

Frequently Asked Questions Series 24 (Released on 26 July 2013)

Listing Rule changes to complement the Securities and Futures Commission's New Sponsor Regulation effective on 1 October 2013

Status of "Frequently Asked Questions"

The following frequently asked questions (FAQs) are designed to assist applicants and professional advisers including sponsors to understand and comply with the Listing Rule changes to complement the Securities and Futures Commission's new sponsor regulation effective on 1 October 2013, particularly in situations not explicitly set out in the Listing Rules or where further clarification may be desirable.

You should refer to the Listing Rules themselves together with the relevant Guidance Letters and, if necessary, seek advice from qualified professional advisers. You should also refer to the transitional arrangements as set out in the Exchange's announcement issued on 23 July 2013. The FAQs are not substitutes for the Listing Rules. If there is any discrepancy between the FAQs and the Listing Rules, the Listing Rules prevail. Defined terms used herein have the same meaning as ascribed to them in the relevant rules and guidance, unless stated otherwise.

In formulating our "*responses*", we may have assumed certain underlying facts, selectively summarised the Listing Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be given to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Contact the Listing Division at the earliest opportunity with any queries.

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No.	Relevant Rules and Guidance	Query	Response
<i>General</i>			
1	Main Board – Rule 12.01A GEM – Rule 16.01A	Where there are revisions to an Application Proof, is an applicant required to publish the subsequent proofs of listing documents on the Exchange’s website?	An applicant is only required to publish its Application Proof, which is the draft listing document submitted with a listing application form, on the Exchange’s website. Unless the listing application lapses, no other proofs are required to be published on the Exchange’s website except for the applicant’s PHIP or the final document. (see also Question 4 below regarding the transitional arrangements)
2	Main Board – Rules 3A.02A, 3A.02B, 3A.17(2), paragraph 9 to Practice Note 22 GEM – Rules 6A.02A, 6A.02B, 6A.17(2), paragraph 8 to Practice Note 5	Are the Listing Rule changes to complement the Commission’s new sponsor regulation (e.g. appointment of sponsor and notification to the Exchange in writing at least two months before submission of a listing application; eight weeks moratorium for Returned Application; and publication of Application Proof on the Exchange’s website etc.) applicable to applications which have lapsed on or before 30 September 2013 and re-submitted on or after 1 October 2013?	All listing applications submitted on or after 1 October 2013 (including re-filed applications) are subject to the Listing Rule changes to complement the Commission’s new sponsor regulation effective on 1 October 2013.
3	Main Board – Rules 9.03(3) and 9.11(1) GEM – Rules 12.09(1) and 12.22(1) Guidance Letter HKEx-GL55-13	What are the “ <i>other relevant documents</i> ”/ “other documents” referred to in the Listing Rules that should be submitted and included in the CD – ROMs at the same time of filing a listing application?	Besides the Application Proof, “other documents” are documents referred in items 3 to 7 of Attachment IM/ IG in Guidance Letter HKEx-GL55-13, where applicable.

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No.	Relevant Rules and Guidance	Query	Response
4	Main Board – Paragraph 9 to Practice Note 22 GEM – Paragraph 8 to Practice Note 5 Guidance Letters HKEx-GL56-13, HKEx-GL57-13	For the Listing Rule changes to complement the Commission’s new sponsor regulation effective on 1 October 2013, is there any transitional arrangement?	Please refer to paragraphs A.15 to A.17 of Guidance Letter HKEx-GL57-13 which list out details of the transitional arrangements.
5	Main Board – Rules 3A.02A(1) and 3A.02B(1) GEM – Rules 6A.02A(1) and 6A.02B(1)	What is the date of the sponsor’s formal appointment referred to in the Listing Rules?	It should be the effective date of the engagement letter or similar written agreement entered into between an applicant and a sponsor in relation to the applicant’s listing application.
6	Main Board – 3A.02B(1) GEM – 6A.02B(1)	When should a sponsor notify the Exchange of its appointment?	A sponsor is required to submit notification of their appointment at least two months before the listing application is submitted.
<i>Arrangements for listing application submitted/ notification of sponsors before 1 October 2013</i>			
7	Main Board – Rules 3A.02A(1) and 3A.05 GEM – Rules 6A.02A(1) and 6A.05	For listing applications submitted on or after 1 October 2013, a sponsor must notify the Exchange in writing of its appointment as soon as practicable. If a sponsor is appointed before 1 October 2013, say 1 August 2013, should the sponsor notify the Exchange in writing of its appointment as soon as practicable under Main Board Rule 3A.02A(1)/ GEM Rule 6A.02A(1) even though these rule changes are not effective until 1 October 2013? And if the answer is affirmative, whether the terms of engagement should comply with the	Effective 1 October 2013, sponsors are obliged by paragraph 17.11(b) of the Code of Conduct and Main Board Rule 3A.02A/ GEM Rule 6A.02A to advise the Exchange as soon as practicable of their appointment regardless of whether a listing application has been submitted. If a sponsor is already appointed or will be appointed before the effective date of the above (i.e. 1 October 2013), it should still submit notification of its appointment to the Exchange as soon as practicable to facilitate processing of the new applicant’s listing application when that application is submitted.

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No.	Relevant Rules and Guidance	Query	Response
		requirements under Main Board Rule 3A.05/ GEM Rule 6A.05?	<p>As a means of notification, a sponsor needs to provide a copy of its engagement letter to the Exchange.</p> <p>Effective 1 October 2013, a sponsor's terms of engagement in relation to a listing application must comply with the requirements of paragraph 17.11(b) of the Code of Conduct and Main Board Rule 3A.05/ GEM Rule 6A.05. In relation to the above notification prior to 1 October 2013, and where a sponsor has already been appointed with terms of appointment that do not comply with these requirements, revised terms that comply with these requirements must be agreed not later than the date the sponsor notifies the Exchange of its appointment.</p>
8	Main Board – Rule 3A.02A(2) GEM – Rule 6A.02A(2)	For a listing application which is expected to be submitted on or after 1 October 2013, if a sponsor ceases to act for the new applicant prior to 1 October 2013, is it required to inform the Exchange in writing, as soon as practicable, of its reasons for ceasing to act?	Where a sponsor ceases to act for a new applicant before 1 October 2013, the Exchange also expects the relevant sponsor to submit its reasons for ceasing to act as soon as practicable if the sponsor has made a notification of appointment to the Exchange (see Question 7 above).
9	Main Board – Rule 3A.02B(2) GEM – Rule 6A.02B(2)	Under the Listing Rules, where more than one sponsor is appointed in respect of a listing application, the listing application can only be submitted not less than two months from the date the last sponsor is formally appointed. Does this requirement apply to a listing application submitted before 1 October 2013?	If a listing application is submitted prior to 1 October 2013, the requirement does not apply. Sponsors should nevertheless be aware that if a listing application is expected to be submitted on or after 1 October 2013, the relevant sponsor will be required to be appointed at least two months before the submission of the listing application (see Question 6 above).

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No.	Relevant Rules and Guidance	Query	Response
10	Main Board – Rules 3A.02A(1) and 3A.02B(1) GEM – Rules 6A.02A(1) and 6A.02B(1)	If a listing application lapsed on or before 30 September 2013 is re-submitted on or after 1 October 2013, is the sponsor required to submit notification to the Exchange of its appointment at least two months before the re-submission?	The two-month notification is not applicable if there is no change in sponsor when the applicant re-submits. The sponsor is only required to submit a copy of its latest engagement letter, which must be in compliance with the requirements of paragraph 17.11(b) of the Code of Conduct and Main Board Rule 3A.05/ GEM Rule 6A.05, to the Exchange at the same time the application is re-submitted.
11	N/A	If a listing application is subject to the old Listing Rules because it was submitted before 1 October 2013, where can the relevant Listing Rules and Guidance Letters be found?	After 1 October 2013, all applicable Listing Rules and Guidance Letters relating to administrative or filing procedures applicable prior to 1 October 2013 can be viewed from a designated website. The Exchange will announce the website in due course.
<i>Transfer application from GEM to Main Board</i>			
12	Main Board – Rule 9A.03(2)	Are the GEM transfer applications subject to the Listing Rule changes to complement the Commission’s new sponsor regulation?	The Listing Rule changes to complement the Commission’s new sponsor regulation do not apply to GEM transfer applications because there is no requirement for a sponsor or listing document.
<i>Initial listing fee</i>			
13	Main Board – Note 2 to Rule 9.03(1)(b) GEM – Note to Rule 12.14(4)	For Returned Applications, will the initial listing fee be refunded?	Where the Exchange returns a listing application to an applicant before it issues its first comment letter, the initial listing fee will be refunded. Where the Exchange has issued its first comment letter to the sponsor, the initial listing fee will be forfeited.

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No.	Relevant Rules and Guidance	Query	Response
<i>Pre-IPO enquires</i>			
14	N/A	What is the Exchange’s policy on pre-IPO enquires?	<p>The Exchange will only consider pre-IPO enquires which are novel and specific.</p> <p>Sponsors cannot shift their responsibility to ensure that an Application Proof is substantially complete to the Exchange or the Commission by abusing the pre-IPO enquiry process. The pre-IPO enquiry process should not be taken as a means to get a listing document pre-vetted before an application is submitted.</p> <p>Any such enquiries will not be considered. Sponsors and advisors are advised to follow the guidance in the relevant Listing Decisions and Guidance Letters issued by the Exchange from time to time. Pre-IPO enquires on a no-name basis will also not be considered.</p>
<i>Waiver from publication of Application Proof</i>			
15	<p>Main Board – Paragraph 19 to Practice Note 22</p> <p>GEM – Paragraph 18 to Practice Note 5</p> <p>Guidance Letter HKEx-GL57-13</p>	For spin-offs/ dual listings/ deemed new listings (reverse takeover), are the applicants required to follow the Listing Rule changes to complement the Commission’s new sponsor regulation effective on 1 October 2013, including the eight weeks moratorium for Returned Applications, and publication of Application Proofs on the Exchange’s website?	Applicants are subject to the new requirements including the eight weeks moratorium for Returned Applications. Unless a waiver is granted, the applicants are required to publish their Application Proofs on the Exchange’s website. Please refer to the relevant Listing Rules and Guidance Letter HKEx-GL57-13.

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No.	Relevant Rules and Guidance	Query	Response
16	<p>Main Board – Paragraph 19 to Practice Note 22</p> <p>GEM – Paragraph 18 to Practice Note 5</p> <p>Guidance Letter HKEx-GL57-13</p>	<p>Under what circumstances will the Exchange consider a waiver from the publication requirements of the Application Proof?</p>	<p>The Exchange or the Commission may waive or modify the publication requirements based on the facts and circumstances of the applicant. Applicants are encouraged to consult the Exchange at an early stage if they envisage any difficulties in complying with the requirements.</p> <p>In the case of a spin-off from an overseas listed parent, HKEx-GL57-13 paragraph A.12 sets out some of the factors which the Exchange or the Commission (as the case may be) will take into account when considering a waiver from the publication requirements but these factors are not meant to be exhaustive and applicants are encouraged to consult the Exchange at an early stage.</p>
<i>Complaints/ allegations received</i>			
17	<p>Main Board – Rule 9.08(2)</p> <p>GEM – Rule 12.10(2)</p> <p>Guidance Letter HKEx-GL57-13</p>	<p>If there are complaints/ allegations in media reports made against an applicant after its Application Proof/ PHIP is published on the Exchange’s website, can the applicant respond to the complaints/ allegations?</p>	<p>An applicant at its own discretion can publish a statement on the Exchange’s website stating that no reliance should be placed on any media reports relating to its published Application Proof/ PHIP as permitted under the Listing Rules. This statement does not need to be pre-vet but a copy should be submitted to the Exchange before its publication.</p> <p>A template of the statement has been included in Guidance Letter HKEx-GL57-13. However, other statements that do not comply with the Listing Rules will require the Exchange’s pre-vetting and approval before its publication.</p>

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No.	Relevant Rules and Guidance	Query	Response
<i>Acceptance for vetting – the 3-Day Check</i>			
18	Guidance Letter HKEx-GL56-13	Once the Exchange accepted an Application Proof for vetting after the 3-Day Check, does it mean that the Application Proof is considered substantially complete?	Please refer to Guidance Letter HKEx-GL56-13.
<i>Vetting process</i>			
19	Main Board – Rules 9.03(2), 9.11(17c), 9.11(18) GEM – Rules 12.12, 12.23(6)	When the Exchange considers that a listing application is ready to be presented to the Listing Committee/ GEM Listing Approval Group for consideration, how will the sponsor be informed?	When a listing application is ready to be presented to the Listing Committee/ GEM Listing Approval Group for consideration, the sponsor will receive a “ <i>Notice to hearing</i> ” letter from the Exchange whereby the sponsor and the applicant should timely submit all relevant documents as required under the Listing Rules to enable the Exchange to process listing applications efficiently.

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No.	Relevant Rules and Guidance	Query	Response
20	N/A	How long would it take for a listing application to be presented to the Listing Committee/ GEM Listing Approval Group for consideration?	<p>Assuming that the Exchange issued two rounds of comments and the sponsor responded within five business days for each round of comment, it would normally take about 40 business days to present an application to the Listing Committee/ GEM Listing Approval Group for its consideration. This timeframe may be shortened depending on the quality of the Application Proof and the sponsor's responses to the regulators' comments.</p> <p>Applicants may submit a timetable on the basis it would take around 25 business days from the date of the listing application to the Listing Committee/ GEM Listing Approval Group hearing.</p> <p>In the case of an applicant which is a mineral company under Chapter 18 of the Listing Rules/ Chapter 18A of the GEM Listing Rules, in addition to the quality of the Application Proof and the sponsor's responses to the regulators' comments, the timeframe will also depend on the quality of the Competent Person's Report. The independent consultants on the panel to assist the Exchange in the review of the Competent Person's Reports have agreed to endeavour to meet the streamlined process timetable as described above but there may be cases where some delay may occur (e.g. due to the quality of the Competent Person's Report).</p>

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No.	Relevant Rules and Guidance	Query	Response
<i>Logistical arrangement – posting on the Exchange’s website</i>			
21	Main Board – Paragraphs 3 and 9 to Practice Note 22 GEM – Paragraphs 2 and 8 to Practice Note 5 Guidance Letter HKEx-GL57-13	Is an applicant required to submit both the English and Chinese versions of the Application Proof to the Exchange during the six-month suspension period from 1 October 2013 to 31 March 2014 (both dates inclusive)?	Paragraphs 3 and 9 of Main Board Practice Note 22/ paragraphs 2 and 8 of GEM Practice Note 5 require that both the English and Chinese versions of the Application Proof be published on the Exchange’s website. During the suspension period from 1 October 2013 to 31 March 2014 (both dates inclusive), applicants are required to submit only the English version of the Application Proofs to the Exchange. (see paragraph A.15 of Guidance Letter HKEx-GL57-13)
22	Main Board – Paragraph 12 to Practice Note 22 GEM – Paragraph 11 to Practice Note 5	Does the six-month suspension period from 1 October 2013 to 31 March 2014 (both dates inclusive) apply to PHIP in terms of publication on the Exchange’s website and submission of both English and Chinese versions?	The six-month suspension period does not apply to PHIP in terms of publication on the Exchange’s website and submission of both English and Chinese versions. Therefore when a PHIP is used, an applicant is required to submit and publish both the English and Chinese versions of the PHIPs on the Exchange’s website in accordance with the Listing Rules.
23	Main Board – Paragraphs 6 to 8 to Practice Note 22 GEM – Paragraph 5 to 7 to Practice Note 5 Guidance Letter HKEx-GL57-13	What is the Exchange’s expected wording of the confirmation from an applicant’s legal adviser in relation to the redactions of an Application Proof and a PHIP for publication of these documents?	The Exchange expects the legal confirmation to follow the wording set out in paragraph 7 to Main Board Practice Note 22/ paragraph 6 to GEM Practice Note 5.

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No.	Relevant Rules and Guidance	Query	Response
24	<p>Main Board – Paragraph 21 to Practice Note 22</p> <p>GEM – Paragraph 20 to Practice Note 5</p> <p>Guidance Letter HKEx-GL57-13</p>	<p>Once an Application Proof is published on the Exchange’s website, will it be removed if an applicant’s application is subsequently returned?</p>	<p>An applicant’s Application Proof will be removed from the Exchange’s website upon completion of all the review procedures for the return decision or the time for invoking such review has lapsed.</p> <p>All information relating to the applicant originally under the “Active” status mark on the Exchange’s website will be removed, and the Exchange’s website will only publish the name of the applicant and its sponsor, and the date of the return.</p>
25	<p>Main Board – Paragraph 21 to Practice Note 22</p> <p>GEM – Paragraph 20 to Practice Note 5</p> <p>Guidance Letter HKEx-GL57-13</p>	<p>Will the details of a Returned Application be removed from the Exchange’s website when the application is re-submitted subsequently?</p>	<p>The name of the applicant and its sponsor, and the date of the return will not be removed from the Exchange’s website even if the application is subsequently re-submitted.</p>
26	<p>Main Board – Rule 9.03(3)</p> <p>GEM – Rule 12.09(3)</p>	<p>For Returned Applications, when will the eight weeks moratorium start?</p>	<p>The eight weeks moratorium starts from the date of the return letter.</p>
27	<p>Main Board – Paragraph 12 to Practice Note 22</p> <p>GEM – Paragraph 11 to Practice Note 5</p> <p>Guidance Letter HKEx-GL57-13</p>	<p>Should the sponsor and the applicant address all comments of the Exchange before the PHIP can be submitted for publication? How will an applicant know if all comments have been addressed?</p>	<p>An applicant’s directors should form their own view to conclude that the material comments raised by the Exchange have been addressed before a PHIP is published on the Exchange’s website.</p>

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28	Guidance Letter HKEx-GL57-13	Can a PHIP be submitted for publication on the Exchange's website on a day where there is no HKEx-ESS service available?	A PHIP can be submitted for publication on the Exchange's website on a day where there is no HKEx-ESS service available, subject to an advance notice given to the Exchange not later than 2:00 p.m. on a business day immediately before the day for the special arrangements to take place. Please refer to Guidance Letter HKEx-GL57-13 for details.