



Hong Kong

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EXCHANGE PUBLISHES GUIDANCE ON MIXED MEDIA OFFERS

The Stock Exchange of Hong Kong Limited (the **Exchange**) has published guidance letter HKEx-GL81-15 (the **Guidance Letter**)¹ to encourage listing applicants to consider using a Mixed Media Offer (**MMO**) for their listing on the Hong Kong Stock Exchange. The Guidance Letter gives an overview of a MMO; sets out template documents for the required announcement of the adoption of a MMO and the disclosure to be made in the prospectus and application form in relation to the MMO; and practical tips for compliance with the conditions applicable to MMOs. A MMO is an offer procedure which permits an issuer to distribute paper application forms for shares and debentures, or interests in a collective investment scheme (**CIS**) authorised by the Securities and Futures Commission (**SFC**), without the associated paper listing document, subject to the satisfaction of certain conditions. The Exchange has also updated its Frequently Asked Questions Series 13 on MMOs.²

Background

The Companies (Winding Up and Miscellaneous Provisions) Ordinance prohibits the issue of an application form for shares unless it is accompanied by a prospectus. This has generally been interpreted as prohibiting the distribution of printed application forms on a public offer of shares or debentures without the printed prospectus. Similar requirements apply to SFC-authorized CIS which apply to list on the Exchange.

In February 2011, section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (the **Class Exemption Notice**) was enacted to allow printed application forms to be distributed without a printed prospectus provided that an electronic version of the prospectus (**e-prospectus**) is made available on the websites of the issuer and the Exchange and printed prospectuses are made available free of charge on request at specified locations, although these do not need to be the same locations as where the printed application forms are available. A public offer made under this class exemption is a MMO.

Relevant Listing Rules

- **Equity Securities**

In relation to offers of equity securities, Main Board Rule 12.11A (GEM Rule 16.04D) provides that all the conditions set out in the Class Exemption Notice must be satisfied for an issuer to issue a printed application form for its equity securities with an e-prospectus displayed on the websites of the issuer and the Exchange. It also sets out the information that must be included in the formal notice under Rule 12.04(3) where an issuer intends to offer equity securities to the public relying on the Class Exemption Notice.

- **CIS**

Main Board Rule 20.19A provides that all listing documents for CIS must be in printed form or such other form approved by the SFC. It also provides that, when permitted, additional copies may be made available to the public on CD ROM, and then lists the things the CD ROM must include.

1 HKEx Guidance Letter HKEx-GL81-15 "Guidance on Mixed Media Offer".

2 A blacklined version of the Exchange's updated Frequently Asked Questions Series 13 relating to Mixed Media Offers is available at http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_13.pdf.

• Debt Securities

Main Board Rule 25.19B (GEM Rule 29.21B) provides that all the conditions in the Class Exemption Notice must be satisfied for an issuer to issue a printed application form for its debt securities with an e-prospectus displayed on certain websites. It also sets out the information that must be included in the formal notice under Rule 25.17(4) where an issuer intends to offer debt securities to the public relying on the Class Exemption Notice.

Guidance on MMOs

Benefits of MMOs

Enable issuers to reduce paper wastage which should save costs and be beneficial to the environment.

MMOs can be used in combination with an ePO pursuant to the Guidelines for Electronic Public Offerings published by the SFC in 2003³ (the **ePO Guidelines**) which facilitate the electronic submission of applications during a public offer.

When can MMOs be used?

MMOs can be used on public offers of equity securities, CIS, and debt securities.

Conditions for MMOs

In order for an offer of shares or debentures to be made by way of a MMO, the following conditions set out in section 9A(3) of the Class Exemption Notice must be satisfied:

a) adequate disclosure must be made to the public that a printed application form will be issued without being accompanied by a printed form prospectus during the period of 5 business days before the offer period commences. The publication of an announcement during that 5-business day period will constitute adequate disclosure for these purposes. The announcement must contain the following information:

- i) that the offeror proposes to offer a company's shares or debentures by way of a prospectus;
- ii) that the shares or debentures are the subject of an application to list on the Exchange;

iii) that the offeror intends to rely on Section 9A of the Class Exemption Notice and issue a printed application form without it being accompanied by a printed prospectus;

iv) that prospective investors will be able to access and download the e-prospectus from either the company's website or HKEx's website during the offer period;

v) the address of each website, the place where the e-prospectus can be accessed and how to access it;

vi) that copies of the printed prospectus will be available for collection at specified locations, free of charge, upon request by members of the public throughout the offer period;

vii) the particulars of the specified locations; and

viii) that at least 3 copies of the printed prospectus must be available for inspection at every location where the printed application forms are distributed throughout the offer period;

b) copies of the printed prospectus must be made available for collection at specified locations, free of charge, upon request by members of the public throughout the offer period;

c) at least 3 copies of the printed prospectus must be available for inspection at every location where the printed application forms are distributed throughout the offer period;

d) the e-prospectus must be reasonably tamper-resistant throughout the offer period;

e) the e-prospectus must be readily accessible by the public:

i) at the start of the offer period, from both the company's designated website and the HKEx website; and

ii) at any time during the offer period after its commencement, from either the company's website or the HKEx website;

³ SFC. "Guidelines for Electronic Public Offerings". April 2003. Available at http://en-rules.sfc.hk/net_file_store/new_rulebooks/hk/HKSFC3527_465_VER11.pdf.

- f) the e-prospectus that is on the company's website must be directly linked from that website's homepage or from another webpage within that website that is directly linked from the homepage;
- g) the webpage (other than the homepage) of the company's website which displays a link to the e-prospectus or the e-prospectus must not contain any promotional information about the offeror or the offer;
- h) when the e-prospectus is accessed from the company's website, a notice must be displayed stating that the securities are being offered solely on the basis of the information provided in the prospectus;
- i) the typeface, format and contents of the e-prospectus must be identical to those of the printed prospectus;
- j) the e-prospectus and the printed prospectus must both contain in a prominent place on the face of the prospectus a statement:
 - i) that the contents of the e-prospectus and the printed prospectus are identical;
 - ii) that copies of the printed prospectus are available for collection at specified locations, free of charge, upon request by members of the public throughout the offer period;
 - iii) the particulars of the specified locations; and
 - iv) that at least 3 copies of the printed prospectus are available for inspection at every location where the printed application forms are distributed throughout the offer period; and
- k) the printed application form must additionally state:
 - i) that prospective investors may access and download the e-prospectus from either the company's website or HKEx's website throughout the offer period;
 - ii) the website addresses, the place on the website where the e-prospectus can be accessed and how it can be accessed; and
 - iii) that prospective investors should read the prospectus prior to submitting an application.

Similar conditions apply to an offer of SFC-authorized CIS by a MMO.

Relevant Condition

Throughout the offer period, copies of the printed prospectus must be available for collection at specified locations, free of charge, upon request by any member of the public ("**Relevant Condition**"). According to the Guidance Letter, issuers and sponsors are expected to make a reasonable estimate of the number of printed prospectuses required to satisfy requests by members of the public. However, it goes on to state that a MMO issuer is only required to demonstrate that it has a reasonable basis for its estimate of printed prospectuses to satisfy requests by members of the public. If this is demonstrated, a temporary shortfall will not be considered as a breach of the Relevant Condition.

When is the Relevant Condition met?

According to the Guidance Letter, the Relevant Condition is met if the issuer is able to:

- a) provide a printed prospectus within 4 business hours upon request to the member(s) of the public; and
- b) the printed prospectus that is provided may be a stapled copy from a photocopy machine which is in black and white, grey-scale (which must provide equivalent information to investors as a colour prospectus) or colour.

What are "specified locations"?

In satisfying the Relevant Condition, a MMO issuer can specify the receiving bank branches at which the printed prospectuses are available for collection. Issuers do not need to make printed prospectuses available at all receiving bank branches where printed application forms are available, but at least 3 printed prospectuses must be available for inspection at every location where printed application forms are available.

Template Documents

The Guidance letter includes the following templates:

- Guidance on announcement for adoption of a MMO – Appendix 2 (Page 11)
- Guidance on disclosure on the first page of the Prospectus – Appendix 3 (Page 13)

- Guidance on disclosure in the “How to Apply” section of the Prospectus – Appendix 3 (Page 14)
- Guidance on disclosure in the Application Form – Appendix 4 (Page 15)

FAQ Series 13: For Investors

The Exchange has also updated FAQ Series 13 in relation to MMOs which sets out the following guidance.

What is a Mixed Media Offer or MMO?

It is an offer process where an issuer or a collective investment scheme (CIS) issuer distributes paper application forms for public offers of certain securities as long as the prospectus is available on the HKEx website or the issuer’s website. The conditions that an offeror must comply with in a MMO are set out in the Class Exemption Notice which is attached as Appendix 1 to the Guidance Letter. The SFC imposes similar conditions on CIS issuers who use a MMO to offer interests in SFC-authorized CISs that are to be listed on the Exchange.

Who may conduct an MMO?

Any offeror intending to conduct a public offer of:

- shares of a company (including an investment company under Chapter 21 of the Main Board Rules) listed or to be listed on the Exchange;
- debentures of a company listed or to be listed on the Exchange; and
- interests in CISs listed or to be listed on the Exchange and authorised by the SFC.

What practice does the MMO aim to change?

Many copies of printed prospectuses are not taken up and end up as trash. An MMO allows offerors to distribute printed application forms without an accompanying printed prospectus.

How to ensure investors who have no access to the internet can access the prospectus before they apply for subscription under an MMO?

There will be free copies of the printed prospectus available at specified locations upon request. In addition, at least three copies of the printed prospectus will be available for inspection at every location at which the paper application forms are available.

What is the difference between MMO and ePO?

A MMO aims to facilitate distribution of electronic listing documents whilst applications continue to be accepted in paper form. The ePO Guidelines aim to facilitate electronic submission of applications during a public offer but do not deal with whether the prospectus is otherwise required to be distributed in printed or electronic form.

Questions regarding printed prospectuses

- How and when can they be requested?

Any member of the public may, during the offer period during normal business hours, obtain a printed prospectus, free of charge, at any location specified in the announcements notifying the public of the adoption of an MMO.

The following two responses were added in the July 2015 update of the FAQs:

- i) How quickly must a printed prospectus be made available to an investor upon request?

Answer: A printed prospectus must be made available to a member of the public upon request within four business hours.

- ii) What is the required quality of such printed prospectus?

The printed prospectus that is provided may be a stapled copy from a photocopy machine which is in black and white, grey-scale or colour. Where it is a black and white or grey-scale prospectus, the sponsor must be satisfied that it provides equivalent information to investors as a colour prospectus.

Can investors still get a copy of the printed prospectus?

Yes, investors can collect a free copy of a printed prospectus upon request. Copies will be available at:

- a) the depository counter of Hong Kong Securities Clearing Company Limited;
- b) the offices of the company's Hong Kong share registrar, sponsor or co-ordinator offices; and
- c) certain designated branches of the receiving or placing banks.

The FAQs now additionally specify that at least three printed prospectuses must be available "for inspection" at every location where the printed application forms are available.

The locations must be stated in the prospectus and announcements made to inform the market of the proposed MMO and on the application forms.

The Exchange expects issuers and their sponsors (or listing agents in the case of CISs) to estimate the possible demand for printed prospectuses, as well as the locations at which they are most likely to be collected. The FAQs provide that companies should put procedures in place to allow them to gauge demand, such as a pre-order or booking system to allow investors to register a request to receive a printed prospectus.

A further update to the FAQs stipulates that sponsors are responsible for complying with the Listing Rules and the Corporate Finance Adviser Code of Conduct by ensuring that sufficient copies of prospectuses are available to satisfy public demand.

Where can investors find out about the website addresses where they can get access to a copy of an electronic prospectus?

Details of where investors can access the e-prospectus on the HKEx website and another website (usually the issuer's website) must be set out in the issuer's announcement which must be made during the five-business day period before the start of the offer period. This information will also be included in the application form.

Can investors rely on information on the company's (issuer's) website when deciding whether to invest in the company's shares?

No, investors can only rely on information contained in the prospectus.

Companies (issuers) must ensure that web pages containing an e-prospectus do not contain any promotional information about the issuer and the offer.

Is the printed prospectus identical to the electronic prospectus?

Yes, except in relation to colour.

Why does the MMO not provide for a mechanism by which a request for obtaining printed prospectuses should be made?

It is the offeror's responsibility to assess the possible demand for printed prospectuses after consulting with its sponsor or listing agent. It is up to offerors and their sponsors how or what procedures/mechanisms they wish to implement to best determine the likely demand for their printed prospectuses.

Since the rule provides for the posting on the HKEx website and the issuer's website of the e-application form together with the e-prospectus, can an applicant simply complete the e-application form downloaded from those websites for subscription purposes?

This is not recommended. Generally, issuers tend to accept only public subscriptions that are made on completion of the standard printed applications forms provided by issuers.

An alternative would be to subscribe under the ePO services provided by an issuer which normally requires completion of an online application form.

FAQ Series 13: For Issuers

Overview

If the electronic prospectus is not available on the issuer's website but is still available on HKEx's website, must the MMO be suspended?

The offeror need only suspend the MMO if the prospectus is not available on both the HKEx website and the issuer's website for 4 consecutive hours or more.

How should the offeror deal with the suspension of a Mixed Media Offer during the offer period?

When an offeror needs to suspend a Mixed Media Offer during the offer period, it must publish a suspension announcement on the HKEx website as soon as possible. The offer can only carry on if it can comply with the requirement of the Companies (Winding Up and Miscellaneous Provisions) Ordinance that when an offeror issues a printed application form, it must issue it with a printed prospectus.

The Class Exemption Notice

Where are the conditions set out in the Class Exemption Notice?

The class exemption is effected by Section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (**Class Exemption Notice**) which came into effect on 1 February 2011. This specifies the conditions which must be met in a MMO.

Does an offeror need to apply to the SFC or the Exchange to conduct an MMO?

No, but an offeror making a public offer of shares or debentures must comply with the conditions in the Class Exemption Notice. A CIS offeror may inform the SFC of its intent to conduct an MMO and conduct the MMO by complying with similar conditions imposed by the SFC in its letter of authorisation.

Can the issuer's website contain information other than prospectus information?

Yes, but the website should clearly delineate what website information is contained in the prospectus and what is not.

How is the notice requirement satisfied when the e-prospectus is accessed from the company's (issuer's) website?

It is a condition of reliance on the class exemption that when the e-prospectus is accessed from the company's website, a notice must be displayed stating that the securities are

being offered solely on the basis of the information provided in the prospectus (paragraph 3(h) of Section 9A of the Class Exemption Notice).

This notice should be given just before access to the prospectus is granted. For example, a plain clear "pop up" notice on a separate webpage of the issuer's website stating that the relevant securities are offered solely on the information in the e-prospectus accessible by a click on the webpage will satisfy this requirement.

How many printed prospectus copies must be made available to the public to satisfy the public demand requirement?

The SFC and the Exchange do not set any the minimum number of copies of printed prospectus that must be made available to satisfy public demand. Offerors and their sponsors or listing agents should make a best estimate of demand for the printed prospectus.

As a best practice, issuers and sponsors can consider stating in the notification announcement of an MMO (made during the 5 business days before the start of the offer period) details of how a member of the public can pre-register with the sponsor to obtain a printed prospectus during the offer period and where a copy can be obtained.

FAQ Series: For Issuers – Listing Rules

What headline category should be used for announcements in relation to MMOs?

The issuer must select the headline category "Mixed Media Offer" under "New Listing (Listed Issuers/New Applicants)".

Must announcements relating to the implementation and/or suspension of an MMO be vetted by the Exchange?

No.

What operational standards must an issuer adhere to for posting announcements relating to an MMO on its own website?

In addition to the requirements in the Class Exemption Notice requiring how access to the e-prospectus must be provided from the issuer's website, reference is made to No. 36 of FAQ Series 3⁴ on electronic disclosure regarding certain guiding principles for layout of the issuer's website.

Is it necessary to revise the printed application forms for shares/debentures/authorised CISs upon issue of an addendum or replacement e-prospectus?

If there is a change to the prospectus warranting the issue of an addendum or replacing an e-prospectus, it is a question of law whether the original printed application forms for the relevant securities accompanying the original prospectus would continue to be valid. The FAQs advise offerors to obtain professional advice on whether the original application forms need to be revised; how they should deal with completed application forms submitted under the terms of the prospectus (e.g. whether the offer period should be extended and/or whether applicants who have already submitted applications based on the original prospectus should be given a right to withdraw).

How to check whether a document is downloadable for display and printing?

MB Rule 2.07C(2) and GEM Rule 16.18(1) provide that all electronic copies of documents submitted by an issuer through HKEx-EDP to the Exchange for publication must be displayable on and printable from the HKEx website. Issuers are required to ensure compliance with these rules. The Exchange also has a hotline for any member of the public who detects any malfunctioning on the HKEx website.

FAQ Series 13: CIS Offering Documents

How does the MMO apply to CIS offerors?

For CIS offerors who intend to adopt an MMO, the SFC will impose conditions in its letter of authorisation similar to those in the Class Exemption Notice for offerors of shares and debentures who intend to adopt an MMO (with necessary changes).

⁴ HKEx. FAQs Series 3 "Electronic Disclosure". Updated 23 June 2014. Available at http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_3.pdf.

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