Charltons - Hong Kong Law Newsletter - 01 November 2006

[online version](http://www.charltonslaw.com/abolition-of-listed-issuers-short-form-preliminary-results-announcements/)

# Hong Kong Law Issue 41

## Abolition Of Listed Issuers' Short-Form Preliminary Results Announcements

The Hong Kong Stock Exchange (the **Exchange**) has announced that it will terminate its practice of publishing Main Board and GEM listed issuers' short-form preliminary results announcements (**Summary Forms**) on its trading and news dissemination systems with effect from 1 December 2006. Summary Forms are currently posted on the Exchange or GEM website and released on the company news information pages of the Exchange's securities market trading system and to subscribers of other Exchange information feed systems.

It was originally proposed that the abolition of the requirement for publication of Summary Forms should take effect on the implementation of Phase 1 of the Exchange's new proposals for the publication of announcements by Main Board issuers as set out in the Exchange's "Exposure Conclusion: Abolition of Requirement for Main Board Issuers to Publish Paid Announcements in Newspapers and Related Matters" published in July 2006. To see a summary of that paper's proposals, please click [here](/newsletters/hklaw/en/2006/37/nl-hklaw-20060816-37.html). The Exchange now proposes to make an announcement concerning the commencement of Phase 1 of those proposals in early January 2007 with a tentative commencement date of 16 April 2007. It will however proceed with the abolition of Summary Forms with effect from 1 December 2006 and letters to that effect were sent to all listed issuers on 23 October 2006.

The new arrangements will be as follows:

* Listed issuers will be deemed to have fulfilled their obligations to inform the Exchange of board approval of preliminary results announcements[[1]](#footnote-25) and to submit soft copies of announcements to the Exchange[[2]](#footnote-26) by submitting to the Exchange softcopies of both the English versions and Chinese versions of the full preliminary results announcements (the **Results Announcements**) immediately following board approval and in any event no later than 9:00 pm on the day of the board meeting approving the results.
* Submission of the Results Announcements should be made either between 12.30 pm and 1.30 pm or after 4.15 pm on the day of the board meeting so that the Exchange can release the information outside of trading hours. The English and Chinese versions of the Results Announcements must be submitted to the Exchange at the same time via the e-Submission System or by physical delivery of a CD-Rom or diskette (together with a confirmation letter and hard copy of its contents) to the Exchange's office.
* The requirement for Main Board listed issuers to publish both the English and Chinese versions of the Results Announcement in the newspaper on the next business day after approval by the board under Rule 13.49 will continue until implementation of the proposals in relation to Main Board issuers' publication of announcements.
* The Exchange has reminded issuers that their directors are responsible for taking all appropriate steps to ensure that price sensitive information (including results information) is kept strictly confidential until an announcement is posted on the Exchange's websites. Until the Results Announcements are released through the Exchange's websites, listed issuers should not therefore publicise their results by any other means including by way of press conferences, analysts' meetings, by publication on their own websites or through transmission through newswire services.
* The Exchange will publish a short message on the company news information pages of AMS/3 and the Market Data Feed Service to inform users when a Results Announcement has been posted on one of its websites.

## Stock Exchange Amendments To Listing Rules On Regulation Of Sponsors And Compliance Advisers

The Exchange has amended its rules to implement policies set out in the Consultation Conclusions on Regulation of Sponsors and Independent Financial Advisers published jointly with the Securities and Futures Commission (the **SFC**) in October 2004. The amended rules will become effective on 1 January 2007 to coincide with the SFC's revised licensing regime becoming effective. For further information on the new SFC licensing regime, please click [here](/newsletters/hklaw/en/2006/35/nl-hklaw-20060512-35.html).

### Eligibility of Sponsors and Compliance Advisers

The amendments provide that the Exchange will allow a firm to act as a sponsor or compliance adviser provided that it is licensed or registered by the SFC to conduct Type 6 regulated activity and its licence or certificate of registration permits it to undertake work as a sponsor. The Exchange will no longer impose any additional initial or continuing eligibility criteria.

### Discipline of Sponsors and Compliance Advisers

The amendments also remove the Exchange's ability to sanction sponsors and compliance advisers. In future, the SFC will be solely responsible for the discipline and sanctioning of sponsors and compliance advisers including in respect of breaches of the conduct standards evidenced by breaches of the Listing Rules. A transitional provision will however apply so that the Exchange will be able to sanction sponsors and compliance advisers in cases that are pending at 31 December 2006. The Exchange, as market operator, will continue to be responsible for the implementation and administration of the Rule requirements including the practice notes on due diligence.

### Eligibility of Independent Financial Advisers (IFAs)

The Exchange will also amend its practice in relation to the eligibility of IFAs with effect from 1 January 2007. The Listing Rules currently provide that IFAs must be acceptable to the Exchange. The Exchange’s current practice is that firms will be acceptable if they have completed two significant corporate finance transactions. With effect from 1 January 2007, the Exchange’s practice will be that a firm will be acceptable as an IFA if:

* it is appropriately licensed or registered to undertake sponsor work (ie. it is licensed or registered by the SFC for Type 6 regulated activity and its licence or certificate of registration allows it to undertake sponsor work); **or**
* it has completed two significant corporate finance transactions.

### Execution of Documents by Sponsors

The amendments also provide that the forms which are required to be signed on behalf of the sponsor (namely, the Advance Booking Form (Form A1), the Declaration and Undertaking with Regard to Directors (Form B), the Formal Application (Form C1) and Sponsor's Declaration (Appendix 19)) should be signed by the Principal/s who has/have been most involved in the work undertaken by the sponsor.

## Listing Rule Changes In Respect Of Structured Products

The Hong Kong Stock Exchange (the **Exchange**) has amended the Main Board Listing Rules to implement key recommendations set out in the Hong Kong's Derivative Warrants Market – the Way Forward, Results of the Consultation on the SFC's Six-Point Plan (the **Consultation Conclusions**) published in March 2006. The following is a summary of the principal amendments.

### Facilitating Further Issues

The Listing Rules require issuers to provide liquidity (i.e. to be prepared to quote buying and selling prices) for a Structured Product issue for the period it is listed on the Exchange. Shortages in the supply of a particular derivative warrant may cause its market price to deviate away from theoretical price levels which are based on the strike price, time to maturity and expected volatility of the underlying security. In this situation, an issuer may, but is not obliged to, launch a Further Issue that increases the overall size of the issue and facilitates the quoting of two-way prices for issues based on theoretical pricing models.

To make it easier for issuers to launch Further Issues, the Listing Rules have been amended to increase the maximum percentage of an existing issue which may be held by an issuer when making a further issue from 20 per cent to 50 per cent (Rule 15A.43(5)).

### Facilitating Identical Issues

It was proposed in earlier consultations that the minimum price requirement ($0.25 per structured product) and the minimum life requirement (of 6 months) be relaxed for issues that are identical to or substantially the same as existing issues. It was believed that such relaxation of the requirements would (i) promote more open competition with existing issues and (ii) minimize price anomalies caused by supply shortages in particular derivative warrants.

Rules 15A.38 and 15A.43 of the Listing Rules have therefore been amended to allow "Emulation Issues" to be launched with a minimum issue price of $0.15 per structured product and a minimum period to maturity of three months. The expiry or maturity date of the Emulation Issue may be up to five business days before or after that of the original structured product. Where the underlying asset of the Emulation Issue is a security listed on the Exchange, the exercise or strike price of the Emulation Issue must not differ by more than one spread in the underlying security from that of the original issue or by no more than 0.5% in other cases.

### Banning Commission Rebates and Incentive Schemes

The Consultation Conclusions proposed that commission rebates or incentive schemes be banned as they encourage investors to invest in derivative warrants for the wrong reasons and without fully understanding the associated risks. It was also considered that issuers could deploy such schemes to influence warrant activity and potentially give investors a misleading impression of turnover and liquidity.

The Listing Rules have accordingly been amended to prohibit issuers from offering, directly or indirectly, commission rebates or other incentive schemes in respect of structured products that they have issued (Rule 15A.24A). A member of an issuer's group that is a securities dealer is allowed to offer commission rebates or other incentives to its customers subject to meeting the following conditions:

1. the commission rebates or other incentives must not be limited exclusively to structured products issued by the issuer;
2. any commission rebate or other incentive in respect of structured products issued by the issuer must not be recovered directly or indirectly by or on behalf of the securities dealer from the issuer;
3. where the commission rebates or other incentives relate to structured products generally (or a class of structured products) any commission rebate or other incentive arising in respect of structured products issued by the issuer must be on identical terms to that arising on structured products issued by other issuers; and
4. where the commission rebates or other incentives relate to securities trading generally (including structured products) any commission rebate or other incentive arising in respect of structured products issued by the issuer must be on identical terms to that arising on structured products issued by other issuers.

### Information Management Arrangements

Rule 15A.29 of the Listing Rules prohibits an issuer from listing structured products where it or any of its group companies or any of their associated companies has been retained by a company whose securities will underlie the structured product (or by any of its group or associated companies) to advise in relation to a transaction (ie. a transaction discloseable under Rule 13.09, Chapters 14 and 14A of the Listing rules, Rule 3 of the Hong Kong Code on Takeovers and Mergers, or Rule 10 of the Hong Kong Code on share repurchases (or their equivalents in the case of an overseas listed company).

The Listing Rules have been amended so that this prohibition does not apply where "an issuer maintains adequate information management arrangements such as those contemplated in sections 292(2) and 271(2) of the Securities and Futures Ordinance (Cap. 571)".

### Effective Date

The Listing Rule amendments came into effect on 30 September 2006. The Exchange will however review the operation of the Rules in respect of further issues and minimum life and issue price after six months.

## Guidelines On Marketing Materials For Listed Structured Products

The SFC has also published its revised Guidelines on Marketing Materials for Listed Structured Products following the publication of its Consultation Conclusions on the Draft Guidelines on Marketing Materials for Listed Structured Products. The new guidelines supersede the previous guidelines set out in the SFC's letter to derivative warrants issuers and their legal advisers dated 21 December 2001. They came into effect on 1 October 2006, although marketing materials produced by 1 October 2006 that comply with the previous guidelines may be used until 30 November 2006.

The Guidelines require marketing materials in respect of structured products to be accurate and unbiased and to include appropriate risk warnings. The Guidelines and a set of frequently asked questions in relation to the Guidelines are available on the SFC's website at [www.sfc.hk](http://www.sfc.hk/web/EN/index.html).

This note is intended as a summary only of recent regulatory developments in Hong Kong. It does not constitute legal advice and specific advice should be sought in any particular situation.

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1. Main Board Rule 13.45 and GEM Rule 17.49 require listed issuers to inform the Exchange immediately after approval by the board of any preliminary results announcement and any payment of dividends. [↑](#footnote-ref-25)
2. Main Board Rule 2.07C(1)(a)/ GEM Rule 16.17(1) require issuers to submit soft copies of announcements to the Exchange for posting on the Exchange's website. [↑](#footnote-ref-26)