

Frequently Asked Questions Series 13 (Released on 26 November 2010)

Rule amendments relating to Mixed Media Offer (effective 1 February 2011)

Notes to FAQ

The following frequently asked questions (**FAQs**) are intended to assist issuers in meeting their obligations in relation to a Mixed Media Offer (**MMO**) particularly in situations not explicitly specified or where further clarification may be desirable. The Securities and Futures Commission (**SFC**) has also posted these FAQs on its website at www.sfc.hk.

Readers should refer to the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2010 (**Notice**) and the Main Board and GEM Listing Rules (**Rules**) to understand the primary obligations and, where necessary, seek qualified professional advice. These FAQs are not a substitute for the Notice or the Rules or such advice. In the event of any discrepancy between any of the contents of these FAQs and the Notice and the Rules, as amended and interpreted from time to time, the provisions of the Notice and the Rules shall prevail.

In formulating our “answers”, we have in some cases assumed certain underlying facts, selectively summarised the relevant provisions of the Notice and the Rules or concentrated on one particular aspect of the question which we interpreted to be the focal point of the enquiry.

The “answers” should therefore not be construed as being definitive and applicable to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division is available for consultation on a confidential basis where interpretation of the Rules is required. Issuers and practitioners are urged to contact the Listing Division at the earliest opportunity with any queries they may have on the Rules.

I. FOR INVESTORS

No	Query	Response
1	What is a Mixed Media Offer or MMO?	<p>Mixed Media Offer or MMO is an offer process where an issuer or a CIS issuer distributes paper application forms for public offers of certain securities* so long as the prospectus is available on the HKEx website or the issuer/CIS issuer's websites.</p> <p>The Class Exemption Notice (attached in Appendix B of the conclusion paper) sets out the condition an offeror must comply with in a Mixed Media Offer. The SFC will impose similar conditions on CIS issuers who intend to conduct a Mixed Media Offer with regards to interests in SFC-authorized CISs that are / or will be listed on the Exchange.</p> <p>*“Securities” refer to shares of or debentures in a company and SFC-authorized CISs.</p>

No	Query	Response
2	Who may conduct an MMO?	<p>Any offeror intending to conduct a public offer of:</p> <ul style="list-style-type: none"> (a) shares of a company (including an investment company under Chapter 21 of the Main Board Rules) listed or to be listed on the Exchange; (b) debentures of a company listed or to be listed on the Exchange, and (c) interests in CISs listed or to be listed on the Exchange and authorised by the SFC under section 104 of the Securities and Futures Ordinance (SFO).
3	What existing practice does the MMO aim to change?	<p>The market has developed a practice of printing large quantities of printed prospectuses copies for distribution at points where printed application forms are distributed, even though e-prospectuses are available online. Many of these copies are not taken up and end up as trash.</p> <p>Under an MMO option, an offeror who complies with the conditions of the Class Exemption Notice (see section B below), or obtains a waiver from the SFC, may distribute printed application forms even though each application form is not accompanied by a printed prospectus.</p>
4	How to ensure investors who have no access to the internet can access the prospectus before they apply for subscription under an MMO?	<p>Question 7 below sets out where investors can get a copy of the paper prospectus.</p> <p>Investors will continue to obtain a free copy of the paper prospectus from specified locations (e.g. at receiving banks and the principal place of business of the sponsors) upon request. Also, at least three copies of the printed prospectus will be available for inspection at every location where the paper application forms are distributed.</p>

No	Query	Response
5	What is the difference between MMO and ePO?	<p>Both the MMO and ePO Guidelines aim to facilitate wider use and acceptance of electronic listing documents. The MMO proposal aims to facilitate distribution of electronic listing documents whilst applications continue to be accepted in paper form. The ePO Guidelines published by the SFC in April 2003 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.</p> <p>Under the ePO Guidelines, the internet (or other electronic means) is used to display or provide access to prospectuses, application forms and/or to collect applications or application instructions from the public (applicants) during an initial public offering or a follow-on public offering.</p> <p>The MMO involves allowing a printed application form for the relevant securities to be issued without being accompanied by printed prospectus if certain conditions are met.</p> <p>MMO and ePO complement each other and are not mutually exclusive.</p>
6	How and when an investor may request a printed prospectus?	<p>Any member of the public may, during the offer period during normal business hours, obtain a printed prospectus, free of charge, at any location specified in the announcements notifying the public of the adoption of an MMO.</p>
7	Can investors still get a copy of paper prospectus?	<p>Yes, investors can collect a copy of paper prospectus free of charge upon request. Copies will be available at:</p> <ul style="list-style-type: none"> (a) the depository counter of Hong Kong Securities Clearing Company Limited; (b) the offices of the company's Hong Kong share registrar, sponsor or co-ordinator offices; and (c) designated branches of the receiving or placing banks. <p>These locations will be stated in the prospectus and announcements to inform the market of the proposed Mixed Media Offer as well as application forms.</p>

No	Query	Response
		<p>We expect issuers and their sponsors/listing agents to assess the possible demand for paper prospectuses, including locations at which they are most frequently and likely to be collected. Companies should put in place appropriate procedures to enable them to gauge demand, for instance, a pre-order or booking system where investors can register their request for a copy of the paper prospectus.</p> <p>Consistent with existing practice, it is the responsibility of the companies' sponsors to comply with the Exchange Listing Rules and the CFA Code of Conduct by ensuring that there are sufficient copies of prospectuses available to the public to satisfy public demand.</p>
8	<p>Where can the investors find out about the website addresses where they can get access to a copy of electronic prospectus?</p>	<p>The application form and the issuer's announcement (made during the five-day period before the start of the offer period) will set out details of where investors can access the electronic prospectus on the HKEx website and another website (usually its own website).</p>
9	<p>Can investors rely on information on the company's (issuer's) website when deciding whether to invest in the company's shares?</p>	<p>No, investors should ensure they only rely on information contained in the prospectus.</p> <p>The issuer's website may contain information outside prospectus. However, we would expect companies to clearly delineate between prospectus information and non-prospectus information. Web pages containing the electronic prospectus must not contain any promotional information about the issuer and the offer.</p>
10	<p>Is the paper prospectus identical to the electronic prospectus?</p>	<p>Yes, the electronic prospectus must be identical to the paper prospectus. It should not be password protected and should be reasonably tamper-resistant.</p>

No	Query	Response
11	<p>Why does the MMO not provide for a mechanism by which a request for obtaining printed prospectuses should be made?</p>	<p>It is the offeror's responsibility, after taking appropriate advice from its sponsor/listing agent) to assess the possible demand for printed prospectuses, including locations at which they are most frequently and likely to be collected.</p> <p>It is up to the offerors and their sponsors how or what procedures/mechanism they wish to implement to best determine the likely demand for their printed prospectuses.</p> <p>Please see responses to Question 7.</p> <p>We do not consider it appropriate for the regulators to impose any requirements on how an investor must make a request for a printed prospectus, say by setting requirements for the time and mode for making such request, as this will only increase the barrier for obtaining a printed prospectus. This may not work to the benefit of prospective investors.</p> <p>Accordingly, the MMO envisages that an investor who wishes to get a printed prospectus is only required to go to the specified locations, e.g. designated branches of receiving banks, for a printed prospectus.</p>
12	<p>Since the rule provides for the posting on the HKEx website and the issuer's website of the e-application form together with the e-prospectus, can an applicant simply complete the e-application form downloaded from those websites for subscription purposes?</p>	<p>This is not recommended. Using application forms downloaded from websites for subscription purpose increases the risk of invalid applications as irregularities during downloading and reproduction may occur.</p> <p>Generally speaking, issuers tend to accept only public subscriptions that are made on completion of the standard printed applications forms provided by issuers.</p> <p>Alternatively, applicants applying under the public offer tranche may subscribe for securities under the ePO services provided by the issuers which normally involve completion of an online application form.</p>

II. FOR ISSUERS

A. Overview

No	Query	Response
13	If the electronic prospectus is not available on the issuer's website but is still available on HKEx's website, must the MMO be suspended?	<p>The offeror need not suspend the Mixed Media Offer if the electronic prospectus is only available on the HKEx website but not the issuer's website. It need only suspend the Mixed Media Offer if the prospectus is not available on both the HKEx website and the issuer's website for 4 consecutive hours or more.</p> <p>If during the offer period, the electronic prospectus is not available on the issuer's website, the offeror need not suspend the Mixed Media Offer if,</p> <ul style="list-style-type: none">(a) the electronic prospectus is available on the HKEx website between 6:00 am to 12:00 midnight from Monday to Friday, except public holidays; and(b) if the prospectus is also not available on the HKEx website, the period of the electronic prospectus being unavailable on both the websites is less than 4 hours. <p>In the event the electronic prospectus is not available on both the HKEx and the company's websites for 4 consecutive hours or more between the hours of 6 am to 12 midnight Mondays to Fridays (except public holidays), the offeror can continue the offer process provided that it can comply with the Companies Ordinance requirement that when an offeror issues a printed application form, it must issue the application form with a printed prospectus.</p>
14	How should the offeror deal with the suspension of Mixed Media Offer during the offer period?	<p>When an offeror need to suspend a Mixed Media Offer during the offer period, it must publish a suspension announcement on the HKEx website as soon as possible. The offeror is encouraged to consult the SEHK and/or the SFC as soon as possible on how best to conduct the remaining offer process. The offer can only carry on if it can comply with the Companies Ordinance requirement that when an offeror issue a printed application form, it must issue the application form with a printed prospectus.</p>

No	Query	Response						
15	How soon can the offeror start with a Mixed Media Offer?	<p data-bbox="651 281 1469 457">Subject to negative vetting by Legislative Council, the Class Exemption Notice will take effect from 1 February 2011. The Listing Rules will come into effect at the same time as the Class Exemption Notice. Assuming the Class Exemption Notice takes effect on 1 February 2011:</p> <table border="1" data-bbox="651 529 1463 957"> <tbody> <tr> <td data-bbox="651 529 1049 669">1 February 2011</td> <td data-bbox="1049 529 1463 669">Class Exemption Notice and Listing Rules amendments come into effect</td> </tr> <tr> <td data-bbox="651 669 1049 810">1, 2, 7 – 9# February 2011</td> <td data-bbox="1049 669 1463 810">Issuer makes announcement about proposed Mixed Media Offer</td> </tr> <tr> <td data-bbox="651 810 1049 957">10 February 2011</td> <td data-bbox="1049 810 1463 957">Offer period for public offer of shares, debentures or SFC-authorized CISs starts</td> </tr> </tbody> </table> <p data-bbox="651 978 1214 1010"># 3, 4, 5 and 6 February are public holidays.</p>	1 February 2011	Class Exemption Notice and Listing Rules amendments come into effect	1, 2, 7 – 9# February 2011	Issuer makes announcement about proposed Mixed Media Offer	10 February 2011	Offer period for public offer of shares, debentures or SFC-authorized CISs starts
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B. Class Exemption Notice

No	Section	Query	Response
16	Cap. 32L	Where conditions are set out in the Class Exemption Notice?	A class exemption is effected by the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) (Amendment) Notice 2010 (Cap.32 sub. leg. L) (Class Exemption Notice). Subject to negative vetting by the Legislative Council, the Notice will come into effect on 1 February 2011. The conditions of the class exemption are set out in 9A of the Notice. A copy of the Class Exemption Notice is attached in Appendix B to the Conclusions Paper.
17	9A	Does an offeror need to apply to the SFC or the Exchange to conduct an MMO?	No but a CO offeror must comply with the conditions in the Class Exemption Notice. A CIS offeror may inform the SFC of its intent to conduct an MMO and conduct the MMO by complying with similar conditions imposed by the SFC in its letter of authorisation.
18	9A(3)(f) & (g)	Can the issuer's website contain information other than prospectus information?	An issuer's website may contain information other than prospectus information, including promotional information about the issuer or the public offer. The issuer's website should clearly delineate in its website what information on its website is contained in the prospectus and what is not. Please refer to the responses to Question 9.
19	9A(3)(h)	How is the notice requirement satisfied when the e-prospectus is accessed from the company's (issuer's) website?	The notice should be given just before access to the prospectus is granted. For instance, a plain clear "pop up" notice on a separate webpage of the issuer's website stating that the relevant securities are offered solely on the information in the e-prospectus accessible by a click on the webpage satisfies this requirement. There are other ways to display the notice. In case of doubt, early consultation with the SFC or the Exchange is recommended.

No	Section	Query	Response
20	9A(3)(b)	How many printed prospectus copies must be made available to the public to satisfy the public demand requirement?	<p>The SFC and the Exchange do not set any the minimum number of copies of printed prospectus that must be made available to satisfy public demand.</p> <p>The CO and CIS offerors and their sponsors or listing agent should make a best estimate of the demand for printed form prospectus based on the facts and circumstances of the case.</p> <p>As a best practice recommendation, issuers and sponsors can consider stating in the notification announcement (made during the 5-day period before the start of the offer period) of an MMO details about how a member of the public may pre-register with the sponsor to obtain a printed prospectus during the offer period (e.g. by way of a hotline service) and where a copy may be obtained.</p>

C. Listing Rules

No	Rule	Query	Response
21	<p>MB Rule 2.07C(3) and Appendix 24</p> <p>GEM Rule 16.18(2) and Appendix 17</p>	What headline category should be used for announcements in relation to MMO?	For announcements in relation to MMO, the issuer must select the headline category “Mixed Media Offer” under “New Listing (Listed Issuers/New Applicants)”.
22	<p>MB Rules 12.11A(1), 25.19B(1)</p> <p>GEM Rules 16.04D, 29.21B(1)</p>	Must announcements relating to the implementation and/or suspension of an MMO be vetted by the Exchange?	No.

No	Rule	Query	Response
23	MB Rule 2.07C(6) GEM Rule 16.19(1)	What operational standards must an issuer adhere to for posting announcements relating to MMO on its own website?	<p>In addition to the requirements in the Class Exemption Notice requiring how access to the e-prospectus must be provided from the issuer's website (e.g. 9A(3)(f),(g),(h) and 9A(10)), reference is made to No. 36 of the FAQ document for electronic disclosure at http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ3.doc regarding certain guiding principles for layout of the issuer's website.</p>
24	MB Rule 11.13 GEM Rule 14.24	Is it necessary to revise the printed application forms for shares/debentures/ authorised CIs upon issue of an addendum or replacement e-prospectus?	<p>If there is a change to the prospectus warranting the issue of an addendum or replacing e-prospectus, it is a question of law whether the original printed application forms for the relevant securities accompanying the original prospectus would continue to be valid.</p> <p>In this connection, Offerors are advised to seek to professional advice as to:</p> <ul style="list-style-type: none"> (a) the need to revise the original application forms and/or; (b) how to deal with completed application forms submitted to the Offerors under the terms of the prospectus. This may include considerations of extending the offer period and/or granting a right of withdraw to applicants who have submitted in applications based on the information in the original prospectus; and (c) the need for putting in place appropriate arrangements to ensure that the issue and marketing of securities is conducted in a fair and orderly manner.

No	Rule	Query	Response
25	<p>MB Rule 2.07C(2)</p> <p>GEM Rule 16.18(1)</p>	<p>How to check whether a document is downloadable for display and printing?</p>	<p>MB Rule 2.07C(2) and GEM Rule 16.18(1) provide that all electronic copies of documents submitted by an issuer through HKEx-EDP to the Exchange for publication must be displayable on and printable from the HKEx website. The issuers must ensure compliance with the Rules in this respect. HKEx also operates a hotline if any member of the public detects any malfunctioning on the HKEx website.</p> <p>Enquires can be sent to the Exchange's IPO Transactions Department by post, phone, fax or email:</p> <p>Address:</p> <p>IPO Transactions Department The Stock Exchange of Hong Kong Limited Hong Kong Exchanges and Clearing Limited 11/F One International Finance Centre 1 Harbour View Street, Central Hong Kong</p> <p>General telephone number: 2522 1122 Public Enquiry Number 2840 3895 General fax number: 2295 0590 Email: info@hkex.com.hk</p>

D. CIS Offering Document

No	Section	Query	Response
26	<p>MB Rule 2.07C(4)(a)</p>	<p>How does the MMO apply to CIS offerors?</p>	<p>For CIS offerors who intend to adopt an MMO, the SFC will impose conditions in its letter of authorization similar to those in the Class Exemption Notice for CO offerors who intend to adopt an MMO (with necessary changes).</p>