
JOINT POLICY STATEMENT

5 November 2007**Pilot Scheme Regarding the Posting of a Web Proof Information Pack on the HKEx Website Prior to the Issue of a Prospectus in IPO Cases****Executive Summary**

The Stock Exchange of Hong Kong Limited (the “**Exchange**”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (“**HKEx**”), and the Securities and Futures Commission (the “**SFC**”) jointly announce the launch of a pilot scheme (“**Pilot Scheme**”) applicable to all new listing applicants (“**Applicant(s)**”). Pursuant to the Pilot Scheme, an Applicant is required to post an information pack in the nature of a near-final draft prospectus (“**Web Proof Information Pack**” or “**WPIP**”) on the HKEx or Growth Enterprise Market (“**GEM**”) websites, as the case may be (collectively the “**HKEx Website**”), prior to the issue of its prospectus. The Pilot Scheme is also applicable to information in the nature of a near-final draft offering circular in respect of the public offering of SFC-authorized collective investment schemes (“**CIS**”), including SFC-authorized real estate investment trusts (“**REITs**”), applying for listing on the Exchange (“**CIS listing applicants**”). The purpose of this posting requirement is to enable members of the public to receive at or around the same time substantially the same information that the Applicants ordinarily make available to the institutional investors (“**Institutional Investors**”) for “bookbuilding” purposes by way of a red herring prospectus or pathfinder prospectus or other materials of similar nature.

The rollout date of the Pilot Scheme is 1 January 2008 (i.e., the Pilot Scheme will apply to Applicants whose applications for listing are tabled to the Listing Committee on or after 1 January 2008 and to CIS listing applicants that receive the SFC’s approval-in-principle letter on or after 1 January 2008). The SFC and the Exchange will review the operation of the Pilot Scheme three months after launch, and inform the market of their findings when appropriate.

The rationale for requiring the WPIP-posting at an earlier stage in the listing process is to address the apparent inequality of information dissemination as between institutional and retail investors in initial public offering cases, and assist in reducing media speculation, the monitoring of which can be very time-consuming for both the Exchange, the SFC and for Applicants.

To assist Applicants and sponsors in preparing the WPIP, we have set out in Attachment 1 sample disclaimer and warning statements to be inserted in a WPIP for reference purposes. Attachment 2 sets out the recommended contents layout of a WPIP, and Attachment 3 sets out the related logistical arrangements for posting a WPIP on the HKEx Website.



To assist Applicants in meeting their WPIP-posting obligations, we have set up a Frequently Asked Questions section on the HKEx Website and the SFC's website at www.sfc.hk.

Applicants and their advisers are encouraged to contact the relevant staff of the Exchange's IPO Transactions Department or, in the case of CIS listing applicants, the relevant staff of the Investment Products Department of the SFC if they envisage any difficulties in complying fully with the requirements described in this Joint Policy Statement.

Purpose

1. The Stock Exchange of Hong Kong Limited (the "**Exchange**"), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited ("**HKEx**"), and the Securities and Futures Commission (the "**SFC**") jointly announce the launch of a pilot scheme ("**Pilot Scheme**") applicable to all new listing applicants ("**Applicant(s)**"). Pursuant to the Pilot Scheme, an Applicant is required to post an information pack in the nature of a near-final draft prospectus conforming with the contents requirements in paragraphs 19 to 22 ("**Web Proof Information Pack**" or "**WPIP**") on the HKEx or Growth Enterprise Market ("**GEM**") websites, as the case may be (collectively the "**HKEx Website**"), prior to the issue of its prospectus in accordance with the relevant provisions of the Companies Ordinance ("**CO**"). The background, rationale, detailed description of the posting requirements of the WPIP on the HKEx Website ("**WPIP-posting**"), the rollout date, the regulatory process going forward and other related matters are set out in this Joint Policy Statement below.
2. The Pilot Scheme is applicable to the public offering of SFC-authorized collective investment schemes ("**CIS**"), including SFC-authorized real estate investment trusts ("**REITs**"), applying for a listing of their interests on the Exchange ("**CIS listing applicants**"). As such, terms or references used in this Joint Policy Statement applicable to Applicants shall have the following meanings in the case of CIS listing applicants, where applicable:

Terms or references used in this Joint Policy Statement	Corresponding meanings where CIS listing applicants are concerned
Applicants	CIS listing applicants conducting a public offering in Hong Kong
Company(ies)	CIS
Post-Hearing Letter that sets out the comments of the Listing Committee	Approval-in-principle letter issued by the SFC
Prospectus(es)	Offering circular(s)
Securities	Interests in CIS
Share(s)	Unit(s)



Shareholder(s)

Unitholder(s)

Sponsor(s)

Listing agent(s)

Registration of prospectus under the
COAuthorisation of the offering circular under
the Securities and Futures Ordinance
("SFO")

Background

3. We understand that Applicants and their sponsors ordinarily commence the “pre-marketing” or “investor education” stage of offering after receiving from the Exchange a letter setting out the Listing Committee’s comments and any conditions to the listing approval (“**Post-Hearing Letter**”). In the case of CIS listing applicants, we understand that this process ordinarily commences after the CIS listing applicants and their listing agents have received the SFC’s approval-in-principle letter. The practice may involve the distribution of pre-deal research reports by members of the underwriting syndicate to professional and institutional investors under the placing tranche (“**Institutional Investors**”).
4. Following pre-marketing, the underwriters commence the “bookbuilding” process, pursuant to which the underwriters approach potential Institutional Investors to obtain non-binding expressions of interest to purchase securities in the offering at various prices. This bookbuilding process is usually conducted contemporaneously with a management roadshow. To assist in the bookbuilding and management roadshow process, Applicants generally issue and distribute to the Institutional Investors materials commonly known as a “red-herring” or “pathfinder” prospectus, which in essence is a near-final draft prospectus conventionally only omitting pricing and related financial and offer size information (the “**Red Herring**” which expression includes materials or documents of similar nature by whatever names they are called).
5. The prospectus which contains all pertinent information relating to the offering and the accompanying share application form will be issued at a later stage after it is registered by the Registrar of Companies in Hong Kong. A large majority of initial public offerings allow an offer period of three and a half days between the issue of the prospectus and the close of offer. It is during this period that the general public investors have first access to the prospectus before making an investment decision.
6. The Exchange has experience in requesting two new listing applicants to post certain information packs which are akin to the WPIP on the HKEx Website prior to the issue of their respective prospectuses so as to provide the public with access to relevant information about these applicants at an earlier stage of their respective listing processes. The feedback drawn from such experience was positive and supportive.



7. Building on such experience and in view of the general positive feedback from the market, we consider it appropriate to take forward the proposal regarding WPIP-posting such that it could be applied across the board to all new listing applicants. For these purposes, we have jointly consulted a select group of market practitioners from the sponsor and legal communities in August this year to solicit their views on the proposed mechanism of requiring earlier dissemination of near-final prospectus information through the HKEx Website to mirror the distribution of the Red Herring to the Institutional Investors. The responses from this select group consultation indicated overwhelming support for the proposed policy direction culminating in the present Joint Policy Statement. The respondents' views received also enabled us to understand the principal concerns of the market about WPIP-posting which we have taken into account when adopting the present policy.

Rationale for WPIP-posting

8. The rationale for requiring WPIP-posting at an earlier stage in the listing process is to address the apparent inequality of information dissemination as between institutional and retail investors in initial public offering cases. This not only helps ensure a more level playing field for all investors but also bring the initial public offering regime in Hong Kong more in line with international practices.
9. If, in reviewing the WPIP, members of the public identify any matter which bears upon the quality of disclosure in the WPIP, they can draw the regulators' attention to the matter. Where we consider such allegation to warrant further investigation, we may require the Applicant concerned to address or clarify such matter before the issue of its prospectus.
10. Further, the posting of the WPIP at an earlier stage in the listing process may assist in reducing media speculation or market rumours, the monitoring of which can be very time-consuming for both the Exchange, the SFC and for Applicants.
11. In view of the rationale behind WPIP-posting, we do not consider a WPIP posted pursuant to the Exchange's or the SFC's "request for posting" letter to constitute a prospectus or an advertisement under the CO or the SFO. Further discussion on the regulatory status of the WPIP is set out in the section headed "Regulatory Status of WPIP" in paragraphs 27 to 31 below.

Particulars of WPIP-posting

Timing requirement for WPIP-posting

12. The obligation for WPIP-posting commences upon the Applicant, via its sponsor, receiving a "request for posting" from the Exchange. This "request for posting" is expected to be issued around the same time as the Exchange sends out the Post-Hearing Letter and requires that the Applicant must submit the WPIP to the Exchange for posting on the HKEx Website on a business day at the earliest practicable time, and in any event not later than the earlier of:



- (a) the time at which the Applicant first distributes any Red Herring to the Institutional Investors; and
- (b) the time at which the first meeting (whether held physically or by video conference or any other media) with the Institutional Investors commences for “bookbuilding” purposes, irrespective of whether any Red Herring has been distributed (“**Prescribed Timing Requirement for WPIP-posting**”).

In the case of CIS listing applicants, the “request for posting” will be issued by the SFC and is expected to be issued around the same time as the SFC issues the approval-in-principle letter.

13. Each sponsor must provide the Exchange with a confirmation at the time it submits to the Exchange the WPIP for posting on the HKEx Website that the Prescribed Timing Requirement for WPIP-posting has been complied with.

Changes to the WPIP

14. We note the Applicants’ and sponsors’ current practice of circulating supplemental materials and revisions to the Red Herring to reflect what they consider (typically in consultation with their legal advisers) to be material changes. Such supplemental materials and revisions include but, without limitation, any circulation by way of a replacement of the original Red Herring or an addendum to the original Red Herring.
15. In view of the policy rationale for WPIP-posting as set forth in paragraphs 8 to 11 above, we require that, whenever the Applicant makes any changes to the Red Herring and distributes to the Institutional Investors any materials to reflect such changes, the Applicant must submit for posting on the HKEx Website the same materials that the Applicant makes available to the Institutional Investors. Where, pursuant to the foregoing, the Applicant has revised the WPIP by replacing the WPIP after its initial posting on the HKEx Website, the revised WPIP must be blacklined to show the changes made to the previously posted WPIP.

No pre-vetting or approval of the WPIP by the Exchange or SFC is required

16. The WPIP and subsequent changes made thereto do not require pre-vetting or clearance from the Exchange or the SFC prior to posting. Obviously, such changes would still need to be cleared by the Exchange (and the SFC in the case of CIS listing applicants) prior to bulk-printing of the final prospectus. This is consistent with the current practice whereby Applicants rely on their judgment (typically in consultation with their sponsors and legal advisers) in determining whether material issues raised by the Listing Committee and the Listing Division (and also the SFC in the case of CIS listing applicants) have been addressed and reflected in the Red Herring before their publication.

Language of the WPIP

17. The WPIP, when posted on the HKEx Website, must be issued in the English language and accompanied at the same time by a Chinese translation.



18. We note that under the current practice the Chinese translation of the prospectus is ordinarily finalised shortly before bulk print of the prospectus. In view of the requirement to post a Chinese translation of the WPIP, Applicants and sponsors are advised to make appropriate arrangements to ensure that the posting of a Chinese translation of the WPIP on the HKEx Website is made within the Prescribed Timing Requirement for WPIP-posting.

Contents Requirements of a WPIP

19. The preparation of the WPIP must follow the following principles:

- (a) it should contain essentially the same information about the Applicant as that provided to the Institutional Investors under the Red Herring, except for information which relates to the placing tranche only;
- (b) it must not contain any information about the offering, price or means to subscribe for shares in the Applicant until a prospectus duly registered in accordance with the relevant provisions of the CO is published;
- (c) it must not contain any information regarding the proposed offering or other information which may result in the WPIP being construed as a prospectus or offering advertisement under the CO regime or falling under the prohibition described in section 103 of the SFO; and
- (d) there must be appropriate disclaimer and warning language to advise viewers of the legal status of the WPIP. Sample disclaimer and warning statements are set out in **Attachment 1** (in Part 1 and Part 2 respectively) for reference only and are not intended to be prescriptive. Subject to the inclusion of the minimum warnings prescribed below, Applicants and sponsors are free to adopt their own versions of disclaimer and warning statements to cater for individual needs. It is important that appropriate disclaimer and warning statements appear on any subsequently revised WPIP and/or addendum to the original WPIP. Such disclaimer and warning statements must state clearly to the effect that:
 - (i) the WPIP is not an offer to sell or an invitation to induce/solicit an offer to acquire, purchase or subscribe for securities in any jurisdiction;
 - (ii) the WPIP is not an offering document, nor is it in final form and is therefore subject to change;
 - (iii) no investment decision should be based on the information contained in the WPIP;
 - (iv) there is no guarantee that there will be an offering;
 - (v) any eventual offer will be subject of a duly registered prospectus, being the only document on which investors should rely.



20. Given that the WPIP is intended for the benefit of the public investors, it should generally follow the contents layout and format of the prospectus which will be ultimately registered by the Registrar of Companies in Hong Kong for ease of reference. The recommended contents layout of WPIP is set out in [Attachment 2](#).
21. We do not intend to require the WPIP to include comfort letters of experts, as we believe that this may present difficulties given that the relevant professional bodies may have strict policies as to when comfort should be provided.
22. Where Applicants and sponsors are concerned that WPIP-posting may violate securities laws in overseas jurisdictions in which the proposed offering is intended to be marketed, it is recommended that Applicants and sponsors ensure that there is sufficient warning language on the WPIP to make clear that the WPIP is intended for access by persons in Hong Kong only. A sample web page containing an acceptance statement from viewers is set out in Part 2 of Attachment 1 for reference only.

On-line facilities for WPIP-posting

23. We note concerns regarding the risk of the WPIP violating securities laws of overseas jurisdictions in view of the ease and speed with which on-line data can be disseminated to a widespread audience. We also recognise that a WPIP is likely to be sizable and on-line viewing of an electronic version of the WPIP may not be ideal. Taking these factors into consideration, we take the view that although the WPIP must be printable and text-searchable, it must be a read-only document which is not capable of being copied or edited electronically.

Withdrawal of the WPIP from the HKEx Website

24. In the event that the Applicant's offering does not proceed as expected, the WPIP including any supplemental materials or revised proof(s) thereof, if any, will remain on the HKEx Website until the earlier of the Applicant giving notice to the Exchange to withdraw its listing application (and in the case of CIS listing applicants, the CIS listing applicant giving notice to the SFC to withdraw its authorisation application) and the lapse of the relevant application. Upon the occurrence of such events, the Exchange will withdraw all WPIP (including any supplemental documents) relating to the Applicant from the HKEx Website as soon as practicable.
25. Where the Applicant's offering proceeds to listing, the Applicant must re-submit through the HKEx's electronic publication system ("**HKEx-EPS**") all the WPIP materials to the Exchange for publication on the Latest Listed Company Information section of the Main Board website or the Latest Company Announcement section of the GEM website, as the case may be. During the Pilot Scheme, such re-posting will involve the Applicant re-posting the WPIP materials through HKEx-EPS prior to the posting of the formal notice. It is contemplated that when the HKEx-EPS is enhanced to incorporate WPIP-posting, no re-posting of the WPIP materials to the relevant sections of the HKEx Website will be required.

*Logistical Arrangements*

26. During the implementation of the Pilot Scheme, WPIP-posting will not be via HKEx-EPS. The logistical arrangements for WPIP-posting are described in detail in [Attachment 3](#).

Regulatory Status of WPIP*Liabilities under the CO and the SFO*

27. From the responses received pursuant to the select group consultation, we note respondents' concerns regarding the legal status of the WPIP and the potential liabilities attaching thereto. For the purpose of clarifying the legal status of the WPIP, we have jointly obtained a legal opinion from a London Q.C. ("**Counsel**") to advise on whether a WPIP posted on the HKEx Website:

- (a) constitutes a prospectus within section 2(1) of the CO;
- (b) constitutes an "advertisement" or an "extract from or abridged version of a prospectus" (section 38B(1)(a) of the CO); or constitutes an "advertisement in relation to a prospectus or proposed prospectus" (section 38B(1)(b) of the CO); and/or
- (c) falls within section 103 of the SFO which states that it is an offence for a person to issue, or have in his possession for the purposes of issue, an advertisement, invitation, or document which to his knowledge is or contains an invitation to the public to enter into an agreement to acquire or subscribe for securities (other than as a registered prospectus).

28. Counsel was asked to opine on the above issues based on the following given facts:

- (a) the WPIP contains no information on the price of the securities, or on the total number of securities available, or in relation to the means to subscribe for securities in the company;
- (b) there is no means by which members of the public are able to subscribe for securities until a registered prospectus is published;
- (c) there are prominent disclaimer and warning statements on the WPIP and/or the HKEx Website to state clearly that:
 - (i) the WPIP is for information only and is not an offering document, nor is it in final form and is therefore subject to change;
 - (ii) no investment decision should be based on the information contained in the WPIP;
 - (iii) there is no guarantee that there will be an offering;



- (iv) any eventual offer will be subject of a duly registered prospectus, being the only document on which investors should rely;
 - (v) no offer can be made for the securities unless and until a registered prospectus is published; and
- (d) the purpose of WPIP-posting is to disseminate information about a listing applicant and its business at an earlier stage in the listing process in compliance with a requirement of the Exchange in pursuance of a policy aimed at addressing the inequality of information dissemination as between institutional and retail investors in initial public offering cases.

29. Based on the given facts, it is the opinion of Counsel that the WPIP:

- (a) does not constitute a “prospectus” under section 2(1) of the CO;
- (b) does not constitute an “advertisement” or an “extract from or abridged version of a prospectus” (section 38B(1)(a) of the CO); nor does it constitute an “advertisement in relation to a prospectus or proposed prospectus” (section 38B(1)(b) of the CO). This opinion is given having regard to the legislative intent of the prohibitions in section 38B(1)(a) and (b) of the CO which is to ensure that the investing public are not being invited or enticed or induced by a document which is less than a full prospectus unless authorised under section 38B(2A)(b) of the CO or section 105 of the SFO; and
- (c) does not constitute an offence under section 103 of the SFO.

30. Having considered the policy rationale for the Exchange’s requirement regarding WPIP-posting, the SFC is of the view that any WPIP posted on the HKEx Website pursuant to the request for posting issued by the Exchange will not constitute a prospectus or an extract from or abridged version of a prospectus or an advertisement in relation to a prospectus or proposed prospectus within sections 2 and 38B, respectively of the CO nor a prohibited advertisement within section 103(1) of the SFO.

Approval of the SFC regarding Modification of the Listing Rules

31. The Exchange notes that the imposition of the requirement on Applicants to post the WPIP on the HKEx Website constitutes a modification of Main Board Rule 2.07C(1)(b)(ii) and GEM Rule 16.17(2)(b) and is intended to have general effect. The SFC has granted its consent under Main Board Rule 2.04 and GEM Rule 2.07 for such modification. This modification is intended to be an interim measure pending formal rule amendments to codify the practice of WPIP-posting.



Rollout Date of the Pilot Scheme

32. The rollout date of the Pilot Scheme is 1 January 2008 (i.e., the Pilot Scheme will apply to Applicants whose applications for listing are tabled to the Listing Committee on or after 1 January 2008 and to CIS listing applicants that receive the SFC's approval-in-principle letter on or after 1 January 2008.) The SFC and the Exchange will review the operation of the Pilot Scheme three months after launch and inform the market of their findings when appropriate.

The Regulatory Process Going Forward

33. In furtherance of the Pilot Scheme, we contemplate the following regulatory process to codify the WPIP-posting requirement:
- (a) assuming no major defect is identified in the operation of the Pilot Scheme, we will proceed to formally codify the WPIP-posting requirement by making necessary amendments to the Listing Rules; and
 - (b) appropriate amendments to the statutory regime would be proposed to clarify/address the issues of criminal and civil liability in connection with the posting of the WPIP on the HKEx Website pursuant to prescribed procedures similar to those stipulated under the Pilot Scheme. Subject to public consultation and the legislative process, the amendments would most likely be included as part of the package to take forward the proposals set out in the Consultation Paper on Possible Reforms to the Prospectus Regime in the Companies Ordinance published in August 2005 and in the subsequent consultation conclusions published in September 2006.

Frequently Asked Questions

34. To assist Applicants in meeting their WPIP-posting obligations, we have set up a **Frequently Asked Questions** section on the HKEx Website and the SFC's website at www.sfc.hk. Initially this section has included some of the comments of the respondents received during the select group consultation process. This section will, where necessary, be updated from time to time.

Early Consultation with the IPO Transactions Department of the Exchange or the Investment Products Department of the SFC

35. Applicants and their advisers are encouraged to contact the relevant staff of the Exchange's IPO Transactions Department or, in the case of CIS listing applicants, the relevant staff of the Investment Products Department of the SFC if they envisage any difficulties in complying fully with the requirements described in this Joint Policy Statement.