hong Kong, the electronic environment will need to be supported by making available copies of the Paper Prospectus for collection at specified locations, free of charge, upon request by any member of the public to ensure that all prospective investors (including those without access to the Internet) who have access to copies of the CO Paper Application Form can also access copies of the prospectus, whether in electronic or paper form.

(d) e-Prospectus readily accessible and capable of being downloaded

46. We propose that a CO Offeror who wishes to make a Mixed Media Offer must, throughout the Offer Period, make available for ready²² access and downloading by the public free of charge the e-Prospectus on and from the company's website in addition to the HKEx website. One advantage of this requirement is that the company's website can act as an alternative database in the unlikely event of a failure of the HKEx website or other adverse contingency.

Question 4

Do you agree that ready accessibility to, and the ability to download by the public free of charge, the e-Prospectus on and from the company's website and the HKEx website, together with availability of copies of the Paper Prospectus for collection at specified locations, also free of charge, upon request by any member of the public as discussed in paragraphs 38 to 42 above, are sufficient for access purposes by prospective investors?

(e) Same typeface, format and contents between the Paper Prospectus and the e-Prospectus

47. As discussed in paragraph 30(e) above, an e-Prospectus should use the same typeface, have the same format and contain the same information (and no more information) in the same sequence as the Paper Prospectus²³ except to the extent that any differences²⁴ are permitted or required by SEHK. This ensures legibility of the e-Prospectus; mitigates any potential detriment to investors arising from the asymmetry of information between paper and electronic versions of a document

²² For instance, the e-Prospectus should not be password-protected.

²³ Every document delivered to the Registrar of Companies ("Registrar") under the CO must be capable of being reproduced in a legible form and comply with such other requirements as the Registrar may specify for purposes of securing that documents of the same kind are of a standard form – see s.346(1)(b) and (c) of the CO. Such requirements are specified by the Registrar in the "Requirements for Documents Guidelines", a revised version of which was published on 13 February 2004.

²⁴ Differences that SEHK will require include the inclusion on the face of the e-Prospectus the statements and information contemplated in paragraph 30(g) above and as further discussed in paragraphs 49 to 51 below. Differences that SEHK will permit include the difference in format resulting from the inclusion of the aforesaid statements and information.

and ensures that an investor who applies on the basis of an e-Prospectus is afforded equivalent protections as one who applies under the Paper Prospectus.

(f) Confirmation with SEHK

48. To ensure that the policy consideration discussed in the preceding paragraph is met, we will require the CO Offeror to confirm with SEHK in writing, prior to the commencement of the Offer Period, that the typeface, format and contents of the e-Prospectus are identical to those of the Paper Prospectus except to the extent that any differences are permitted or required by SEHK.

Question 5

Do you anticipate any problems with the requirement to provide a written confirmation to SEHK, prior to the commencement of the Offer Period, that the typeface, format and contents of the e-Prospectus are identical to those of the Paper Prospectus except to the extent that any differences are permitted or required by SEHK? If so, please explain what these may be.

(g) Statements and information to be contained on the face of the e-Prospectus

49. As discussed in paragraphs 38, 44 and 45 above, it is important that there is genuine access to a prospectus. A prospective investor should also have the option of downloading for retention a copy of the e-Prospectus as a public offer is made solely on the basis of the information set out in the prospectus.
50. Accordingly, the SFC will require, as a condition to granting the proposed class exemption, each e-Prospectus to contain, in a prominent place on the face of it and in a clear and legible form, the following statements and information:-

- a. a statement that its contents are identical to those of the Paper Prospectus except to the extent that any differences are permitted or required by SEHK²⁵;
- b. a statement that throughout the Offer Period, copies of the Paper Prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public; and
- c. particulars of the specified locations²⁶.

51. Statements and information will not be considered as prominently displayed if an average member of the investing public is likely to overlook them or will not see them until after he has decided to invest.

Question 6

Do you agree that an e-Prospectus should contain in a prominent place on the face of it the statements and information discussed in paragraph 50 above?

Should any other statement and/or information be included on the face of the e-Prospectus to ensure genuine access?

(h) Statements and information to be contained in the Paper Application Form

52. Regulatory caution also needs to be exercised on the contents of the Paper Application Form. We are of the view that each CO Paper Application Form should display the following statements and information in a prominent place:-

- a. a statement that the e-Prospectus is displayed on the company's website and the HKEx website;
- b. the address of the company's website;

²⁵ This is similar to the requirement under rules 12.11(2)(a)(i), 20.19A(2)(a)(i) and 25.19A(2)(a)(i) of the Main Board Listing Rules and rules 16.04C(a)(i) and 29.21A(a)(i) of the GEM Listing Rules regarding publication of listing documents on CD ROMs.

²⁶ See paragraph 42 above for where specified locations should include.

- c. the address of the HKEx website;
 - d. a statement that throughout the Offer Period, copies of the Paper Prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public;
 - e. particulars of the specified locations; and
 - f. a statement that prospective investors should read the prospectus prior to submitting an application.
53. To facilitate access, CO Paper Application Forms should set out detailed navigation instructions (to the fullest extent known at the time of issue) as to how a prospective investor can access the relevant e-Prospectus on the company's website and the HKEx website respectively.
54. Where an addendum or a replacement prospectus is issued, a CO Offeror should issue revised CO Paper Application Forms distinguishable from the original version. These revised CO Paper Application Forms should indicate in a prominent manner (a) the publication and availability of the addendum or replacement prospectus; (b) the address of the company's website; (c) the address of the HKEx website; (d) a statement that throughout the Offer Period, copies of the replacement prospectus or the original prospectus and the addendum, as the case may be, are made available for collection at specified locations, free of charge, upon request by any member of the public; (e) particulars of the specified locations; and (f) a statement that prospective investors should read the replacement prospectus or the original prospectus as amended and supplemented by the addendum, as the case may be, prior to submitting an application.

Question 7

Do you anticipate any systemic and/or logistical problems with the requirement to publish revised CO Paper Application Forms in the event an addendum or a replacement prospectus is issued? If so, please explain what these may be.

PART C – THE UNIT TRUSTS CODE AND THE REITS CODE

55. For the reasons set out in paragraphs 12 to 22 above, the SFC intends to exempt, by way of a waiver to any CIS Offeror which offers its interests to be listed on SEHK by way of a public offer, from strict compliance with the CIS Accompaniment Requirement provided that specified conditions designed to ensure that the waiver would not prejudice the interests of the investing public are met. As the Proposal will be implemented by way of a waiver granted at the time of the authorisation of the SFC-authorised listed CIS or the relevant offering document, no amendment is required to be made to the Unit Trusts Code or the REITs Code.
56. Details of the specified conditions subject to which a waiver is granted will be set out in the letter of authorisation issued by the SFC. It is expected that these specified conditions will (a) be substantially similar to those conditions to the class exemption proposed to be granted to CO Offerors (with necessary changes being made) and (b) include the requirement that throughout the offer period, the electronic form of the listing document is displayed on the HKEx website and the CIS Offeror's website for access and downloading.

Question 8

Do you agree with the Proposal being implemented in the manner described in paragraphs 55 and 56 above in respect of a CIS Offeror making a public offer of interests in an SFC-authorized listed CIS using the Mixed Media Approach? If not, please explain what your views are and suggest alternative manner(s) in which the Proposal may be implemented for such purposes.

PART D – AMENDING THE EXCHANGE LISTING RULES

57. In addition to the CO requirements as set out in paragraphs 5 and 6 above, a CO Offeror also needs to comply with the Main Board Listing Rules or the GEM Listing Rules, as the case may be, with respect to a public offer of shares in or debentures of a company to be listed on SEHK. Similarly, in addition to compliance with the Unit Trusts Code or the REITs Code, as the case may be, a CIS Offeror also needs to comply with the Main Board Listing Rules with respect to its offer of interests to be listed on SEHK.

Listing Documents must include copies made available in printed form

58. As briefly discussed in paragraph 2(c) above, the Exchange Listing Rules will need to be amended following the implementation of the Proposal.

59. It is intended that the first sentence of each of rules 12.11 and 25.19A of the Main Board Listing Rules will be amended to the effect that “*listing documents published by a new applicant must include copies made available in paper form*”. In other words, it shall no longer be a requirement that all listing documents issued by a new applicant be in paper form and that it suffices if such listing documents include copies made available in paper form.

60. It is also intended that the first sentence of each of rules 16.04C and 29.21A of the GEM Listing Rules will be amended in the same manner as described in the preceding paragraph.

61. The Proposal is also applicable to listed issuers. For example, a listed issuer will be able to rely on the Class Exemption Notice and make an offer to the public of a new class of shares using the Mixed Media Approach.
62. To implement the Proposal in relation to SFC-authorized listed CIS, it is intended that rule 20.19A of the Main Board Listing Rules will be amended to require all listing documents issued by a CIS Offeror to be in printed form or such other format of publication as may be approved by the SFC in compliance with all applicable laws, regulations and rules.

The electronic publication requirement

63. SEHK intends to add a provision in each of Chapters 12 and 25 of the Main Board Listing Rules and Chapters 16 and 29 of the GEM Listing Rules to provide that any announcement that is required to be published by an issuer under the Class Exemption Notice must be published in accordance with rule 2.07C of the Main Board Listing Rules or rules 16.17 and 16.18 of the GEM Listing Rules, as the case may be, and that no prior approval will be required from SEHK before publication.

The formal notice

64. Rules 12.04(3) and 25.17(4) of the Main Board Listing Rules provide that where a formal notice is required to be published in newspapers, it must state, amongst other things, the addresses at which copies of the listing document are available to the public.
65. As a result of the Proposal, SEHK intends to add an explanatory note to each of the abovementioned Main Board Listing Rules such that where a CO Offeror intends to rely on the Class Exemption Notice and make a Mixed Media Offer, the requirement under each of these rules be replaced with the following items in lieu:

- a. a statement that the issuer intends to rely on the Class Exemption Notice and issue a CO Paper Application Form for the shares or debentures without a Paper Prospectus;
- b. a statement that throughout the Offer Period, the e-Prospectus is displayed on the issuer's website and the HKEx website;
- c. a statement that throughout the Offer Period, the e-Prospectus is readily accessible and capable of being downloaded from the issuer's website and the HKEx website by the public free of charge;
- d. the addresses of the issuer's website and the HKEx website;
- e. a statement that throughout the Offer Period, copies of the Paper Prospectus will be made available for collection at specified locations, free of charge, upon request by any member of the public; and
- f. particulars of the specified locations.

66. It is anticipated that rules 16.09(3) and 29.19(3) of the GEM Listing Rules will be amended in the same manner as described in the preceding paragraph.

67. A copy of the proposed amendments to the Exchange Listing Rules is attached at Appendix 1 and we invite discussion from the public thereon.

Question 9

Do you agree that each of the aforementioned Exchange Listing Rules should be amended in the manner described above? Should any other Exchange Listing Rules be amended in light of the Proposal?

PART E – INACCESSIBILITY OF ELECTRONIC LISTING DOCUMENTS FOR DOWNLOADING

68. Where a CO Offeror or CIS Offeror makes a Mixed Media Offer and there occurs a prolonged, contemporaneous inaccessibility of the electronic listing document for downloading from both (a) the HKEx website and (b) the company's website or the CIS Offeror's website, as the case may be, such CO Offeror or CIS Offeror should immediately suspend its Mixed Media Offer, activate an appropriate contingency plan and proceed to issue and/or supply paper application forms together with listing documents published in printed form. The Mixed Media Offer should not resume until such time as the electronic listing document becomes accessible for downloading again from either (a) the company's website or the CIS Offeror's website, as the case may be, or (b) HKEx website. This precautionary measure is necessary to ensure that the fundamental principle that no prospective investor should be given access to an application form without contemporaneous access to the relevant offering document²⁷ is upheld.

69. We are of the opinion that continuous inaccessibility of an electronic listing document for downloading from a website for at least 4 consecutive hours constitutes a prolonged failure for purposes of determining whether suspension of a Mixed Media Offer is necessary.

70. In this regard, sponsors and listing agents are reminded of their obligations under the CFA Code of Conduct²⁸ to put in place sufficient arrangements and resources to ensure that an offer and all matters ancillary thereto are conducted in a "*fair, timely and orderly manner*"²⁹. In particular, they should ensure that (a) there are sufficient prospectuses or offering documents and application forms for distribution; (b) the distribution of prospectuses or offering documents and application forms can be made in a timely and orderly fashion and (c) appropriate

²⁷ See paragraph 11 of this Joint Consultation Paper.

²⁸ The CFA Code of Conduct was published by the SFC in April 2003.

²⁹ See paragraph 5.3 of the CFA Code of Conduct.

contingency plans have been drawn up to deal with any events of disorder or failure which may arise during the public offer period³⁰.

71. In addition, CO Offerors are also reminded of their obligation under the Exchange Listing Rules to make sure that there are sufficient copies of the listing document available to the public³¹. Similarly, agents appointed by CIS Offerors are reminded of their functions under the Exchange Listing Rules to be responsible for the “*overall management of the listing process*” and to ensure that the “*listing process is managed and conducted in a fair, timely and orderly manner*”³².
72. Any CO Offeror or CIS Offeror who suspends a Mixed Media Offer and proceeds with the issuance and/or supply of paper application forms and listing documents published in printed form should provide prospective investors with prompt notification of the suspension.
73. This notification serves to “counter-act” the announcement that is published prior to the issue of the listing document informing prospective investors of the intention of the CO Offeror or CIS Offeror, as the case may be, to make a Mixed Media Offer.
74. Such notification should be communicated by way of (a) an announcement published by the CO Offeror or CIS Offeror, as the case may be, via HKEx-EPS in accordance with the requirements of the Exchange Listing Rules and (b) providing a prominent, clear and legible notice adjacent to where paper application forms are made available to the public.

Question 10A

What are your views on the requirements to:-

(a) suspend a Mixed Media Offer in the event the public cannot download the

³⁰ See paragraphs 5.4(a), (c) and (d) of the CFA Code of Conduct.

³¹ See rules 12.07 and 25.19 of the Main Board Listing Rules and rules 16.12 and 29.21 of the GEM Listing Rules.

³² See rule 20.06(2) of the Main Board Listing Rules.

electronic listing document from both (i) the HKEx website and (ii) the company's website or the CIS Offeror's website, as the case may be; and

(b) promptly notify prospective investors of a CO Offeror's or CIS Offeror's suspension of a Mixed Media Offer?

Question 10B

Do you agree that continuous inaccessibility of an electronic listing document for downloading from the aforementioned websites for at least 4 consecutive hours constitutes a prolonged failure warranting suspension of a Mixed Media Offer?

If not, please specify a period of time which should have lapsed when an electronic listing document cannot be downloaded from such websites before a Mixed Media Offer should be required to be suspended and your reasons therefor.

PART F – PUBLICITY AND DISCLOSURE MATERIALS REFERRING INVESTORS TO AN ELECTRONIC LISTING DOCUMENT

75. The CO and the Securities and Futures Ordinance (“SFO”) set out requirements concerning the form and manner of publication of extracts from or abridged versions of prospectuses and advertisements and provide for authorisation of materials in certain circumstances³³.
76. The guidelines on use of offer awareness and summary disclosure materials in offerings of shares and debentures under the CO (“Guidelines”)³⁴ issued by the SFC in March 2003³⁵ clarified the SFC’s view regarding the treatment of certain types of publicity and disclosure materials issued to the public in Hong Kong in connection with a proposed offer of shares or debentures in Hong Kong by a

³³ See section 38B of the CO and sections 103 and 105 of the SFO.

³⁴ See paragraphs 3 to 6 of the Guidelines.

³⁵ The Guidelines were issued by the SFC pursuant to section 399 of the SFO.

prospectus which is required to be registered pursuant to section 38D or 342C of the CO.

77. In light of the Proposal, it is anticipated that where a CO Offeror wishes to make a Mixed Media Offer, references in the Guidelines to locations at which copies of a prospectus are expected to or will become available³⁶ should be interpreted to include the items set out in paragraph 65 above for consistency purposes.
78. In addition, as prospectuses and application forms can be issued using different media of communication following the implementation of the Proposal, the SFC expects that references to the CO Accompaniment Requirement in the Guidelines³⁷ will be interpreted in a manner consistent with the class exemption³⁸.
79. Furthermore, where any offer awareness material issued upon or after registration of a prospectus and/or summary disclosure material is in electronic form and such material refers a reader to an e-Prospectus, such material must be published in such a manner that an average member of the public will unlikely confuse it with the prospectus.
80. We will continue to allow links from any electronic offer awareness material issued upon or after registration of a prospectus and/or summary disclosure material to the address of the HKEx website as it is unlikely to blur the distinction between prospectus information, on which the offer is made, and marketing materials, provided that such offer awareness or summary disclosure material sets out detailed navigation instructions (to the fullest extent known at the time of issue) as to where a copy of the e-Prospectus can be found.
81. In the context of a public offer of shares in or debentures of a company to be listed on SEHK, authorisation for registration of the prospectus is administered by

³⁶ See paragraphs 4.02(b), 5.01(b) and 6.03(a) of the Guidelines.

³⁷ See paragraphs 4.02(h), 5.01(h) and 6.03(h) of the Guidelines.

³⁸ The Guidelines should not be interpreted in any manner that would conflict with the provisions of any applicable law or regulatory requirements – see paragraph 1.06 of the Guidelines.

SEHK³⁹ and all publicity materials released in Hong Kong relating to such offer must be approved by SEHK before release⁴⁰. In such cases, the Guidelines are subject to the Exchange Listing Rules and SEHK's prevailing practice from time to time⁴¹.

82. SEHK is supportive of the Guidelines and is in fact currently applying equivalent practices where publicity and/or disclosure materials are proposed to be used in cases where SEHK administers authorisation for registration of the relevant prospectuses.

83. SEHK confirms its continuing support for the Guidelines including the manner in which they should be interpreted following the implementation of the Proposal.

Question 11

Do you agree with our approach on how the Guidelines should be interpreted following implementation of the Proposal? If not, please explain what your views are.

PART G – ROLE OF SPONSORS IN A PUBLIC OFFER

84. The SFC is mindful that the Proposal may cast doubts in the minds of sponsors as to the additional measures they need to implement to ensure that the requirements⁴² of the CFA Code of Conduct are complied with in an initial public offer using the Mixed Media Approach.

85. The SFC is of the view that the wording of the CFA Code of Conduct is sufficiently broad to permit CO Paper Application Forms to be issued with an e-

³⁹ The SFC's functions under sections 38B(2A)(b), 38D(3), 38D(5), 342C(3) and 342C(5) of the CO, to the extent they relate to any prospectus which is concerned with any shares in or debentures of a company that have been approved for listing on SEHK, have been transferred to SEHK by order of the Chief Executive in Council pursuant to section 25 of the SFO – see rule 11A.03 of the Main Board Listing Rules and rule 15.03 of the GEM Listing Rules.

⁴⁰ See rules 9.08 and 24.08 of the Main Board Listing Rules / rules 12.10 and 28.08 of the GEM Listing Rules.

⁴¹ See paragraph 2.04 of the Guidelines.

⁴² See paragraphs 5.3 and 5.4 of the CFA Code of Conduct.

Prospectus and cater for the obligation to provide those investors who request with copies of the Paper Prospectus free of charge. Therefore, the SFC does not think it is necessary to amend the CFA Code of Conduct by expressly providing for the kind of additional measures a sponsor should implement (for instance, by prescribing in detail contingency plans that should be put in place in the event of a concurrent failure of the company's website and the HKEx website).

86. The SFC believes that a less prescriptive approach, which better reflects its regulatory philosophy, offers sponsors more flexibility when determining the manner in which they fulfil their responsibilities under the CFA Code of Conduct, taking into account the nature of the shares or debentures being offered, the nature of the new applicant and the nature of the persons likely to consider acquiring them. The SFC would however emphasize that a less prescriptive approach should not involve a relaxation of the standards of behaviour and should not result in a reduction in the level of investor protection.

Question 12

Do you consider it appropriate to give sponsors the flexibility to determine the manner in which they fulfil their responsibilities under the CFA Code of Conduct in light of the Proposal?

PART H – INVESTOR EDUCATION

87. We recognise that the Proposal presents challenges and opportunities as there is greater risk, where a CO Offeror or CIS Offeror makes a Mixed Media Offer, that a prospective investor may not access the relevant listing document before he submits his application.
88. Notwithstanding, the proposed changes are in our view a positive development and should not be denigrated as potentially dangerous merely because the Proposal may place greater responsibility on investors for their investment decisions and research as we do not believe that accessibility to information is

necessarily sacrificed. We remain committed to promoting a more efficient and competitive capital market without compromising investor protection, thereby supporting Hong Kong's continuing role as an international financial centre.

89. We believe that investor education is essential in ensuring investor protection and reducing the risk described in paragraph 87 above. As such, we will continue to make investor education in this respect a policy priority. For instance, the SFC intends to remind investors, through its dedicated investor education website (www.invested.hk) and other investor education initiatives, of the importance of accessing, reading and understanding all offer documents, whether published in printed or electronic form, before making an investment decision and submitting an application form. SEHK also intends to post investor education materials on the HKEx website, for example by way of e-learning modules, to introduce investors to public offers that adopt the Mixed Media Approach.

Draft Rule Amendments

The underlined parts represent the proposed amendments to the Exchange Listing Rules

Proposed Amendments to the Main Board Listing Rules

12.04 Where a formal notice is published in the newspaper, whether pursuant to rule 2.07C or otherwise, it must be not less than 12 centimetres by 16 centimetres (4 inches by 6 inches approximately) in size and must state at least the following:-

- (1) ...
- (3) the address(es) at which copies of the listing document (if any) are available to the public;

Note: Where the issuer intends to rely on the Class Exemption Notice to make a Mixed Media Offer referred to in rule 12.11A(1), reference is made to the requirements set out in rule 12.11A(2).

...

12.11 Listing documents published by a new applicant must include copies made available in paper form. All listing documents published by a new applicant must be in printed form...

...

Publication of electronic form prospectus and printed application form

12.11A (1) Where an issuer intends to rely on section 9A of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap.32L) (“Class Exemption Notice”) and issue a printed application form for its equity securities with an electronic form prospectus displayed on certain websites (“Mixed Media Offer”), it must satisfy all the conditions set out in section 9A(3) of the Class Exemption Notice. Where in compliance with the conditions set out in the Class Exemption Notice or otherwise in connection with the making or suspension of a Mixed Media Offer the issuer is required to publish any announcement, such announcement must be published in accordance with rule 2.07C. No clearance of such announcement by the Exchange is required before publication.

- (2) Where the issuer intends to offer equity securities to the public in reliance upon the Class Exemption Notice referred to in rule 12.11A(1), the requirement in rule 12.04(3) above shall be replaced by the following information:
- (a) a statement that the issuer intends to rely on the Class Exemption Notice referred to in rule 12.11A(1) and issue a printed application form for its equity securities without a paper form prospectus;
 - (b) a statement that throughout the offer period, the electronic form prospectus is displayed on the issuer's website and the Exchange's website;
 - (c) a statement that throughout the offer period, the electronic form prospectus is readily accessible and capable of being downloaded by the public free of charge from the issuer's website and the Exchange's website;
 - (d) the addresses of the issuer's website and the Exchange's website;
 - (e) a statement that throughout the offer period, copies of the paper form prospectus will be made available for collection at specified locations, free of charge, upon request by any member of the public; and
 - (f) particulars of the specified locations referred to in the note below.

Note: "Specified locations" means:

- (1) In the case of a listed issuer, the depositary counter of HKSCC, the designated branches of the receiving banks specified in the prospectus, if any, and the place of business of the issuer's approved share registrar in Hong Kong.
- (2) In the case of a new applicant, the depositary counter of HKSCC, the designated branches of the receiving banks specified in the prospectus, if any, and the principal place of business of the sponsors acting in respect of the application for listing of the equity securities.

...

20.19A All listing documents issued by an applicant must be in paper form or such other form of publication as may be approved by the Commission in compliance with all applicable laws, regulations and rules. However, aAn applicant may, to the extent permitted under applicable laws and

regulations and the applicant's own constitutional documents, make additional copies available to the public...

...

25.17 In every other case a formal notice stating the following information must be published in accordance with rule 2.07C not less than two clear business days before dealings commence and, where it is also published in the newspapers, whether pursuant to rule 2.07C or otherwise, such formal notice must be not less than 12 centimetres by 16 centimetres (4 inches by 6 inches approximately) in size:-

(1) ...

(4) the address(es) at which copies of the listing document (if any) are available to the public;

Note: Where the issuer intends to rely on the Class Exemption Notice to make a Mixed Media Offer referred to in rule 25.19B(1), reference is made to the requirements set out in rule 25.19B(2).

...

25.19A Listing documents published by a new applicant must include copies made available in paper form. All listing documents published by a new applicant must be in printed form...

...

Publication of electronic form prospectus and printed application form

25.19B (1) Where an issuer intends to rely on section 9A of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap.32L) ("Class Exemption Notice") and issue a printed application form for its debt securities with an electronic form prospectus displayed on certain websites ("Mixed Media Offer"), it must satisfy all the conditions set out in section 9A(3) of the Class Exemption Notice. Where in compliance with the conditions set out in the Class Exemption Notice or otherwise in connection with the making or suspension of a Mixed Media Offer the issuer is required to publish any announcement, such announcement must be published in accordance with rule 2.07C. No clearance of such announcement by the Exchange is required before publication.

(2) Where the issuer intends to offer debt securities to the public in reliance upon the Class Exemption Notice referred to in rule 25.19B(1),

the requirement in rule 25.17(4) above shall be replaced by the following information:

- (a) a statement that the issuer intends to rely on the Class Exemption Notice referred to in rule 25.19B(1) and issue a printed application form for its debt securities without a paper form prospectus;
- (b) a statement that throughout the offer period, the electronic form prospectus is displayed on the issuer's website and the Exchange's website;
- (c) a statement that throughout the offer period, the electronic form prospectus is readily accessible and capable of being downloaded by the public free of charge from the issuer's website and the Exchange's website;
- (d) the addresses of the issuer's website and the Exchange's website;
- (e) a statement that throughout the offer period, copies of paper form prospectus will be made available for collection at specified locations, free of charge, upon request by any member of the public; and
- (f) particulars of the specified locations referred to in the note below.

Note: "Specified locations" means the depositary counter of HKSCC, the designated branches of the placing banks specified in the prospectus and the principal place of business of the co-ordinator for the offer specified in the prospectus.

Proposed Amendments to the GEM Listing Rules

16.04C Listing documents published by a new applicant must include copies made available in paper form. All listing documents published by a new applicant must be in printed form...

...

Publication of electronic form prospectus and printed application form

16.04D (1) Where an issuer intends to rely on section 9A of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap.32L) (“Class Exemption Notice”) and issue a printed application form for its equity securities with an electronic form prospectus displayed on certain websites (“Mixed Media Offer”), it must satisfy all the conditions set out in section 9A(3) of the Class Exemption Notice. Where in compliance with the conditions set out in the Class Exemption Notice or otherwise in connection with the making or suspension of a Mixed Media Offer the issuer is required to publish any announcement, such announcement must be published in accordance with rules 16.17 and 16.18. No clearance of such announcement by the Exchange is required before publication.

(2) Where the issuer intends to offer equity securities to the public in reliance upon the Class Exemption Notice referred to in rule 16.04D(1), the requirement in rule 16.09(3) below shall be replaced by the following information:

(a) a statement that the issuer intends to rely on the Class Exemption Notice referred to in rule 16.04D(1) and issue a printed application form for its equity securities without a paper form prospectus;

(b) a statement that throughout the offer period, the electronic form prospectus is displayed on the issuer’s website and the GEM website;

(c) a statement that throughout the offer period, the electronic form prospectus is readily accessible and capable of being downloaded by the public free of charge from the issuer’s website and the GEM website;

(d) the addresses of the issuer’s website and the GEM website;

(e) a statement that throughout the offer period, copies of the paper form prospectus will be made available for collection at specified locations, free of charge, upon request by any member of the public; and

(f) particulars of the specified locations referred to in the note below.

Note: “Specified locations” means:

(1) In the case of a listed issuer, the depositary counter of HKSCC, the designated branches of the receiving banks specified in the prospectus, if any, and the place of business of the issuer’s approved share registrar in Hong Kong.

(2) In the case of a new applicant, the depositary counter of HKSCC, the designated branches of the receiving banks specified in the prospectus, if any, and the principal place of business of the sponsors acting in respect of the application for listing of the equity securities.

...

16.09 A formal notice required for publication on the GEM website in accordance with rules 16.07 or 16.08 must state at least the following:-

- (1) ...
- (3) the address(es) at which copies of the listing document (if any) are available to the public;

Note: Where the issuer intends to rely on the Class Exemption Notice to make a Mixed Media Offer referred to in rule 16.04D(1), reference is made to the requirements set out in rule 16.04D(2).

...

29.19 In every other case, a formal notice stating the following information must be published on the GEM website in accordance with Chapter 16 not less than 2 clear business days before dealings commence:-

- (1) ...
- (4) the address(es) at which copies of the listing document (if any) are available to the public;

Note: Where the issuer intends to rely on the Class Exemption Notice to make a Mixed Media Offer referred to in rule 29.21B(1), reference is made to the requirements set out in rule 29.21B(2).

...

29.21A Listing documents published by a new applicant must include copies made available in paper form. All listing documents published by a new applicant must be in printed form...

...

Publication of electronic form prospectus and printed application form

29.21B (1) Where an issuer intends to rely on section 9A of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap.32L) (“Class Exemption Notice”) and issue a printed application form for its debt securities with an electronic form prospectus displayed on certain websites (“Mixed Media Offer”), it must satisfy all the conditions set out in section 9A(3) of the Class Exemption Notice. Where in compliance with the conditions set out in the Class Exemption Notice or otherwise in connection with the making or suspension of a Mixed Media Offer the issuer is required to publish any announcement, such announcement must be published in accordance with rules 16.17 and 16.18. No clearance of such announcement by the Exchange is required before publication.

(2) Where the issuer intends to offer debt securities to the public in reliance upon the Class Exemption Notice referred to in rule 29.21B(1), the requirement in rule 29.19(4) above shall be replaced by the following information:

(a) a statement that the issuer intends to rely on the Class Exemption Notice referred to in rule 29.21B(1) and issue a printed application form for its debt securities without a paper form prospectus;

(b) that throughout the offer period, the electronic form prospectus is displayed on the issuer’s website and the GEM website;

(c) that throughout the offer period, the electronic form prospectus is readily accessible and capable of being downloaded by the public free of charge from the issuer’s website and the GEM website;

(d) the addresses of the issuer’s website and the GEM website;

(e) a statement that throughout the offer period, copies of the paper form prospectus will be made available for collection at specified locations, free of charge, upon request by any member of the public; and

(f) particulars of the specified locations referred to in the note below.

Note: “Specified locations” means the depositary counter of HKSCC, the designated branches of the placing banks specified in the prospectus and the principal place of business of the coordinator for the offer specified in the prospectus.

**COMPANIES ORDINANCE (EXEMPTION OF
COMPANIES AND PROSPECTUSES FROM
COMPLIANCE WITH PROVISIONS)
(AMENDMENT) NOTICE 2008**

(Made by the Securities and Futures Commission under sections 38A and
342A of the Companies Ordinance (Cap. 32))

1. Commencement

This Notice shall come into operation on _____ 2008.

2. Section added

The Companies Ordinance (Exemption of Companies and Prospectuses
from Compliance with Provisions) Notice (Cap. 32 sub. leg. L) is amended by
adding –

**“9A. Exemptions from requirement to issue
form of application for shares or
debentures with prospectus**

(1) Where –

- (a) it is proposed to offer any shares in or debentures
of a company incorporated under the Ordinance
by a prospectus issued generally;
- (b) the shares or debentures have been approved by
a recognized exchange company for listing on a
stock market it operates; and
- (c) a form of application for the shares or debentures
in printed form is issued,

then, subject to the conditions specified in subsection (3), the offeror is
exempted from compliance with the requirements of section 38(3) of the
Ordinance to the extent that the offeror may issue the printed application
form without a paper form prospectus.

(2) Where –

- (a) it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong by a prospectus issued generally;
- (b) the shares or debentures have been approved by a recognized exchange company for listing on a stock market it operates; and
- (c) a form of application for the shares or debentures in printed form is issued,

then, subject to the conditions specified in subsection (3), the offeror is exempted from compliance with the requirements of section 342(3) of the Ordinance to the extent that the offeror may issue the printed application form without a paper form prospectus.

(3) The conditions referred to in subsections (1) and (2) are that –

- (a) during the period of 5 business days prior to the commencement of the offer period, adequate disclosure is made to the public that a printed application form will be issued without a paper form prospectus;
- (b) throughout the offer period, copies of the paper form prospectus relating to the offer are made available for collection at specified locations, free of charge, upon request by any member of the public;
- (c) throughout the offer period, the electronic form prospectus relating to the offer is displayed on –
 - (i) the company's website; and
 - (ii) the designated website of the recognized exchange company;
- (d) throughout the offer period, the electronic form prospectus is readily accessible and capable of

being downloaded by the public free of charge from –

- (i) the company's website; and
 - (ii) the designated website of the recognized exchange company;
- (e) the typeface, format and contents of the electronic form prospectus are identical to the paper form prospectus, except to the extent that any differences are permitted or required by the recognized exchanged company;
- (f) the offeror shall, prior to the commencement of the offer period, confirm with the recognized exchange company in writing that the typeface, format and contents of the electronic form prospectus are identical to the paper form prospectus, except to the extent that any differences are permitted or required by the recognized exchange company;
- (g) the electronic form prospectus is to contain, in a prominent place on the face of it, a statement in a clear and legible form –
 - (i) that its contents are identical to the paper form prospectus, except to the extent that any differences are permitted or required by the recognized exchange company;
 - (ii) that throughout the offer period, copies of the paper form prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public; and

- (iii) of the particulars of the specified locations; and
- (h) the printed application form is to state in a prominent place –
 - (i) that the electronic form prospectus is displayed on the company’s website and the designated website of the recognized exchange company;
 - (ii) the address of the company’s website;
 - (iii) the address of the designated website of the recognized exchange company;
 - (iv) that throughout the offer period, copies of the paper form prospectus are made available for collection at specified locations, free of charge, upon request by any member of the public;
 - (v) the particulars of the specified locations; and
 - (vi) that prospective investors should read the prospectus prior to submitting an application.

(4) For the purposes of subsection (3)(a), adequate disclosure is regarded as having been made during the period of 5 business days prior to the commencement of the offer period if –

- (a) an announcement is published in accordance with the requirements of the relevant listing rules on at least one of those 5 business days; and
- (b) the announcement contains the following information –

- (i) that the offeror proposes to offer shares in or debentures of a company by a prospectus issued generally;
- (ii) that the shares or debentures are the subject of an application to a recognized exchange company for listing;
- (iii) that the offeror intends to rely on this section and issue a printed application form for the shares or debentures without a paper form prospectus;
- (iv) that throughout the offer period, the electronic form prospectus relating to the offer will be displayed on the company's website and the designated website of the recognized exchange company;
- (v) that throughout the offer period, the electronic form prospectus will be readily accessible and capable of being downloaded by the public free of charge from the company's website and the designated website of the recognized exchange company;
- (vi) the address of the company's website;
- (vii) the address of the designated website of the recognized exchange company;
- (viii) that throughout the offer period, copies of the paper form prospectus relating to the offer will be made available for collection at specified locations, free of

charge, upon request by any member of the public; and

(ix) the particulars of the specified locations.

(5) The condition specified in subsection (3)(d) is regarded as not having been complied with if, for 4 consecutive hours or more within the offer period, the electronic form prospectus relating to the offer is not readily accessible and capable of being downloaded by the public free of charge from –

(a) the company's website; and

(b) the designated website of the recognized exchange company.

(6) In this section –

“business day” (營業日) means a day other than –

(a) a public holiday;

(b) a Saturday; and

(c) a gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);

“designated website” (指定網站), in relation to a recognized exchange company, means the website of the recognized exchange company designated by the recognized exchange company for the purposes of this section;

“offer period” (要約期), in relation to an offer of shares in or debentures of a company by a prospectus, means the period during which the shares or debentures are offered;

“offeror” (要約人), in relation to an offer of shares in or debentures of a company by a prospectus, means any company that makes the offer;

“paper form prospectus” (招股章程印本) means the printed version of a prospectus which –

- (a) complies with the relevant listing rules of the recognized exchange company concerned;
- (b) complies with Part II of the Ordinance, in the case of a company incorporated under the Ordinance, or Part XII of the Ordinance, in the case of a company incorporated outside Hong Kong; and
- (c) without limiting the generality of paragraph (b), has been registered under section 38D of the Ordinance, in the case of a company incorporated under the Ordinance, or section 342C of the Ordinance, in the case of a company incorporated outside Hong Kong;

“printed application form” (印刷本申請表格), in relation to an offer of shares in or debentures of a company, means the form of application for the shares or debentures in printed form;

“relevant listing rules” (《有關上市規則》) means the listing rules applicable to the stock market referred to in subsection (1)(b) or (2)(b), as the case may be;

“relevant stock market” (有關證券市場) means the stock market referred to in subsection (1)(b) or (2)(b), as the case may be;

“specified locations” (指明地點) means –

- (a) in the case of an offer of shares in a company by a prospectus –
 - (i) where any of the shares in the company are already listed on the relevant stock

market, the depositary counter of Hong Kong Securities Clearing Company Limited, the designated branches of the receiving banks specified in the prospectus, if any, and the place of business of the company's approved share registrar in Hong Kong; or

(ii) where none of the shares in the company are listed on the relevant stock market, the depositary counter of Hong Kong Securities Clearing Company Limited, the designated branches of the receiving banks specified in the prospectus, if any, and the principal place of business of the sponsors acting in respect of the application for listing of the shares; or

(b) in the case of an offer of debentures of a company by a prospectus, the depositary counter of Hong Kong Securities Clearing Company Limited, the designated branches of the placing banks specified in the prospectus and the principal place of business of the co-ordinator for the offer specified in the prospectus.

(7) For the purposes of subsections (3), (4), (5) and (6), references to "company" include a company incorporated outside Hong Kong except where the context otherwise requires."

Martin WHEATLEY
Chief Executive Officer,
Securities and Futures Commission
2008

Explanatory Note

The Securities and Futures Commission may, by notice published in the Gazette under sections 38A(2) and 342A(2) of the Companies Ordinance (Cap. 32) (“the Ordinance”), exempt any class of companies from the requirements of sections 38(3) and 342(3) of the Ordinance, respectively. Section 38(3) of the Ordinance provides that it shall not be lawful to issue any form of application for shares in or debentures of a company unless the form is issued with a prospectus which complies with section 38 of the Ordinance. Section 342(3) of the Ordinance provides that it shall not be lawful to issue any form of application for shares in or debentures of a company incorporated outside Hong Kong unless the form is issued with a prospectus which complies with Part XII of the Ordinance.

2. This Notice exempts an offeror company which issues a printed application form for shares in or debentures of a company (“relevant company”) from the requirement to issue it together with a paper form prospectus. The exemption is subject to certain conditions. One of the conditions is that, throughout the offer period, an electronic form prospectus relating to the offer is to be displayed on the relevant company’s website and the website of the recognized exchange company which has approved the shares or debentures for listing.