



**Latest developments in the Hong Kong  
Fixed Income Market:  
The SFC's perspective**

**HKCMA Forum 2005**

William Pearson  
Director of Corporate Finance  
Securities and Futures Commission



## Background to reforms

- ◆ Establishment of the Financial Market Development Task Force in December 2001
- ◆ Various working groups formed under the Task Force
- ◆ Working Group on Debt Market, and Securities Offering Issues subgroup tasked with:
  - facilitating the debt market, and
  - improving the statutory and regulatory regimes in relation to public offering mechanisms



## Three-Phase Approach

- ◆ **Phase 1:** SFC Guidelines (policy statement) and class exemptions – “quick wins”
- ◆ **Phase 2:** amendments to the CO to provide expressly in law for:
  - Phase 1 proposals
  - other miscellaneous improvements to the prospectus regime
- ◆ **Phase 3:** Comprehensive review of the existing law and processes relating to public offers of shares/debentures



## SFC Guidelines on “offer awareness” and “summary disclosure” materials

### *Offer awareness materials:*

- ◆ Allow retail investors to arrange their affairs in advance
- ◆ Contain limited factual and procedural information, and health warnings – no promotional element
- ◆ Must be issued by the issuer of the prospectus
- ◆ Usually no earlier than 14 days before the HK public offer
- ◆ No pre-vetting by the SFC required



*Summary disclosure materials:*

- ◆ Mini-prospectuses/fact sheets highlighting key information
- ◆ Available only from the time of issue of the prospectus
- ◆ Statement whether contain fair summary or not
- ◆ Applications made only on the basis of the full prospectus
- ◆ Require pre-vetting by the SFC



## SFC Guidelines on “dual prospectus” structure

- ◆ Legislative framework: not contemplate/conducive to programme/repeat offers
- ◆ “Dual prospectus” structure:
  - Programme prospectus: contains generic information
  - Issue prospectus: contains offer specific information
  - Technically treated as separate prospectuses, to be read together



## “Dual prospectus” structure (cont.)

- ◆ SFC exemptions from content requirements not appearing in the relevant prospectus
- ◆ Conditions for exemption: availability and accessibility of both prospectuses
- ◆ No need for re-registration of the programme prospectus on each offering
- ◆ Validity: 12 months or until new accounts



## May 2003 Class Exemptions

- ◆ **For listed debt offerings:** specified contents requirements in the Companies Ordinance
  - same as or similar to those requirements under the listing rules
  - provided no waiver, modification or other dispensation has been granted from such requirements
- ◆ **For all listed and unlisted debt offerings:** specified contents requirements that SFC considers are irrelevant and/or unduly burdensome



## Features of Companies (Amendment) Ordinance 2004

### Exempt Offers

- ◆ Exempt offers or “safe harbours”, including:
  - offer to professional investors
  - offer to not more than 50 persons
  - offer where total consideration not more than HK\$5,000,000
  - offer where minimum denomination or minimum consideration payable not less than HK\$500,000
  - offer in respect of an exchange of shares or debentures in the same company provided no increase in the issued share capital or aggregate principal amount outstanding



## Exempt offers - general

- ◆ Combinations of exemptions (with the exception of the 2 monetary exemptions)
- ◆ Statement required to be inserted in certain exempt offer documents

*“The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice”*



## Overall disclosure standard for prospectuses

- ◆ Paragraph 3, Third Schedule CO, amended:  
*“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”*:
  - required “particulars and information” could be different for the same company, when issuing debentures rather than shares
  - in some cases may constitute a higher benchmark



## SFC Exemption power

- ◆ Scope of SFC's exemption power
  - Additional ground for exemption: “*compliance is otherwise unnecessary or inappropriate*”
  - SFC to publish particulars of all exemptions on SFC website
- ◆ Coverage of exemption power extended to new provisions
- ◆ Power to issue class exemptions, subject to public consultation and negative vetting by LegCo



## Power for SFC to amend certain schedules

- ◆ The SFC may by order published in the Gazette amend the “relevant provisions” and certain schedules:
  - 3<sup>rd</sup> (prospectus content requirements)
  - 17<sup>th</sup> (exempt offers)
  - 18<sup>th</sup> (warning statements)
  - 19<sup>th</sup> (offer awareness advertisements)
  - 20<sup>th</sup> (supplemental prospectuses)
  - 21<sup>st</sup> (programme and issue prospectuses)
  - 22<sup>nd</sup> (persons specified for the purposes of the prospectus civil liability provision)
- ◆ Order will be subsidiary legislation subject to public consultation and negative vetting by LegCo



## Codifying SFC Guidelines

### *Offer awareness advertisements*

- ◆ Principles in *SFC Guidelines on offer awareness and summary disclosure materials* given statutory footing
- ◆ Power for SFC to permit additional information to be included in advertisements

### *Programme structure*

- ◆ Principles in *SFC Guidelines on Dual Prospectuses* given statutory footing



## Impact of reforms

- ◆ Rapid growth of retail debt market
  - credit-linked/equity-linked/hybrids
  - unlisted; market making
  - distribution through banks, brokers
- ◆ Programme documentation; “dual prospectus” structure
- ◆ Marketing materials
  - fact sheets/leaflets/posters
  - liability same as prospectus
- ◆ Plain English prospectus
- ◆ Sales process
  - sales staff training
  - customer understanding
  - customer suitability
- ◆ Secondary market transparency



## Possible issues for review in 3<sup>rd</sup> Phase

- ◆ Move the CO prospectus regime into the SFO
- ◆ Abolish concept of “offer to the public”
- ◆ Shift from “document-based” regime to “transaction-based”
- ◆ Scope of the CO prospectus regime
  - traditional capital raising only (not investment/financial products)
  - options; “bodies” (not just companies)
- ◆ Tailor-made content requirements for equity and debt issues
- ◆ Incorporation by reference.



**Thank you.**