



**By email (response@hkex.com.hk) and by post**

10 February 2020

Our Ref.: C/CFAP, M124896

Hong Kong Exchanges and Clearing Limited  
8<sup>th</sup> Floor, Two Exchange Square  
8 Connaught Place, Central  
Hong Kong

Dear Sirs,

**Re: Consultation Paper on Review of Chapter 37 – Debt Issues to Professional Investors Only**

— The Hong Kong Institute of CPAs' Corporate Finance Advisory Panel has reviewed the Consultation Paper ("CP") on "Review of Chapter 37 – Debt Issues to Professional Investors Only" and is pleased to provide its comments on the proposals.

While the Institute supports the underlying principle of Hong Kong Exchanges and Clearing Limited ("HKEX")'s initiative to protect the interests of investors and, at the same time, maintain an effective listing platform for bond market development in Hong Kong, we have some concerns about the proposed approach to addressing these aims. The proposals seem to focus primarily on ensuring the financial strength and capacity of issuers, rather than addressing the apparent problem areas more directly, i.e., how to ensure that certain types of investors, who are not, or may not, in practice, be, professional investors, are discouraged from investing in debt issues under Chapter 37 of the Listing Rules ("Ch37 DIs"), and/or are given adequate warning about the risks if they choose to do.

**Proposed increased of the net asset value ("NAV") requirement**

While we understand the intention behind the proposal to increase the minimum NAV Requirement of issuers of Ch37 DIs to give better protection to investors and improve the quality of listings, we believe that this may make Hong Kong uncompetitive relative to alternative markets for listing debt securities. In particular, we note that for listing of foreign debt securities on Singapore Exchange ("SGX"), an asset requirement is one of the alternative eligibility criteria only, whereas the Luxembourg Stock Exchange ("LUXSE"), Irish Stock Exchange ("ISE") and London Stock Exchange ("LSE") do not prescribe any asset requirement for determining an issuer's eligibility for debt listings.

If the proposed NAV threshold requirement of HK\$1 billion is seen as being too high, this will just encourage issuers to list their bonds on other exchanges with lower requirements, including SGX.

**Maintaining the current eligibility exemption available for state corporations**

We note that LUXSE, ISE and LSE do not provide a waiver for state corporations. We consider that it may be time to review the blanket waiver for state corporations, or as a minimum, require state corporations that list Ch37 DIs, which have no government



guarantee, to make it more explicit that investors cannot expect any debts of the corporation to be underwritten by the government in the event of the default or bankruptcy of the corporation.

### **Introduction of a minimum issuance size for Chapter 37 Debts**

Whilst, once again, we appreciate that HKEX's objective is to improve the quality of listings by allowing only issuers with financial capacity and a proven track-record of supporting debt issuances of a significant amount to be eligible to list Ch37 DIs, we are concerned about Hong Kong's competitive position. In this regard, we note that the minimum issuance size for listing on SGX is S\$5 million (around HK\$30 million), and is even lower for listing on LUXSE, ISE and LSE. The proposed minimum issuance size of HK\$100 million, therefore, is likely to lead more bond issuers to list debt securities on other markets, which could have an adverse impact on the development of the bond market in Hong Kong.

### **Publishing disclosure guidance to the market on specified special features**

Publishing disclosure guidance to the market on specified special features found in certain Ch37 DIs and other disclosure-related matters may be worthwhile from an investor protection perspective. At the same time, HKEX should clarify the status of any such guidance. As, in general, bonds are listed and sold in multiple jurisdictions, there could be an issue if the disclosure expectations in Hong Kong deviate substantially from the requirements in other markets and are seen as being much more onerous.

### **Other comments**

While generally, we agree with other proposals in the CP, further clarification may be needed in relation to certain matters, such as the meaning of "unusual movements" in the price or trading volume of the Ch37 DIs, and how HKEX could monitor this, especially when the debts are not traded through the HKEX clearing system; and the meaning and practical implications of a suspension, given that most trading in Ch37 DIs is conducted on an OTC basis.

In order to improve Hong Kong's competitiveness, in principle, the direction of travel should be to streamline the application process for debt listings and to reduce timeframes for listing of debt/ securitisation transactions. Listing applications for wholesale bonds on SGX, for example, can be processed within one business day.

Under the circumstances, HKEX may need to consider further whether the proposals in the CP could over-regulate the market for genuine professional investors and hinder efforts to develop Hong Kong as a regional hub for bond issuance/ listing, and as a securitisation financing hub for infrastructure and small and medium enterprises.

It would appear that there are underlying issues regarding how to alert retail investors in the secondary market of the risks attached to Ch37 DIs and whether the definition of "professional investor", for whom fewer protections are deemed necessary, needs to be reviewed.

As regards the latter point, we see this as a concern given that the size of an investment portfolio that qualifies an individual to be called a "professional investor"



has not been increased for 17 years, and is now equivalent to no more than the value of a small flat in Hong Kong. Moreover, a “portfolio” could be merely a time deposit at a bank. It is questionable, therefore, whether all those currently falling within the definition of “professional investor” should be so regarded, and additional protections for some of them may be warranted. For this reason, while the CP identifies certain important issues with the existing regime that merit further consideration, we have reservations about the way in which it tries to address these issues.

The completed questionnaire, which explains the Institute's views in more detail, are attached.

Should you have any questions on the Institute's submission, please feel free to contact me at the Institute.

Yours faithfully,

Peter Tisman  
Director, Advocacy and Practice Development

PMT/NCL/pk

*Encl.*



Hong Kong Institute of  
**Certified Public Accountants**  
香港會計師公會

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## QUESTIONNAIRE ON CONSULTATION PAPER ON REVIEW OF CHAPTER 37 – DEBT ISSUES TO PROFESSIONAL INVESTORS ONLY

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We invite interested parties to respond to the Consultation Paper on Review of Chapter 37 – Debt Issues to Professional Investors Only (“**Consultation Paper**”), downloadable from the HKEX website at:

<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2019-Chapter-37-Debt-Issues/Consultation-Paper/cp201912.pdf>

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of the Respondent; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEX both Part A and Part B of this Questionnaire no later than **7 February 2020** by one of the following methods:

By mail or  
hand delivery to      Hong Kong Exchanges and Clearing Limited  
8th Floor, Two Exchange Square  
8 Connaught Place  
Central  
Hong Kong

**Re: Consultation Paper on Review of Chapter 37 –  
Debt Issues to Professional Investors Only**

By fax to                      (852) 2524-0149

By e-mail to                  [response@hkex.com.hk](mailto:response@hkex.com.hk)

Please mark in the subject line:

**“Re: Consultation Paper on Review of Chapter 37 –  
Debt Issues to Professional Investors Only”**

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

## Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

## **Purpose**

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("Regulatory Functions");
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

## **Direct marketing**

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

## **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

## **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of your personal data**

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

## **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-

enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

## **Compliance with laws and regulations**

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

## **Corporate reorganisation**

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link:



<https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

### **Termination or cancellation**

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

### **General**

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

### **Contact us**

By Post:  
Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
8/F., Two Exchange Square  
8 Connaught Place  
Central  
Hong Kong

By Email:  
[DataPrivacy@HKEX.COM.HK](mailto:DataPrivacy@HKEX.COM.HK)

**Part A      General Information of the Respondent**

(1) Please state whether your response represents your personal or your company/entity's view by checking () the boxes below and filling in the information as appropriate:

Company/Entity view

Company/Entity name*:	Hong Kong Institute of Certified Public Accountants		
Company/Entity type*:	<i>HKEX Participant</i> :- <input type="checkbox"/> SEHK <input type="checkbox"/> HKFE <input type="checkbox"/> HKSCC <input type="checkbox"/> SEOCH <input type="checkbox"/> HKCC <input type="checkbox"/> Listed company <input checked="" type="checkbox"/> Professional body / Industry association <input type="checkbox"/> Market practitioner (Type: _____ ) <input type="checkbox"/> None of the above (Type: _____ )		
Contact person*:	Mr	Peter Tisman	
Title:	Director, Advocacy and Practice Development		
Phone no.*:	2287 7084	Email address:	peter@hkipa.org.hk

Personal view

Respondent's full name*:	Mr/Ms/Mrs		
Phone no.*:	_____	Email address:	_____
Among the following, please select the one best describing your position*:			
<input type="checkbox"/> Listed company staff	<input type="checkbox"/> HKEX participant staff	<input type="checkbox"/> Individual investor	
<input type="checkbox"/> Institutional investor staff	<input type="checkbox"/> Lawyer	<input type="checkbox"/> Accountant	
<input type="checkbox"/> None of the above	(Type: _____ )		

**Important note: All fields marked with an asterisk (\*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.**

(2) Disclosure of identity

HKEX may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should tick the box below:

I/We do not wish to disclose my/our identity to the members of the public.

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Signature (with Company/Entity Chop if the response represents company/entity view)

## Part B      Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:

<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/December-2019-Chapter-37-Debt-Issues/Consultation-Paper/cp201912.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

**Capitalised terms have the same meaning as defined in the Consultation Paper unless otherwise stated.**

1. Do you agree with the proposed increase of the NAV Requirement from HK\$100 million to HK\$1 billion?

Yes

No

Please give reasons for your views.

While, we understand the Exchange's aim to improve the quality and financial security of debt listings, and strengthen investor protection, raising the minimum Net Asset Value ("NAV") Requirement for issuers of debt under Chapter 37 of the Listing Rules ("Ch37 DIs"), from HK\$100 million to HK\$1 billion, would represent a substantial increase in the minimum requirements. We have serious concerns about the impact that such a major change would have on the competitiveness of Hong Kong's listed debt market.

We note that, for listing of foreign debt securities on the Singapore Exchange ("SGX"), an asset requirement (i.e., that the issuer should have consolidated net tangible assets of at least S\$50 million (around HK\$300 million)) is one of the alternative eligibility criteria only. We also note that other competing markets, including the Luxembourg Stock Exchange ("LUXSE"), Irish Stock Exchange ("ISE") and the London Stock Exchange ("LSE") do not have any asset requirement for determining the issuer's eligibility for debt listings.

Furthermore, as the Exchange point out in the consultation paper ("CP"), a majority of Ch37 DIs are currently traded over-the-counter ("OTC") and bonds are listed normally to enable investors (such as funds), which are permitted to invest only in listed bonds and/ or equities, to invest in such bonds. The listing location of the bonds is not crucial to the issuers and, therefore, by raising the threshold of the NAV requirement tenfold, as proposed, issuers may be encouraged to list their bonds on other exchanges with lower requirements, such as SGX.

We believe that concerns about retail investors purchasing bonds on the secondary market, as well as certain categories of persons, who should probably not be regarded as being professional investors, being sold Ch37 DIs without sufficient safeguards, need to be addressed by other, more targeted means.

As regards the latter point, we believe that there is a potential concern because the size of an investment portfolio which qualifies an individual to be called a "professional investor", has not been increased for 17 years and is now equivalent only to the value of a small flat in Hong Kong. Furthermore, a "portfolio" could be merely a time deposit at a bank. It could also be an account shared with an "associate." In practice, therefore, the value of the portfolio at the disposal of someone deemed to be "professional investor" could be even less than HK\$8 million. This being the case, it is questionable whether all those currently falling within the definition of "professional investor" can legitimately be regarded as such. Additional protections for some of them may be warranted.

2. (a) Do you agree that the Exchange should maintain the current Eligibility Exemption available for State corporations?

Yes

No

Please give reasons for your views.

We note the observation (at paragraph 64 of CP), that the Exchange has received comments on whether financial support or backing will be provided by a state to its state corporations in case of default by these corporations of their payment obligations. These comments were driven by the risk disclosures in recent listing documents of Ch37 DIs issued by state corporations, indicating that the repayment obligations under their Ch37 DIs remain with the issuer, i.e., no financial support will be provided to the issuer by the state in case of default of its payment obligations. Questions have been raised, therefore, about the appropriateness of the current exemption available to state corporations from the Issuer Eligibility Requirements ("Eligibility Exemption").

The CP indicates that LUXSE, ISE and LSE do not provide an equivalent exemption for state corporations. As regards Mainland state corporations, it is quite widely reported these days that the debt burden in the Mainland is substantial and that the Central People's Government or provincial governments will not generally underwrite the debts of state-owned enterprises. We would suggest, therefore, that unless and until the issues raised in the response to Q1, about alerting retail investors in the secondary market of the risks attached to Ch37 DIs and revisiting the definition of "professional investor" are adequately addressed, it may be appropriate to review the blanket Eligibility Exemption accorded to state corporations. As a minimum, it would seem that state corporations listing Ch37 DIs, which have no state guarantee, should be required to make it more explicit to investors that they cannot expect any debts of the corporation to be guaranteed by the state in the event of the default or bankruptcy of the corporation.

- (b) If not, which type of State corporations should comply with Issuer Eligibility Requirements? Please give reasons for your views.

3. (a) Do you agree with the proposed introduction of a minimum issuance size of HK\$100 million (or equivalent in other currencies) for Chapter 37 Debts?

Yes

No

Please give reasons for your views.

Again, we understand the intention to provide better protection for investors by ensuring that only issuers with financial capacity and a proven track-record of supporting debt issuances of a significant amount will be eligible for listing. However, for similar reasons as in the case of the proposal to increase the minimum NAV of issuers, we have concerns that setting this relatively high hurdle will result in business migrating to other markets, given the much lower minimum issuance size elsewhere, including LUXSE, ISE, LSE, and SGX. As pointed out in the CP, the previous minimum issuance size of HK\$50 million was removed following a consultation in 2010, "on the basis that it was a requirement to protect retail investors and not applicable to a regime for professional investors" (see paragraph 66, footnote 59). In principle, the same argument continues to apply. To the extent that there is problem about the types of investors that are, in fact, able to access Ch37 DIs, or to whom they may be marketed, these issues should be dealt with by more targeted measures, as suggested in our reply to Q1.

- (b) Do you agree that such minimum issuance size shall not apply to tap issuances?

Yes

No

Please give reasons for your views.

We have no specific comment on this.

4. Do you agree with the proposal to require issuers to state explicitly on the front cover of the listing document the intended investor market in Hong Kong (i.e. professional investors only) for its Chapter 37 Debts, in addition to the existing legend required under Rule 37.31?

Yes

No

Please give reasons for your views.

We agree with this proposal from an investor protection perspective. In particular, it could help to alert retail investors in Hong Kong that Ch37 DIs are not intended for them and that they purchase such debt at their own risk .



5. Do you agree with the proposal to require publication of listing documents for Chapter 37 Debts on the Exchange's website on the listing date?

Yes

No

Please give reasons for your views.

We agree with this proposal as an enhancement of transparency from an investor protection perspective. However, if the listing documents for Ch37 DIs are required to be published on the Exchange website (rather than platforms, such as Bloomberg, which are more usually accessed by professional investors) there is always a risk that this may attract greater attention from retail investors, which would defeat the purpose. Therefore, it will be important for investors who are not professional investors to be directed via the website to the warning that these investments are intended for professional investors only.

6. (a) Do you agree that the Exchange's current disclosure and vetting approach in relation to listing documents for Chapter 37 should remain unchanged, notwithstanding that the intended investors would include HNW Investors?

Yes

No

Please give reasons for your views.

We note that the legal framework in Hong Kong imposes no mandatory requirements for contents on offerings to professional investors, and does not differentiate disclosure standards between institutional investors and "high net worth ('HNW') investors." We note also that in a 2010 consultation the market favoured moving away from the previous, more prescriptive, approach. Furthermore, adopting a prescriptive disclosure approach under Chapter 37 could result in regulatory inconsistency and different disclosure requirements for Hong Kong listed securities compared with other securities, such as overseas listed or unlisted debt securities, where the same class of professional investors may be targeted for securities with potentially the same structure and features (paragraph 99(a) of the CP).

While, in principle, we agree with the Exchange's proposal, the fact that the issue is being raised is evidence that concerns have arisen under the current "light-touch" approach. As we have indicated above, in our view, there is a clear need to revisit the definition of "professional investor", particularly as this relates to HNW individuals and corporations.

- (b) For the purpose of Rule 37.29, should there be a different standard with specific disclosure requirements in respect of Chapter 37 Debts that are

offered to HNW Investors, compared to those that are offered to Institutional Investors, for example, the manner of presenting information such as the terms and conditions and financial information of issuer and any credit support provider (even though the current Hong Kong legal framework does not differentiate disclosure standards between Institutional Investors and HNW Investors)? If so, what should those specific disclosure requirements be?

Yes

No

Please give reasons for your views.

We consider that it may not be necessary to impose a different standard with specific disclosure requirements in respect of Ch37 DIs offered to HNW investors, as this could make the regulatory regime cumbersome and complicated, and less attractive to issuers. As indicated above, the current Hong Kong legal framework does not differentiate disclosure standards between institutional investors and HNW Investors.

That said, as also explained above, we consider that a more fundamental issue is the need to look again at the definition of "professional investor."

7. (a) Do you agree that the Exchange should publish disclosure guidance to the market on specified Special Features found in certain Chapter 37 Debts and other disclosure-related matters?

Yes

No

Please give reasons for your views.

In principle, publishing some disclosure guidance to the market on specified Special Features found in certain Ch37 DIs and other disclosure-related matters should aid transparency. However, the status of such guidance would need to be clarified. Bonds in general are listed and sold in multiple jurisdictions and there are general market standards on disclosure. Therefore, the Exchange would need to keep any such guidance under review to ensure that it remains current and broadly in line with standards elsewhere.

- (b) Do you have other suggestions on any additional or alternative proposals that the Exchange may implement to promote disclosure quality and consistency for Chapter 37 Debts?

Yes

No

Please give reasons for your views.

We have no specific comment on this.

8. Do you agree with the proposal to codify the PI Waiver by revising the definition of "professional investors" under Chapter 37 to include HNW Investors?

Yes

No

You may provide reasons for your views.

Codifying the PI Waiver can be considered after the definition of "professional investor", as this relates to HNW investors, has been reviewed, otherwise it would risk codifying a potential problem area.

9. (a) Do you agree with the proposal to allow eligibility of a REIT Issuer (or a REIT Guarantor) to be assessed by reference to the REIT Assets and REIT Financials respectively, provided that it has recourse to the REIT Assets to satisfy the obligations under the relevant Chapter 37 Debts?

Yes

No

Please give reasons for your views.

We agree with this proposal. It would establish consistency, on the basis that there should be no difference from an investor's perspective between the debt issuance of a listed company and a listed REIT

- (b) Do you agree that if the relevant REIT is listed on the Exchange, a REIT Issuer (or a REIT Guarantor) should be qualified as a HK Listco and therefore, be exempted from the Issuer Eligibility Requirements?

Yes

No

Please give reasons for your views.

We agree with this proposal. See the response to Q9 above.

10. Do you have any comments on the proposed enhancements relating to the continuing obligations of the issuer and guarantor under Chapter 37?

Yes

No

Please give reasons for your views.

In principle, we agree with the proposals.

We support the proposal to clarify that the timing of making an announcement of information to avoid a false market, or information having a material affect on a guarantor's ability to meet its obligations under debt securities, should be "as soon as reasonably practicable" rather than "immediately." While we understand that this is intended to be a less rigorous requirement, it should be made clear how "as soon as reasonably practicable" has been interpreted in actual cases.

11. Do you agree with the proposal to replace the existing requirements to submit copies of constitutional documents and resolutions as part of the listing application documents with a requirement to provide written confirmation by the issuer (or guarantor, as the case may be) in relation to its due incorporation, capacity and authorisation?

Yes

No

Please give reasons for your views.

We agree with this proposal, which would help to streamline the application process and so increase the competitiveness of Hong Kong's bond issuing/ listing market.

12. (a) Do you agree with the proposal to replace the existing requirement to submit last published financial statements with a new requirement for an issuer (or the guarantor that an issuer relies in fulfilling the Issuer Eligibility Requirements) to submit its audited financial statements to evidence its fulfilment of the Issuer Eligibility Requirements?

Yes

No

Please give reasons for your views.

We agree with this proposal, which would help to streamline the application process and increase the competitiveness of Hong Kong's bond issuing/ listing market.

- (b) Where the issuer (or the guarantor) is exempted from the Issuer Eligibility Requirements or where the required audited financial statements are disclosed in the listing document, do you agree that such issuer (or guarantor) should not be required to separately submit financial statements to the Exchange?

Yes

No

Please give reasons for your views.

We agree with this proposal, as it would help to streamline the application process and increase the competitiveness of Hong Kong's bond issuing/ listing market.

13. Do you agree with the proposal to amend Rule 37.26 to clarify that supplementary listing document includes a pricing supplement?

Yes

No

Please give reasons for your views.

We agree with this proposal.

14. The Exchange invites your comments regarding whether the drafting of the proposed housekeeping Rule amendments will give rise to any ambiguities or unintended consequences.

Regarding the draft LR 37.46A, we would request the that Exchange clarify (i) the meaning of "unusual movements" in the price or trading volume of Ch37 DIs; and (ii) how the Exchange could monitor the price and trading volume, especially when the debts are not traded on the Exchange's clearing system.

As a separate matter, as regards the reference in the CP to the possible suspension from trading of Ch37 DIs, the implications and effect of a suspension should be clarified, given that most trading of Ch37 DIs is conducted on an OTC basis.

15. Do you have any other comments in respect of the matters discussed in the Consultation Paper? If so, please set out your additional comments.

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We understand the aim of the proposals in the CP to improve the quality of debt listings and provide better safeguards for investors. However, it may be necessary to consider further whether the proposals would achieve that end without over-regulating the market for genuine professional investors and hindering efforts to develop Hong Kong as a regional hub for bond issuance/ listing, and a securitisation financing hub for infrastructure and small and medium enterprises.

As we note above, underlying issues seem to be how to ensure (i) that retail investors in the secondary market are fully aware of the risks attached to Ch37 DIs and, as far as possible, discouraged from investing in them, and (ii) that the definition of “professional investor,” is restricted to those investors who can reasonably be considered to be experienced and relatively sophisticated. However, the proposals in the CP focus mainly on regulation of, and minimum requirements for, issuers rather than trying to address these concerns more directly.

Separately, if the issues outlined above can be resolved, we consider that measures to streamline the application process and timeframe for listing of debt/ securitisation transactions would help to increase the competitiveness of the Hong Kong market. We understand that listing applications for wholesale bonds in SGX, for example, can be processed within 1 business day.

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