



Hong Kong Law

March 2014

## NEW SPONSOR REGIME UPDATE

### EXCHANGE PUBLISHES INFORMATION ON LISTING APPLICATIONS RECEIVED SINCE COMMENCEMENT OF THE NEW REGULATORY REGIME FOR SPONSORS

#### Introduction

The Hong Kong Stock Exchange (the **Exchange**) has published a news release providing information on the new listing applications it has received since the new regulatory regime for sponsors came into effect on 1 October 2013.

As of 31 January this year, the Exchange had performed the Initial 3-day Check (for more information on the Initial 3-day Check, please refer to our previous newsletter) on 18 new listing applications.<sup>1</sup> Of these, 14 applications were accepted for detailed vetting while four were returned for failing the Initial 3-day Check.

The following is a summary of the reasons for the returned listing applications and other relevant information on new listing applications.

#### Reasons for the returned listing applications

##### **Deficiencies noted in Initial 3-day Check**

The following deficiencies were noted between the four applications that failed the Initial 3-day Check:

<sup>1</sup> Excluding applications for transfer of listing from GEM to Main Board under Chapter 9A of the Main Board Listing Rules and listing of a collective investment scheme under Chapter 20 of the Main Board Listing Rules.

1. Failure to follow Guidance Letter HKEx-GL6-09A in that the applicant filed its listing application before the end of its trading record period and did not provide nine-month financials for its latest financial year end. Paragraph 4.2(b)(ii) of Guidance Letter HKEx-GL6-09A requires an applicant that cannot include the financial information for the most recent financial year in an audited or advanced form in its first Application Proof to include with its listing application financial information for a stub period of at least nine months and comparative information together with the related Management Discussion and Analysis. Paragraph 5.2 of that guidance letter provides that the earliest time a company can file its application is after the end of its three-year trading record period. Any listing applications filed with the Exchange before the end of an applicant's trading record period will not be accepted.
2. Insufficient information to assess whether the applicant satisfies the ownership continuity and control requirement under Main Board Listing Rule 8.05(1)(c) of which guidance was previously provided in a pre-IPO enquiry.
3. Insufficient information to assess whether the applicant satisfies the minimum profit requirement under Main Board Listing Rule 8.05(1)(a).

4. Failure to submit a reply to the outstanding comments on the applicant's compliance with the minimum cash flow requirement under GEM Listing Rule 11.12A(1) raised by the Exchange during the last application.
5. Failure to provide Liquidity Disclosure<sup>2</sup> as defined in Guidance Letter HKEx-GL38-12, to a date no more than two months before the date of the Application Proof.
6. Failure to disclose the controlling shareholder's conviction.
7. Insufficient disclosure on the proposed issuance of corporate bonds of which guidance was previously provided in a pre-IPO enquiry.
8. Insufficient disclosure on the performance of the listing applicant's business.



### **Deficiencies noted in qualitative assessment**

Two other cases that passed the Initial 3-day Check, but failed the subsequent qualitative assessment, were returned because the disclosure of information in the Application Proof was not substantially complete in all material respects as required under Main Board Listing Rule 9.03(3) and GEM Listing Rule 12.09(1) to allow a reasonable investor to make a fully-informed investment decision. (For a more detailed description of these rules, please refer to our previous newsletter).

<sup>2</sup> Paragraph 32 of Part A of Appendix 1 to the Main Board and GEM Listing Rules respectively requires the listing document to include a statement as at the most recent practicable date (which also must be stated) of a new applicant's indebtedness (or an appropriate negative statement, liquidity, financial resources and capital structure, if material (Part 2 Paragraph 4 of Guidance Letter HKEx-GL38-12).

The deficiencies included:

1. Insufficient disclosure on the applicant's business model, non-compliance incidents, use of proceeds and hedging policy.
2. Insufficient information to enable investors to assess the extent of the applicant's reliance on a major customer.
3. Insufficient information to enable investors to assess the impact of certain disputes and complaints, suitability of directors under GEM Listing Rules 5.01 and 5.02 and sustainability of the applicant's business.
4. Insufficient information to assess whether the applicant satisfied the management continuity requirement under GEM Listing Rule 11.12A(3).

### **Accelerated review request**

One sponsor requested an accelerated review (as set out in Chapter 2B of the Main Board Listing Rules and Chapter 4 of the GEM Listing Rules) of the decision to return the listing application, but the Listing Committee upheld the return decision.

### **Regulatory commenting process**

One of the primary aims of the new sponsor regulatory regime was to enhance the quality of disclosure in the Application Proof and thereby shorten the vetting process. The following is a summary of the performance pledges by the Exchange, with 'T' being the date of receipt of listing application form A1/5A:

Within T+3: The Initial 3-Day Check will be completed.

Within T+4: A case receipt acknowledgement/ return letter will be issued.

Within T+10: A first comment letter will be issued.

The Exchange met its performance pledges for the 18 listing applicants filed under the new sponsor regime. In addition, with the submission of "substantially complete" Application Proofs under the new sponsor regime, the average number of comments per application and the average vetting time taken by the Exchange (from the date of listing application to the Listing Committee hearing) were substantially reduced compared to the previous regime.

## Exchange to publish return decisions from 1 April 2014

The Exchange noted its concern over the relatively high return rate (33.3%) among the small number of listing applications received. It also noted that the reputational risk to listing applicants and sponsors will be more serious from 1 April 2014, when the Exchange will publish on its website the name of a listing applicant whose listing application has been returned, together with the name of the sponsor and the date of the return decision.

As stated in the Exchange's announcement on 23 July 2013, the Exchange and the SFC will review the effectiveness of the Initial 3-day Check during the first six-months of the Transitional Period to determine whether to continue it during the following six months or after the Transitional Period. The SFC's prior consent is required for any decision to remove or continue the Initial 3-day Check after the first six-months of the Transitional Period. The effectiveness review is currently in progress and the results will be announced shortly.



## Application Proofs to be published on Exchange's website from 1 April 2014

Under the transitional provisions in place between 1 April 2014 and 30 September 2014, Application Proofs submitted to the Exchange will be published on the Exchange's website when listing applications are accepted for detailed vetting following completion of the Initial 3-day Check.

## Review of effectiveness of the Initial 3-day Check

From 1 October 2013 to 30 September 2014 (both dates inclusive) (the **Transitional Period**), the Exchange performs an Initial 3-Day Check of Application Proofs against a prescribed checklist in Table B of Guidance Letter HKEx-GL56-13.

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**Hong Kong Office**

Dominion Centre

12th Floor

43-59 Queen's Road East

Hong Kong

**Tel:** + (852) 2905 7888

**Fax:** + (852) 2854 9596

[www.charltonslaw.com](http://www.charltonslaw.com)