

## HKEX GUIDANCE LETTER

HKEX-GL18-10 (June 2010) (Updated in July 2013, March 2014 and July 2018)

Summary	
Subject	Guidance on publicity materials and e-IPO advertisements
Listing Rules	Main Board Rule 9.08 GEM Rule 12.10
Related Publications	<ul style="list-style-type: none"><li>Guidelines on Use of Offer Awareness and Summary Disclosure Materials in Offerings of Shares and Debentures under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) issued by the Securities and Futures Commission (“SFC”) in March 2003 (“Offer Awareness Guidelines”)</li><li>Guidelines for Electronic Public Offerings issued by the SFC in April 2003 (“ePO Guidelines”)</li><li>HKEX-GL98-18 – Guidance on Disclosure in Listing Documents</li><li>Sections 38B(1) and (2) of Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) (“CWUMPO”)</li><li>Sections 103(1), (2) and (3), and 105 of Securities and Futures Ordinance (Cap. 571) (“SFO”)</li></ul>
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**Important note:** *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Department on a confidential basis for interpretation of the Listing Rules or this letter.*

### 1. Purpose

- 1.1 This letter sets out our principles for approving publicity materials relating to an issue of securities that require our consent before they can be released; and contains relevant guidance on offer awareness materials and electronic initial public offering (e-IPO) advertisements.

### 2. Relevant Rules and Laws

#### *The Listing Rules*

- 2.1 Under Main Board Rule 9.08 (GEM Rule 12.10), publicity materials relating to an issue of securities by a new applicant must comply with all statutory requirements and can only be released after they are reviewed by the Exchange. Non-compliance can result in delay of the applicant’s listing timetable. **(Updated in July 2018)**

2.2 Main Board Rules 9.08(1) and (2) (GEM Rules 12.10(1) and (2)) set out publicity materials and certain documents that do not require the Exchange's prior review. ***(Updated in July 2018)***

2.3 ***(Deleted in July 2018)***

#### ***CWUMPO (Updated in March 2014)***

2.4 Section 38B(1) of the CWUMPO makes it an offence to publish (a) by way of ***advertisement*** any extract from or abridged version of a prospectus; or (b) an advertisement relating to a prospectus or proposed prospectus, relating to shares or debentures of a company whether incorporated in or outside Hong Kong.

2.5 Section 38B(2) of the CWUMPO sets out a number of exceptions to the requirements under Section 38(B)(1) of the CWUMPO. ***(Updated in July 2018)***

#### ***SFO***

2.6 Section 103 of the SFO makes it an offence, unless SFC's authorisation for issue is obtained under section 105 of the SFO, to issue any advertisement, invitation or document which to the issuer's knowledge is or contains an invitation to the public to enter into or offer to enter into an agreement to deal in securities.

2.7 Sections 103(2) and (3) of the SFO contain a number of exceptions to the general prohibition. Section 103(3)(a)(iii) exempts a publication falling under section 38B(2) of the CWUMPO.

#### ***Other Regulatory Guidelines***

2.8 The Offer Awareness Guidelines were issued by the SFC in March 2003 to clarify SFC's view regarding the treatment of certain types of materials which are issued to the public in Hong Kong in connection with an offer of shares or debentures made by a prospectus. ***(Updated in July 2018)***

2.9 The ePO Guidelines were issued by the SFC in April 2003 to provide guidance to persons who offer electronic public offering services. ***(Updated in July 2018)***

### **3. Guidance**

3.1 ***(Deleted in July 2018)***

3.2 The overriding principle is that material information of an applicant should be included in and released in the form of a prospectus to enable an investor to make an informed assessment of its activities, assets and liabilities, financial position, management and prospects. ***(Updated in July 2018)***

3.3 Accordingly, we adopt a purposive approach to assess whether publicity materials relate to an issue of securities and whether to consent to them.

- 3.4 Even though certain publicity materials may on their face appear to be for the purpose of promoting an applicant, its products or business, we normally consider that they relate to an issue of securities and incline not to consent to their publication if they are:
- (a) not commensurate with the particular nature of the applicant's business, products, customers or markets;
  - (b) presented in a manner which makes them likely to be read together with information related to the public offering; and/ or
  - (c) likely to condition the market ahead of the issue of the prospectus and affect perceptions of the upcoming offer. **(Updated in July 2018)**
- 3.5 In assessing whether the information in question may condition the market, we will consider all relevant circumstances, including the nature of the applicant's business, its advertising history, the form of the publicity materials and the way they are presented.
- 3.6 Applicants and sponsors should ensure compliance with the requirements under the Listing Rules regarding "publicity materials" and CWUMPO, SFO and other statutory requirements regarding "advertisements", especially where materials are issued shortly before or during the offer period, and regardless of the form of the materials (e.g. advertisements, news articles or editorials based on interviews with the applicant's senior management and designed to look like objective stories, etc.). **(Updated in July 2018)**
- 3.7 We will take strict measures against unauthorised publicity materials. These may include suspending vetting until all unauthorised publicity materials are withdrawn and delaying the listing timetable so that the influence of unauthorised promotion has "cooled-off".
- 3.8 Paragraphs 3.9 to 3.14 below set out the specific circumstances on whether the Exchanges' consent is required prior to the publication of certain materials under Main Board Rule 9.08 (GEM Rule 12.10). **(Updated in July 2018)**

#### ***Offer Awareness Materials***

- 3.9 Pursuant to the Offer Awareness Guidelines, offer awareness materials are publicity materials that, among other things, (a) strictly limit to communicating procedural and administrative information regarding the proposed offer; and (b) do not promote the issuer of the shares, debentures or the offer. The Guidelines also set out criteria for determining offer awareness materials. Offer awareness materials may be released without any vetting by the SFC. **(Updated in July 2018)**
- 3.10 Offer awareness materials under the Offer Awareness Guidelines may overlap with those which are publicity materials relating to an issue of securities under the Listing Rules. If so, both the Listing Rules and the Offer Awareness Guidelines must be complied with. **(Updated in July 2018)**

3.11 *(Deleted in July 2018)*

***e-IPO Advertisements***

3.12 Applicants may advertise directly or through their e-IPO service providers the electronic methods for subscription of IPO shares. We normally consider these e-IPO advertisements to be offer awareness materials and do not require the Exchange's consent before release. ***(Updated in July 2018)***

3.13 However, applicants and sponsors should ensure the e-IPO advertisements:

- (a) fully meet the criteria for offer awareness materials under the Offer Awareness Guidelines;
- (b) follow the ePO Guidelines; and
- (c) the relevant guidance in HKEX-GL98-18 regarding listing document cover is followed if there are images, photos or pictures in the e-IPO advertisement. We will not object to e-IPO advertisements using the same design used on prospectus covers. ***(Updated in July 2018)***.

3.14 *(Deleted in July 2018)*

3.15 *(Deleted in July 2018)*

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