

HKE_x GUIDANCE LETTER
HKE_x-GL81-15 (June 2015)

Subject	Guidance on Mixed Media Offer
Listing Rules	Main Board Rules 12.11A, 20.19A and 25.19B GEM Rules 16.04D and 29.21B
Related Publications	Frequently Asked Questions Series 13 – Rule amendments relating to Mixed Media Offer Guidelines for Electronic Public Offerings issued by the SFC in April 2003 (ePO Guidelines)
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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 Department on a confidential basis for an interpretation of the Listing Rules, or this letter.*

I. Purpose

1.1 This letter provides:

- an overview of a Mixed Media Offer (“**MMO**”) to facilitate the use of MMO;
- template documents on MMO for reference; and
- practical tips for compliance with the MMO conditions.

II. Background

2.1 The Companies (Winding Up & Miscellaneous Provisions) Ordinance, Cap. 32 (“**CO**”) prohibits the issue of an application form unless it is issued together with a prospectus¹. This has been commonly interpreted to mean that companies conducting a public offering of shares and debentures cannot distribute a printed application form unless it is accompanied with a printed prospectus. The Code on Unit Trusts and Mutual Funds and the Code on Real Estate Investment Trusts have similar requirements for SFC-authorized collective investment schemes (“**CIS**”) seeking to list interests in CISs on the Exchange.

¹ Sections 38(3) and 342(3) of the CO.

- 2.2 The above requirements resulted in large wastage of paper as most retail investors only took the printed application forms but not the printed prospectuses.
- 2.3 In February 2011, after a public consultation process, a class exemption (“**Class Exemption**”) under section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap.32L) (“**Class Exemption Notice**”) was enacted to allow, subject to certain conditions, the despatch of electronic prospectuses where printed application forms are issued. A public offer that proceeds under this class exemption is known as a “Mixed Media Offer” or “MMO”.
- 2.4 The conditions set out in the Class Exemption Notice include making available an electronic copy of the prospectus on the issuer’s website and the Exchange’s website; and making printed prospectuses publicly available free of charge upon request at specified locations (which do not have to be the same locations as where the printed application forms are distributed). The MMO is implemented through the Class Exemption Notice and complemented by ancillary Listing Rule amendments².
- 2.5 For CIS offerors who intend to adopt a MMO, the SFC will impose similar conditions as those in the Class Exemption Notice in its letter of authorisation.

III. Listing Rules and the Relevant Laws

Listing Rules

- 3.1 The main provisions of the Listing Rules regulating a MMO are:
- (a) in relation to public offers of equity securities - Main Board Rule 12.11A (GEM Rule 16.04D);
 - (b) in relation to public offers of CISs - Main Board Rule 20.19A; and
 - (c) in relation to public offers of debt securities - Main Board Rule 25.19B (GEM Rule 29.21B).
- 3.2 Frequently Asked Questions Series 13 has been published to assist issuers in meeting their obligations in relation to a MMO.

Class Exemption Notice (Cap.32L), Section 9A

- 3.3 Appendix 1 sets out section 9A of the Class Exemption Notice. Please refer to <http://www.legislation.gov.hk/blis/eng/index.html> for the complete Class Exemption Notice.

² See Update No. 97 in January 2011. The relevant amendments to the Listing Rules became effective on 1 February 2011.

IV. Our Guidance

Benefits of MMO

- 4.1 A MMO provides issuers an option to reduce paper wastage from overprinting copies of prospectuses, which is expected to be friendly to the environment and cost-saving.
- 4.2 A MMO can be used in combination with an ePO pursuant to the ePO Guidelines. 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.

Applicability of MMO

- 4.3 MMOs are available to public offers of equity securities, CIS, and debt securities.

Templates

- 4.4 To assist issuers in meeting their obligations under the Listing Rules, set out in Appendices 2, 3, and 4 are the Exchange's guidance on MMO disclosure in:
- announcement for adoption of a MMO (see Appendix 2);
 - prospectus (see Appendix 3); and
 - application forms (white, yellow and other colours) (see Appendix 4).

MMO condition that copies of the printed prospectus are available for collection upon request by members of the public

- 4.6 One of the MMO conditions imposed by the Class Exemption Notice is that, throughout the offer period, copies of the printed prospectus are available for collection at specified locations, free of charge, upon request by any member of the public ("**Relevant Condition**").³ We expect issuers and sponsors to make a reasonable estimate of the number of printed prospectuses required to satisfy requests by members of the public. In this regard, the considerations and compliance standard we expect an issuer and its sponsor using a MMO to take into account to make a reasonable estimate are no different from those expected of an issuer and its sponsor not using a MMO.⁴
- 4.7 A MMO issuer is not held to a higher standard than that of an issuer not using a MMO. 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.

³ See Class Exemption Notice section 9A(3)(b).

⁴ See Main Board Rule 12.07 (GEM Rule 16.12).

- 4.8 The Relevant Condition is met if the issuer is able to:
- (a) provide a printed prospectus within four 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 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.

Meaning of “specified locations”

- 4.9 In satisfying the Relevant Condition, a MMO issuer is entitled to specify at which receiving bank branches the printed prospectuses are available for collection. The MMO conditions do not require printed prospectuses to be available at all receiving bank branches where printed application forms are available, so long as at least three printed prospectuses are available “for inspection” at every location where printed application forms are available.

Early Consultation

- 4.10 Issuers and sponsors may consult the Listing Department staff on the use of MMO if they have any questions. CIS issuers who wish to use MMO in their public offers of CIS are encouraged to consult the Product Investments unit of the SFC for advice on the necessary waivers.

End

Section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap.32L) (“Class Exemption Notice”) - Exemptions from requirement to issue form of application for shares or debentures with prospectus

(1) Where—

- (a) it is proposed to offer any shares in or debentures of a company incorporated under a former Companies Ordinance or the Companies Ordinance (Cap 622) by a prospectus issued generally; (28 of 2012 ss. 912 & 920)
- (b) the shares or debentures have been approved by a recognized exchange company for listing on a stock market it operates; and
- (c) a form of application for the shares or debentures in printed form is issued,

then, subject to the conditions specified in subsection (3), the offeror is exempted from compliance with the requirements of section 38(3) of the Ordinance to the extent that the offeror may issue the printed application form without it being accompanied by a printed form prospectus relating to the offer.

(2) Where—

- (a) it is proposed to offer any shares in or debentures of a company incorporated outside Hong Kong by a prospectus issued generally;
- (b) the shares or debentures have been approved by a recognized exchange company for listing on a stock market it operates; and
- (c) a form of application for the shares or debentures in printed form is issued,

then, subject to the conditions specified in subsection (3), the offeror is exempted from compliance with the requirements of section 342(3) of the Ordinance to the extent that the offeror may issue the printed application form without it being accompanied by a printed form prospectus relating to the offer.

(3) The conditions referred to in subsections (1) and (2) are—

- (a) during the period of 5 business days prior to the commencement of the offer period, adequate disclosure is made to the public that a printed application form will be issued without it being accompanied by a printed form prospectus relating to the offer;
- (b) throughout the offer period, copies of the printed form prospectus are available for collection at specified locations, free of charge, upon request by any member of the public;
- (c) throughout the offer period, at least 3 copies of the printed form prospectus are available for inspection at every location where the printed application forms are distributed;
- (d) throughout the offer period, the electronic form prospectus relating to the offer is in a form which is reasonably tamper-resistant;
- (e) the electronic form prospectus is readily accessible by the public—

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Section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Cap.32L) (“Class Exemption Notice”) - Exemptions from requirement to issue form of application for shares or debentures with prospectus

- (i) at the commencement of the offer period, from both the company’s designated website and the recognized exchange company’s designated website; and
 - (ii) at any time during the offer period after its commencement, subject to subsection (5), from either the company’s designated website or the recognized exchange company’s designated website;
- (f) the electronic form prospectus that is on the company’s designated website is directly linked from—
 - (i) the homepage of that designated website; or
 - (ii) another webpage within that designated website that is directly linked from the homepage;
- (g) the webpage (other than the homepage) within the company’s designated website displaying—
 - (i) link to the electronic form prospectus; or
 - (ii) the electronic form prospectus,does not contain any promotional information about the offeror or the offer;
- (h) when the electronic form prospectus is accessed from the company’s designated website, a notice is to 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 electronic form prospectus are identical to those of the printed form prospectus;
- (j) each of the electronic form prospectus and the printed form prospectus contains, in a prominent place on the face of the prospectus, a statement in a clear and legible form—
 - (i) that the contents of the electronic form prospectus and the printed form prospectus are identical;
 - (ii) that throughout the offer period, copies of the printed form prospectus are available for collection at specified locations, free of charge, upon request by any member of the public;
 - (iii) of the particulars of the specified locations; and
 - (iv) that throughout the offer period, at least 3 copies of the printed form prospectus are available for inspection at every location where the printed application forms are distributed; and
- (k) the printed application form is to state in a prominent place—
 - (i) that throughout the offer period, prospective investors may access and download the electronic form prospectus from either the company’s designated website or the recognized exchange company’s designated website;
 - (ii) the address of each of the designated websites, the place on the website where the electronic form prospectus may be accessed and how that prospectus may be accessed;

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- (iii) that throughout the offer period, copies of the printed form prospectus are available for collection at specified locations, free of charge, upon request by any member of the public;
 - (iv) the particulars of the specified locations;
 - (v) that throughout the offer period, at least 3 copies of the printed form prospectus are available for inspection at every location where the printed application forms are distributed; and
 - (vi) that prospective investors should read the prospectus prior to submitting an application.
- (4) For the purposes of subsection (3)(a), adequate disclosure is regarded as having been made during the period of 5 business days prior to the commencement of the offer period if—
- (a) an announcement is published in accordance with the requirements of the relevant listing rules on at least one of those 5 business days; and
 - (b) the announcement contains the following information—
 - (i) that the offeror proposes to offer shares in or debentures of a company by a prospectus issued generally;
 - (ii) that the shares or debentures are the subject of an application to a recognized exchange company for listing;
 - (iii) that the offeror intends to rely on this section and issue a printed application form for the shares or debentures without it being accompanied by a printed form prospectus relating to the offer;
 - (iv) that throughout the offer period, prospective investors may access and download the electronic form prospectus relating to the offer from either the company’s designated website or the recognized exchange company’s designated website;
 - (v) the address of each of the designated websites, the place on the website where the electronic form prospectus may be accessed and how that prospectus may be accessed;
 - (vi) that throughout the offer period, copies of the printed form prospectus will be available for collection at specified locations, free of charge, upon request by any member of the public;
 - (vii) the particulars of the specified locations; and
 - (viii) that throughout the offer period, at least 3 copies of the printed form prospectus will be available for inspection at every location where the printed application forms are distributed.
- (5) The condition specified in subsection (3)(e)(ii) is regarded as being satisfied even if the electronic form prospectus relating to the offer is, for a period of less than 4 consecutive hours during the offer period after its commencement, not readily

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accessible by the public from both the company’s designated website and the recognized exchange company’s designated website.

- (6) For the purposes of subsection (5)—
- (a) an hour, or part of an hour, falling on a Saturday, Sunday or public holiday; or
 - (b) an hour, or part of an hour, between midnight and 6:00 a.m. from Monday to Friday,

is not included in determining the time during which the electronic form prospectus is not readily accessible by the public.

- (7) If, after the offeror has published an announcement in accordance with subsection (4), the offeror knows that any of the conditions specified in subsection (3) will not be satisfied or is not satisfied in relation to the offer, the offeror—
- (a) must, as soon as practicable, publish a suspension announcement in accordance with the rules of the recognized exchange company; and
 - (b) must not issue the printed application form during the offer period without it being accompanied by a printed form prospectus relating to the offer.
- (8) After the publication of a suspension announcement under subsection (7)(a), the offeror may, during the offer period, issue the printed application form without it being accompanied by a printed form prospectus relating to the offer if—
- (a) each of the conditions specified in subsection (3) has been or is satisfied in relation to the offer; and
 - (b) it has published a resumption announcement in accordance with the rules of the recognized exchange company.

- (9) In this section—

business day (營業日) means a day other than—

- (a) a public holiday;
- (b) a Saturday; or
- (c) gale warning day or a black rainstorm warning day as defined in section 71(2) of the Interpretation and General Clauses Ordinance (Cap 1);

designated website (指定網站)—

- (a) in relation to a company, means a website designated by the company for the purposes of this section;
- (b) in relation to a recognized exchange company, means the website of the company designated by it;

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offer period (要約期), in relation to an offer of shares in or debentures of a company by a prospectus, means the period during which the shares or debentures are offered;

offeror (要約人), in relation to an offer of shares in or debentures of a company by a prospectus, means any company that makes the offer;

printed application form (印刷本申請表格), in relation to an offer of shares in or debentures of a company by a prospectus, means the form of application for the shares or debentures in printed form;

printed form prospectus (印刷本招股章程) means the printed version of a prospectus offering shares in or debentures of a company which—

- (a) complies with the relevant listing rules of the recognized exchange company concerned;
- (b) complies with—
 - (i) if the company is incorporated under a former Companies Ordinance or the Companies Ordinance (Cap 622), Part II of the Ordinance; or
 - (ii) if the company is incorporated outside Hong Kong, Part XII of the Ordinance; and
- (c) without limiting paragraph (b), has been registered under—
 - (i) if the company is incorporated under a former Companies Ordinance or the Companies Ordinance (Cap 622), section 38D of the Ordinance; or
 - (ii) if the company is incorporated outside Hong Kong, section 342C of the Ordinance; (28 of 2012 ss. 912 & 920)

relevant listing rules (有關上市規則) means the listing rules applicable to the stock market referred to in subsection (1)(b) or (2)(b);

relevant stock market (有關證券市場) means the stock market referred to in subsection (1)(b) or (2)(b);

specified locations (指明地點) means—

- (a) for an offer of shares in a company by a prospectus—
 - (i) if any of the shares in the company are already listed on the relevant stock market, the depository counter of Hong Kong Securities Clearing Company Limited, the designated branches of the receiving banks specified in the prospectus, if any, and the place of business of the company’s approved share registrar in Hong Kong; or
 - (ii) if none of the shares in the company are listed on the relevant stock market, the depository counter of Hong Kong Securities Clearing Company Limited,

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- the designated branches of the receiving banks specified in the prospectus, if any, and the principal place of business of the sponsors acting in respect of the application for listing of the shares; or
- (b) for an offer of debentures of a company by a prospectus, the depository counter of Hong Kong Securities Clearing Company Limited, the designated branches of the placing banks specified in the prospectus and the principal place of business of the co-ordinator for the offer specified in the prospectus.
- (10) For the purposes of this section, an electronic form prospectus is readily accessible from a website if it is capable of being viewed, downloaded, retained and printed as a copy from the website in its entirety, whether as a single file or as multiple files, by the public without a password or paying any charges.

(L.N.158 of 2010)

Guidance on announcement for adoption of a MMO

MIXED MEDIA OFFER

The Company will be issuing the Prospectus on or around [date] in connection with the proposed [Global Offering]. An application has been made to the Listing Committee of the Stock Exchange for the granting of the listing of, and permission to deal in, the [Shares/ Share Stapled Units] in issue and to be issued pursuant to the [Reorganisation] and the proposed [Global Offering]. Dealings in the [Shares/ Share Stapled Units] on the Stock Exchange are expected to commence at 9:00 a.m. on [date].

The Company will be relying on Section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Chapter 32L of the Laws of Hong Kong) and will be issuing (a) the **WHITE** and **YELLOW** Application Forms without them being accompanied by a printed Prospectus and [(b) the **[color of application form]** Application Forms to the [nature of potential shareholders] without them being accompanied by a printed Prospectus, unless [exceptional cases]]. From [time, date] until [time, date], an electronic form Prospectus which contents are identical to the printed Prospectus can be accessed and downloaded from the websites of the Company at [**Company's website**] and the Stock Exchange at www.hkexnews.hk, under the “*HKExnews > Listed Company Information > Latest Listed Company Information*” section, respectively.

Any one may obtain a copy of the printed Prospectus, free of charge, upon request during normal business hours from [time, date] until [time, date] at the following locations:

1. any of the following branches of the receiving banks for the Hong Kong Public Offering:

[Name of the receiving banks]

	<u>Branch Name</u>	<u>Address</u>
Hong Kong Island	[Branch Name]	[address]
Kowloon	[Branch Name]	[address]
New Territories	[Branch Name]	[address]

2. any of the following addresses of the [Joint] Sponsor[s]:

[Name of the [Joint] Sponsor[s]], at [addresses]

3. the Depository Counter of Hong Kong Securities Clearing Company Limited at 1/F, One & Two Exchange Square, 8 Connaught Place, Central, Hong Kong.

During normal business hours from [time, date] until [time, date], at least three copies of the printed Prospectus will be available for inspection at every location where the **WHITE** and **YELLOW** Application Forms [and the **[color of application form]** Application Forms] are distributed as set out in the section headed “*How to Apply for Hong Kong Offer [Shares/ Share Stapled Units and Reserved Share Stapled Units] — Applying for Hong Kong*”

Offer [Shares/ Share Stapled Units and Reserved Share Stapled Units] — Where to Collect the Application Forms” in the Prospectus.

Guidance on disclosure on the first page of the Prospectus

IMPORTANT

[The Company] will be relying on Section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Chapter 32L of the Laws of Hong Kong) and will be issuing the **WHITE** and **YELLOW** Application Forms [and the **[color of application form]** Application Forms] without them being accompanied by a printed prospectus. The contents of the printed prospectus are identical to the electronic form prospectus which can be accessed and downloaded from the websites of the Company at **[Company's website]** and the Stock Exchange at **www.hkexnews.hk** under the “*HKExnews > Listed Company Information > Latest Listed Company Information*” section, respectively.

Any one may obtain a copy of the printed prospectus, free of charge, upon request during normal business hours from [time, date] until [time, date] at the following locations:

1. any of the following branches of the receiving banks for the Hong Kong Public Offering:

[Name of the receiving banks]

	<u>Branch Name</u>	<u>Address</u>
Hong Kong Island	[Branch Name]	[address]
Kowloon	[Branch Name]	[address]
New Territories	[Branch Name]	[address]

2. any of the following addresses of the [Joint] Sponsor[s]:

[Name of the [Joint] Sponsor[s]], at [addresses].

3. the Depository Counter of Hong Kong Securities Clearing Company Limited at 1/F, One & Two Exchange Square, 8 Connaught Place, Central, Hong Kong.

During normal business hours from [time, date] until [time, date], at least three copies of the printed prospectus will be available for inspection at every location where the **WHITE** and **YELLOW** Application Forms [and the **[color of application form]** Application Forms] are distributed as set out in “How to Apply for Hong Kong Offer Shares” in this prospectus.

Guidance on disclosure in the “How to Apply” section of the Prospectus

IMPORTANT

[The Company] will be relying on Section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Chapter 32L of the Laws of Hong Kong) and will be issuing the **WHITE** and **YELLOW** Application Forms [and the **[color of application form]** Application Forms] without them being accompanied by a printed prospectus. The contents of the printed prospectus are identical to the electronic form prospectus which can be accessed and downloaded from the websites of the Company at **[Company’s website]** and the Stock Exchange at **www.hkexnews.hk** under the “*HKExnews > Listed Company Information > Latest Listed Company Information*” section, respectively.

Any one may obtain a copy of the printed prospectus, free of charge, upon request during normal business hours from [time, date] until [time, date] at the following locations:

1. any of the following branches of the receiving banks for the Hong Kong Public Offering:

[Name of the receiving banks]

	<u>Branch Name</u>	<u>Address</u>
Hong Kong Island	[Branch Name]	[address]
Kowloon	[Branch Name]	[address]
New Territories	[Branch Name]	[address]

2. any of the following addresses of the [Joint] Sponsor[s]:

[Name of the [Joint] Sponsor[s]], at [addresses].

3. the Depository Counter of Hong Kong Securities Clearing Company Limited at 1/F, One & Two Exchange Square, 8 Connaught Place, Central, Hong Kong.

During normal business hours from [time, date] until [time, date], at least three copies of the printed prospectus will be available for inspection at every location where the **WHITE** and **YELLOW** Application Forms [and the **[color of application form]** Application Forms] are distributed as set out below.

Guidance on disclosure in the Application Forms

[The Company] will be relying on Section 9A of the Companies (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice (Chapter 32L of the Laws of Hong Kong) and will be issuing the **WHITE** and **YELLOW** Application Forms [and the **[color of application form]** Application Forms] without them being accompanied by a printed prospectus. The contents of the printed prospectus are identical to the electronic form prospectus which can be accessed and downloaded from the websites of the Company at [**Company’s website**] and the Stock Exchange at www.hkexnews.hk under the “*HKExnews > Listed Company Information > Latest Listed Company Information*” section, respectively.

Any one may obtain a copy of the printed prospectus, free of charge, upon request during normal business hours from [time, date] until [time, date] at the following locations:

1. any of the following branches of the receiving banks for the Hong Kong Public Offering:

[Name of the receiving banks]

	<u>Branch Name</u>	<u>Address</u>
Hong Kong Island	[Branch Name]	[address]
Kowloon	[Branch Name]	[address]
New Territories	[Branch Name]	[address]

2. any of the following addresses of the [Joint] Sponsor[s]:

[Name of the [Joint] Sponsor[s]], at [addresses].

3. the Depository Counter of Hong Kong Securities Clearing Company Limited at 1/F, One & Two Exchange Square, 8 Connaught Place, Central, Hong Kong.

During normal business hours from [time, date] until [time, date], at least three copies of the printed prospectus will be available for inspection at every location where the **WHITE** and **YELLOW** Application Forms [and the **[color of application form]** Application Forms] are distributed as set out in “How to Apply for Hong Kong Offer Shares” in this prospectus.