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TOPICAL ISSUES

Initial 3-Day Check – Application Proofs – discontinued after 30 September 2014: HKEx [announced](#) that the Initial 3-Day Check of Application Proofs would be discontinued after 30 September 2014. Accordingly, starting from 1 October 2014, when the listing applicant files a listing application with HKEx, its Application Proof will be published on the HKEx’s website simultaneously.

The Guidance Letter [HKEx-GL56-13](#) published by HKEx has been amended and the 3-Day Checklist (Table B) was merged with Table A of the same Guidance Letter. Other related Guidance Letters [HKEx-GL57-13](#), [HKEx-GL58-13](#), [HKEx-GL60-13](#) and [HKEx-GL61-13](#) have also been updated to reflect the change.

PRACTICAL TIPS

The abolition of the Initial 3-Day Check and thus the “censoring procedure” mean that Application Proofs can be viewed by the public at the same time when listing applicants submit their listing applications. Accordingly, before submitting Application Proofs, applicants and their professional parties should be more careful and diligent in checking to ensure that all the material information is correct and all the relevant requirements have been duly satisfied to minimise any unnecessary embarrassment. In particular, the disclosure requirements for an Application Proof for HKEx’s vetting and the information which must be redacted in an Application Proof for the purpose of publication on HKEx’s website as specified in the Guidance Letter [HKEx-GL56-13](#) must be carefully checked to ensure their compliance.

Weighted Voting Right Structures – concept paper published: HKEx published its [“Concept Paper – Weighted Voting Rights”](#) to seek views on whether weighted voting right structures should be allowed for companies listed or intending to list on HKEx, and if so, to what extent?

Please refer to our Legal Update entitled [“Should We Adopt Weighted Voting Right Structures for Listing and Listed Companies in Hong Kong?”](#) for further information.

PRACTICAL
TIPS

HKEx states that it does not have a stance on the issue for the time being: “The Concept Paper is intended to be a neutral, factual and analytical presentation of the relevant issues and considerations. The Exchange has formed no view and looks forward to receiving the views of respondents,” said David Graham, HKEx’s Chief Regulatory Officer and Head of Listing. It appears that it is up to the market to decide whether the WVR Structures should be adopted. If anyone wants to make a response to the Concept Paper, he should submit the same on or before 30 November 2014.

Prospectus liability on sponsors – relying on existing law: SFC published its [*“Supplemental Consultation Conclusions on the Regulation of IPO Sponsors – Prospectus Liability”*](#) to confirm, among others, that sponsors have potential statutory criminal and civil liability under the existing CWUMPO for untrue statements (including material omissions) in prospectuses and SFC will rely on the

relevant CWUMPO provisions to take action as appropriate. Also, no further legislative amendment is required to clarify sponsors’ civil and criminal prospectus liability.

Please refer to our Legal Update entitled [*“SFC Confirms it will Rely on Existing Law to Impose Prospectus Liability on Sponsors”*](#) for further information.

PRACTICAL
TIPS

SFC confirms that sponsors are included in the broad category of persons who “authorised the issue of the prospectus” under the existing CWUMPO. Accordingly, they may be subject to criminal and civil liability for any untrue statement (including material omission) in prospectuses. For criminal liability, this includes imprisonment and a fine and for civil liability, sponsors may be liable to pay compensation to all persons who subscribe for any shares on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement. In order to protect the interest of sponsors, they should ensure that due diligence and verification of prospectuses are conducted properly and accurately.

 PROCEDURES AND WAIVERS

CIS – minor Listing Rules amendments: HKEx published minor amendments on Chapter 20 of the MBLR which governs SFC-authorized CIS. The amendments include the following:

- Clarifying the eligibility requirement of listing agents;
- Streamlining the application procedures for CIS listing applicants; and

- Clarifying the procedures for the listing of additional interests in a close-ended CIS after listing.

The [*Listing Rules amendments*](#) will be applicable to listing applications submitted on or after 10 November 2014.

PRACTICAL
TIPS

Before any CIS can be listed on HKEx, authorisation must first be obtained from SFC. SFC is empowered by section 104 of the SFO to authorise CIS in accordance with the requirements of the relevant codes published by SFC. Its authorisation process includes vetting of the Hong Kong offering documents or other relevant product description documents. On the other hand, HKEx is responsible for the listing of authorised CIS and its role includes vetting of listing documents and other relevant documents in respect of listing issues not covered by the SFC codes, supervising the conduct of the listing process and monitoring continuing compliance with the Listing Rules.

Glossary

IN THIS UPDATE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS

Application Proof	In the case of a new listing applicant, referring to a draft listing document that is required to be substantially complete and is submitted to HKEx together with a listing application form for listing its equity securities under Chapter 9 of the MBLR; in the case of a new CIS applicant with a listing agent appointed which is required to discharge the functions equivalent to those of a sponsor, a draft listing document that is submitted to the SFC together with an application for authorisation of the CIS for the purpose of listing its interests on HKEx	MBLR	Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited
		PRC	People's Republic of China
		SEHK	The Stock Exchange of Hong Kong Limited
		SFC	Securities and Futures Commission
		SFO	Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong)
CIS	Collective investment schemes		
CWUMPO	Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32 of the Laws of Hong Kong)		
GEM	Growth Enterprise Market operated by SEHK		
GEM LR	Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited		
HK	Hong Kong Special Administrative Region of the PRC		
HKEx	Hong Kong Exchanges and Clearing Limited (also referring to its subsidiaries, including SEHK, as appropriate)		
IPOs	Initial public offerings		
Listing Rules	Main Board LR and/or GEM LR, as the case may be		

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