

Client Alert

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Hong Kong Stock Exchange Publishes Rule Changes to Complement SFC's New Sponsor Regime

By Stephen Birkett and Heidi Pang

On July 23, 2013, the Hong Kong Stock Exchange published changes to its Listing Rules which complement the SFC's new regime regarding sponsors. Both sets of changes will come into effect on October 1, 2013, except for two of the Exchange's Listing Rule changes (indicated below) which will be effective from April 1, 2014. (For more on the SFC's revised sponsor regime, please see our Client Alert of May 2012 at this link). The Exchange's key rule changes are as follows:

APPOINTMENT OF SPONSORS

As foreshadowed in the SFC's consultation conclusions on this topic, the amended Listing Rules will require sponsors to be appointed under a written engagement agreement, and to provide the Exchange with a copy as soon as they are formally appointed. All sponsors will need to be formally appointed at least two months before the filing of a listing application. If a sponsor ceases to act for a new applicant at any time (whether or not a listing application has been submitted), the sponsor must inform the Exchange of the reasons in writing as soon as practicable. To help sponsors meet their obligations under the Listing Rules, the written engagement agreement must contain specified obligations for the applicant and its directors, including full assistance to the sponsor in performing its due diligence work, and enabling the sponsor to gain access to all relevant records in connection with the listing application.

PUBLICATION OF APPLICATION PROOF ON THE EXCHANGE'S WEBSITE

From April 1, 2014, the proof prospectus lodged with a listing application ("**Application Proof**"), which must be substantially complete, must be published on the Exchange's website when the application is submitted. An Application Proof to be published on the Exchange's website ("**AP-Publication**") must be redacted to exclude information about the offering, price or means of subscribing for the equity securities, but only to the extent necessary in order not to constitute a prospectus under the Companies Ordinance. It must also include adequate warning statements advising viewers of the legal status of the AP-Publication. A newly published Practice Note 22 sets out the information that must be included (or excluded) and the timing for the AP-Publication. New Guidance Letters, GL56-13 and GL57-13, have also been published regarding content requirements, as well as logistical arrangements for publication of Application Proofs.

CONFIDENTIAL FILINGS

Exemptions from the requirement to publish the Application Proof are available (i) if the applicant has been listed on a recognized stock exchange for not less than five years and has a market capitalization of US\$200 million or more; and (ii) by waiver (if granted, on a case-by-case basis) in the case of a spin-off listing.

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EIGHT-WEEK MORATORIUM ON RE-FILING RETURNED APPLICATIONS

There will be an eight-week moratorium on re-filing a listing application that is returned by the Exchange because the Application Proof is not substantially complete. When applications are returned, the names of sponsors and listing applicants together with the return date will be published on the Exchange's website, but this will only take effect on April 1, 2014.

ACCELERATED REVIEW OF DECISIONS TO RETURN LISTING APPLICATIONS

There will be an accelerated process for reviewing any Exchange decision to return a listing application on the grounds that the Application Proof is not substantially complete. A new Guidance Letter, GL61-13, sets out a sample timetable for each stage of the accelerated review process and the documentation required for the review.

ACCELERATED FILING OF LISTING APPLICATION DOCUMENTS

A number of documents previously required to be submitted either in draft form or after the listing application will be required to be submitted as final or advanced drafts at the time of the application. These include a final/advanced draft of all waiver applications, and any statement of adjustments relating to the accountant's report. Profit-forecast and cashflow-forecast memoranda, as well as a letter from the sponsor confirming sufficiency of working capital, will also be required for submission of the listing application, instead of as part of the 15-day documents (which will be abolished) or four-day documents under the existing rules.

SPONSORS' UNDERTAKINGS AND DECLARATIONS

A composite sponsor undertaking and statement of independence will be required at the time of the listing application (as set out in a revised Appendix 17, incorporating the current Appendix 18 statement). The sponsor's declaration in Appendix 19 has also been amended to require sponsors to confirm that the information in the listing document (now including the experts' sections) is true, accurate, complete and not misleading in all material respects, hence imposing additional obligations on sponsors, particularly in connection with the experts' sections.

INITIAL THREE-DAY CHECK

For a transitional period, the Exchange will only accept listing applications for detailed vetting after completion of an initial three-day check of the Application Proof based on a prescribed checklist. This system will operate for one year from October 1, 2013 to September 30, 2014, subject to an effectiveness review after six months. A listing application may be returned during the initial three-day period if it is not substantially complete. It may still be returned after being accepted for detailed vetting if, after a qualitative assessment, the Exchange and/or the SFC determine that the Application Proof is not substantially complete. A new Guidance Letter, GL56-13, provides guidance on the extent of the disclosure required in Application Proofs in order for them to be considered substantially complete, as well as a "Three-day Checklist" of disclosure matters that the Exchange will check in Application Proofs prior to acceptance.

STREAMLINED REGULATORY COMMENTING PROCESS

The regulatory commenting process will be streamlined to focus on major issues such as eligibility, suitability, sustainability, compliance (with the Listing Rules, Companies Ordinance and Securities and Futures Ordinance) and any material disclosure deficiencies.

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POST-HEARING INFORMATION PACK

The requirement to post a Web Proof Information Pack will be replaced in its entirety with a new requirement to publish a Post Hearing Information Pack (“**PHIP**”). A newly published Practice Note 22 sets out the information that must be included (or excluded), and timing for publishing PHIPs. New Guidance Letters GL56-13 and GL57-13 also apply regarding content requirements and logistical arrangements for the publication of PHIPs.

The Exchange has published a number of other new or revised Guidance Letters to complement the new regime. These Guidance Letters relate to the rule changes outlined above, in addition to topics such as disclosure on material non-compliance, disclosure on directors and senior management, and management discussion and analysis on historical financial information.

For a copy of the Guidance Letters, please follow this link:

http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/iporq/gl_newrg.htm

For a copy of the Listing Rule amendments, please follow this link:

http://www.hkex.com.hk/eng/rulesreg/listrules/mbrulesup/Documents/mb_nlr_1310.pdf

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