

# Client Alert.

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## HKEx Streamlines Rules Governing the Listing of Debt Securities Offered to Professional Investors

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Hong Kong Exchanges and Clearing Limited (“**HKEx**”) has recently issued its Consultation Conclusions on the Proposed Changes to Requirements for the Listing of Debt Issues for Professionals Investors Only, which amends the rules for listing debt securities (including convertible bonds) offered to professional investors, and marks a significant step by the HKEx to enhance its attractiveness as a listing platform for debt securities.

The new rules, which come into effect on November 11, 2011, have introduced the following key changes:

- abolishing the checklist-based disclosure requirement for offering documents, and replacing it with a general obligation to include information that is customary for offers of debt securities to professionals;
- streamlining the application and approval process;
- authorizing the Head of Listing to approve listing applications and permitting the delegation of such authority within the Listing Division;
- for routine applications, issuing the Listing Eligibility Letter five business days after receiving a listing application;
- amending the definition of professional investor (as regards to persons in Hong Kong) to bring it into alignment with the Securities and Futures Ordinance, and extending the definition to include professional investors outside Hong Kong; and
- removing certain rules which were only relevant to retail investors.

### OFFERING DOCUMENTS

Previously, the contents of an offering document had to be drafted by reference to a detailed checklist issued by the HKEx, which has now been replaced with a general obligation to disclose information that is customary for offers of debt securities to professionals. As a result, the HKEx will no longer review and comment on the substantive contents of an offering document, and the only specified requirements are responsibility and disclaimer statements in prescribed forms, and a statement limiting distribution of the offering document to professional investors. Going forward, an offering document will only be reviewed for compliance with these three compulsory disclosure requirements.

This approach mirrors that of the Singapore Stock Exchange (“**SGX**”) in relation to offerings of bonds made primarily to institutional and sophisticated investors. In 2004, when Japanese issuers of convertible bonds changed their listing venue from London to Singapore because of the potential impact of the Financial Services Action Plan in the EU, concerns were raised that removing any specific disclosure requirements would lead to a “dumbing down” of offering circulars. This has not happened, perhaps because of awareness by issuers and underwriters of the need to make proper disclosure in accordance with international standards. Therefore, we would not expect there to be any change to the general scope of disclosure in relation to debt securities listed on the HKEx. For example, although the new rules do not require the inclusion of financial statements, we would expect they will continue to be included.

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## APPLICATION AND APPROVAL

The application and approval process has been streamlined. The number of documents required to be submitted by an applicant has been reduced, and in particular the listing agreement, experts' consents and the checklist previously required to accompany the submission documents, are no longer required.

Although the HKEx will continue to review each applicant for compliance with the relevant listing eligibility criteria, for routine applications the HKEx aims to issue a Listing Eligibility Letter five business days after it receives an application. Further, the new rules also provide the flexibility to submit a draft of the application form for the purpose of obtaining the Listing Eligibility Letter.

The Head of Listing is now authorized under the new rules to approve a listing application, and may delegate such authority within the Listing Division. Listing approval from the Listing Committee will no longer be required.

Experience over the last 30 years has shown that the choice of exchange for international professional-only issues has tended to be made more by reference to consistency of approach to required disclosure and service standards rather than cost or the contents of offering documents (this is particularly so when comparing London and Luxembourg as listing venues). London, in particular, has received credit for establishing clear service standards and publishing regularly the degree of adherence to those standards<sup>1</sup>.

## ELIGIBILITY

The definition of "professional investor" has been revised in alignment with the definition set forth in Part 1 of Schedule 1 of the Securities and Futures Ordinance. In order to reflect the market reality that non-retail debt securities are commonly structured as cross-border offerings, the definition of "professional investor" has also been extended to persons outside Hong Kong who are entitled to exemptions as professional investors in another jurisdiction.

Certain provisions which were only relevant to retail investors have been removed from the listing eligibility requirements. For example, companies listed on the HKEx or any other stock exchange will be exempted from the HK\$100 million minimum assets requirement, and private companies within the meaning of section 29 of the Companies Ordinance are no longer disqualified. More significantly, the requirement to produce accounts for two years preceding an application for listing has been waived for an applicant whose shares are listed on the HKEx, or which is a special purpose entity backed by assets of a guarantor.

## OTHER PROPOSALS

Certain proposals discussed in the earlier consultation paper and which were recommended by some industry participants were not adopted, including the requirement for anti-dilution provisions to be included for convertible bonds and for the HKEx to be notified of any proposal to change the trustee and to have the opportunity to impose conditions on that change. As with the contents of offering documents, our experience is that market practice effectively ensures the inclusion of these protections in appropriate cases.

## POSSIBLE TAXATION CONCERNS FOR HONG KONG CORPORATE INVESTORS

As noted in the December 2010 Consultation Paper, for corporations subject to Hong Kong tax, interest on a corporate bond listed on the HKEx will be taxable. Until this issue is addressed, it may preclude corporate investors in Hong Kong from investing in debt securities listed on the HKEx and limit the effectiveness of the changes.

<sup>1</sup> For the six months ended June 30, 2011, the UKLA service standard for comments on an initial proof of a document for an already listed issuer was 95 percent within five working days. The result achieved was 99.54 percent according to the UKLA's website.

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## CONCLUSION

The changes implemented by the HKEx are to be welcomed. If successfully implemented, they will enhance HKEx's attractiveness as a choice of listing venue for "professionals only" debt securities. In addition, for those issuers already listed on the HKEx, listing debt securities on HKEx will obviate the need to comply with the continuous disclosure regimes of more than one stock exchange<sup>2</sup>.

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<sup>2</sup> For example, Rule 316 of the Listing Manual of the SGX requires the release to the SGX via SGXNET of all information released to the home market at the same time.