

Chapter 35

DEBT SECURITIES

TAP ISSUES, DEBT ISSUANCE PROGRAMMES AND ASSET-BACKED SECURITIES

35.01 This Chapter sets out the additional requirements in relation to tap issues, debt issuance programmes and asset-backed securities. It does not apply to debt issues to professionals only.

Tap issues

35.02 Where application is made by an issuer for listing of a tap issue, the Exchange will normally apply the same requirements for each subsequent tranche as would apply to the initial tranche. However, where such an application is contemplated, the Exchange should be consulted at the earliest opportunity as to the requirements which will apply.

35.03 Any listing document issued in connection with a tap issue must specify the maximum nominal amount of debt securities which could be issued.

Debt issuance programmes

Application procedure and requirements

35.04 The application for listing must cover the maximum amount of securities which may be in issue and listed at any one time under the programme. If the Exchange approves the application, it will admit to listing all securities which may be issued under the programme within 12 months after the publication of the listing document subject to the Exchange:—

- (1) being advised of the final terms of each issue;
- (2) receiving and approving for publication any supplementary listing document that may be appropriate;
- (3) receiving confirmation that the securities in question have been issued; and
- (4) receiving any listing fees payable.

35.05 The final terms of each issue which is intended to be listed (“the pricing supplement”) must be submitted in writing to the Exchange as soon as possible after they have been agreed and in any event no later than 2:00 p.m. on the business day before listing is required to become effective. The pricing supplement may be submitted by the issuer, or one or more firms designated by the issuer so long as in the latter case the Exchange has received a letter of appointment signed by a duly authorised officer of the issuer.

35.06 The pricing supplement relating to an issue, when read together with the listing document and any supplementary listing document in respect of the programme, must provide an investor with the full terms and conditions of that issue.

35.07 An application in the form set out in Appendix 5C need not be submitted for issues made after the first issue in any 12 month period after publication of the listing document.

35.08 For an issue in excess of the notified maximum or made more than 12 months after publication of the listing document, a further application (and new listing document) must be submitted to the Exchange.

Listing document

- 35.09 The listing document must contain the general terms and conditions applicable to all securities that may be issued and listed under the programme.
- 35.10 In addition to those documents mentioned in paragraph 53(5) of Part C of Appendix 1, the following must be published on the Exchange's website and the issuer's own website for as long as issues are made under the programme:
- (1) the current listing document;
 - (2) any supplementary listing document published since the current listing document was published; and
 - (3) any pricing supplements issued since the current listing document was published.
- 35.11 The listing document must include a statement that the documents required by paragraph 53(5) of Part C of Appendix 1 (documents on display) are published on the Exchange's website and the issuer's own website throughout the life of the programme.

Asset-backed securities

Qualifications for listing

- 35.12 The following additions and exceptions to the qualifications for listing apply to issuers of asset-backed securities:
- (1) the issuer must normally be a single purpose undertaking. (The requirement to be a single purpose undertaking does not preclude the addition to the pool of further assets during the life of the securities. Furthermore, further classes of debt securities may be issued by the undertaking, backed by separate pools of similar assets);
 - (2) where an issue of asset-backed securities is backed by equity securities, those securities must be listed on a stock exchange or traded on another regulated and regularly operating open market; the equity securities must represent non-controlling interests in and must not confer legal or management control of the companies issuing the equity securities; where options or conversion rights relating to equity securities are used to back an issue, this paragraph applies in respect of the securities resulting from the exercise of those options or rights; and
 - (3) there must be a trustee or other appropriate independent party representing the interests of the holders of the asset-backed securities and with the right of access to appropriate information relating to the assets.

Listing document

- 35.13 The listing document must include the following additional information:
- (1) a description of the assets used to back the asset-backed securities, giving at least the following (where relevant):
 - (a) the geographical location or legal jurisdiction of the financial assets;
 - (b) the pool size and any specified minimum or maximum;
 - (c) the types of loans;

- (d) the maturity of loans;
- (e) the size of loans;
- (f) the loan to value ratio at origination where the loans in the pool are themselves secured or backed by other assets, if a valuation was available;
- (g) the principal lending criteria and extent to which loans may be included which do not meet these criteria;
- (h) an indication of significant representations and warranties given to the issuer relating to the loan pool;
- (i) the method of origination;
- (j) any loan substitution rights;
- (k) any rights or obligations to make further advances;
- (l) the principal insurance policies, including the names, and where appropriate, the addresses and a brief description of the providers. Any concentration with one insurer should be disclosed if it is material to the transaction;
- (m) where the assets consist of debt obligations of 10 or fewer borrowers or where a borrower accounts for 10% or more of the assets, the information required in respect of each borrower will be the same as that which would be required if it were itself the issuer of the securities to be listed unless it is already listed on a stock exchange or the debt obligations are guaranteed by an entity listed on a stock exchange, in which case only the name, address, country of incorporation, nature of business and name of the exchange on which its securities are listed must be disclosed in respect of the issuer and the guarantor (if applicable). The relationship with the guarantor, if any, must be included. The terms and conditions of the loans or debt securities must be stated, except where the assets are debt securities listed on a stock exchange; and
- (n) where the assets consist of debt obligations of more than 10 borrowers, or where a borrower accounts for less than 10% of the assets the general characteristics and descriptions of the borrowers must be given;

however, due to the nature of the transaction, some of the above requirements may not be appropriate and additional information may be required. In such cases, the Exchange should be consulted at an early stage;

- (2) a description of the material risks together with any methods whereby they are sought to be addressed;
- (3) a description of the method and a statement of the date of the sale, transfer or assignment of the assets or of any rights in the assets to the issuer;
- (4) a description of the structure of the transaction and explanation of the flow of funds including:
 - (a) how the cash flow from the assets is expected to meet the issuer's obligations to holders of the securities, in particular, information on any credit enhancements, an indication of where material potential liquidity shortfalls are expected to occur and the availability of any liquidity supports and indication of provisions to cover interest shortfall risks;

- (b) an indication of any investment parameters for the investment of temporary liquidity surpluses;
 - (c) how payments are collected from borrowers of the loans in the pool;
 - (d) the order of priority of payments made by the issuer, where relevant to the holders of the class of debt securities in question;
 - (e) the fees payable by the issuer out of cash flow received (for example, fees to the administrator);
 - (f) details of any other arrangements upon which payments of interest and principal to investors are dependent;
 - (g) information on whether or not there is any intention to accumulate surpluses in the issuer; and
 - (h) details of any subordinated debt finance;
- (5) the name, address and brief description of the originator of the financial assets backing the issue;
- (6) the name, address and information to demonstrate the suitability of the administrator together with a summary of the administrator's responsibilities and a summary of the provisions relating to termination of the appointment of the administrator and whether or not an alternative administrator has been appointed, and
- (7) the names and addresses and brief description of:
- (a) any swap counterparties and any providers of other material forms of enhancement; and
 - (b) the banks with which the main accounts relating to the transaction are held.

35.14 If an issue is guaranteed as to principal and interest by a listed company or a company that is suitable for listing, the Exchange may be prepared to accept a shorter form of disclosure as regards the additional information required under this Chapter in the listing document if it is satisfied that any information omitted is not material from the point of view of the investors likely to be concerned.

In a case when the information required with respect to each borrower will be the same as that which would be required if it were itself the issuer of the securities to be listed, and where the issuer of the underlying securities or borrower of the underlying loans does not cooperate with the preparation of the listing document, then, as an alternative to the declaration required under paragraph 2 of Part C of Appendix 1, a declaration in the following form is acceptable:

"This document, for which the [issuer]/[directors of the issuer collectively and individually] accept[s] full responsibility, includes particulars given in compliance with the Rules Governing the Listing of Securities on GEM of The Stock Exchange of Hong Kong Limited for the purpose of giving information with regard to the issuer. Subject as set out below, the [issuer]/[directors], having made all reasonable enquiries, confirm[s] that to the best of [its]/[their] knowledge and belief the information contained in this document is accurate and complete in all material respects and not misleading or deceptive, and there are no other matters the omission of which would make any statement herein or this document misleading.

The information relating to [the underlying issuer(s)/borrower(s)] has been accurately reproduced from the information published by that [issuer] [borrower]. So far as the issuer [and the directors] is [are] aware and/or is [are] able to ascertain from information published by [the underlying issuer(s)/ borrower(s)] no facts have been omitted which would render the reproduced information misleading”.

Accounts waiver

- 35.15 If no other requirement for the preparation of annual reports and accounts exists, the Exchange may consider an application for a waiver of the requirements set out in rules 31.37 to 31.47 in respect of annual reports and accounts. If a waiver is granted, the terms and conditions of the issue must include a requirement for the issuer to provide written confirmation to the trustee (or equivalent), on an annual basis, that no event of default or other matter which is required to be brought to the trustee’s attention has occurred.