

Guidelines for Electronic Public Offerings

**Hong Kong
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1. Introduction

- 1.1 For the purpose of these Guidelines, an electronic public offering (ePO) takes place where the Internet (or other electronic means¹) is used to display or provide access to prospectuses, applications forms and/or to collect applications or application instructions from the public (applicants) during an initial public offering (“IPO”) or a follow-on public offering.
- 1.2 These Guidelines aim at providing guidance to persons who offer ePO services. Such persons should also refer to and comply with the Guidance Note on the Regulation of Electronic Provision of Regulated Activities issued by the Commission (or such parts of that Guidance Note as apply to them).
- 1.3 The Commission would like to stress that investors should be encouraged to make informed investment decisions and takes the view that intermediaries² and other industry participants should assist investors in this respect. Therefore, persons offering electronic facilities to distribute and/or collect applications or application instructions in a securities offering should ensure that the application forms or facilities enabling the collection of application instructions (e.g. in the case of the Internet, the application input screen) are accompanied by a copy of the relevant prospectus (and any supplemental prospectus relating to the offering).
- 1.4 These Guidelines do not have the force of law. A failure by any person to comply with any provision of the Guidelines that applies to it or him may reflect adversely on the person’s fitness and propriety to perform or offer relevant functions or services.
- 1.5 These Guidelines supersede the Guidelines for Registered Persons Using the Internet to Collect Applications for Securities in an Initial Public Offering published by the Commission in July 2000.

Background

- 1.6 There are various forms of ePO. The sections below describe the more popular methods currently used in the Hong Kong securities market.
- 1.7 In traditional public offerings, an applicant wishing to participate would collect a paper copy of the prospectus and application form published by the issuer of the prospectus, complete the application form³ and deliver it with a cheque to receiving banks⁴ in person. Alternatively, where an applicant uses the services of an intermediary, the application form may be completed and delivered with a cheque to the receiving bank by the intermediary. Receiving banks would send the application forms to the relevant share registrar for processing after the cheques have been honoured. ePOs differ from traditional public offerings in that all or some of the processes in the public offering are electronic rather than manual or paper-based.

¹ In these Guidelines, “other electronic means” refers to electronic trading mechanisms (e.g. hand held or wireless trading devices).

² In these Guidelines, “intermediaries” has the same meaning as in the Securities and Futures Ordinance.

³ In these Guidelines, “application forms” means paper copies of the application forms prescribed by the issuer of the prospectus, and where appropriate, electronic or scanned copies of such paper application forms. It does not include arrangements to collect application instructions or application instructions input screens, where these are not prescribed by the issuer.

⁴ An exception is in cases where yellow/nominee forms are used. Investors would provide their application information to intermediaries, and the intermediary completes the yellow/nominee form on their behalf.

- 1.8 In some ePOs, the interaction between the applicant and the intermediary (the front-end process of the public offering) may be done electronically, e.g., electronic prospectuses are made available or disseminated, and/or applications are collected electronically. The procedures between the intermediary, the receiving bank, share registrar and issuer (the back-end process of the ePO) may also be electronic, e.g., the application data from applicants are sent on a CD-ROM (or other media) with a completed bulk application form⁵ by the intermediary to the receiving bank.
- 1.9 Alternatively, where the front-end process is electronic, the back-end process can be completed via the traditional method, e.g., by the manual delivery of completed paper application forms to the receiving bank in person. The Commission is aware that this method is common in respect of traditional yellow application forms.
- 1.10 An ePO can also be described as “issuer-driven” or “registrant-driven”. For the purposes of these Guidelines, an “issuer-driven” ePO is where the issuer decides to offer an ePO mechanism through intermediaries who are eligible service providers (“ESPs”)⁶. This usually involves the provision of an electronic prospectus by the issuer to ESPs, the electronic collection of application information from applicants by ESPs, and the electronic collection and transmission of application data from ESPs to receiving banks or share registrars.⁷ Thus, in “issuer-driven” ePOs, both front-end and back-end processes of the ePO would normally be done electronically.
- 1.11 A “registrant-driven” ePO differs in that an intermediary may collect applications from its clients electronically (or manually⁸) but the applications may be delivered to the issuer or the receiving bank either in the traditional, paper-based manner or in any other way specified by the issuer (e.g., in recent public offering of retail bonds, applications can only be made through designated placing banks who have entered into a contractual arrangement with the issuer. Or, an online broker/intermediary who offers ePO services but is not part of the issuer’s syndicate). The issuer would have little or no role in this service. Thus, in “registrant-driven” ePOs, the front-end process of the ePO may be manual or electronic whilst the back-end process is normally manual.

2. Issuer-driven ePO

2.1 General

- 2.1.1 In an issuer-driven ePO, responsibility for the coordination, the capacity of back-end systems, testing, contingency planning and decision-making *etc.* of all aspects of the ePO fall on the issuer, the sponsor and share registrar. In practice, where the issuer uses a sponsor, the sponsor would be expected to drive and coordinate the ePO.

⁵ Also referred to as “ESP application forms”. These are paper application forms that are prescribed by the issuer and completed by ESPs when the submission of applications from the ESP to the receiving bank is done electronically.

⁶ These are intermediaries who have passed the data conformity tests organized by the Federation of Share Registrars.

⁷ “The Operational Procedures for eIPO Applications Submitted Via Banks/Stockbrokers” is available at the Federation of Share Registrars’ website at www.fedsrltd.com.

⁸ Where application data is collected manually, the ‘electronic’ element in the ePO process may be the electronic display or distribution of the prospectus via the Internet, on or through the intermediary’s website.

2.1.2 The need for and the level of coordination, contingency planning and capacity testing *etc.* will vary according to the scale of the ePO and the preferences of the issuer. These should be carefully considered by the issuer and the sponsor. Sponsors acting for issuers should also refer to the Corporate Finance Adviser Code of Conduct as amended from time to time for additional guidance in relation to public offerings.

2.1.3 The following sections set out some of the issues that an issuer, the sponsor or share registrar should consider in an ePO. Issuers who set up a standalone website for a public offering through which application instructions are collected from investors should also have regard to the issues, where applicable, in paragraph 2.7.

2.2 Selection

2.2.1 It is the issuer's choice whether to have an issuer-driven ePO in addition to the conventional, paper-based public offering. If the issuer wishes to do so, it should invite suitable intermediaries to provide ePO services or facilities.

2.2.2 Only intermediaries who are ESPs (i.e., those who have passed the data conformity tests organised by the Federation of Share Registrars) are eligible to take part in an issuer-driven ePO where the back-end of the ePO includes the electronic transmission of application data from the intermediary to a receiving bank and share registrar.

2.2.3 A list of current ESPs is available from the Federation of Share Registrars (www.fedsrltd.com).

2.3 Preparation of Prospectus

2.3.1 The issuer should prepare the prospectus (and any supplemental prospectus) in electronic form. The electronic form of such documents should be prepared in a format that cannot be tampered with.

2.4 Information to ESPs

2.4.1 The issuer should provide detailed instructions, a timetable and other information relevant to the ESP's role in the ePO to ESPs prior to the commencement of the ePO. Such information should include–

- (a) details of the documents that will be provided to the ESP for displaying on the ESPs website (normally, the electronic prospectus and any supplemental prospectus and, where applicable, the application forms (all such documents, collectively, “the public offer documents”));
- (b) whether, and if so, the date on which, a draft of the public offer documents will be sent by the issuer to ESPs for the purposes of formatting their websites;
- (c) whether hyperlinking to the public offer documents on the issuer's website⁹ is permitted and the issuer's requirements, if any, for hyperlinking;

⁹ This will include any standalone website for the public offering which the issuer may set up for the duration of the offering.

- (d) the date, procedures and media (e.g. CD-ROM or file transfer) for ESPs to collect the public offer documents from the issuer;
- (e) specific instructions, if any, as to how ESPs should post the public offer documents and application input screen on their websites;
- (f) the date(s) and time(s) on which ESPs should post the public offer documents and application input screen on their websites;
- (g) disclosure statements, warnings or legends, if any, which the issuer requires ESPs to post on their websites; and instructions, if any, if ESPs are required to obtain consent from the issuer to posting the issuer's logo on their websites;
- (h) the date and time on which ESPs may begin to collect applications and the date and time when collections must cease;
- (i) timing, procedures and other details in relation to the share registrar's procedures for acknowledging receipt of electronic applications from ESPs;
- (j) details of pre-defined systems specifications, if required, for data submitted by ESPs to share registrars;
- (k) the dates and procedures for ESPs to collect the ESP application form/bulk application forms from the issuer;
- (l) details of how and when ESPs should submit the completed electronic applications and payments to the relevant share registrar (and/or the receiving bank);
- (m) procedures for re-submission of application data¹⁰, if this is permitted¹¹; and
- (n) where there are exceptions (e.g., missing data, errors) to the data submitted by ESPs, the ESPs should be notified and the exceptions rectified.

2.5 Information to the public

2.5.1 If the issuer has its own website (including any standalone website set up by the issuer for the public offering), it should consider posting a list of the participating ESPs, a timetable and other procedural details of the public offering (including the ePO) on its website.

2.5.2 The availability of ePO and a list of the participating ESPs should also be set out in the prospectus, application form and in any formal notice or announcement detailing the application procedures for the public offering.

¹⁰ In some ePOs, the issuer (or its sponsor or share registrar) may accept re-submission of application data where the application information initially submitted is found to contain errors or incomplete information.

¹¹ Ideally this should be communicated prior to the commencement of the ePO. However, if subsequent to the commencement, it is decided that re-submission of application data is permitted, this should be communicated to ESPs as soon as possible.

2.6 Contingency and Planning

- 2.6.1 Issuers and sponsors should have a contingency plan to deal with emergency situations relating to the ePO.
- 2.6.2 Issuers and sponsors should also ensure that there is a central point for the coordination of all parties involved in the ePO. The coordination team should consist of representative of all parties involved in the ePO.
- 2.6.3 The level of contingency planning and coordination may vary according to the scale of each public offering, the potential popularity of the public offering and the preferences of the issuer.

2.7 ESP's role

- 2.7.1 The ESP is responsible for the compliance and system integrity for the front-end process of the ePO. This would include the processes for collection and handling of applications and the electronic interface of its website.
- 2.7.2 Where applicable, an ESP should ensure that:
- (a) it adheres to the sponsor's (or, where there is none, the issuer's) and the share registrar's instructions in relation to the overall coordination and timing of the ePO;
 - (b) the public offer documents and the application input screen are readily accessible on its website. The public offer documents must be identical to those provided by the issuer;
 - (c) the public offer documents and application input screen are complete, located close to each other and cannot be tampered with;
 - (d) where a hyperlink to the public offer documents on the issuer's website is provided, the matters in paragraph 4.2 are satisfied;
 - (e) the public offer documents (or a hyperlink to these documents) on the ESP's website are first displayed or made available at the same time as the prospectus is made available to the public by the issuer;
 - (f) information on its website relating to the ePO is in both English and Chinese ;
 - (g) a statement to the effect that no applications or monies can be accepted once the public offering closes, or where the ESP has any reason to believe that the electronic public offer documents or processes for collection and handling of applications have been tampered with, or (where applicable) duplicate or multiple applications have been made to the issuer;
 - (h) information reasonably required by the sponsor (or, where there is none, the issuer) to enable it to monitor the ePO, including information in relation to the level of application and volume the ESP processes during the ePO is given to the sponsor (or the issuer, as the case may be) upon request;

- (i) the design of its website and its operation should –
- i. give applicants access to free software to download, extract compressed files (if necessary), view and print the public offer documents and/or application input screen;
 - ii. give applicants contact information for technical support or enquiries in connection with the operation of the ePO service and the website;
 - iii. give applicants an opportunity to read or access the public offer documents before being given access to the webpages where the particulars relating to the application (e.g. number of securities to be applied for, selection of payment methods) are collected;
 - iv. require applicants to confirm separately the following before being given access to the webpages where the application information is collected:
 - they have been provided with sufficient opportunity to access the public offer documents and the information disclosed in the documents;
 - they have read and agree to be bound by the terms and conditions set out in the ePO service provider’s website; and
 - they are eligible to apply;
 - v. require the input and validation of HK identity card details (or other information) of applicants as required by the issuer;
- (j) a confirmation is given to the applicants as soon as possible once it has received the application submitted by them;
- (k) the applicants are able to print a copy of the relevant webpages containing the details of application information inputted by them and the confirmation message;
- (l) the design of the website and presentation of the ePO information encourages investors to make investment decisions based only on the contents of the public offer documents rather than other information, particularly promotional or marketing materials and media coverage;
- (m) there are sufficient procedures to monitor the ePO service it provides and to ensure the ePO service is offered in accordance with the sponsor’s (or, where there is none, the issuer’s) instructions;
- (n) there are reasonable measures to ensure that its computer systems have sufficient capacity and security to protect the integrity of the transactions. Moreover, documented contingency plans should be put in place to deal with the situation where the securities application collection service or the display/download of the public offer documents provided through the Internet is disrupted;

- (o) information is provided on its website to enable potential applicants to determine whether the service is suitable for them. This should include –
- i. the types of persons who are eligible to use the service (e.g. existing clients);
 - ii. a clear delineation of the area containing the public offer documents and a warning to applicants that any information falling outside those areas is not part of the public offer documents and the securities are offered solely on the basis of the information in the public offer documents;
 - iii. the procedures which an applicant must go through to make a valid application, including the issuer's terms and conditions;
 - iv. dates and timing for various stages of the ePO including deadlines for submitting applications and making payments;
 - v. detailed instructions and information in relation to the application procedures including any requirements or arrangement which applicants must have in place so that they can use the service, e.g., a list of payment methods, limitations associated with the payment methods such as service lead time or transaction limits *etc.*, circumstances and procedures for refunding monies to applicants, procedures for distributing and registering securities certificates or crediting to applicant's account, description of the fees and charges that may be made to the applicant and deadlines for submission of the application;
 - vi. a statement that potential applicants should read the public offer documents prior to making an investment decision and should make the investment decision based on the public offer documents rather than on information, particularly promotional or marketing materials and media coverage that may accompany the offering;
 - vii. warnings that, in using the service, the applicant assumes the risks associated with conducting transactions over the Internet (e.g. that the transactions may be subject to interruption, transmission blackout, delayed transmission due to Internet traffic or incorrect data transmission due to the public nature of the Internet);
 - viii. a list of suggested alternative places where applicants can obtain copies of the public offer documents¹²; and
 - ix. a prominent statement on its website informing applicants that the website belongs to the ESP and not the issuer and that in using the ePO service, the ESP is the applicant's (and not the issuer's) agent.

¹² An ESP may point out in its website, the relevant pages containing this information in the electronic prospectus which is on the ESP's website (or accessible by hyperlink from the ESP's website).

3. Registrant-driven ePO

3.1 General

- 3.1.1 A registrant-driven ePO differs from an issuer-driven ePO in that the issuer has little or no responsibility towards the intermediary and the need for coordinating the back-end of the ePO is absent.
- 3.1.2 The intermediary's responsibilities in this type of ePO are almost the same as an ESP's in an issuer-driven ePO (namely, the matters set out in paragraph 2.7 except 2.7.2(a) and (h)). In addition, the intermediary proposing to display (or through a hyperlink to the issuer's website, provide access to) the electronic prospectus should seek the issuer's prior consent to do so¹³. This is to ensure that the intermediary displays or provides access to all necessary public offer documents and to ensure that the electronic version of the public offer documents are identical to those provided or issues by the issuer (where they are so issued or provided). An intermediary choosing to display or provide access to public offer documents without the issuer's consent should ensure that the documents displayed or to which access is given includes all relevant public offer documents and that these are made available on its website at the same time as they are made available to the public by the issuer.
- 3.1.3 In ePOs, where applicants submit application instructions to intermediaries by Internet or other electronic means, these instructions are then aggregated (with instructions from other clients of the intermediary). The intermediary then submits one application on behalf of all its clients. Intermediaries offering this type of service should ensure that the matters stated paragraph 2.7 (except 2.7.2(a) and (h)) are addressed and also provide a clear explanation as to the nature of the service being offered and of any particular risks associated with this type of application that do not normally arise under an issuer-driven ePO or a traditional paper-based application process. Where applicable, it should explain that facilities enabling the collection of such application instructions may not result in any application being made on behalf of the investor and no legal relationship may exist between the investor and the issuer.

3.2 Other types of registrant-driven ePOs

- 3.2.1 The Commission is also aware that in some registrant-driven ePOs, electronic application forms¹⁴ (in addition to the electronic prospectus) have been made available on intermediaries' websites for downloading and printing by applicants. The printed application forms are then handled in the traditional, paper-based method – i.e., they are completed manually by applicants and submitted to the intermediary who will then submit the paper forms to the receiving banks.
- 3.2.2 In addition to the issues listed in paragraph 3.1, intermediaries who offer this type of ePO service should ensure that they have the issuer's consent to do so. They should also ensure that the application forms collected by the intermediary and delivered to the issuer, the share registrar or receiving bank (as the case may be) will not be

¹³ Whilst the SFC considers that it is good practice to obtain consent from the issuer (or third party) prior to creating a hyperlink, this is not an SFC requirement. Intermediaries who wish to create a hyperlink to other persons' websites, may also wish to consider whether there are any other legal issues involved (for example, whether there are any intellectual property issues).

¹⁴ For example, scanned copies of the paper application forms prescribed by the issuer.

rejected by them. These intermediaries should liaise with the issuer for details of the format of the downloaded and printed application forms that the receiving bank will accept. If the issuer's consent and the required information are not given, the intermediary will usually be unable to offer this service.

4. Other matters

4.1 *Electronic prospectus*

4.1.1 Public offer documents in both English and Chinese versions must be displayed or accessible by hyperlink on the intermediary's website.

4.1.2 The following enhancements or differences between the paper version and an electronic version of any public offer documents are acceptable –

- (a) a search facility for defined expressions;
- (b) hypertext links within the prospectus;
- (c) prompts to assist readers to use and find information in the document. The prompts should not contain any information that does not appear in the registered paper document; and
- (d) a zoom facility so that readers may enlarge or reduce the information displayed.

4.1.3 Whilst the issuer is expected to inform and provide ESPs with electronic supplemental prospectuses in an issuer-driven ePO, in a registrant-driven ePO, the intermediary is expected to ensure that a copy of any supplemental prospectus is provided on its website at the same time as it is made available to the public by the issuer.

4.2 *Hyperlinking to electronic prospectuses*

4.2.1 As an alternative to providing a copy of the public offer documents on its website, an intermediary may establish a hyperlink from its website to the website of the issuer (or any standalone website set up by the issuer for the duration of the public offering) or that of a suitable third party. Any intermediary wishing to use this method should:

- (a) consider obtaining prior consent from the issuer (or the third party) to establish the hyperlink¹⁵. The intermediary should indicate on its webpage containing the hyperlink whether consent has been obtained;
- (b) ensure that the webpage or the icon containing the hyperlink contains a clear message to inform applicants that they are leaving the intermediary's website and entering the website of the other person;
- (c) ensure that the webpage or the icon containing the hyperlink clearly describes where the hyperlink leads. Subject to (b) above, a hyperlink described as leading to the prospectus (or other public offer document, as the case may be)

¹⁵ Please refer to footnote 13 above.

must provide direct access to the front cover or table of contents of the relevant document. Hyperlinks described as leading to the prospectus (or other public offer document) which lead to webpages containing information other than the relevant document or to certain parts of the document are not acceptable for these purposes;

- (d) put in place procedures to monitor the performance of the hyperlink to ensure that applicants using the intermediary's webpage can access the electronic public offer documents on the relevant website for the duration of or for so long as applications are being accepted through that intermediary; and
- (e) immediately cease to accept applications through its website if the hyperlink fails to provide applicants with proper access to the public offer documents on the issuer/third party's website.