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# Capital Markets Quarterly Update

HONG KONG

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## DISCLOSURE REQUIREMENTS AND GUIDANCE

**Revised guidance - accounting and disclosure requirements - acquisitions of subsidiaries and businesses - stub period comparatives:** HKEx published a revised guidance letter "*HKEx-GL32-12*" on the accounting and disclosure requirements for (1) acquisitions of subsidiaries and businesses conducted during or after the trading record period; and (2) stub period comparatives. There are various additions and modifications being included in the revised guidance letter. Some of the major amendments are specified as follows:

- *Including guidelines for the application of MBLR 4.28 (GEMLR 7.30)* – the rule states that where a listing applicant has acquired or proposed to acquire any businesses or companies which would on the date of application or after the date of acquisition be classified as a major subsidiary as defined in the rule, pro forma financial information prepared in accordance with the relevant Listing Rules in respect of the enlarged group should be disclosed in its listing document. HKEx

explains (1) that this rule applies to any business or company acquired or proposed to be acquired after the trading record period which would be classified as a major subsidiary; and (2) the application of the size test in relation to this rule.

- *Specifying the conditions where waivers of MBLR 4.04(2) and (4) (GEMLR 7.03(2) and 7.03(4)) will be granted* - the rule states that an applicant is required to include in its accountants' report the results and balance sheets of any subsidiary or business acquired or proposed to be acquired since the date to which its latest audited accounts have been made up immediately preceding the issue of the listing document or since the incorporation of such subsidiary or the commencement of such business or such shorter period as may be acceptable to HKEx (as the case may be). There are three scenarios pursuant to which waiver may be granted:
  - » In relation to acquisitions of equity securities in the ordinary and usual course of business of the applicant;

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- » In relation to acquisition of a business or subsidiary; and
- » In cases where the requirements under paragraphs 32 and 33 of

the Third Schedule to the CWUMPO<sup>1</sup> apply, an exemption of the relevant requirements is granted by the SFC.

### PRACTICAL TIPS

*Please also refer to the previous article “Guidance - accounting and disclosure requirements for acquisitions of subsidiaries and businesses” contained in our Capital Markets Quarterly Update (January to March 2014) for information about the previous version of the guidance letter. Please read this article in conjunction with the previous article.*

#### **Voluntary inclusion of unaudited financial information of the companies acquired after the track record period - allowed: HKEx**

published a listing decision “[HKEx-LD43-2](#)” allowing the voluntary inclusion of the unaudited financial information in relation to the businesses of a group of companies (“**Acquired Group**”) acquired by the listing applicant after its track record in the listing document provided that:

- The listing document must contain a risk factor to warn investors about the unaudited nature of the information; and
- A mechanism must be included for the subsequent disclosure of the actual audited information of the Acquired Group for the relevant period with which the unaudited information of the Acquired Group could be compared.

### PRACTICAL TIPS

*The listing decision should not be taken as a general precedent case as the decision was made based on the following factors which may be distinguishable from some previous cases:*

- *HKEx, in previous precedents, had rejected the inclusion of unaudited profit estimates in prospectuses as this might encourage other companies in the future to include profit forecasts/estimates rather than audited information for stub periods. The present case, however, did not involve a profit forecast/estimate of the applicant as the Acquired Group’s unaudited accounts would not be consolidated into those of the listing group (“**Group**”) upon listing and therefore would not form part of the results of the Group;*
- *The unaudited information of the Acquired Group showed a loss and so the inclusion of the Acquired Group’s unaudited accounts was not intended to give the Group a better valuation; and*
- *The application did not involve any fundraising nor fresh offer of shares and so the inclusion was not intended to increase the attractiveness of the offer.*

<sup>1</sup> S32 of the CWUMPO states that if the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants (who shall be named in the prospectus) upon the following should be included in the prospectus -

- (a) the profits or losses of the business in respect of each of the 3 financial years immediately preceding the issue of the prospectus;
- (b) the assets and liabilities of the business at the last date to which the financial statements of the business were prepared.

S33(1) states that if-

- (a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other undertaking; and
- (b) by reason of that acquisition or anything to be done in consequence thereof or in connexion therewith that undertaking will become a subsidiary of the company, a report made by accountants (who shall be named in the prospectus) upon the following should be included in the prospectus -
  - (i) the profits or losses of the other undertaking in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and
  - (ii) the assets and liabilities of the other undertaking at the last date to which the financial statements of the undertaking were prepared.

## PROCEDURES AND WAIVERS

### **Revised guidance - confirmations required on the accountants' report, pro forma financial information and profit forecast in Application Proofs:**

HKEx published a revised guidance letter "[HKEx-GL58-13](#)" on guidance on confirmations required from the reporting accountants on the accountants' report, pro forma financial information and profit forecast ("**Reports**") in Application Proofs and subsequent draft listing documents. The Appendix of the guidance letter contains a suggested template of the reporting accountants' confirmation ("**Template**"). The amendment made in this version

of this guidance letter is paragraph 7 of the Template. The reporting accountants are required to confirm that they have reviewed the calculations of and the accounting policies adopted in arriving at the relevant profit forecast in accordance with Hong Kong Standard on Investment Circular Reporting Engagements 500 "Reporting on Profit Forecasts, Statements of Sufficiency of Working Capital and Statements of Indebtedness" issued by the HKICPA instead of Auditing Guideline 3.341 "Accountants' Report on Profit Forecast" as stated in the previous version.

#### PRACTICAL TIPS

*Where the financial information contained in an Application Proof is not in a final form, it must be in an advanced form. In such case, the reporting accountants must provide a confirmation (in a form similar to the Template) to the listing applicant with a copy of it be made to the sponsor, HKEx and the SFC stating that no significant adjustment is expected to be made to the draft Reports based on the work done as of the date of the confirmation. An applicant that does not comply with the requirements as stated in this guidance letter may render the listing application not considered substantially complete as required under the Listing Rules.*

**Placing of shares by lead brokers - to connected clients holding on behalf of independent third parties – consent requirements:** HKEx published a revised guidance letter "[HKEx-GL75-14](#)" to provide guidelines for obtaining prior written consent from HKEx under Appendix 6 of the MBLR ("**Placing Guidelines**") for placing of shares by a lead broker or any distributors to connected clients<sup>2</sup> who will hold the shares on behalf of independent third parties. The guidelines are summarised as follows:

- *Situations where no prior written consent is required* – if all the shares being allocated to the connected client are fully distributed to independent placees so that the lead broker or distributor will not hold any share upon completion of the offer provided that all relevant provisions under the Placing Guidelines are being duly complied with.
- *Situations where prior written consent is required* – generally HKEx will give its consent subject to the satisfaction of the following conditions:-
  - » The shares are held on behalf of independent third parties;
  - » No preferential offering of shares to the connected client or, the terms of the agreement with the relevant cornerstone investor pursuant to whom the connected client is holding shares on behalf of are substantially the same as other cornerstone investors' agreements; and
  - » Details of the allocation to the connected client will be disclosed in the allotment result announcement.
- *Situations where no consent will be given generally* – for a connected client's proprietary account.

#### PRACTICAL TIPS

*In order to avoid any undesirable delay in the applicant's listing timetable, sponsors and lead brokers are reminded that they should apply to HKEx for written consent under the Placing Guidelines to allocate shares to connected clients on a timely manner, if required.*

<sup>2</sup> Paragraph 13(7) of Appendix 6 of the MBLR states that "connected clients" in relation to an exchange participant means any client of such member who is a company which is a member of the same group of companies as such exchange participant.

**CIS applications – guidance on documentary requirements and administrative matters:**

HKEx published a guidance letter “[HKEx-GL79-14](#)” to explain guidelines in relation to the documentary requirements and administrative matters for CIS applications. The guidelines are summarised as follows:

- *Appointment of a listing agent* - a listing agent must have all the necessary licences and qualifications. Where the CIS applicant is a real estate investment trust or where HKEx or the SFC may otherwise require, the listing agent must have the required licences and qualifications to act as a sponsor.
- *Publication of Application Proof and PHIP* - Where a CIS applicant’s listing agent is required to discharge the functions equivalent to those of a sponsor (whether or not the application involves an IPO), it is required to publish an Application Proof and a PHIP.
- *Streamlining of application process and documentary requirements* - Attachment 1 of the guidance letter contained some administrative matters and the documents required to be submitted at different stages of the application process. Also, the number of copies of the relevant documents required to be submitted has also been reduced as explained in Attachment 2.
- *Stamp duty remission for exchange traded funds (“ETFs”)* - for ETFs eligible for stamp duty remission, HKEx will issue a final listing approval earlier (shortly after the publication of the listing document) if it receives a letter from a listing agent at the time of submission of the application form confirming that it needs the final approval letter to apply for a stamp duty remission.

**PRACTICAL  
TIPS**

HKEx published amendments to Chapter 20 and Appendix 5 of the MBLR which govern SFC-authorized CIS. The amendments take effect for listing applications submitted on and after 10 November 2014. For details, please refer to the previous article “[CIS - minor Listing Rules amendments](#)” contained in our [Capital Markets Quarterly Update \(July to September 2014\)](#).

## Glossary

IN THIS UPDATE, THE FOLLOWING TERMS HAVE THE FOLLOWING MEANINGS

<b>Application Proof</b>	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	<b>MBLR</b>	Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited
		<b>PHIP</b>	Post Hearing Information Pack, referring to in the case of a listing of the equity securities of a new applicant, a near-final draft listing document for the listing of equity securities published on HKEx's website; in the case of a listing of interests in a CIS with a listing agent appointed which is required to discharge the functions equivalent to those of a sponsor, a near-final draft listing document for the listing of interests in the CIS published on HKEx's website
<b>CIS</b>	Collective investment schemes	<b>PRC</b>	People's Republic of China
<b>CWUMPO</b>	Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32 of the Laws of Hong Kong)	<b>SEHK</b>	The Stock Exchange of Hong Kong Limited
<b>GEM</b>	Growth Enterprise Market operated by SEHK	<b>SFC</b>	Securities and Futures Commission
<b>GEMLR</b>	Rules Governing the Listing of Securities on the Growth Enterprise Market of The Stock Exchange of Hong Kong Limited		
<b>HK</b>	Hong Kong Special Administrative Region of the PRC		
<b>HKEx</b>	Hong Kong Exchanges and Clearing Limited (also referring to its subsidiaries, including SEHK, as appropriate)		
<b>HKICPA</b>	Hong Kong Institute of Certified Public Accountants		
<b>IPOs</b>	Initial public offerings		
<b>Listing Rules</b>	MBLR and/or GEMLR, as the case may be		



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