



## SPONSOR REGIME UPDATE: INITIAL 3-DAY CHECK

### Exchange Continues Initial 3-day Check of Application Proofs to 30 September 2014 and Publishes Guidance on Failure of Initial 3-day Check

The Hong Kong Stock Exchange (the **Exchange**) has confirmed that it will continue to conduct an initial 3-day check of application proofs from 1 April to 30 September 2014 to give practitioners more time to become accustomed to the requirements of the new sponsor regime which came into effect on 1 October 2013. The Exchange's news release of 24 March also reminds practitioners of the changes that came into effect on 1 April 2014:

- Application Proofs will be published on the HKExnews website after the Exchange accepts the application for detailed vetting following completion of the Initial 3-day Check (or in the case of a collective investment scheme listing under Chapter 20 of the Main Board Rules, when the applicant notifies the Exchange that the SFC has formally taken up its authorisation application);
- Application Proofs must be submitted to the Exchange in both English and Chinese;
- If a listing application is returned for failing the Initial 3-day Check, or is returned later because the information is found not to be substantially complete, the names of the sponsor and listing applicant and the date of the decision to return will be published on the HKExnews website; and

- If an Application Proof is published on the HKExnews website and the application is later found to not be substantially complete, the Application Proof will be removed from the website.

A new Guidance Letter HKEx-GL74-14 has also been published on what constitutes failure of the initial 3-day check. This follows news previously published that of the 18 new listing applications submitted between 1 October 2013 and 31 January 2014, four were returned for failing the 3-day check<sup>1</sup>.

### Initial 3-day Check

The initial 3-day check (**Initial 3-day Check**) of Application Proofs<sup>2</sup> is part of the transitional arrangements the Exchange put in place on commencement of the new sponsor regime. An Application Proof is the draft listing document that is required to be substantially complete when it is submitted to the Exchange with a listing application. The Exchange accepts listing applications for detailed vetting only after completing the Initial 3-day Check. The rationale for conducting it is that an Application Proof cannot be substantially complete if it does not materially satisfy the Initial 3-day Check.

<sup>1</sup> See the Exchange's press release of 28 February 2014 "Exchange Provides Information on New Listing Applications received since the New Sponsor Regulation Took Effect on 1 October 2013"

<sup>2</sup> For more information on the Initial 3-day Check, please refer to our previous newsletter

## Initial 3-day Checklist

The Initial 3-day Check is based on a prescribed 3-day checklist (**Initial 3-day Checklist**) in Guidance Letter HKEx-GL56-13, as updated in February and March 2014. The Initial 3-day Checklist sets out the extent and nature of the initial check for the sole purpose of determining whether an Application Proof will be accepted for detailed vetting by the Exchange.

If an Application Proof fails the Initial 3-day Check, the listing application will be returned. If a listing application is accepted for detailed vetting, the Application Proof will be posted on the HKExnews website starting from 1 April 2014. Acceptance of a listing application for detailed vetting does not however mean that the Application Proof is substantially complete and the Exchange or SFC may still return a listing application if the Application Proof is found not to be substantially complete after a more qualitative assessment.

If a listing application is returned, either on failing the Initial 3-day Check or later, the listing application will be returned and may only be re-submitted eight weeks after the date of the decision to return the application. From 1 April 2014, the names of the listing applicant and sponsor of a returned listing application and the return date will be published on the HKExnews website.

## Failure of the Initial 3-day Check

The Exchange's Guidance Letter provides the following guidance on what constitutes a failure of the Initial 3-day Check:

- The Exchange will return an Application Proof only if the deficiencies in the Initial 3-day Checklist are sufficiently material to result in the Application Proof being not substantially complete;
- If the Application Proof is otherwise substantially complete, omission of certain matters under the Initial 3-day Checklist will not in itself result in the return of the application;
- In general, failure to include any one single matter in the Initial 3-day Checklist is unlikely to result in a return of the Application Proof, unless the omission is material;
- Materiality will be determined by the specific facts and circumstances of each application;
- An example of a material omission of an Initial 3-day Checklist item is where financial information in the Application Proof did not comply with Main Board Rules 4.04 and/or 8.06 and Guidance Letter HKEx-GL6-09A.



## Revised Initial 3-day Checklist

In February and March 2014, the Exchange revised the Initial 3-day Checklist in Guidance Letter HKEx-GL56-13 to require additional details in the following sections of the Application Proof.

Individual section	Disclosure matters to be checked for in the Initial 3-day Check
Risk Factors	Risks relating to the applicant's business, the relevant industry and the share offering are identified
Information about the Listing Document and Global Offering	<ul style="list-style-type: none"> <li>a) Directors' responsibility statement for the AP-Vetting's contents;</li> <li>b) Restrictions on offer and sale of shares;</li> <li>c) Application for listing of shares on the Exchange;</li> <li>d) Shares will be eligible for admission into CCASS;</li> <li>e) Professional tax advice recommended;</li> <li>f) Registration of subscription, purchase and transfer of shares (for PRC issuers);</li> <li>g) Share registrar and stamp duty</li> </ul>
Regulations	Regulations on the applicant's business and the relevant industry should be included
Future Plans and Use of Proceeds	<ul style="list-style-type: none"> <li>a) Future plans;</li> <li>b) Breakdown of the use of proceeds;</li> <li>c) The identity of the businesses to be acquired or, if not yet identified, the nature and a brief description of the types of businesses to be sought, the acquisition strategy, and the status of any related negotiations;</li> <li>d) The interest rate and maturity of the debt if the proceeds will be used to discharge any debt. If the debt to be discharged was incurred within one year before the date of the listing application, the listing document should describe how the borrowing was used (unless it was for working capital); and</li> <li>e) The amount of net proceeds to be received by the applicant if the offer price is fixed at low-end, mid-point and high-end of the offer price range with and without exercising the over-allotment option</li> </ul>

<p>Summary of the applicant's constitution, law of the place of incorporation and information relating to dual primary listing</p>	<ul style="list-style-type: none"> <li>a) Memorandum of association;</li> <li>b) Articles of association;</li> <li>c) For PRC and overseas issuers, company law of the place where the applicant is incorporated;</li> <li>d) Trust deed (in the case of stapled securities);</li> <li>e) Material differences between the Listing Rules and overseas listing rules (for applicants listed overseas)</li> </ul>
<p>Statutory and General Information</p>	<ul style="list-style-type: none"> <li>a) Incorporation of the applicant;</li> <li>b) Changes in share capital of the applicant and its subsidiaries at least within two years immediately preceding the issue of the listing document;</li> <li>c) corporate reorganisation;</li> <li>d) restrictions on share repurchases;</li> <li>e) summary of material contracts;</li> <li>f) disclosure of interests of directors/chief executive/substantial shareholders;</li> <li>g) directors' service contracts and remunerations;</li> <li>h) pre-IPO share option scheme/share option scheme (if applicable);</li> <li>i) experts' qualification and consents;</li> <li>j) promoter;</li> <li>k) preliminary expenses;</li> <li>l) information on selling shareholder (if applicable);</li> <li>m) resolutions passed by shareholders;</li> <li>n) independence of sponsor (if the applicant has more than one sponsor);</li> <li>o) sponsor's fees</li> </ul>

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