

Response to the Hong Kong Institute of Company Secretaries

Schedule 1 – Amendments updating the prospectus regime

Enhanced clarity of the application of the prospectus regime

The purpose of the proposed 17th Schedule, read together with the proposed definition of “prospectus” in section 2(1), is to carve out from the definition of “prospectus” offering documentation in relation to specified types of offers that can be made without triggering the prospectus regime. The Australian case law referred to in the submission of the Hong Kong Institute of Company Secretaries (HKICS), on the face of it, appears to fall within the scope of an offer to members of a club or association and should be covered by section 10 of the proposed 17th Schedule.

Permissible advertisements and “dual prospectus” structure

2. The Securities and Futures Commission (SFC) would refer to the Stock Exchange of Hong Kong (SEHK) HKICS’ suggestion of SEHK publicising a forthcoming public offer by way of advertisement the cost of which is to be recovered from the issuers.

The prospectus itself

3. We agree that the use of plain language in a prospectus would render the document more user-friendly. On the other hand, we note that since personal liability often attaches to directors for contents of prospectuses, these documents are often drafted by lawyers in such a way that may result in them being too technical and complex for the laymen. The policy of SFC is that so long as the documents comply with the relevant prospectus-related provisions and investor protection is not compromised, the issuer of the prospectus should have discretion to determine how the documents are drafted. SFC and SEHK have been promoting the use of simpler language in prospectuses to facilitate understanding by investors. For example, the Working Group on Plain Language under SFC published a booklet “How to Create a Clear Prospectus” earlier to demonstrate how the presentation of prospectus can

be improved. SFC is supportive of the use of plain language in prospectuses and will continue its efforts with SEHK in this regard.

4. We agree with the Hong Kong Institute of Company Secretaries that application forms and prospectuses should be placed in close proximity in the interest of investor protection. The Securities and Futures Commission would consider how best to remind issuers and their receiving banks to place these documents to allow easy access to the documents by the investing public.

Financial Services and the Treasury Bureau
Securities and Futures Commission

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