



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

RESPONSES TO THE FOLLOW-UP QUESTIONS RAISED BY THE SUBCOMMITTEE ON 23 JUNE 2009

7 July 2009



3. Please provide the checklist(s)/manual(s) that SFC staff are required to follow when vetting the draft prospectuses and marketing materials of Minibonds and other LB-related structured financial products.
- 3.1 When reviewing a prospectus, the Prospectus Team first checks precedents, consults any relevant internal practices or policy (refer to paragraph 3.3 below) and that the document contains the information specified in the Third Schedule ("Third Schedule") to the Companies Ordinance ("CO"). To facilitate our review process, a structured note issuer or its legal adviser typically submits a completed CO compliance checklist(s) to demonstrate how they have complied with the Third Schedule requirements. The checklist(s) in essence contain(s) the relevant CO provisions prescribing the disclosure requirements and a blank copy of this compliance checklist is attached at **Appendix A**.
- 3.2 In reviewing marketing materials, the Prospectus Team refers to its published and gazetted *Guidelines on Use of Offer Awareness and Summary Disclosure Materials in Offerings of Shares and Debentures under the CO* ("CO Marketing Guidelines") a copy of which is available on the SFC's official website and attached at **Appendix B** with which issuers are required to comply. Amongst other things, the CO Marketing Guidelines require that the marketing materials must not contain anything that is inconsistent with the information contained in the prospectus, and that the contents must not be false, biased, misleading or deceptive. The Prospectus Team also checks to see if appropriate warnings are included in the marketing materials. **S1-Appendix 1**
- 3.3 There has also been internal guidance since 2005 on points to note when reviewing prospectuses and marketing materials. For purposes of facilitating Subcommittee members' understanding of the guidance, a summary of points compiled from this internal guidance is attached at **Appendix C**.



4. Please provide the relevant written records on SFC's authorization of the prospectuses and marketing materials of Minibonds series 27, 34 and 35 (S32) and Constellation Notes series 44, 56 and 58 (S33), including the queries/comments, if any, raised by SFC to the issuers on these documentations.
- 4.1 The SFC has raised queries and commented on all Minibond prospectuses. In addition, from series 16 onwards (being the first series where marketing materials were submitted to the SFC for authorisation), the SFC also raised queries and commented on the marketing materials.
- 4.2 The SFC has raised queries and commented on all prospectuses for Constellation notes series. In addition, starting from series 10 and 11 (being the first series of Constellation notes where marketing materials were submitted to the SFC for authorisation), the SFC raised queries and commented on the marketing materials.
- 4.3 Examples of queries and comments made by the SFC are set out in the **Appendix D**. In addition, I briefly discuss below the differences in features of Minibonds and Constellation Notes respectively.

Differences in Features of Minibonds

- 4.4 The various series of Minibonds can roughly be divided into three groups in terms of their features: (i) Series 1, (ii) Series 2 to 9 and (iii) Series 10 to 36.
- 4.5 Series 1 - Pacific International Finance Limited issued notes and used (i) the proceeds from the issue of the notes to purchase the underlying securities (US\$ fixed rate notes guaranteed by Hutchison Whampoa Limited) which were held by an independent trustee, and (ii) the interest income and principal repayment from the underlying securities to pay interest and principal repayment due under the notes via swap arrangements with Lehman Brothers Special Financing Inc. ("LBSF"). The swap arrangements are guaranteed by Lehman Brothers Holdings Inc. ("LBHI").
- 4.6 Series 2 to 9 - the payment of interest and repayment of principal of the notes are subject to no credit event occurring to any of the reference entities specified in the prospectuses and no other redemption event occurring prior to the maturity date. The underlying securities used as collateral to back each of series 2 to 9 were guaranteed by LBHI. In respect of series 9, there were swap arrangements with LBSF acting as swap counterparty and LBHI as swap guarantor.
- 4.7 Series 10 to 36: the payment of interest and repayment of principal of the notes are subject to no credit event occurring to any of the reference entities specified in the prospectuses and no other redemption event occurring prior to the maturity date. However, instead of using securities guaranteed by LBHI as collateral, the collateral used to secure the notes were AAA-rated CDO securities (as at the date of issue or purchase of such securities). The criteria for choosing the collateral for each series are set out in the issue prospectus and the collateral is purchased on or after the issue date of the notes. For each series, there were swap arrangements with LBSF acting as swap counterparty and LBHI as swap guarantor.



Differences in Features of Constellation Notes

- 4.8 The issuer is Constellation Investment Ltd. The various series of Constellation Notes can roughly be divided into three main groups: (i) Series 1 to 4 and Series 6 to 13 (credit-linked notes), (ii) Series 14 to 50 and Series 55 to 85 (credit-linked notes) (iii) Series 5 and Series 51 to 54 (equity-linked notes).
- 4.9 All Constellation Notes are credit-linked notes except for Series 5 and Series 51 to 54, which are equity-linked notes. These equity-linked notes are secured by bank deposits and swap arrangements with DBS Bank Ltd acting as swap counterparty.
- 4.10 Series 1 to 4 and Series 6 to 13 used either bank deposit or corporate/government bonds as collateral. All remaining credit-linked series of Constellation Notes used AAA-rated CDO securities (as at the issue date of the notes) as collateral. The selection criteria for choosing the collateral for each series are set out in the issue prospectus and the collateral is purchased after the date of the prospectus. For each series, there were swap arrangements with DBS Bank Ltd acting as swap counterparty.



Appendix A

Application for authorisation for registration of the *[name of document]* pursuant to section 38D(5) or section 342C(5) of the Companies Ordinance

Compliance Checklist

Compliance Checklist for *[name of issuer/guarantor]* in respect of *[name of document]*.

The following checklist is to assist you in ensuring compliance with the Companies Ordinance. Please enclose the completed checklist with your application. The checklist is divided into 4 parts as follows:

- Part 1: Information to be supplied to the Securities and Futures Commission
- Part 2: Compliance with the Third Schedule of the Companies Ordinance
- Part 3: Compliance with sections 44A and 44B of the Companies Ordinance (sections 38 and 44A are not applicable to Rights/Warrants Issue)
- Part 4: Compliance with sections 342, 342B, and 342C of the Companies Ordinance (section 342 is not applicable to Rights/Warrants Issue)

Part 3 is to be completed by companies incorporated in Hong Kong while Part 4 is to be completed by companies incorporated outside Hong Kong.



Part 1

Information to be submitted to the Securities and Futures Commission

Name of Applicant
Company/Issuer:

Address of Company:

Type of Issue:

Proposed Date of
Registration:

Contact Person:

In Hong Kong:

Solicitors:

Parties Involved:

Please ensure that you have submitted all the relevant documents as required under the Companies Ordinance.



Part 2

Compliance with the Third Schedule of the Companies Ordinance

Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
1.	The general nature of the business of the company, and if the company carries on 2 or more activities which are material having regard to profits or losses, assets employed or any other factor, information as to the relative importance of each such activity.					
2.	The authorised share capital and the description and nominal value of the shares into which it is divided, the amount of share capital issued or agreed to be issued, and the amount paid up on the shares which have been issued.					
3.	Sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares or debentures and the financial condition and profitability of the company at the time of the issue of the prospectus, taking into account the nature of the shares or debentures being offered and the nature of the company, and the nature of the persons likely to consider acquiring them.					
4.	The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.					
5.	The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.					
6.	Names, descriptions and addresses of directors or proposed directors.					
7.	Where shares are offered to the public for subscription, particulars as to: (a) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of sums, required to be provided in respect of each of the following matters -					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	<p>(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;</p> <p>(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;</p> <p>(iii) the repayment of any money borrowed by the company in respect of any of the foregoing matters;</p> <p>(iv) working capital;</p> <p>but, so long as the general purpose of the issue is clearly stated and the issue is fully underwritten this sub-paragraph need not be complied with, and</p> <p>(b) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.</p>					
8.	The date and time of the opening of the subscription lists.					
9.	The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the 2 preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.					
10.	The number, description and amount of any shares in or debentures of the company which any person has, or is entitled to be given, an option to subscribe for, together with the following particulars of the option, that is to say:-					



Para No. In the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
11.	(a) the period during which it is exercisable;					
	(b) the price to be paid for shares or debentures subscribed for under it;					
	(c) the consideration (if any) given or to be given for it or for the right to it;					
	(d) the names and addresses of the persons to whom it or the right to it was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.					
11.	The number and amount of shares and debentures which within the 2 preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.					
12.	(1) As respects any property to which this paragraph applies:					
	(a) the names and addresses of the vendors;					
	(b) the amount payable in cash, shares or debentures to the vendor and, where there is more than 1 separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor;					
	(c) short particulars of any transaction relating to the property completed within the 2 preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect.					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	<p>(2) The property to which this paragraph applies is property purchased or acquired by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of the issue of the prospectus, other than property:-</p> <p>(a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or</p> <p>(b) as respects which the amount of the purchase money is not material.</p>					
13.	The amount, if any, paid or payable as purchase money in cash, shares or debentures for any property to which paragraph 12 applies, specifying the amount, if any, payable for goodwill.					
14.	The amount, if any, paid within the 2 preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or the rate of any such commission.					
15.	The amount or estimated amount of preliminary expenses and the persons by whom any of those expenses have been paid or are payable, and the amount or estimated amount of the expenses of the issue and the person by whom any of those expenses have been paid or are payable.					
16.	Any amount or benefit paid or given within the 2 preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
17.	The dates of, parties to and general nature of every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than 2 years before the date of issue of the prospectus, and a statement that a copy of every such material contract has been delivered to the Registrar for registration.					
18.	The names and addresses of the auditors, if any of the company, and, if the prospectus invites the public to subscribe for debentures which are stated in the prospectus to be guaranteed, the names and addresses of the auditors, if any, of the guarantor corporation.					
19.	Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.					
20.	If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.					
21.	In the case of a company which has been carrying on business, or of a business which has been carried on, for less than 3 years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.					
22.	The contents or a sufficient summary of the contents of the articles of the company with regard to any borrowing powers exercisable by the directors and the manner of variation of such powers.					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
23.	Particulars of any bank overdrafts or other similar indebtedness of the company and its subsidiaries, if any, as at the latest practicable date or, if there are no bank overdrafts or other similar indebtedness, a statement to that effect.					
24.	Particulars of any hire purchase commitments, guarantees or other material contingent liabilities of the company and its subsidiaries, if any, or, if there are none such, a statement to that effect.					
25.	Particulars of the authorised debentures of the company and its subsidiaries; if any, the amount issued and outstanding or agreed to be issued, or if no debentures are outstanding a statement to that effect.					
26.	<p>If the prospectus invites the public to subscribe for debentures of the company:-</p> <p>(a) the rights conferred upon the holders thereof, including rights in respect of interest and redemption, and particulars of the security, if any, therefor;</p> <p>(b) the designation of such debentures which shall incorporate - (i) in the case of debentures not secured by a charge on assets of the company - (A) the word "unsecured" if the designation is in English; (B) the expression in Chinese "無保證" if the designation is in Chinese; or (C) both such word and expression respectively if the designation is both in English and Chinese; and (ii) in the case of debentures secured to a substantial extent by a specific mortgage or charge - (A) the word "mortgage" if the designation is in English; (B) the expression in Chinese "按揭" if the designation is in Chinese; or (C) both such word and expression respectively if the designation is both in English and Chinese;</p>					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	(c) particulars of any guarantee subsisting in respect of the debentures, including the name and address of the guarantor, and the designation or any description of the debentures shall only incorporate the word "guaranteed" or the expression in Chinese "獲擔保" if they are guaranteed to a substantial extent by a legally enforceable guarantee.					
27.	A statement as to the gross trading income or sales turnover (as may be appropriate) of the company during each of the 3 financial years immediately preceding the issue of the prospectus including an explanation of the method used for the computation of such income or turnover, and a reasonable break-down between the more important trading activities; but a bank, discount house or other company whose business is in the opinion of the directors of a character that such a statement is either not practicable or not of value may instead include an explanation of the absence of such a statement.					
28.	If the prospectus offers shares in the company for sale to the public- (a) the names, addresses and descriptions of the vendor or vendors of the shares, or, if there are more than 10 vendors, the like particulars of the 10 principal vendors and a statement of the number of other vendors; (b) particulars of any beneficial interest possessed by any director of the company in any shares so offered for sale.					
29.	The name, date and country of incorporation, whether public or private (if applicable), the general nature of the business, the issued capital and the proportion thereof held or intended to be held, of every company the whole of the capital of which or substantial proportion thereof is held or intended to be held, or whose profits or assets make or will make a material contribution to the figures in the auditors' report or to the next accounts of the company.					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
30.	A statement of the persons holding or beneficially interested in any substantial part of the share capital of the company and the amounts of the holdings in question.					
31.	<p>(1) A report by the auditors of the company with respect to</p> <p>(a) profits and losses and assets and liabilities of the company in accordance with sub-paragraph (2) or (3), as the case required; and</p> <p>(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years,</p> <p>and, if no accounts have been made up in respect of any part of the period of 3 years ending on a date 3 months before the issue of the prospectus, containing a statement of that fact.</p> <p>(2) If the company has no subsidiaries, the report shall:</p> <p>(a) so far as regards profits and losses, deal with the profits or losses of the company in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and</p> <p>(b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.</p> <p>(3) If the company has subsidiaries, the report shall:</p>					
	(a) so far as regards profits and losses, deal separately with the company's (other than subsidiaries) profits or losses as provided by sub-paragraph (2) and, in addition, deal either-					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	<p>(i) as a whole with the combined profits or losses of its subsidiaries; or</p> <p>(ii) individually with the profits or losses of each subsidiary,</p> <p>or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and with the combined profits or losses of its subsidiaries; and</p> <p>(b) so far as regards assets and liabilities, deal separately with the company's (other than subsidiaries) assets and liabilities as provided by sub-paragraph (2) and, in addition, deal either-</p> <p>(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or</p> <p>(ii) individually with the assets and liabilities of each subsidiary,</p> <p>and shall indicate as respects the profits or losses and assets and liabilities of the subsidiaries the allowance to be made for persons other than members of the company.</p>					
32.	<p>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 -</p> <p>(a) the profits and losses of the business for each of the 3 financial years immediately preceding the issue of the prospectus; and</p> <p>(b) the assets and liabilities of the business at the last date to which the accounts were made up.</p>					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
33.	<p>(1) If:</p> <p>(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 body corporate; and</p> <p>(b) by reason of that acquisition or anything to be done in consequence thereof or in connexion therewith that body corporate will become a subsidiary of the company,</p> <p>a report made by accountants (who shall be named in the prospectus) upon -</p> <p>(i) the profits or losses of the other body corporate in respect of each of the 3 financial years immediately preceding the issue of the prospectus; and</p> <p>(ii) assets and liabilities of that other body corporate at the last date to which the accounts of the body corporate were made up.</p> <p>(2) The said report shall:</p> <p>(a) indicate how the profits or losses of the body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired; and</p>					
	<p>(b) where the other body corporate as subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by paragraph 31(3) in relation to the company and its subsidiaries.</p>					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
34.	<p>(1) This paragraph shall apply in the case of every company whose accounts at the last date at which the accounts have been made up disclose that either a value exceeding 10 per cent of the value of the assets of the company or a value of not less than \$3,000,000 is placed on the company's interest in land and buildings.</p> <p>(2) A valuation report with respect to all the company's interest in land or buildings which shall include the following particulars of each property:</p> <p>(a) the address;</p> <p>(b) a brief description;</p> <p>(c) the use at the date of report;</p> <p>(d) the nature of tenure;</p> <p>(e) a summary of the terms of any sub-leases or tenancies, including repair obligations granted by the company;</p> <p>(f) the approximate age of buildings;</p> <p>(g) the present capital value;</p> <p>(h) the estimated current net rental, being the estimated average net annual income from the property accruing to the company over a long period of years (not being less than 3 years) before taking into account tax and any interest or mortgage expenses but after taking into account management and maintenance expenses;</p> <p>(3) A report for the purposes of sub-paragraph (2) shall state-</p> <p>(a) whether the valuation -</p>					
	<p>(i) is the current value in the open market, stating whether -</p> <p>(A) on an investment basis, or</p> <p>(B) on an development basis, or</p> <p>(C) on a future capital realisation basis.</p>					



Para No. in the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	<p>(ii) is the current level value as an asset of a going concern; or</p> <p>(iii) is the value after development has been completed; or</p> <p>(iv) has any other basis (which should be stated);</p> <p>(b) Where the valuation is based on value after development completed:</p> <p>(i) the date when the development is expected to be completed;</p> <p>(ii) the estimated cost of carrying out the development or (where part of the development has already been carried out) the estimated cost of completing the development;</p> <p>(iii) the estimated value of the property in the open market in its present condition.</p> <p>(4) If the company has obtained more than one valuation report regarding any of the company's interests in land or buildings within 6 months before the issue of the prospectus then all other such reports shall be included.</p>					
42.	Any report required by Part II of the Third Schedule to the Companies Ordinance shall either indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary or shall make those adjustments and indicate that adjustments have been made.					



Para No. In the third schedule	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
43.	Any report by accountants required by Part II shall be made by accountants qualified under the Professional Accountants Ordinance (Cap 50) for appointment as auditors of a company and shall not be made by any accountant who is an officer or servant, or a partner of or in the employment of an officer or servant, of the company or of the company's subsidiary or parent undertaking or of a subsidiary of the company's parent undertaking; and for the purposes of this paragraph the expression "officer" (高級人員) shall include a proposed director but not an auditor.					
46	Any valuation report required by Part II- (a) shall not state or imply that any land or building has been professionally valued unless the valuation is made by a professionally qualified valuation surveyor who is subject to the discipline of a professional body; (b) shall not be made by a person who is an officer or servant or proposed director of the company or the company's subsidiary or parent undertaking or of a subsidiary of the company's parent undertaking; and (c) shall not be made by a company which- (i) is the company's subsidiary or parent undertaking or a subsidiary of the company's parent undertaking; or (ii) has either a paid up capital of less than \$1,000,000 or the assets of which do not exceed liabilities by \$1,000,000 or more as shown in the company's last balance sheet.					



Part 3

Compliance with sections 44A and 44B of the Companies Ordinance

Section	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
44A(1)	No allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally and no proceedings shall be taken on applications made in pursuance of a prospectus so issued, until the beginning of the 3rd day after that on which the prospectus is first so issued or such later time (if any) as may be specified in the prospectus.					
44A(2)	Subject to section 38A, no allotment shall be made of any shares in or debentures of a company in pursuance of a prospectus issued generally later than 30 days after the day on which the prospectus is first so issued.					
44A(6)	An application for shares in or debentures of a company which is made in pursuance of a prospectus issued generally shall not be revocable until after the expiration of the 5th day after the time of the opening of the subscription lists, or the giving before the expiration of the said 5th day, by some person responsible under section 40 for the prospectus, of a public notice having the effect under that section of excluding or limiting the responsibility of the person giving it.					
44B(1)	Where a prospectus, whether issued generally or not, states that application has been or will be made for permission for the shares or debentures offered thereby to be listed on any stock exchange, any allotment made on an application in pursuance of the prospectus shall, whenever made, be void if the permission has not been applied for before the 3rd day after the first issue of the prospectus or if the permission has been refused before the expiration of 3 weeks from the date of the closing of the subscription lists or such longer period not exceeding 6 weeks as may, within the said 3 weeks, be notified to the applicant for permission by or on behalf of the stock exchange.					



Section	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
44B(2)	<p>Where the permission has not been applied for as aforesaid, or has been refused as aforesaid, the company shall forthwith repay without interest all money received from applicants in pursuance the prospectus, and, if any such money is not repaid within 8 days after the company becomes liable to repay it, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of 8 per cent per annum from the expiration of the 8th day:</p> <p>Provided that a director shall not be liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.</p>					



Part 4

Compliance with sections 342, 342B and 342C of the Companies Ordinance (section 342 is not applicable to Rights/Warrants Issue)

Section	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
342	<p>(1) Subject to section 342A, it shall not be lawful for any person to issue, circulate or distribute in Hong Kong any prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, whether the company has or has not established a place of business in Hong Kong unless the prospectus is dated (which date shall, unless the contrary is proved, be taken as the date of publication of the prospectus) and:</p> <p>(a) contains particulars with respect to the following matters:</p> <p>(i) the instrument constituting or defining the constitution of the company;</p> <p>(ii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;</p> <p>(iii) an address in Hong Kong where the said instrument, enactments or provisions, or copies thereof, and if the same are in a language other than English or Chinese a translation thereof in English or Chinese certified in the prescribed manner, can be inspected;</p> <p>(iv) the date on which and the country in which the company was incorporated;</p> <p>(v) whether the company has established a place of business in Hong Kong, and, if so, the address of its principal office in Hong Kong;</p>					



Section	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	<p>(b) subject to the provisions of this section, is either in the English language and contains a Chinese translation or in the Chinese language and contains an English translation, and states the matters specified in Part I of the Third Schedule and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule:</p> <p>Provided that the provisions of paragraph (a)(i), (ii) and (iii) shall not apply in the case of a prospectus issued more than 2 years after the date at which the company is entitled to commence business, and, in the application of Part I of the Third Schedule for the purposes of the subsection, paragraph 5 thereof shall have effect with the substitution, for the reference to the articles, of a reference to the constitution of the company.</p> <p>(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of subsection (1)(a) or (b), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.</p> <p>(2A) Every prospectus to which subsection (1) applies must contain a statement specified in Part 2 of the Eighteenth Schedule.</p> <p>(7) It is hereby declared that the provisions of the Third Schedule applied by this section are also applied to a guarantor corporation in relation to an offer or invitation to the public to subscribe for or purchase debentures of a company incorporated outside Hong Kong.</p>					



Section	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
342B	<p>(1) It shall not be lawful for any person to issue, circulate or distribute in Hong Kong any prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong, whether the company has or has not established a place of business in Hong Kong-</p> <p>(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid; or</p> <p>(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all the persons concerned bound by all the provisions (other than penal provisions) of sections 44A and 44B so far as applicable.</p>					
342C	<p>(1) No prospectus offering for subscription or purchase shares in or debentures of a company incorporated outside Hong Kong (whether the company has or has not established a place of business in Hong Kong) shall be issued, circulated or distributed in Hong Kong unless the prospectus complies with the requirements of this Ordinance and, on or before the date of its publication, circulation or distribution in Hong Kong, its registration has been authorized under this section and a copy thereof has been registered by the Registrar.</p>					
	<p>(2) Every prospectus shall:</p>					



Section	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	<p>(a) on the face of it, state that a copy has been registered as required by this section and, immediately after such statement, state that neither the Commission nor the Registrar takes any responsibility as to the contents of the prospectus or, where the prospectus is or is to be authorised for issue by a recognised exchange company pursuant to a transfer order made under section 25 of the Securities and Futures Ordinance (Cap. 571), state that neither the Commission nor the recognised exchange company nor the Registrar takes any responsibility as to the contents of the prospectus;</p> <p>(b) on the face of it, specify or refer to statements included in the prospectus which specify, any documents required by this section to be endorsed on or attached to the copy so registered; and</p> <p>(c) conform with such requirements as are prescribed by the Chief Executive in Council or specified by the Registrar under section 346 which are applicable to prospectuses to be registered under this Part.</p> <p>(3) An application for authorization for registration of a prospectus under this section shall be made in writing to the Commission and there shall be delivered to the Commission together with the application a copy of the prospectus proposed to be registered which has been certified by 2 members of the governing body of the company or by their agents authorized in writing as having been approved by resolution of the governing body and having endorsed thereon or attached thereto-</p> <p>(a) any consent to the issue of the prospectus required by section 342B from any person as an expert; and</p>					
	(b) in the case of a prospectus issued generally, also:					



Section	Particulars	Complied with			Page	Remark
		Yes	No	N/A		
	<p>(i) a copy of any contract required by paragraph 17 of the Third Schedule to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof or, if in the case of a prospectus exempted under section 342A from compliance with the requirements of section 342(1), a contract or a copy thereof or a memorandum of a contract is required by the Commission to be available for inspection in connection with the request made under section 342A(1), a copy or, as the case may be, a memorandum of that contract;</p> <p>(ii) where the prospectus offers shares in the company for sale to the public, a list of the names, addresses and descriptions of the vendor or vendors of the shares; and</p> <p>(iii) where the persons making any report required by Part II of the Third Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in paragraph 42 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.</p>					
	<p>(4) The references in subsection (3)(b)(i) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English or Chinese, be taken as references to a copy of a translation of the contract in either language or a copy embodying a translation in English or Chinese of the parts not in either language, as the case may be, being a translation certified in the prescribed manner under subsection (9) to be a correct translation.</p>					



Appendix B

Guidelines on use of offer awareness and summary disclosure materials in offerings of shares and debentures under the Companies Ordinance

S1-Appendix 1

1. INTRODUCTION

- 1.01 Section 399 of the Securities and Futures Ordinance ("SFO") empowers the Securities and Futures Commission (the "Commission") to issue guidelines indicating the manner in which, in the absence of any particular consideration or circumstance, it proposes to perform its functions. These guidelines, issued under section 399 and intended for the assistance of issuers or vendors of shares or debentures and their professional advisers, relate to the content and manner of publication of certain materials which may be issued to the public in Hong Kong in connection with an offer of shares or debentures made by a prospectus.
- 1.02 The guidelines clarify the Commission's view regarding the treatment of certain types of such materials. First, they describe a type of material that the Commission would regard as neither falling within the prohibition in section 103(1) of the SFO or the definition of "prospectus" in section 2 of the Companies Ordinance ("CO"), nor as amounting to an extract from or abridged version of a prospectus within the meaning of section 38B of the CO. Secondly, they describe a type of material that the Commission would regard as being an extract from or abridged version of a prospectus, rather than a full prospectus. Issuers or vendors of shares or debentures that propose to issue materials to the public that refer to or supplement the prospectus and application form must consider carefully the legal and regulatory requirements that may apply to those materials. For the avoidance of doubt, these guidelines are not issued under, and should not be construed as a notice pursuant to, section 38B(2A)(a) of the CO, which empowers the Commission by notice in the Gazette to specify the form and manner of publication of an extract from or abridged version of a prospectus or any class of prospectuses.
- 1.03 The CO and SFO set out requirements concerning the form and manner of publication of prospectuses, extracts from or abridged versions of prospectuses, and advertisements, and provide for registration or authorization of materials in certain circumstances. Section 38B(1) of the CO dealing with advertisements concerning prospectuses makes it unlawful to publish by way of advertisement in any manner any extract from or abridged version of a prospectus relating to shares or debentures of a company whether incorporated in or outside Hong Kong. Section 38B(2) provides a number of exceptions to the prohibition, including in paragraph (c) the publication of an advertisement, invitation or document which has been authorized by the Commission under section 105 of the SFO and, in paragraph (d), the publication of an extract from or abridged version of a prospectus that has been approved by the Commission in a particular case. Section 103 of the SFO makes it an offence to issue any advertisement or invitation to the public to enter into or offer to enter into an agreement to deal in securities. Again, and in addition to section 105 referred to above, subsections (2) and (3) of section 103 contain exceptions to the prohibition, including that in 103(3)(a)(iii), which exempts



an extract from or abridged version of a prospectus the publication of which would not contravene section 38B(1) of the CO by virtue of the availability of an exemption under section 38B(2).

- 1.04 The Commission considers that certain publicity materials that are issued by the issuer of a prospectus and are designed only to raise investor awareness of the occurrence of a public offer of shares or debentures will not constitute a prospectus or an extract from or abridged version of a prospectus within sections 2 and 38B, respectively of the CO nor a prohibited advertisement within section 103(1) of the SFO. Such materials may assist the issuer of the prospectus in the efficient conduct of an offer of the shares or debentures and facilitate greater retail investor participation. Potential investors would be given greater notice of the offer and have more time to arrange their financial and other affairs in anticipation of the offer. In these guidelines, the Commission specifies requirements concerning the form and manner of publication for publicity materials that it considers will not fall within the statutory provisions described above. In these guidelines, the expression "offer awareness materials" refers only to those materials that satisfy the specified requirements.
- 1.05 The Commission also considers that disclosure materials such as mini-prospectuses and fact sheets that summarize or highlight key information concerning a public offer of shares or debentures should be encouraged, as they are likely to facilitate greater understanding by potential investors of the information contained in the prospectus. The Commission considers that these documents will often amount to extracts from or abridged versions of a prospectus, rather than a full prospectus. Any document that constitutes an extract from or abridged version of a prospectus must be expressly authorized prior to issue. In these guidelines, the Commission specifies requirements concerning the form and manner of publication for disclosure materials that it considers will constitute extracts from or abridged versions of a prospectus. In these guidelines, the expression "summary disclosure materials" refers only to those materials that satisfy the specified requirements.
- 1.06 These guidelines do not have the force of law and should not be interpreted in any manner that would conflict with the provisions of any applicable law or regulatory requirements. The guidelines represent a regulatory policy position taken by the Commission for market development purposes within what it understands to be the boundaries of applicable law. The guidelines should not be construed as legal advice or as a definitive interpretation of the relevant statutory provisions. Issuers and vendors of shares and debentures should seek legal advice if they are in any doubt as to the relevant statutory provisions or whether their particular circumstances or proposals would breach applicable legal or regulatory requirements.

2. APPLICATION

- 2.01 These guidelines apply to all publicity materials and disclosure materials issued to the public in Hong Kong in connection with a proposed offer of



shares or debentures in Hong Kong by a prospectus whether issued before or after registration of the relevant prospectus. However, they do not apply where the issuer of the prospectus is a collective investment scheme authorized by the Commission under section 104 of the SFO, as advertising by such schemes is subject to other regulations.

- 2.02 The guidelines apply to all communication media used to disseminate information including brochures, correspondence, circulars, flyers, leaflets, mail shots, newspapers and magazines, posters and other visual advertising media, television or radio, electronic media including the Internet, ATM services and telephone hotlines, and any form of wireless video or audio transmission. The guidelines apply whether the communication is targeted at or restricted to a particular audience or customer base or is open to the general public.
- 2.03 The guidelines apply to offers of shares or debentures where a prospectus is required to be registered by the Registrar of Companies pursuant to sections 38D or 342C of the CO. In cases involving a prospectus offering shares or debentures to be listed on The Stock Exchange of Hong Kong Limited (the "Exchange"), authorisation for registration of the prospectus is administered by the Exchange. In cases not involving such a listing the Commission administers the authorisation for registration.
- 2.04 These guidelines may describe only the way in which the Commission proposes to exercise its own functions. Accordingly, the guidelines apply where publicity and/or disclosure materials are proposed to be used in a case where the Commission administers authorisation for registration of the prospectus. Practitioners are reminded that in the case of listed securities the listing rules require all "publicity materials" released in Hong Kong by particular applicants for listing to be approved by the Exchange before release. Accordingly, in such cases these guidelines are subject to Exchange listing rules and practice from time to time. The Exchange has nevertheless indicated that it supports these guidelines and proposes to apply equivalent practices when the Exchange administers authorisation for registration of a prospectus. Issuers of shares or debentures to be listed on the Exchange wishing to avail themselves of these guidelines should inform the Exchange at the earliest opportunity.

3. GENERAL PRINCIPLES FOR CONTENTS OF OFFER AWARENESS AND SUMMARY DISCLOSURE MATERIALS

- 3.01 The Commission considers that certain publicity and disclosure materials do not contain an offer or invitation to the public (nor are calculated to invite such an offer or invitation from the public) to subscribe or purchase shares or debentures and should accordingly not amount to an advertisement or invitation within the meaning of section 103(1) of the SFO or a prospectus or an extract from or abridged version of a prospectus within the meaning of sections 2 and 38B, respectively of the CO. By contrast, other materials will contain such an offer or invitation (or be calculated to invite one) and/or



constitute a prospectus or an extract from or abridged version of a prospectus, and will require an exemption, registration or authorization. The content and form of the materials, including any legending used to clarify their legal nature, are key considerations determining where they fall within the legal framework. Issuers of any such materials should consider in all cases whether specific legending is necessary and appropriate in their particular case and should seek legal advice if in doubt.

In paragraphs 4 to 6 below, the Commission lists the contents of particular materials that it believes would satisfy both the relevant legal requirements and its regulatory objectives for such materials. This paragraph 3 sets out some general principles that the Commission considers must also be met before any such materials satisfy these requirements and objectives.

- 3.02 The materials must not contain anything that is inconsistent with the information contained in the prospectus.
- 3.03 The materials must be in plain and clear language. The contents must not be false, biased, misleading or deceptive, and the issuer must have reasonable grounds to believe that this is the case. Materials must be carefully framed if they are not to result in statutory liability for the issuer of the materials and/or its directors.
- 3.04 The font size of all warning statements and legal legends in the materials must be at least 40% of the font size that predominates in the materials and must not be presented in a style that is designed to reduce their impact. Such statements and legends must be capable of being read with ease by anyone scanning the material.
- 3.05 The materials must be issued by the issuer of the prospectus. They must state their date of issue and identify the issuer. The materials must be authorized for issue by the issuer and include a statement that the issuer of the prospectus or its directors take responsibility for the contents.
- 3.06 In the case of materials designed for broadcast on a monitor or screen, or transmission by radio, the following shall apply:
 - (a) the statements prescribed in paragraphs 4.02(e)-(h), 5.01(e)-(h), and 6.03(e)-(h) (as the case may be) below must be audibly read out at the end of each broadcast and (except for a radio transmission) also be in writing;
 - (b) for television and other screen based media, text containing the prescribed statements must be displayed for such time as to be sufficiently prominent to allow the viewer to read the entire text of the statements with reasonable ease; and
 - (c) for radio broadcasts, the prescribed statements must be delivered by way of a voice-over that is sufficiently distinct from the rest of the content of the broadcast to be prominent.



4. CONTENTS OF OFFER AWARENESS MATERIALS ISSUED PRIOR TO REGISTRATION OF A PROSPECTUS

4.01 The Commission considers that publicity materials released prior to the registration of a prospectus that contain only information on procedural and administrative arrangements for the proposed offer could play a useful role in the offer process. The Commission's intention is that materials that comply with paragraph 3 and either paragraph 4 or 5 (as the case may be) of these guidelines will bring the materials within a regulatory regime that does not require any pre-vetting of their form and manner of publication. The regulatory treatment relies upon the fact that the form and manner of publication of the material are controlled, by providing, among other things, that:

- (a) the material is strictly limited to communicating procedural and administrative information regarding the proposed offer, and
- (b) nothing in the content and manner of publication of the material promotes the issuer of the shares or debentures, or the offer.

Materials that comply with the prescribed requirements will constitute "offer awareness materials" for the purposes of these guidelines.

4.02 The Commission's view is that publication of material containing the following information only would not constitute an advertisement falling within the prohibition in section 103(1) of the SFO nor give rise to a prospectus or an extract from or abridged version of a prospectus for the purposes of sections 2 and 38B of the CO:

- (a) the name and the place of incorporation of the issuer and a description of the shares or debentures proposed to be offered;
- (b) the date on which and locations at which the prospectus will become available to the public;
- (c) details of the administrative procedures relevant to retail investors that are likely to assist their participation in the offer;
- (d) if a listing is being applied for on the Exchange and/or elsewhere, a statement that the issuer is seeking a listing of the shares or debentures on the Exchange and/or any other applicable stock exchanges;
- (e) a statement that the material is issued by the issuer of the prospectus and a responsibility statement;
- (f) a statement that potential investors should read the prospectus for detailed information about the proposed offer before deciding whether or not to invest in the shares or debentures proposed to be offered;
- (g) a statement that the material does not constitute an offer or an invitation to induce an offer by any person to acquire, purchase or subscribe for the shares or debentures proposed to be offered; and
- (h) a statement that no application for the shares or debentures mentioned in the material should be made by any person nor would such application be accepted without the completion of a formal application form or other application procedure that is to be issued with or in respect of the prospectus.



The material need not include each of items (a)-(d) but must include items (e)-(h). The material may also include other relevant legends designed to provide further clarification as to its legal nature, provided such legends are consistent with the material not being a prospectus nor a document falling within the prohibitions under section 103(1) of the SFO or section 38B(1) of the CO.

- 4.03 The Commission believes that offer awareness materials should not be published too far in advance of the launch of the proposed offer because of the risk that changes become necessary to the administrative and procedural arrangements set out in the materials. Publication must not be intended to indirectly or impliedly promote the offer or the issuer or otherwise condition the market ahead of the offer. The issuer of the prospectus should consider whether the use of offer awareness materials when combined with "brand" marketing and/or media attention that sometimes accompanies initial public offerings in Hong Kong may condition the market. The issuer of the prospectus should take into account all relevant circumstances when determining how far in advance of the date of the prospectus it is appropriate to begin publishing offer awareness materials, and the scale and frequency of such publication thereafter. While it is a matter for the issuer of the prospectus in each case to determine these matters by reference to the particular circumstances of the case, the Commission considers that offer awareness materials should not normally be issued earlier than 14 days before the date of the prospectus for the Hong Kong offer.
- 4.04 Offer awareness materials should not be used after the close of the offer period and materials displayed in public places should be removed as soon as practicable thereafter.
- 4.05 Offer awareness materials may be issued in either English or Chinese or both.

5. CONTENTS OF OFFER AWARENESS MATERIALS ISSUED UPON OR AFTER REGISTRATION OF A PROSPECTUS

- 5.01 Offer awareness materials may alternatively or additionally be released on or after registration of the prospectus. The Commission's view is that publication of material containing the following information only would not constitute an advertisement falling within the prohibition in section 103(1) of the SFO nor give rise to a prospectus or an extract from or abridged version of a prospectus for the purposes of sections 2 and 38B, respectively of the CO:
- (a) the name and the place of incorporation of the issuer and a description of the shares or debentures being offered;
 - (b) the date of the prospectus and the locations at which it is available to the public;
 - (c) details of the administrative procedures relevant to retail investors that are likely to assist their participation in the offer;



- (d) if a listing is being applied for on the Exchange and/or elsewhere, a statement that the issuer is seeking a listing of the shares or debentures on the Exchange and/or any other applicable stock exchange;
- (e) a statement that the material is issued by the issuer of the prospectus and a responsibility statement;
- (f) a statement that potential investors should read the prospectus for detailed information about the offer before deciding whether or not to invest in the shares or debentures being offered;
- (g) a statement that the material does not constitute an offer or an invitation to induce an offer by any person to acquire, purchase or subscribe for the shares or debentures being offered; and
- (h) a statement that no application for the shares or debentures mentioned in the material should be made by any person nor would such application be accepted without the completion of a formal application form or other application procedure that is issued with or in respect of the prospectus.

The material need not include each of items (a)-(d) but must include items (e)-(h). The material may also include other relevant legends designed to provide further clarification as to its legal nature, provided such legends are consistent with the material not being a prospectus nor a document falling within the prohibitions under section 103(1) of the SFO or section 38B(1) of the CO.

- 5.02 Offer awareness materials falling within this paragraph 5 should not be used after the close of the offer period and materials displayed in public places should be removed as soon as practicable thereafter.



6. SUMMARY DISCLOSURE MATERIALS

- 6.01 When a prospectus complying with the requirements of the CO has been published, an issuer may also publish a document in the nature of an "extract from or abridged version of a prospectus" under section 38B(2)(d) of the CO if it is published in accordance with such form and manner of publication as may have been authorized by the Commission (in the case of unlisted offers) or the Exchange (in the case of listed offers) under section 38B(2A)(b) of the CO.
- 6.02 The Commission's view is that in order for a document to constitute an "extract from or abridged version of a prospectus" for the purposes of section 38B of the CO, rather than a prospectus, there must be a prospectus in issue at the time the extract or abridged version is published. The Commission believes that materials such as mini-prospectuses and fact sheets that summarize or highlight key information concerning an offer of shares or debentures should be encouraged, as they are likely to facilitate greater understanding by potential investors of the information contained in the prospectus. It considers that those documents that comply with the requirements in this paragraph 6 will amount to extracts from or abridged versions of a prospectus, rather than a full prospectus. Any document that constitutes an extract from or abridged version of a prospectus must be expressly authorized prior to issue. Materials that comply with the specified requirements will constitute "summary disclosure materials" for the purposes of these guidelines.
- 6.03 The Commission's position is that summary disclosure materials must comply with the general principles set out in paragraph 3 of these guidelines. Such material must also not contain any substantive information that is not contained in the prospectus, and must include the following:
- (a) a statement that the prospectus, which alone contains full details of the issuer and offer, has been published and is available for collection at specified locations;
 - (b) the date of the prospectus;
 - (c) in the case of summary disclosure material that is intended to provide a fair summary of the information in the prospectus (such as a mini-prospectus that summarizes the information in the prospectus), a statement that it is an extract from or abridged version of the prospectus and the directors of the issuer of the prospectus are satisfied that it contains a fair summary of the material information in the prospectus and does not omit anything which the directors consider to be material in the context of the offer;
 - (d) in the case of summary disclosure material that is not intended to provide a fair summary of the information in the prospectus (such as a fact sheet containing offer statistics and procedural information relating to applications), a statement that it is an extract from or



abridged version of the prospectus and does not contain a fair summary of the material information in the prospectus;

- (e) a statement that the directors of the issuer of the prospectus have authorized the issue of the summary disclosure material and take responsibility for its contents;
- (f) a warning statement that potential investors should read the prospectus for detailed information about the issuer and the offer before deciding whether or not to invest in the shares or debentures being offered;
- (g) a statement that the summary disclosure material does not constitute an offer or an invitation to induce an offer by any person to acquire, purchase or subscribe for the shares or debentures being offered; and
- (h) where an application form is issued with the prospectus or an application procedure is described in the prospectus, a statement that no application for any shares or debentures mentioned in the summary disclosure material should be made by any person nor would such application be accepted by the issuer of the prospectus without the completion of the formal application form or other application procedure that is issued with or in respect of the prospectus.

6.04 In addition, when approving summary disclosure material the Commission will wish to be satisfied that the following requirements will be met, namely that:

- (a) the summary disclosure material will only be made available or distributed from the time of issue of the prospectus;
- (b) any application form issued by the issuer of the prospectus will state that any application for or purchase of the shares or debentures referred to in the summary disclosure material can only be made on the basis of the full prospectus identified by its date of publication; and
- (c) in an offering structure that does not require potential investors to complete an application form prescribed by the issuer of the prospectus, the issuer of the prospectus will require that all locations at which summary disclosure material is distributed and where application or purchase instructions for the shares or debentures from investors are received shall have administrative procedures in place (i) to inform interested persons that the application for or purchase of the shares or debentures referred to in the summary disclosure material can only be made on the basis of the prospectus relating to the offer identified by its date of publication and that they should refer to the prospectus, (ii) to make the prospectus readily available to potential investors free of charge prior to receipt of application or purchase instructions, or refer them to a location where they may obtain it with ease and free of charge, and (iii) to provide that any application or purchase instruction from an investor will not be accepted without obtaining the investor's prior confirmation that he or she has read or had access to the prospectus.

6.05 Summary disclosure materials must be issued in both English and Chinese (unless the Commission has granted an exemption under section 38A or 342A of the CO permitting publication of the relevant prospectus in one language



only, in which case any summary disclosure materials used must be published only in that language) but may be distributed in separate language versions. If separate language versions are used, the material must include a statement in the other language in a prominent place on the front page or cover of the material that a version in the other language is available and where a copy may be obtained. The issuer must ensure that there are sufficient copies of both language versions available for the duration of the offer.

7. VETTING OF OFFER AWARENESS MATERIALS AND SUMMARY DISCLOSURE MATERIALS

- 7.01 In relation to public offers of listed shares or debentures, issuers of "publicity materials" should note that Rules 9.08, 24.08 and 37.23 of the Main Board Listing Rules and Rules 12.10, 28.08 and 30.25 of the GEM Listing Rules require all materials falling within the scope of "publicity material released in Hong Kong relating to an issue of securities" to be pre-vetted by the Exchange. An applicant for listing proposing to issue any publicity or disclosure materials should contact the Exchange to determine whether pre-vetting is required. Materials that constitute an extract from or abridged version of a prospectus must be specifically vetted and approved by the Exchange under section 38B(2A)(b) of the CO.
- 7.02 In relation to public offers of unlisted shares or debentures, the Commission is of the view that:
- (a) if any publicity or disclosure material proposed to be issued to the public complies with paragraph 3 and either one of paragraphs 4 and 5 (as the case may be) of these guidelines the document does not constitute a prospectus within the meaning of section 2 of the CO or an advertisement within the prohibition under section 103(1) of the SFO or an extract from or abridged version of a prospectus within the meaning of section 38B of the CO. Accordingly, no pre-vetting or authorization by the Commission is required;
 - (b) if any publicity or disclosure material proposed to be issued to the public does not comply with paragraph 3 and/or either one of paragraphs 4 and 5 (as the case may be), the issuer and its advisers must consider whether the material falls within any of the statutory provisions in paragraph (a) above; and
 - (c) if any publicity or disclosure material proposed to be issued to the public complies with paragraphs 3 and 6 of these guidelines, the Commission will treat it as an extract from or abridged version of a prospectus within the meaning of section 38B of the CO and consider it for authorization under section 38B(2A)(b) of the CO.



Appendix C

Summary of Points to note when reviewing prospectuses and marketing materials

To facilitate Subcommittee members' understanding of the internal guidance which has been in existence since 2005, set out below is a summary of points compiled from such internal guidance that reviewers should note when reviewing draft prospectuses and marketing materials of structured notes offered to the public. These serve as internal guidance only and do not have force of law. The guidance may not be applicable in every case depending on the nature and structure of the particular structured notes being offered. Where applicable, these points indicate disclosures which reviewers should request issuers to consider including in the relevant prospectuses where they do not otherwise appear in the drafts submitted.

Summary of policy on points to note while reviewing documents

1. Programme Prospectus

Responsibility statement –

- 1.1. If the obligations of the issuer are guaranteed, the guarantor must also take responsibility. If it is a fund-raising exercise for the guarantor group, the directors of the guarantor will also need to take responsibility in the same way as directors of the issuer.

Reliance on distributors – reference to “noteholders”

- 1.2. For a programme where the legal holder of the notes is the depositary (in the case of a global bearer note) or the nominee of the clearing system (in the case of a global registered note), the prospectus to disclose that references to “noteholders” do not mean individual investors. A distributor will, as a direct or indirect participant, hold such interests on behalf of investors either in its own account with the clearing system or through another entity.
- 1.3. The prospectus to state that investors are bound by the terms and conditions of the notes they buy.

Limited recourse programmes –

- 1.4. The prospectus to disclose whether there is any negative pledge provision.

False market / Ongoing disclosure –

- 1.5. The prospectus to contain an undertaking from the issuer (and the guarantor where applicable) to give notice to the noteholders of any information about the issuer (and the guarantor where applicable) which is necessary to avoid the establishment of a false market in the notes, or which may significantly affect their ability to make payments on the notes (or the ability of the guarantor to honour the guarantee where applicable).

Investor compensation fund not applicable –

- 1.6. The prospectus to state whether investors are covered by the investor compensation fund.



Statement of class exemptions relied on –

- 1.7. The prospectus should either contain a statement required by section 10 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice ("**Exemption Notice**")¹, or the issuer has to seek an exemption on the "unnecessary" ground (on the basis that the issuer is exempted from compliance by virtue of the class exemption notice).

Accountants –

- 1.8. For overseas issuers / guarantors, they will usually need to apply for a waiver from the requirement in paragraph 43 of the Third Schedule to the CO for the accountants' report to be prepared by accountants qualified under the Professional Accountants Ordinance.

Risk management policies –

- 1.9. To urge the issuer/guarantor to set out its risk management system or policies (usually extracted from annual report, if any,) in the prospectus as an appendix.

Limited recourse programmes –

- 1.10. In the case of limited recourse programmes, the prospectus to state the SPV issuer has no assets other than the collateral and swap arrangements which secure each series of its notes. Investors' claims against the issuer are limited to the realised value of the collateral and such amounts (if any) due to the issuer from the swap counterparty as a result of the termination of the swap.

The prospectus to set out the security arrangements (i.e. how the notes are secured) and the priority of noteholders in the ranking of claims against the issuer in connection with the enforcement of the collateral.

Collateral and swap arrangements –

- 1.11. Where the notes are in effect a replica of the collateral with the terms of the notes providing for the straight pass through of the economic benefit of the collateral, investors are in fact taking the credit risk of the collateral issuer/guarantor (but note swap guarantor is different and see paragraph [1.13] below). In such cases, the latest financial information of the collateral issuer/guarantor is to be provided in the prospectuses. The argument for this requirement is based on paragraph 3 of the Third Schedule to the CO. Where the swap counterparty swaps the amount of interest and principal received on the collateral into amounts an issuer needs to pay out on its notes, investors would also be taking the credit risk of the swap counterparty. Reviewers could also rely on paragraph 3 of the Third Schedule to the CO and require disclosure of the swap counterparty's financial information.
- 1.12. In light of the recent credit crunch resulting from the US sub-prime mortgage situation, reviewers to inquire in each case of collateralised issue whether the

¹ "Where a prospectus is issued in reliance of any exemption under this Notice, it must contain a statement identifying the exemptions that the issuer of the prospectus has relied on under this Notice."



collateral will consist of collateralised debt obligations (CDOs) or other asset backed securities. If the collateral consists of CDOs backed by mortgages, reviewers would need to ensure that appropriate risk disclosure is made in the prospectus.

Reviewers to also request specific disclosure about the potential lack of liquidity in CDOs which may affect their value as collateral.

- 1.13. Where the security for notes issued by orphan SPV issuers under a secured limited recourse programme comprises or will comprise swap arrangements and third party AAA-rated collateral, some issuers (through their legal advisers) have put up arguments that although the swap guarantor technically falls within the definition of "guarantor corporation" in sections 38(8)/342(8) of the CO, the underlying credit risk for the notes is that of the AAA-rated collateral, and the swap guarantor in such cases could be exempt from compliance with the Third Schedule disclosure requirements (i.e. an exemption from section 38(7)/342(7) is sought):-
- a. This is because these AAA-rated collateral are the source of the principal repayment and interest payments used to service the repayment of principal and the payment of interest on the notes. The collateral, and all cashflows received from it, are subject to strict security arrangements in favour of the trustee for the noteholders. The collateral is held by a custodian and cash receipts are dealt with by the custodian and paying agent subject to the power of the trustee to intervene under the security arrangements.
 - b. The swap arrangements are documented under a market standard ISDA master agreement which is tailored to fit with the security arrangements and the limited recourse nature of the notes. Under the ISDA documentation, all exchanges under the swap arrangements between the note issuer and the swap counterparty are inter-conditional so that either party may refuse to pay if the other party does not pay. This extends to the existence of an event of default or potential event of default so that if such an event applies to the swap counterparty, the note issuer would be entitled not to make its side of the exchange until the swap counterparty had made its payment.
 - c. For cross currency exchanges, there is an irreducible minimum settlement risk for normal exchanges known as "Herstatt risk". This applies because a payment of, for example, an Asian currency must be made during the day in the Asian time zone; but the exchange payment in a European currency or in US dollars, even though it is for value the same date, could only be made in the later European or US time zone. There is therefore an intraday payment risk which is borne by the payor of the currency in the earlier time zone. This risk is controlled by the inter-conditionality feature of the documentation which references a potential event of default; and by the payment mechanisms set up under the documentation under which irrevocable confirmations of payment are exchanged from the parties' paying banks on the day before the due date for payment.
 - d. Given an investor's investment risk attaches to the third party collateral and not to the swap guarantor, an exemption from



compliance with section 38(7)/342(7) could be considered on the "irrelevant" and "unnecessary" statutory grounds.

International Financial Reporting Standards –

- 1.14. In view of the adoption of the IFRS by the EU since 1 January 2005, financial statements of companies incorporated in the EU for the 2005 financial year will need to be presented in accordance with IFRS. Given structured note issuers are required to produce 2 years' financial statements in the prospectus, some explanation to be given in the prospectus as to the principal reclassifications and restatements made to the 2005 financials as a result of the change in accounting standards from national GAAP to IFRS, so that a meaningful comparative analysis can be made with the 2004 financials prepared in accordance with national GAAP. This should be of little concern in cases of issues in 2007 or after (as the requirement for 2 years' audited financial statements goes back to 2005 only), but reviewers should remain alert in the event that 2004 financial information is referred to.

Auditors' reports –

- 1.15. Paragraph 31 of the Third Schedule to the CO provides that a prospectus must contain audited financial information of the issuer (or the guarantor corporation by virtue of section 38(7)/342(7) of CO) in respect of each of the 3 financial years immediately preceding the issue of the prospectus (or, in an offer of unlisted debentures, in reliance on section 8(3)(b)(i) of the Exemption Notice, 2 financial years, i.e. Year₁ and Year₂ only, exempting Year₃). It further provides that if no accounts have been made up in respect of any part of the period of 3 (or 2 where section 8(3)(b)(i) of the Exemption Notice applies) years ending on a date 3 months before the issue of the prospectus, the prospectus must contain a statement of that fact. Such statement to be set out in an issue prospectus for a particular offer of notes.

Statement of reliance –

- 1.16. Section 10 of the Exemption Notice provides that where a prospectus is issued in reliance of any exemption under the Exemption Notice, it must contain a statement identifying the exemptions relied upon. For instance, where the programme prospectus provides 2 (instead of 3) years' audited financial information in reliance of the Exemption Notice, and a statement identifying the exemption and citing reliance thereon is contained in the prospectus, a question arises as to whether or not a similar statement of reliance is required in the issue prospectus. There are arguments for and against its inclusion, and the present approach is that the issuer and its legal advisers should formulate a logical and reconcilable explanation for consideration.

Unaudited quarterly or interim accounts –

- 1.17. Under the CO, there is no statutory requirement for the disclosure of unaudited quarterly or interim accounts in a prospectus. It is the issuers' responsibility under paragraph 3 of the Third Schedule to the CO to ensure that there are sufficient particulars and information in the prospectus at the time of issue to enable investors to form a valid and justifiable opinion of the



shares/debentures being offered and the financial condition and profitability of the issuer/guarantor, and to come to an informed investment decision. There is no firm legal view on whether an issuer needs to include published interims (including half-yearly or quarterly financial statements) in an issue prospectus (or an addendum to the programme prospectus) for a proposed issue.

Almost all issuers now prefer to register their unaudited quarterly/interim reports (or those of its guarantor or swap guarantor) as an addendum to the programme prospectus to avoid, for example, an inequality of information between the US and Hong Kong markets because Forms 10Q are publicly available on the SEC website as part of US banks' regulatory filings in the US. This approach would avoid selective disclosure of information to the detriment of investors in Hong Kong.

Due to the implementation of the EU *Transparency Directive* in 2007/08, issuers/guarantors incorporated in the EU member states whose shares are listed/admitted to trading on an EU regulated market should now be required to publish quarterly "interim management statements" ("IMS"), being a narrative update with minimal specific content requirements covering either the first quarter results or the cumulative third quarter results. As the EU and the US (which requires "full" quarterly reporting) both require some form of quarterly reporting, going forward reviewers to request EU issuers to include their quarterly IMS as part of their offer documentation.

Paragraphs 23-25, Third Schedule to the CO –

- 1.18. Where waivers are sought in respect of paragraphs 23 – 25 of the Third Schedule to the CO (usually in cases where information required by such paragraphs on bank overdrafts, hire purchase commitments, guarantees or other material contingent liabilities and outstanding debentures of the issuer/guarantor corporation (usually a global financial services provider) needs to be updated to the latest practicable date or date of issue of the prospectus as required by paragraph 3) on the basis that further particulars of such items are unnecessary as:
- a. they relate to the financial position of the issuer/guarantor corporation;
 - b. it has been confirmed in the prospectus that, taking into account the nature of the notes being offered, there has been no material change in the financial position of the issuer/guarantor corporation since the date of its latest audited financial statements; and
 - c. such latest financial statements contain sufficient particulars of such items at that date and are included in the programme prospectus,

The issuer/guarantor corporation will need to confirm to the SFC in the exemption application letter that "*where waivers are sought on the grounds that the information required is "unnecessary", the prospectus (assuming the waivers are granted) will comply with paragraph 3 of the Third Schedule to the CO.*" A paragraph 25 waiver to SPV issuers under a limited recourse programme would also be considered on the basis that each series of notes is secured on a separate batch of collateral and the noteholders of each such series have limited recourse to the extent of the collateral on which the particular series is secured (i.e. particulars of authorised debentures of the issuer would not impact on prospective investors' investment decision).



Estate duty –

- 1.19. With the passage by LegCo of the Revenue (Abolition of Estate Duty) Bill 2005 on 2 November 2005, estate duty was abolished as from 11 February 2006. Estate duty chargeable in respect of deaths occurring on or after 15 July 2005 but before 11 February 2006 will be reduced with retrospective effect to a nominal duty of HK\$100 for estates of assessed value exceeding HK\$7.5 million. Any estate duty overpaid will be refunded. The description of HK estate duty in the "taxation" section of the programme prospectus to reflect this.

SFC disclaimers –

- 1.20. "The SFC has authorised this programme prospectus for registration by the Registrar of Companies. SFC authorisation does not imply the SFC's endorsement or recommendation of any offer contained or referred to in this document."

Board resolutions approving programme prospectus and authorising registration –

- 1.21. For HK incorporated issuers, section 38D(3) of the CO requires the prospectus to be signed by "every director and proposed director or by his agent authorised in writing" and there is no need to produce a copy of the board resolution approving the issue of the prospectuses. For non-HK incorporated issuers, section 342C(3) of the CO requires certification by 2 members of the governing body of the issuer or by their agents that the prospectus has been approved by the board². Overseas issuers normally submit a copy of the relevant board resolutions. In the case of HK/UK incorporated issues, London Counsel's opinion was to the effect that under Hong Kong/English law, a board resolution has to approve a specific prospectus tabled before the board and not a document that has not even come into existence. Accordingly no "forward-looking" board resolutions are acceptable for HK/UK incorporated issuers. In the case of issuers incorporated other than in HK/UK, reviewers should check to see whether the board resolutions relied upon for the purposes of meeting the registration requirements of section 342C(3) of the CO (i.e. the copy of the prospectus proposed to be registered needs to be certified by 2 members of the governing body of the company or by their agents authorised in writing as "having been approved by a resolution of the governing body") provides for blanket approval in respect of future prospectuses (e.g. a board resolution in 2004 approving a note programme and future programme/issue prospectuses). If so, reviewers will require confirmation that "forward-looking" board resolutions under the laws of the country of incorporation of the issuer are sufficiently wide to cover approval of the prospectuses in question.

2. Issue Prospectus

² The prospectus must be certified by 2 members of the governing body of the company or by their agents authorised in writing "as having been approved by resolution of the governing body" – see section 342C(3). This usually means board resolution (for approval of prospectus), power of attorney and/or signing authority (for authorisation of agents).



Paragraphs 1.1, 1.7, 1.11, 1.12 and 1.18 of "Programme Prospectus" apply equally to issue prospectuses.

Principal-protected vs principal-guaranteed? –

- 2.1. There is an important distinction between a product which is principal protected and one which is principal guaranteed. In both cases, the payout at maturity will, in the absence of default, always be 100% of the principal amount (irrespective of, for example, the share price performance of the underlying shares).

Principal protection means that redemption at 100% of the principal on maturity depends on the note issuer receiving, for example, the corresponding payment on the collateral and the swap arrangements i.e. the investor's principal is protected by, say, AAA-rated collateral but if the collateral issuer/collateral guarantor defaults, the investor could lose his principal.

Principal guarantee means that repayment of 100% of the principal at maturity is guaranteed by a guarantor of the issuer's obligations under the notes pursuant to a deed of guarantee.

It is important to disclose with clarity to which type a product belongs. This is because a principal protected product, albeit so called, is nevertheless subject to how the credit market performs, whilst a principal guaranteed product is subject to the credit quality of that particular guarantor.

Notification –

- 2.2. In any issue where the terms and conditions cater for the possibility of changes, after the issue of the issue prospectus, to the issue date, initial price, fixing date or trade date, the possibility of such changes should be disclosed in the issue prospectus. Furthermore, where coupon rates and manner/basis of redemption are determined by reference to share price performance, issuers should notify investors (through distributors) of the actual coupon and redemption amounts.

Board Resolutions approving issue prospectus and authorising registration –

- 2.3. Please refer to paragraph 1.21 of "Programme Prospectus" which also applies to issue prospectus.

Classes of assets to which the notes are linked -

- 2.4. The following classes of assets are generally considered acceptable:-
- a. a single class of shares which satisfies the requirements of (i) Rule 15A.30(1) or 15A.30(2), and (ii) Rule 15A.35³, of the Main Board Listing Rules;

³ Pursuant to Rule 15A.35 of the Main Board Listing Rules, SEHK publishes a "Stock Eligibility Schedule" quarterly setting out those stocks (includes exchange traded funds) listed on SEHK which are eligible for listed structured product issuance, whether as single or basket



- b. shares which are listed on SEHK with a trading history of less than 60 consecutive business days and a minimum market capitalisation in public hands of HK\$10 billion as of the issue date of the relevant structured products;
- c. overseas listed stocks - (i) must be listed on a recognized overseas stock exchange; (ii) the list of overseas listed stocks must be approved by the SFC prior to launch; (iii) the relevant notes must be cash settled (following the requirement in Rule 15A.45 of the Main Board Listing Rules).

A few criteria that reviewers should take into account in considering whether to grant approval for overseas listed stocks to be the underlying for equity-linked notes:

- whether the overseas company has a corporate/investor relations website which contains at the minimum the annual and interim/quarterly financial statements for the 2 most recent financial years;
 - whether information in relation to the stock is available in English (a Japanese stock has been turned down by SEHK as its corporate website does not have an English version);
 - whether stock quote information is freely available either on the overseas company's website or the relevant exchange's website (since unlisted equity-linked notes are designed to be held to expiry, delayed stock quotes are acceptable);
 - whether the stock is a constituent of a leading index in the market where it is listed;
 - where the overseas company is listed on an exchange which requires a minimum percentage of shares to be in public hands, whether the public float capitalisation of such shares is of an amount equivalent to (or exceeds) HK\$4 billion or, if such exchange does not impose a minimum public float requirement, whether the market capitalisation of the shares is equivalent to (or exceeds) HK\$10 billion and where the SFC is satisfied with the liquidity of the market for the shares.
- d. a basket of underlying securities which satisfies the requirements of Rules 15A.32 and 15A.35³ of the Main Board Listing Rules;
 - e. a basket of underlying shares (comprising no more than 10 shares) which are not listed on SEHK, but listed or dealt in on another regulated, regularly operating, open stock market recognised for this purpose by the SFC (see the criteria in (c) above);
 - f. shares of companies incorporated in the People's Republic of China and listed on the Shanghai Stock Exchange and/or the Shenzhen

scheduled stocks. For unlisted structured products reviewers should track SEHK's practice and only consider those stocks which are in the Stock Eligibility Schedule. Reviewers will be provided with the most recent Stock Eligibility Schedule from time to time.



Stock Exchange in the bank sector and/or the industrial transportation sector of the FTSE/Xinhua China A50 Index (as a type of overseas listed stocks, which has been considered and approved in previous cases);

- g. indices - (i) must be those which are approved by the SEHK as underlyings for listed structured products (currently comprising Hang Seng Index, Hang Seng China Enterprises Index, Dow Jones Industrial Average Index, Nasdaq 100 Index, Standard & Poor's 500 Index, MSCI Taiwan Index, MSCI World Index, MSCI AC Asia-Pacific exJapan Index, MSCI India Index, MSCI Korea Index, Nikkei 225 Stock Average Index, KOSPI 200 Index and Reuters/Jefferies CRB Index); and (ii) must be cash settled (following SEHK practice);
- h. funds - e.g. ETFs such as the Tracker Fund and the A50 China Tracker; listed REITS such as the Link REIT which satisfy the requirements of: in the case of a single fund, Rule 15A.30(1) or 15A.30(2), or, in the case of a basket of funds, Rule 15A.32, and in both cases, Rule 15A.35³, of the Listing Rules.

Describing companies to which the notes are linked—

- 2.5. When considering the adjectives used by an issuer to describe the underlying companies, reviewers should ensure that the comment is limited to asking issuers to substantiate/explain the choice of words when in doubt as to the appropriateness of the words used (as opposed to asking issuer to delete the words in question). For example, when corporations with global operations that most ordinary persons on the street should know of are chosen as the underlying, the use of "international", "well-known" and "household names" to describe such corporations should be acceptable. Such words are neutral in the sense that it is factually correct that a corporation is "international" if it has worldwide operations, and it could also be "well-known" or become a "household name" for positive or negative reasons. In addition, the use of "blue chips" and "red chips" to describe the 43 HSI constituent stocks and 30 HSCCI (Hang Seng China-Affiliated Corporations Index) constituent stocks respectively should also be acceptable as they are known in the market as such. The use of the words "large cap" to describe companies which are constituent stocks of the Hang Seng HK LargeCap Index should also be acceptable. Reviewers can obtain a list of the current constituents of the various indices on the website of HSI Services Limited at www.hsi.com.hk under the folder "Constituents".

Name of a series —

- 2.6. Reviewers should also consider whether the name given to a particular series of notes or a particular feature of the notes is misleading to prospective investors. For example, it may not be appropriate to label a series of notes with a "step-up" feature where, for example, where redemption is possible at half-yearly intervals and a bonus amount equal to 2% of its nominal value is payable if redemption occurs at 6 months, 4% at 12 months, 6% at 18 months and 8% at 24 months, the rate payable on such redemption dates on an annualised basis is 4%, therefore, there is no actual "step-up" in the bonus rate.

For equity linked notes —



- 2.7. If no closing price is available for one underlying share (out of a basket) on a valuation or observation date due to a market disruption event, what is the treatment for the affected share and the unaffected shares?
- a. Would closing prices of unaffected shares on the original valuation/observation date be used for calculation purposes, whilst the valuation/observation date for the affected share would be the next following scheduled trading day on which there is no market disruption event i.e. a closing price for the affected share is published (unless no closing price is available for each of the following 5 or 8 scheduled trading days, in which case the calculation agent (acting as the agent of the issuer) will in good faith estimate the closing price of the affected share on that 5th/8th scheduled trading day); or
 - b. Would the valuation/observation date be postponed for all shares in the basket?
- 2.8. For ELNs with a daily accrual feature, if no closing price is published for one or more shares in the basket due to a market disruption event, what is the treatment for the affected share and the unaffected shares?
- a. if no closing price for one or more (but not all) shares (out of a basket) are available on an exchange business day due to a market disruption event, would closing prices of the unaffected shares on that exchange business day be used for calculation purposes, whilst the closing price(s) of the affected share(s) on that day will be the closing price(s) on the next following exchange business day on which the closing price(s) of the affected share(s) is/are available?
 - b. if no closing price is available for ALL shares in the basket on an exchange business day due to a market disruption event, what is the treatment? Would such day be deemed not to be an exchange business day for calculation purposes?
- 2.9. Reviewers should request issuers to state whether the number of shares to be physically delivered on maturity (if redemption is by way of physical delivery rather than repayment of the principal amount) will be determined on a per-note or aggregated basis, and to state whether extra interest or amount will be paid for any delay in payment or delivery of shares.
- 2.10. In the summary box or "at a glance" section of an IP, ensure that the worst case scenario (minimum fixed return over maximum tenor plus physical delivery of worst performer) is stated prominently in the box as this will usually be extracted to form part of the marketing materials. Example: *"The notes are not principal protected and may be redeemed by physical delivery of the worst performing share which may be worth substantially less than the principal amount of the notes. Investors may only receive the minimum fixed coupon of [*]% over the 2-year term of the notes."* Such worst case scenario to be prominently stated in each of the marketing materials beneath the visual.
- 2.11. Hypothetical examples/scenario analyses to be inserted in an issue prospectus so that prospective investors can better understand how the notes work. To get a balanced picture across to prospective investors, the best, moderate and worst case scenarios to be presented.



- 2.12. If the term "guaranteed" coupon is used by issuers under a non-guaranteed programme, when all they mean is that the coupon is fixed, reviewers to request issuers to use the term "fixed" coupon as the word "guarantee" may mislead prospective investors into thinking that the notes are guaranteed.

For credit linked notes –

- 2.13. The "redemption on maturity" section in the summary of the features of the notes to include a prominent statement, after "100% of principal amount", to the effect that if a credit event occurs, the credit event redemption/cash settlement amount payable to investors is likely to be less, and could be substantially less, than the principal amount of the notes. This is to ensure that if the summary section is extracted to form an advertisement, a balanced view highlighting the credit-linked risks of the notes is presented.
- 2.14. The issue prospectus to state whether interest will be paid for any part of the interest period during which a credit event happens or an early redemption (whether due to an event of default, illegality, taxation reasons or otherwise) is made. In most instances, the commercial deal is that no interest will accrue.
- 2.15. Reference obligations are used as a benchmark to determine the credit event redemption amount if a credit event occurs to a reference entity. Where the reference obligation of a reference entity is a subordinated obligation, the issue prospectus should state the credit rating of the subordinated obligation as opposed to that of the reference entity's long-term senior unsecured debt (or state both sets of ratings), since investors are exposed to a subordinated debt which is more likely to cause greater loss upon a credit event than if the reference obligation is a senior debt.
- 2.16. Where the term of a CLN is, say, 5.5 years and different interest rates apply to different periods, some issuers present the applicable interest rates in the following format:

Years 1 – 4: [X]% p.a.

Year 5 – 5.5: [Y]% p.a.

Confusion may arise from the adoption of this format as it may appear to investors at first blush that [Y]% is only applicable to the last half-year of the investment period whereas it is applicable to the last 1.5 years. A clearer presentation format would be as follows:

First 4 years: [X]% p.a.

Last 1.5 years: [Y]% p.a.

Additional points

Past performance –

- 2.17. Where past performance of an underlying (i.e. the subject matter to which the notes are linked) (in terms of historical share prices) is set out in the prospectus, the duration covered should be of at least 5 but not more than 6



years or of a period equal to the maximum tenor of the notes, whichever is the longer (in cases where the underlying share has been listed for less than 5 years, since the date of listing). Where the underlying share has less than a year's trading record; reviewers should check whether the issue prospectus has appropriate risk disclosure regarding the listed entity not having an established trading record and that price and volume volatility may be higher than those with an established trading record. The price charts should be set out horizontally over a page, with a maximum of 2 charts to one page. This will avoid issuers cherry-picking the best results.

Minimum transfer amount –

- 2.18. Issuers more often than not designate a minimum purchase amount for their notes (e.g. the notes are in denominations of HK\$10,000 but an investor needs to purchase a minimum of, say, HK\$30,000 or 3 notes). Reviewers should ask the issuers to confirm whether there is a minimum transfer amount and if so, whether it is the same as the minimum purchase amount (as the minimum transfer amount could be, say, HK\$10,000 or 1 note). Where there is a minimum transfer amount, it should be clearly stated in the issue prospectus.

Good faith estimate –

- 2.19. In all ELN or ILN structures where closing prices or levels of the underlying stocks or indices on a valuation date (or during an observation period) have to be determined in order to calculate the relevant coupon/redemption amounts, issuers usually adopt the ISDA convention on postponement of a valuation date due to a market disruption event (e.g. postponement to the next following scheduled trading day when no market disruption event subsists unless there is a market disruption event on each of the following 5 or 8 scheduled trading days, in which case the calculation agent will do a good faith estimate of the relevant closing prices or levels).
- 2.20. The possibility of situations where the calculation agent appointed by the issuer needs to estimate in good faith the price or level of the underlying (linked) stocks or indices affected by the postponement of a valuation date is useful and relevant information for investors that should be highlighted in the front-end of the issue prospectus.

"No material adverse change" statement –

- 2.21. The issue prospectus for each offer to include a bring-down statement, i.e. in the context of the structured products being offered there is no material adverse change in the financial or trading position of the issuer (or the guarantor corporation) since the date to which its last published audited financial statements were made up. Issuers who include unaudited interim or quarterly financial statements in the prospectuses (and not as display documents) may peg such bring-down statement to the date of the unaudited interim or quarterly financial statements instead. This approach is acceptable provided there is no window period which is not covered, even though such financial statements are unaudited, as the issuers and their directors are subject to prospectus liability anyway.

Fees and charges –



- 2.22. Issuers to state in the issue prospectus whether there are any charges or fees involved in relation to the structuring of the notes. This is to mirror the following disclosure requirement (or a statement to the like effect) in respect of offer documents for equity-linked deposits, which are functionally similar to ELNs:

"Although there are no explicit charges, any fees and charges incurred by the Issuer, whether to enter into underlying investments or hedging agreements or for operational or administrative purposes and profit margins, if any, are already indirectly contained in and subsumed into the calculation of the coupon(s) and the principal under the notes."

Application and authorisation fees –

- 2.23. In relation to the application for authorisation for registration of a prospectus (within the definition of CO), a fee of HK\$30,000 is chargeable in accordance with item 21(f) of Schedule 1 to the Securities and Futures (Fees) Rules. In cases where two or more prospectuses are submitted for authorisation, in so far as the law would require a payment of that amount in respect of each prospectus, an application for waiver from the issuer would be considered, for example, on the basis that the offer contained in the prospectuses could have been made via a single prospectus and that it would therefore be duly burdensome or inappropriate to charge more.

Paragraphs 27 and 31 exemptions –

- 2.24. Reviewers to check whether issuers have complied with paragraphs 27 and 31 of the Third Schedule of the CO, and in particular, take note of the following:-

Paragraph 27 of the Third Schedule:

"A statement as to the gross trading income or sales turnover (as the case may be appropriate) of the company during each of the 3 financial years immediately preceding the issue of the prospectus....."

Paragraph 27 exemption will be required if the financial statements for the immediately preceding year are not available when a prospectus is issued.

Under paragraph 31 of the Third Schedule:

"A report by the auditors of the company.....in respect of each of the 3 financial years immediately preceding the issue of the prospectus....."

Paragraph 31 exemption will be required if the financial statements for the immediately preceding year are not available when a prospectus is issued.

In addition, if the issuer is also relying on section 8(3)(b)(ii) of the Exemption Notice in respect of paragraph 31 (that the audited financial statements for the immediately preceding year (i.e. Year₁) are not available), an appropriate statement regarding the unavailability of Year₁'s financial statements to be set out in the issue prospectus (see also paragraph 1.15 of "Programme Prospectus" above regarding section



8(3)(b)(i) of the Exemption Notice). If the issuer is applying for an exemption from paragraph 31 but NOT relying on the Exemption Notice, the issuer to insert a similar statement of the unavailability in the issue prospectus to ensure consistency in the level of disclosure among issuers.

Reviewers need to pay extra attention to this paragraph at the turn of every year before issuers publish the relevant audited financial statements for the immediately preceding year (e.g. when an issuer proposes to issue a prospectus in January 2008 whilst its immediately preceding financial year end is 31 December 2007).

3. Marketing Materials

- 3.1. In general, reviewers should refer to the *"Guidelines on use of offer awareness and summary disclosure materials in offerings of shares and debentures under the Companies Ordinance"* issued by the SFC on 21 March 2003 (and in particular paragraphs 3, 5 and 6) for background information. SFC disclaimers and other legends which must be included in each of the marketing materials are as follows:
- a. [ABC] Ltd. is the issuer of the notes. If it has already been identified as such in the front-end of the material e.g. the summary of terms in a factsheet/leaflet has already identified the note issuer, there is no need to do so in the legends. The need to identify the note issuer usually occurs in the case of bus panel or bus shelter ads, tentcards/leaflet holders, posters and print ads.
 - b. Investment involves risks.
 - c. To highlight to prospective investors that they should read the relevant prospectuses for detailed information about the issuer/guarantor and the offer of the notes, and ask the distributors for copies and whether any addendum has been published during the offer period before deciding whether to invest in the notes.
 - d. The material does not constitute an offer or an invitation to induce an offer by any person to acquire the notes. The offer of the notes is made solely on the basis of the information contained in the prospectuses and applications will only be taken on the basis of the prospectuses.
 - e. The material is issued by [identify the issuer of the material e.g. XYZ Securities Limited as the arranger of the notes], who takes responsibility for the issue and contents of the material.
 - f. The issue of the material has been authorised by the SFC under [section 38B(2A)(b) of the Companies Ordinance and] section 105(1) of the Securities and Futures Ordinance. SFC authorisation does not imply the SFC's endorsement or recommendation of the notes referred to in the material. The SFC accepts no responsibility for the contents of the material.
- 3.2. The above disclaimers and legends must be legible in the context of:



- a. font size (paragraph 3.04 of the Guidelines requires that all warning statements and legal legends in the materials must be at least 40% of the font size of the predominant text and must not be presented in a style that is designed to reduce their impact). Such statements and legends must be capable of being read with ease by anyone scanning the material;
- b. format/layout of the marketing material (i.e. with clear paragraph headings and spacing). When issuers decide what the marketing materials should say, they must ensure that everything that is said is readily readable. If this has an impact on the format/layout of the materials they produce, such that some formats are not suitable, so be it;
- c. where the material will be displayed or published (e.g. a bus panel advertisement – the legends must not be clustered).

Emphasis –

3.3. The visual in an advertisement normally comes with a headline banner stating the maximum potential return of the notes. To achieve a balance, the worst case scenario should be stated in a prominent position beneath the graphic:

- a. in the case of ELNs:
 - i) the notes are not principal protected;
 - ii) investors may only receive the minimum fixed coupon of [x]% during the [y]-year life of the notes;
 - iii) the notes may be redeemed by physical delivery of the worst performing share which may be worth substantially less than the principal amount of the notes.
- b. in the case of CLNs:
 - i) the notes are not principal protected;
 - ii) if a credit event occurs, the credit event redemption/cash settlement amount is likely to be less and could be substantially less than the principal amount of the notes.

In addition, where subordinated obligations of the reference entities are used as reference obligations for the purposes of the calculation of the credit event redemption amount upon the occurrence of a credit event, but the credit ratings shown in the main text of the marketing materials are those for senior unsecured debt of the reference entities (as opposed to the ratings applicable to the subordinated reference obligations), both sets of ratings (or those applicable to the reference obligations only) to be shown so that investors are not misled.

3.4. The prominence given to the figure representing the total maximum potential return (i.e. the font size used for such figure in the headline banner) to be balanced with the prominence given to the worst case scenario caption. To stress that this figure reflects the best case scenario and whether such return



can be achieved depends on market performance of the underlying (e.g. share price performance or credit performance).

Visual and artwork –

- 3.5. As far as the marketing theme and artwork are concerned, anything associated with speed or racing is generally not acceptable (to avoid giving prospective investors the impression that investing in a structured product and obtaining the maximum return is fast/assured) (however, visual showing a race car or an airplane without emphasising the motion or a helicopter on the launch pad has been accepted). A neutral theme is preferred (in the past, the use of "gold" and "diamonds" with toned-down sparkles have been allowed). Examples of rejection include rockets and fighter jets. Where a theme is considered to be unacceptable (or variations to an otherwise acceptable theme are required), the reviewers to alert the issuers in the first instance as they need time (and extra costs) to come up with an alternative theme.

Slogans –

- 3.6. The same applies to the marketing slogans proposed to be used. Reviewers to ask issuers to put the marketing slogans (as opposed to corporate branding slogans) used in their advertisements into the issue prospectus on the basis that the marketing materials should not contain any information that is not in the prospectus. To do otherwise will cloud the legal position, undermine the philosophy that the prospectus should contain everything an investor needs to know (and raise a valid question why the information is being provided but not in the prospectus), and potentially confuse investors. If an issuer wants some information in the marketing materials, then it should go in the prospectus.

Legibility –

- 3.7. Reviewers to ask the issuers/legal advisers to submit the smallest version of the print ad for review of legibility. In addition, a word version of the text for comment purposes to be submitted as well.

Tentcards –

- 3.8. Some issuers produce tentcards for holding SFC-authorised factsheets or leaflets. If such tentcards or leaflet holders contain only the visual/graphic with no text/slogans or reference to the offer of the relevant series, SFC authorisation may not be required (where authorisation is not required, a copy for reference will be needed). In determining whether any regulatory benefit is served by authorisation, the issuers need to show whether the "worst case scenario" caption will be "hidden" when the factsheets or leaflets are inserted into the holder. If it is so "hidden", the issuers to state the "hidden" caption onto the tentcard/leaflet holders, thereby requiring authorisation.

LED display –

- 3.9. Where issuers propose to place an in-train advertising message on the LED display panel of MTR carriages, the SFC disclaimers must be displayed for a certain minimum period of time (normally not less than 2 seconds) depending on the amount of text set out in each frame.

Webpages –



- 3.10. Some issuers would like to submit webpages (being part of its or the arranger's website) as marketing materials for authorisation. Whilst the review of such materials relating to the features of the particular products will be no different from other forms of marketing materials (e.g. leaflets), the issuer or the arranger is to demonstrate how the screenflow is set out, and in particular reviewers must be aware of hyperlinks and icons unrelated to the product. Furthermore, a disclaimer is to be inserted on the first webpage which a viewer sees when entering the section or folder about structured products. The disclaimer must clearly state which webpages have been authorised by the SFC and carve out all others where SFC authorisation is not required. All hyperlinks and unrelated banner advertisements appearing on the webpages would also need to be carved out.

E-mail/website attaching authorised marketing –

- 3.11. There are cases where distributors wish to send out non-SFC-authorised e-mails or hard copy letters to their existing customers attaching an SFC-authorised factsheet/leaflet. The text of the e-mail or letter must be such that no reference is made to the features of the notes being offered, apart from something generic or neutral such as "*Series X notes issued by ABC Ltd. now on offer. Please see attached.*" In the case of e-mails, there must be a link to a locked PDF version of the relevant prospectuses. In the case of letters, investors' attention must be drawn to where they may obtain copies of the relevant prospectuses.

Where distributors wish to post SFC-authorised marketing on their websites, reviewers should ask the legal advisers to submit the proposed screenflow for review.

- 3.12. Since the e-mail/letter makes only neutral passing reference to the notes being offered and refers to and encloses the SFC-authorised factsheet/leaflet, it does not give any cause for concern from a regulatory or disclosure perspective. No regulatory purpose would be served by the SFC taking regulatory or legal action under section 38B(1) if such an e-mail or letter were issued without SFC authorisation.

Online banner advertisement –

- 3.13. Where issuers/arrangers propose to place banner advertisements on webpages of the distributors or other online media, reviewers should request them to provide the screenflow of such banners. The information that can be displayed on such banners is very limited, for example, title of series, nature of underlyings and maximum coupon amount, due to the lack of memory storage space available for such banners on the relevant webpages. Reviewers must ensure that the text displayed on such banners is legible and investors are given sufficient time to read each individual frame. The banners to also at least display the following information :-

- Investment involves risk
- The notes are principal/non-principal protected, and, if applicable, warning statements regarding the minimum (or nil) coupon amount and/or physical delivery of the worst performing share
- Investors must read the prospectuses
- Who is responsible for the issue and contents of the relevant banner



- SFC disclaimers

Hyperlinks to locked PDF formats of the prospectuses on such banners would also be acceptable.

Bonus gifts for successful subscriptions –

- 3.14. Bonus gifts (in the form of cash coupons and electronic or other products) offered by distributors for successful subscriptions of a certain size are now a regular side-feature of a note offer. It used to be the case that all the terms and conditions relating to the redemption and use of such gifts are inserted in the relevant marketing materials – so much so that it clutters, and may discourage people from reading, information relating to the notes themselves.
- 3.15. Although issuers have discretion as to what they wish to put in their advertisements (provided the contents are accurate, clear, unambiguous and not misleading), reviewers should suggest to them that it should not be done at the expense of cluttering the space used to describe the notes. Reviewers to advise issuers that the following approach is preferable:

Minimum “gift” information required for advertisement as follows:

- “Terms and conditions apply – please ask your distributor for full details relating to availability, delivery/collection, warranty and liability prior to purchase of Notes.” This is to be preceded, where applicable, by a description of the gift(s) (and their approximate retail value(s)), terms relating to the level of successful subscription before qualifying for gift redemption, as well as whether investors can choose a combination of gifts if their subscriptions exceed a certain level.
- 3.16. Full terms and conditions of the gift scheme will have to be documented and made available for collection by investors via distributors (and copied via e-mail to the SFC with a confirmation that no material terms have been omitted). This approach can also work for gifts relating to credit card bonus points and air miles – since prospective investors need to be the holder of the relevant credit card or member of the relevant mileage programme before they can qualify for gift redemption, the full terms and conditions should point out to investors that they will be bound by the separate terms and conditions which govern the use of such credit card or mileage programme.
 - 3.17. The above principle can also be applied where there is information that does not appear to add value for investors’ understanding. For example, a list in the advertisement which sets out a host of defined terms and asks investors to read the issue prospectus for detailed definitions. Again, reviewers to suggest to issuers that they may wish to consider whether this clutters information relating to the main features and risks of the notes, when they will have already asked prospective investors to read the prospectuses before making an investment decision.

Hypothetical examples –

- 3.18. Where hypothetical examples are used in a marketing material, they should be balanced with emphasis on both the upside and the downside risk. Reviewers should request the worst case scenario to be inserted, unless the



structure of the particular product is such that it makes little sense to have such a demonstration (e.g. where the product is principal protected, or where the parameters are such that the chance of the worst case scenarios is not quite realistic - e.g. where strike price for physical delivery is 1% of the initial price.

References to websites –

- 3.19. Where there are references to websites in the marketing materials, the SFC authorisation wording should be such that prospective investors are left in no doubt as to the extent of authorisation. Example: *"SFC authorisation does not imply SFC's endorsement or recommendation of the Notes nor its endorsement of the information contained in any website referred to in this [description of document]."*



Appendix D

Examples of Comments raised by the SFC in Prospectuses and Marketing Leaflets of certain series of Minibonds and Constellation Notes

Prospectus

(a) Minibonds

Series 27

1. Since the reference obligations of certain reference entities were subordinated notes, the SFC queried if the issuer should disclose in the prospectus the particular nature and risks in relation to subordinated notes as reference obligations. This was subsequently set out in the prospectus.
2. Following SFC's query, the issuer revised its definitions of credit ratings in the prospectus as they are only applicable to the reference entities' overall capacity to repay debts and the credit agencies have issued a different set of definitions for credit ratings in respect of specific financial obligations.
3. As the notes were credit-linked to the reference entities and not their reference obligations (which would serve as benchmark obligations when calculating the credit event redemption amount following the occurrence of a credit event), the SFC queried if the issuer should, and the issuer subsequently did, highlight this in the prospectus.

Series 34

4. Following the sub-prime crisis in mid-2007, the SFC queried if the issuer should disclose in the prospectus whether the CDO collateral would be linked to mortgage-backed or asset-backed securities. A statement to the effect that the CDO would not be an asset-backed securities CDO and that they would not be linked to asset-backed or mortgage-backed securities was subsequently added to the prospectus.
5. Following SFC's query, a risk factor on the liquidity of the CDO collateral was added to the prospectus.

Series 35

6. Since one of the reference obligations of a reference entity was a subordinated note, the SFC queried if the issuer should, and the issuer subsequently did, disclose in the prospectus the particular nature and risks in relation to a subordinated note as a reference obligation.

(b) Constellation Notes

Series 14-17 (first series of Constellation notes where collateral may comprise CDOs)

7. Following SFC's request, the issuer clarified that interest would cease to accrue from the last interest payment date before the occurrence of an early redemption event (other than a credit event) or an event of default.



8. As it is stated in the prospectus that collateral may consist of CDOs, the SFC queried if the issuer should include, and the issuer subsequently did include, a warning to the effect that if the CDO collateral is early redeemed due to a default, it is likely that the proceeds of realisation will be substantially less than the principal amount of the collateral being realised and that prospective investors may lose all or substantially all of their investments in the notes.
9. Following SFC's request, the issuer included a warning to the effect that if the issuer becomes unable to make payment of the full amount due in respect of the principal or interest on the notes for certain tax reasons and the swap counterparty does not elect to pay additional amounts to the issuer to enable full payments to be made under the notes, all further payments shall be made after deduction of all applicable taxes and that investors would have no right to require the issuer to redeem the notes in such circumstances.
10. The SFC asked the issuer to re-consider the sentence "*The Issuer makes no representation whatsoever that the contents of any such marketing materials issued and/or distributed by persons other than the Issuer are accurate, true, not misleading or not deceptive and no responsibility whatsoever is accepted in relation to any such marketing materials by or on behalf of any person who is responsible for this Issue Prospectus and Programme Prospectus*" as it may potentially conflict with the new section 40(6) of the CO which extends an issuer's liability to information in marketing materials. This sentence was subsequently deleted.
11. For series 17 which is HKD-denominated, the SFC queried if the floating rate component of the interest rate applicable should be changed from USD-LIBOR to HKD-HIBOR. The issuer amended the prospectus accordingly.
12. Following SFC's request, the issuer included an additional warning to the effect that if a succession event such as merger, demerger or spin off occurs with respect to any reference entity and any successor is not an existing reference entity, such successor could have a different, and worse, credit rating than the original predecessor reference entity

Series 43-46

13. Following SFC's query, the issuer corrected the information in the prospectus to the effect that following the occurrence of a credit event, investors would receive the "credit event redemption amount", and not an "early redemption amount". This is because the methods for calculating early redemption amount (following the occurrence an early redemption event other than a credit event) and credit event redemption amount are different
14. Following SFC's query, the issuer included as one of the display documents the unaudited quarterly financial results of the swap counterparty.

Series 55-58

15. SFC raised concerns regarding how the initial proposed slogan "*Let your investment ascend from our favourable interest rates*" related to the notes. The issuer submitted another headline (together with the rationale) for Series 55-58 – "*Outstanding returns. Proud achievement*" and "取得驕人投資回報，當然值得自豪". As the maximum potential return was subject to non-occurrence of



credit events and other early redemption events, SFC questioned the use of the term “取得”. The authorised version of the prospectus contained the headlines “驕人潛在回報，當然值得自豪” (in Chinese) and “*Outstanding potential returns. Proud achievement*” (in English).

16. SFC requested the issuer to enlarge font size of and space out text in “Summary of Main Terms” and “The Reference Entities” sections to improve legibility.
17. The initial draft prospectus included a statement that the investor will need to confirm and acknowledge to the distributor that he/she has “*received or have been afforded sufficient opportunity to obtain a copy of our programme prospectus, the addendum, this issue prospectus and any updating addendum or supplement to the prospectus published before the offer of the notes closes*” – the underlined part of the sentence did not appear in earlier Series of Constellation notes. The SFC queried how investors could give this confirmation if the updating addendum was published after the investor placed his/her order but before the offer closes. The issuer amended the prospectus by elaborating on the effect of the confirmation as follows:
 - a. the investor confirmation was amended to say that “... *if any updating addendum or supplement to these prospectuses have been published when you place your order, you will be asked to confirm you have received or have been afforded sufficient opportunity to obtain a copy of that updating addendum or supplement too*”;
 - b. a new confirmation was added – “*when you place your order for the notes, you have agreed with your distributor (if your distributor is acting as principal) or the initial subscriber (if your distributor is acting as agent) that you cannot revoke your order for the notes, even if we publish and register any updating addendum or supplement During the offer period (unless we specify otherwise in the updating addendum or supplement)*”;
 - c. the statement to the effect of paragraph (b) above was drawn to the attention of investors in the “IMPORTANT” box on page 2 (i.e., first page after the cover page) of the prospectus.

The issuer’s legal advisers explained that this concept of “irrevocable orders” was akin to the position in listed equity initial public offerings.

18. Following SFC’s concern, it is stated in the prospectus that despite the unlisted nature of one of the reference entities (with limited public information available), its parent company is listed and would be required to provide certain public disclosures in respect of itself and its subsidiaries.



Marketing Leaflets

(a) Minibonds

Series 16 (the first Minibond series where marketing materials were submitted to the SFC for authorisation)

19. The original draft marketing slogan included the term "guarantee" in Chinese ("保證"). The SFC questioned the appropriateness of the use of such term when the product is not capital guaranteed and also asked the issuer to consider revising the marketing leaflet in order to present a more balanced view. The term "實力的保證" was replaced with "實力的代表" in the authorised version of the marketing leaflet.
20. SFC requested the issuer to re-consider the use of the phrase "first come first serve basis" as this may mislead investors into thinking that the product was popular. The phrase was replaced by "...on offer for a limited period only".
21. SFC urged the issuer to refer to the "Disclaimer / Important Notice" section in leaflets by other issuers and consider whether any additions need to be made as appropriate. The equivalent section in the marketing leaflet for Minibond series 16 was revised with the use of headings. E.g. The following headings were put in bold in the marketing leaflet:- *"The Notes are not capital protected investments", "Secured nature of the Notes", "Prospective investors must read the Prospectus", and "General"*.

Series 27

22. The issuer and the arranger confirmed in its application letter for authorisation that the marketing leaflet is, in their view, clear and unambiguous, accurate and not misleading.
23. Following SFC's request, the issuer highlighted the non-principal protected feature of the notes more prominently and improved legibility of the "Important Notice/Disclaimer" section.

Series 34

24. The arranger confirmed in its application letter for authorisation that the marketing leaflet is, in their view, clear and unambiguous, accurate and not misleading.
25. Following SFC's request, the issuer highlighted the non-principal protected feature of the notes more prominently.
26. With only one of 4 tranches of the series linked to the USD/RMB exchange rate, SFC queried whether it is justified to have the marketing slogan for the series linked to that particular feature. Note: this particular feature and the relevant tranche of the series were subsequently removed from the offer.

Series 35



27. The arranger confirmed in its application letter for authorisation that the marketing leaflet is, in their view, clear and unambiguous, accurate and not misleading.

(b) Constellation Notes

Series 10-11 (first Constellation series where marketing materials were submitted to the SFC for authorisation)

28. The issuer was asked to provide reasons how the visuals relate to the notes.
29. The SFC queried the use of the phrase “*first come, first served*” to avoid misleading investors that the notes are popular – this was subsequently changed to “*Notes are offered for a limited time*”.
30. The SFC queried whether the issuer should clarify in the headlines that the interest rate payable is on a per annum basis. This change was subsequently made by the issuer.
31. In the section headed “summary of main terms”, the SFC queried if the issuer should refer, and the issuer did subsequently refer, prospective investors to the prospectuses for details relating to credit events.
32. The SFC requested, and the issuer agreed, to add SFC authorisation wording & SFC disclaimer in “Risk Factor / Important Notice” section.
33. The SFC queried the appropriateness of the sentence “*information contained in this leaflet which is based on the Programme Prospectus (as supplemented by the Addendum), the Issue Prospectus and sources from third parties is believed to be reliable, but no representation is made and no responsibility is accepted for its truthfulness, accuracy or completeness*” as it conflicts with the responsibility statement. This sentence was subsequently deleted.
34. The SFC raised concerns about the phrase “a 100% fixed purchase price guaranteed”. The issuer subsequently changed it to “a fixed issue price at 100% of principal amount”.
35. Following SFC’s queries, warnings to the effect that (i) the information is a summary only; and (ii) the market agent intends, but is not obliged, to commence making a market in the notes 6 months after the issue date of the notes and accordingly, it may be difficult for investors to obtain a bid or offer price for the notes during the first 6 months were included in the marketing leaflet.
36. The SFC requested the issuer to improve legibility of the section headed “Risk Factors / important Notices”.

Series 43-46

37. SFC raised concerns as to the consistency between the English and Chinese versions and whether the description fits some of the reference entities.
38. SFC raised queries on the accuracy and consistency of various terms used in the marketing leaflet as compared to the prospectus.



39. Rather than showing the credit ratings of the reference entities, SFC queried if the issuer should include credit ratings of reference obligations, especially since the reference obligations are often subordinated obligations.
40. SFC requested the issuer to increase font size and legibility of certain phrases, including the “non-principal protection” warning.

Series 55-58

41. SFC reminded the issuer to amend the marketing leaflet by tracking our corresponding comments on the issue prospectus.
42. SFC asked, and the issuer made, the section headed “Risk Factors / Important Notices” more prominent.
43. SFC highlighted inconsistencies between English and Chinese versions – it was noted that there was information missing from the English version. The missing information was subsequently inserted into the English version.
44. SFC requested the issuer to consider including additional “non-principal protection” warning. The issuer agreed to SFC’s request.