

**HKEx GUIDANCE LETTER**  
**HKEx-GL34-12 (April 2012)**

<b>Subject</b>	<b>Disclosure in listing documents relating to hard underwriting</b>
<b>Listing Rules and Regulations</b>	<b>Main Board Rules 2.13(2), 7.03 and 11.07</b>
<b>Related Publications</b>	<b>N/A</b>
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*Important note: This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.*

**1. Purpose**

1.1 This letter gives guidance on disclosure in listing documents relating to hard underwriting.

**2. Relevant Listing Rules**

2.1 Main Board Rule 7.03 states that an offer for subscription must be fully underwritten.

2.2 Main Board Rule 2.13(2) provides that the information contained in an issuer's document must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the issuer must not, among other things:

- (a) omit material facts of an unfavourable nature or fail to accord them with appropriate significance;
- (b) present favourable possibilities as certain or as more probable than is likely to be the case.

2.3 Main Board Rule 11.07 states that as an overriding principle, all listing documents must contain such particulars and information as, according to the particular nature of the issuer and the securities for which listing is sought, is necessary to enable an investor to make an informed assessment of the activities, assets and

liabilities, financial position, management and prospects of the issuer and of its profits and losses and of the rights attaching to such activities.

### **3. Guidance**

- 3.1 Main Board Rule 7.03 states that an offer for subscription must be fully underwritten. To comply with this requirement, a listing applicant for initial public offering on the Main Board of the Exchange would typically enter into underwriting agreements for the Hong Kong Public Offer and the International Placing. Such underwriting arrangements are often referred to as “soft underwriting”, which means the underwriters are entitled to terminate the underwriting agreements with immediate effect if any of the events as stipulated in the agreements occurs prior to 8:00 am on the date of listing. If the underwriting agreement is terminated, the listing will not proceed.
- 3.2 The underwriting agreement for the Hong Kong public offer (“**Hong Kong Underwriting Agreement**”) is usually entered into before the issue of the prospectus and forms part of the material contracts for inspection. The underwriting agreement for the international placing is usually signed after the issue of the prospectus at around the price determination date. Salient terms of the Hong Kong Underwriting Agreement are disclosed under the “Underwriting” section of the prospectus.
- 3.3 Occasionally, a listing applicant may enter into a “hard underwriting agreement” under which the underwriters agreed to commit to purchase a fixed value of shares not taken up under the public offer and/or international placing on the condition that the final offer price is fixed at the low end of an indicative offer price range. The listing applicant would agree to pay a fee for the hard underwriting arrangement, in addition to the normal underwriting fees payable under the soft underwriting agreements.
- 3.4 Hard underwriting arrangements usually appear when the demand for offer shares is expected not to be strong, and therefore the listing applicant is willing to pay an extra fee to secure a certain amount of committed underwriting.

#### ***Disclosure relating to hard underwriting agreement***

- 3.5 Where a hard underwriting agreement is entered into before the issue of the prospectus, disclosure of the salient terms of such agreement should be made in the prospectus applying the principles of Main Board Rule 2.13(2). In general, the disclosure should include:
  - The date of hard underwriting agreement
  - Amount underwritten
  - Conditions
  - Grounds for termination
  - Fees
- 3.6 If the hard underwriting agreement is entered into after the issue of the prospectus,

the issuer is required to issue a supplemental prospectus to disclose the above information to the public.

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