

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please make your comments by replying to questions below against proposed changes discussed in the Consultation Paper at the hyperlink:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2010122.pdf>

Where there is insufficient space provided for your comments, please attach additional pages

A. Presentation

1. Do you prefer the style in Appendix I or in Appendix II?

- Appendix I
 Appendix II

Please explain your reasons.

We think Appendix II is more appropriate. The drafting is already very clear, plain English adds very little. Indeed, sometimes it can lead to ambiguity as to whether the Issuer or Guarantor is being referred to.

2. Do you agree that the expression “debt issues to professional investors only” should replace “selectively marketed securities” to more clearly indicate the intended scope of the Rules?

- Yes
 No

Please explain your reasons.

See 3 below.

B. Eligibility Requirements

3. Do you agree that professional investors should be defined by reference to the SFO as proposed?

- Yes
 No

Please explain your answer.

We do not agree that the definition of professional investors should be restricted to the definition under the SFO. It is very important that the definition of professional investors also covers equivalent exempt investors or public offer exemptions under other jurisdictions in which the offering of debt securities is made.

Cross-border offerings are particularly common for non-retail offers. Such offerings will be structured to comply with the laws of each relevant jurisdiction into which the offer is made. Therefore, the prescribed definition under the SFO may well not be suitable for jurisdictions other than Hong Kong into which the offer is made. In our view, what is key

is that the offer is not a 'public offer' in each jurisdiction into which it is being made.

We therefore propose a new term "Non-Public Offering", the definition of which would be: "an offering of securities to (a) "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that Ordinance; or (b) any person to whom the securities may be offered or sold in Hong Kong, by means of any document, in circumstances which do not result in the document being a "prospectus" as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance; or (c) any other person to whom the securities may be offered or sold in accordance with a relevant exemption from the public offer regulations in such jurisdiction outside Hong Kong.

4. Do you agree with the eligibility standards in proposed Rules 37.03 to 37.25?

Yes except as stated below

No

If not, please explain how you would change them

	Generally, there seems to be no eligibility requirements for trusts.
37.06	Please clarify in the drafting whether an Issuer must include two audit reports and the associated financial statements (i.e. three years) or the latest audit report and two years of financial statements in the Offering Circular.
37.18(c) and 37.23(c)	Please clarify what is meant by "eligible".
37.20	We suggest this be deleted. The inclusion of adjustment events in the terms and conditions is a commercial matter between the Issuer and the Bondholders. While most, if not all, convertible bond issues include adjustment events in the Conditions, it seems unnecessary for the Exchange to require these to be included.
37.22 to 37.25	We propose that the warrant listing rules should be expanded to cover subscription warrants sold to 'professionals' i.e. warrants over shares.
37.26 and 37.29	Please specify that Appendix 1C is not applicable.

5. Should applicants be required to deposit their issues into overseas settlement systems to further ensure that they will not be acquired by retail investors in the secondary markets?

Yes

No

Please explain your answer.

Professionally targeted issues are currently commonly settled through the CMU system in Hong Kong. Indeed, to date, all offshore CNY denominated instruments have been

cleared through the CMU due to the difficulty offshore clearing systems have in settling CNY trades/payments. We therefore think that requiring overseas settlement systems would seriously impede the development of the CNY bond market in Hong Kong. We are not aware of any issues or public concerns that have arisen relating to retail acquisition of securities trading within CMU. In our view, the platform on which trading occurs is more important than the system through which securities are cleared.

6. Should there be a minimum board lot size for products?

- Yes. The minimum board lot size should be
- HK\$1,000,000
 - HK\$500,000
 - Other amount (*please specify*): HK\$_____
- No

Please explain your answer.

The trading of "professionally marketed" debt issues is undertaken on an OTC basis and not over the Exchange. Indeed, no such debt issues should be admitted to trading on the Exchange, as that would give retail investors access to trading. Therefore, we consider that a concept of a minimum board lot is irrelevant for Chapter 37 securities.

C. Listing Approval

7. Do you agree with the proposed listing approval authority discussed in paragraph 31 of the Consultation Paper?

- Yes
- No

If not please explain how you would revise the approval authority.

D. Listing Documents

8. Do you agree with the proposed content requirements in proposed Rules 37.26 to 37.33?

- Yes except as stated below
- No

Please explain your answer.

37.31 By adding a positive statement to this effect, the HKSE is limiting distribution to SFO professionals only. We consider such a statement to be (a) excessively restrictive (please see Comment 3 above) as it would prevent distribution to professionals in other markets who may not comply with the

SFO definition and (b) redundant given the selling restrictions that are already set out in the Offering Document (see “Subscription and Sale” section). Practically all of the transactions that are listed under Chapter 37 are structured so that prospectuses or registration statements are not required in each of the jurisdictions in which they are sold. If the intention is that the standard Hong Kong selling restriction satisfies this requirement, its inclusion will not be an issue. Please clarify whether anything else is intended.

9. Should we retain any of the current disclosure requirements we propose to delete?

Yes

No

If you answered yes please provide details.

Please consider keeping Rule 29.06 or include “pricing supplement” in the second sentence of Rule 37.26. The current rule requires the pricing supplement to be read together with the listing document or any supplementary listing document to provide the investor with the full terms and conditions of the issue. This rule makes sense and no explanation is provided as to why it is deleted. The drafting note for the proposed Rule 37.26 suggests that the rule reflects the existing Rule 29.06, but the pricing supplement is not referred to in the proposed rule.

Please consider whether the documents set out in Rules 37.35(f) to (g) and (i) could be submitted post receipt of the eligibility letter. This may prevent unnecessary delay in the listing application process given that corporate authorisations may be obtained post launch to ratify the debt issue prior to settlement. The issue of the final listing approval could be stipulated in the eligibility letter to be conditional upon the submission of all corporate authorisations required.

E. Application Vetting

10. Do you agree with our proposal to continue vetting applications for compliance with listing eligibility standards?

Yes

No

Please explain your answer.

We consider that it is important that the basic eligibility requirements continue to be checked for compliance by the Exchange.

11. Do you agree with our proposal to vet listing documents to ensure they include responsibility and disclaimer statements in prescribed forms, statements limiting distribution to professional investors and any other information required by the Exchange?

- Yes
 No

Please explain your answer.

See 10 above.

12. Do you agree with our proposal not to vet the other detailed contents of listing documents?

- Yes
 No

Please explain your answer.

Given these transactions are marketed to professional investors, we consider that statutory disclosure standards and market practice should ensure sufficient information is provided to investors.

F. Application Procedures

13. Do you agree with the proposals in respect of application procedures?

- Yes except as stated below
 No

If you do not agree please indicate how you would change them.

37.32 and 37.39	Please provide that any requirements (including those set out in Rule 2.07C4(b)) for a English and Chinese language notice to be published be disapplied.
37.36-38	Please could you confirm the procedure for listing after the issue of the Eligibility Letter. What form does the confirmation referred to in Rule 37.37 take? Will there be a listing approval letter? Existing Rule 37.22 explicitly provides that a preliminary listing document may be circulated prior to confirmation by the Exchange that it has no further comments on the listing document. It would be helpful if this could be retained in the Listing Rules.
37.38	Please qualify "any event" with the words "material and adverse"? As currently drafted this rule may result in inconsequential information being provided to the Exchange.
37.42	Same comment as above. How will the Exchange confirm that the pricing supplement may be issued?

G. Continuing Obligations

14. Do you agree with the proposed continuing obligations set out in proposed Rules 37.44 to 37.57?

Yes except as stated below

No

Please explain your answer.

37.48-50	<p>We suggest there be a clear distinction between information that the Bondholders should be notified of by announcement and information that the Exchange needs to be aware of for the administration of the bond issue. Under the terms of the Bonds, the Issuer must notify Bondholders of any early redemption prior to maturity.</p> <p>As regards announcements of purchases, Rule 13.31(1) requires announcement of any purchase of a listed debt security. We suggest that Chapter 37 securities should be excluded from this. Disclosure will be made on cancellation and issuers must consider their obligations under Rule 37.47(b). Failing which, guidance as in paragraph 7.1 of the current Listing Agreement would be helpful. Generally, there has been confusion in the market between paragraph 7 of the Listing Agreement and Rule 13.31(1), clarity on the position on purchases of Chapter 37 securities would be appreciated.</p>
37.49	<p>We do not think that the Exchange needs to be informed of these events. The Bondholders will be notified under the terms of the Bonds of any such replacement or amendment and there are protections in the Bonds to ensure that the Bondholders must agree to any replacement or amendment if it materially affects their interests. We do not agree that the Exchange need impose conditions for the change as this is a commercial matter between the Issuer and the Bondholders. In addition, it is unclear from the drafting how long the Issuer needs to wait before it can conclude the Exchange does not intend to impose any conditions. As noted in paragraph 23 of the Consultation Paper other exchanges do not require consent to be obtained prior to changes being made. The amended rule still effectively seems to require consent. Given the profile of the investor base, we do not consider they need the protection of the Exchange in these circumstances.</p>
37.50	<p>We would propose that an Issuer also informs the Exchange of any early redemption prior to maturity, so that the Exchange can delist the securities.</p>

15. Should we retain any of the current continuing obligations that we propose to delete?

Yes. Please provide details of the requirements

<p>Please consider the applicability of some of the requirements of Rule 37.35 to states and supranationals.</p> <p>Modification of Appendix 4. New inserted words should refer to “professional investors” instead of “professionals”</p>
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Modification of Appendix 7E 4(2) note 4.3 and Appendix 7E 12(1) (reflected in proposed Rule 37.53). Please consider making clear that investors should have access to financial information of the Issuer/Guarantor on a periodic basis. If the Issuer (or its Guarantor) is a private company, it is not likely to have an obligation to publish or have any annual accounts or interim reports which can be forwarded to the SEHK per the proposed rule. Financial information of the Issuer (or Guarantor) will be important for investors to make an informed decision regarding their investment.

No

H. Other Issues

16. Should eligibility under the GEM Rules be limited to companies already listed on GEM?

Yes

No

Please explain your answer.

Given the limited requirements for listing on the Main Board, we do see why any company (including those listed on GEM) would list Chapter 37 securities on GEM.

17. Should any other provisions in the Listing Rules be included in Chapter 37?

Yes. Please provide details of the requirements

Rule 10.06(3) prevents companies buying back shares and then immediately re-issuing them. Unfortunately this rule also catches companies that wish to conduct liability management exercises, including exchange offers for convertible bonds. Such transactions may involve an Issuer buying back a convertible bond in association with a commitment by an investor to purchase a new convertible bond. Often in these circumstances the convertible bond option is 'out of the money' with the instrument trading by reference to its credit. The Exchange has frequently issued waivers in these circumstances permitting bond exchange offers. Given that the proposed Chapter 37 does not require an Issuer to notify the Exchange about repurchases, would the Exchange consider issuing some guidance explaining that Rule 10.06(3) should not apply to convertible bonds sold to "professional investors" in accordance with Chapter 37 and approval from the Exchange for such transactions does need not be sought?

No

18. Should any other consequential changes be made to the Rules?

Yes. Please provide details of the requirements

See comment in Section 14 regarding Rule 13.31(1) and comment in Section 19 regarding Rule 10.06(3).

No

19. Are there any other comments you would like to make?

Yes

No

If your answer is "Yes" please elaborate your views.

Given the positive impact we think the proposals in the Consultation Paper will have on listings of debt securities on the Exchange, we would also suggest that the Exchange discusses with the SFC the removal of the need for waivers regarding compliance with Part XV of the SFO. An issuer may become a "listed corporation" within the meaning of the SFO after its bonds are listed on the Hong Kong Stock Exchange under Chapter 37, and hence may be required to comply with Part XV of the SFO even when its shares are not listed and traded on the Hong Kong Stock Exchange. Waivers are typically granted by the SFC in such situation as a matter of course, but each waiver application incurs extra time and significant costs (including waiver application fees). We would therefore propose that the Exchange and the SFC reformulate the rules such that an issuer with its bonds listed pursuant to Chapter 37 does not need to make further waiver application to the SFC. We consider that the current waiver process is an unprecedented (compared to other jurisdictions) process, which is burdensome and expensive for issuers. It therefore acts as a disincentive to listing on the Hong Kong Stock Exchange. We do not think that removal of this requirement will have any impact on the quality of disclosure in the market or prejudice the investing public in any way.