



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

**Consultation Conclusions on the draft Guidelines for
Persons Using the Internet to Collect Applications
for Securities in a Public Offering**

《為在公開發售中利用互聯網收集證券認購申請的人士提供的指引》草擬本的諮詢總結

Hong Kong
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香港
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Consultation Conclusions

A. Introduction

1. On 28 January 2003, the Securities and Futures Commission (“the SFC”) released a consultation document inviting public comments on the draft **Guidelines for Persons Using the Internet to Collect Applications for Securities in a Public Offering** (“the draft Guidelines”).
2. The draft Guidelines intend to provide guidance on how an electronic public offering of securities should take place.
3. The consultation period ended on 26 February 2003.
4. Taking into account the comments received, several amendments to the draft Guidelines were considered appropriate. A summary of the comments received on the draft Guidelines (“summary of comments”) is attached as Annex 1. The marked up Guidelines are attached as Annex 2.
5. The SFC wishes to thank those who have provided their comments in the consultation.
6. The purpose of this report is to provide an analysis of the main comments raised during the consultation process and the rationale for the Commission’s conclusions. This report should be read in conjunction with the consultation paper, the draft Guidelines and the summary of comments.

B. Public Consultation

Background

7. The Guidelines for Registered Persons Using the Internet to Collect Applications for Securities in an Initial Public Offering were first published by the SFC in July 2000. Since publication, new methods of offering electronic public offering services have evolved. In order to provide more guidance to industry participants in this rapidly evolving area, the SFC has revised and updated the 2000 Guidelines. The revised Guidelines have been renamed as the Guidelines for Electronic Public Offerings (ePO Guidelines) as the scope of the 2000 Guidelines has been extended to include Initial Public Offerings and all follow on public offerings.

Consultation Process

8. In addition to the press release regarding the consultation exercise which was issued on 28 January 2003, the consultation paper was also posted on the website of the SFC and distributed to all registrants through FinNet. The draft Guidelines were also considered by the SFC’s Shareholder’s Group and Advisory Committee. Their comments have been taken into account during the consultation process.

9. Four submissions were received. Comments varied considerably in range and depth, with some focusing on broad principles and others on points of detail and clarification.

C. The Consultation Conclusions

10. Most of the comments received related to the suggestion that prior consent should be obtained from the issuer (or third party) before establishing a hyperlink or using the issuer's electronic public offer documents in a registrant-driven ePO. In general, respondents felt that the requirement to obtain prior consent was not practical and the hyperlinking process should not be made difficult.
11. The SFC would like to stress that the issues stated in the ePO Guidelines are not requirements but are issues which issuers, sponsors and/or intermediaries should consider in offering ePO services.
12. With respect to the suggestion to obtain the issuer's (or third party's) consent prior to establishing a hyperlink, the SFC considers that prior consent from the issuer may enable an intermediary to know when supplemental prospectuses are issued and hyperlink to such documents. In addition, prior consent will eliminate the possibility of intellectual property infringement, if any, related to the hyperlinking (or posting of the issuer's prospectus on the intermediary's website).
13. That said, the SFC agrees that hyperlinking should not be hindered. Therefore, the ePO Guidelines have been amended to stress that prior consent is not a regulatory requirement and that if the intermediary does not consider it necessary to obtain consent for regulatory purposes, it may also wish to consider whether there are any other legal implications relating to the hyperlinking, for example, intellectual property considerations.
14. One respondent, in particular, noted that since the issuer has little or no responsibility for a registrant driven ePO, it is not practical to require the issuer to assess the intermediary's internal controls etc. before giving consent. Therefore the issuer's consent should not be required. The issuer's consent to offer a registrant-driven ePO is different from that required to offer an issuer-driven ePO. In an issuer-driven ePO, the issuer (or sponsor) is expected to be the 'driving party' in the ePO and therefore bears most of the responsibility in coordinating and overseeing the ePO. Hence, in an issuer-driven ePO, the issuer should be able to assess the intermediary's/ESP's internal controls etc. before consent is given. Conversely, in a registrant-driven ePO, the driving party is the intermediary. The intermediary alone decides whether it wishes to offer the ePO service. It alone has the responsibility to ensure that the service it offers is properly coordinated. The SFC believes that the suggestion (that the issuer's consent (or 'no objections') should be obtained to offer such a service and to use or hyperlink to the issuer's prospectus) may assist the intermediary to know when supplemental public offer documents are issued and to have access to such documents.

15. Most other comments received relate to clarifying certain provisions of the draft Guidance Note. The SFC has accepted majority of the comments or suggestions from the consultation exercise and has made amendments to the draft Guidance Note. The table at Annex 1 summarises all the written comments received and the SFC's response.

Annex 1

Summary of Written Comments on draft ePO Guidelines and SFC's Responses

Item No.	Section Reference	Details of the Section	Respondent's Comments	SFC's Response
1.	General	N.A.	<i>HKAOB</i> : A list of ESPs should be provided on the SFC's website.	A list of ESPs is posted on the website of the Federation of Share Registrars. The SFC's website is hyperlinked to the Federation's website.
2.	2.7.2 (e)	Where applicable, an ESP should ensure that the electronic prospectus and announcements (or a hyperlink to these documents) on the ESP's website is displayed or made available at the same time as paper copies of the prospectus are made available to the public.	<i>Respondent B</i> : The Respondent is the view that the above requirement refers to the IPO offer period rather than the physical availability of IPO service/prospectus at branches which are only open during office hours.	The SFC agrees. The paragraph has been amended.
3.	2.7.2 (o)(viii)	Where applicable, an ESP should ensure that it has on its website a list of places where applicants can obtain copies of the prospectus and application forms including paper or electronic copies.	<i>Respondent B</i> : An ESP should be considered having satisfied the said requirement by pointing customers to such information in the prospectus.	
4.	3.2.2 and 3.2.3	Intermediaries who offer registrant-driven ePO services should ensure that they have the issuer's consent to use the prospectus or provide a hyperlink to the electronic prospectus on the issuer's website.	<i>Respondent A</i> : Since, in a registrant-driven ePO, the issuer has little or no responsibility towards the intermediary, it appears to be impracticable for the issuer to assess the internal control, financial conditions, etc. of the intermediary before the issuer can give a consent to	The Guidelines do not require an intermediary in a registrant-driven ePO to obtain the issuer's consent to offer the service. What is 'required' (so as to comply with requirements in the Companies Ordinance) is for the ESP to either provide an electronic copy of the prospectus on its website or to establish a

Item No.	Section Reference	Details of the Section	Respondent's Comments	SFC's Response
			<p>the intermediary. Therefore, the issuer's consent registrant-driven ePO should not be required.</p>	<p>hyperlink to the electronic prospectus on the issuer's website or that of a third party. The SFC considers that it is good practice to obtain prior consent as this will enable intermediaries to know of/have access to supplemental prospectuses when these are issued. Intermediaries which do not obtain prior consent should ensure that there are no intellectual property rights issues related to hyperlinking.</p>
5.	4.2.1	<p>An ESP/intermediary who establishes a hyperlink to the website of an issuer or third party should obtain prior consent from the issuer or the third party to establish the hyperlink.</p>	<p><i>Boom.com:</i> Due to the tight schedule of most public offerings, there may be a problem in the timing and practicality of obtaining the prior consent from the issuer or the third party before establishing the hyperlink. The SFC should reconsider the practicality to obtain prior consent from issuer or 3rd party. The SFC should advise whether it has plans to assist intermediaries to obtain consent from issuers.</p>	<p>Please see item above for SFC's response. The SFC considers that these are commercial matters for issuers and intermediaries. As such, it does not intend to assist ESPs/intermediaries to obtain consent from issuers.</p>

List of Respondents

Dated Received	Respondent
21 February 2003	Boom.com (“Boom”)
26 February 2003	Respondent A
26 February 2003	Hong Kong Association of Online Brokers (“HKAOB”)
28 February 2003	Respondent B

**Guidelines for ~~Persons using the Internet~~
~~to Collect Applications for Securities~~
~~in a~~Electronic -Public Offerings**

**Hong Kong
April 2003**

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/disseminate prospectuses, ~~and~~ applications forms and/or to collect applications or application instructions from the public (applicants) during an initial public offering (“IPO”) or ~~any~~ follow-on public offering.
- 1.2 These Guidelines aim ~~to-at~~ provide guidance to persons who offer ePO services. Such persons should also refer to and comply with the Guidance Note on the Regulation of Electronic ~~Offering and Trading of Securities and Futures Contracts~~ 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 ~~endeavour to~~ assist investors in this respect to make informed investment decisions. Therefore, persons offering electronic facilities to ~~enable the~~ distribution and/or ~~collection of~~ 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 ~~instruction~~ input screen) are accompanied by a copy of the relevant prospectus (and any supplemental ~~information prospectus relating and announcements relevant~~ 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 –
- ~~(a) — shall not by itself render him liable to any judicial or other proceedings, but in any proceedings under the SFO before any court the Guidelines shall be admissible in evidence, and if any provision set out in the Guidelines appears to the court to be relevant to any question arising in the proceedings it shall be taken in account in determining the question; and~~
- ~~(b) — the Commission shall consider whether such failure tends to reflect adversely on the person’s fitness and properness to perform or offer relevant functions or of operating such 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. ~~Persons who wish to offer ePO services should also refer to and comply with the various codes, regulations and guidelines issued by the Commission as well as any relevant legislation.~~

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 ~~The term “Internet” i~~In these Guidelines, “other electronic means” refers to electronic trading mechanisms (e.g. hand held or wireless trading devices) ~~and the Internet~~.

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

- 1.7 In traditional public offerings, an applicants wishing to participate would collect a paper copyies of the prospectus and application forms published by the issuer of the prospectus, complete the application forms³ and deliver it with a cheque~~the completed forms~~ 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,~~on collection of the application forms and cheque payments~~ would send the application forms to the relevant share registrar for processing after the cheques have been honoured. ePOs differ from ~~the~~ traditional public offerings in that all or some of the processes in the public offering are electronic rather than manual or paper-based.
- 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~~instructions~~ 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, i.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~~applications~~.
- 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~~instructions~~ from its clients electronically (or manually⁸) but the applications~~information would~~may be delivered to the issuer or the receiving bank either in the

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 so that the the intermediary can completes the yellow/~~nominee forms~~ on their behalf.

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 persons licensed by or registered with the Commission (i.e. intermediaries) and 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.fedsrld.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.

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.

~~1.12 In addition, there is the CCASS eIPO service offered by the Hong Kong Exchanges and Clearing Limited, which involves data communication between only CCASS and its participants. The CCASS eIPO procedures can be found in the General Rules of CCASS and the CCASS Operational Procedures published by Hong Kong Securities Clearing Company Limited.~~

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 public offering (including 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.

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. ~~In addition, if large public interest in the public offering is anticipated, consultation with the Corporate Finance Division of the Commission is encouraged.~~ 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 ~~where~~ application instructions may be ~~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 ~~ESPs~~ 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 is ~~is~~ electronic transmission of application data from the intermediary to a receiving bank and share registrar, that is to say, as an ESP.

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 including~~ any supplemental prospectus ~~and announcements in connection with the offering~~) in ~~paper and~~ electronic form. ~~The An~~ electronic form of such documents prospectus should be prepared in a format that cannot be tampered with. ~~When the paper and electronic form of the prospectus are available, a copy of both (the paper and the electronic form either on CD-ROM or other electronic means) and a list of all websites and/or other places where the paper and electronic prospectuses and application procedures will be made available should be sent to the Listing Division of HKEx (in the case of listed securities) or the Corporate Finance Division of the Commission (in other cases).~~

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 ~~public offering (including the ePO)~~ to ESPs prior to the commencement of the ~~public offering~~ePO. Such information should include~~s~~ –

- (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”))~~announcements~~;
- (b) whether, and if so, the date on which, a draft of the public offer documents ~~electronic prospectus~~ will be sent by the issuer to ESPs for the purposes of formatting their websites;
- (c) ~~details of~~ whether hyperlinking to the public offer documents ~~electronic prospectus~~ on the issuer's website⁹ is permitted and the issuer's requirements, if any, for hyperlinking;
- (d) the date, procedures and media (e.g. CD-ROM or file transfer) for ESPs to collect the electronic prospectus ~~public offer documents~~ from the issuer;
- (e) specific instructions, if any, as to how ESPs should post the electronic prospectus ~~public offer documents~~ and application ~~instructions~~ input screen on their websites;
- (f) the date(s) and time(s) on which ESPs should post the electronic prospectus ~~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 ~~post~~ing 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~~should cease;

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

- (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~~ 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 relating to detailing the application procedures for the public offering.

2.6 Contingency and Planning

- 2.6.1 Issuers and sponsors should have a contingency plan to deal with emergency situations relating to the ~~public offering, including 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 ~~public offering, including the~~ ePO. The coordination team should consist of representative of all parties involved in the ~~public offering, including the~~ ePO team.
- 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.

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.

2.7 **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 ~~it collects~~ and the electronic interface of its website.

2.7.2 Where applicable, an ESP should ensure that:-

- (a) it adheres to ~~the issuer's~~, 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 a full copy of the electronic prospectus, any supplemental prospectus and announcements (in both English and Chinese language);~~ and the application ~~instruction~~ input screen are readily accessible available on its website. The ~~electronic prospectus, supplemental prospectus and announcements~~ public offer documents should must be identical to those provided by the issuer;
- (c) the ~~electronic prospectus, supplemental prospectus, announcements~~ public offer documents and application ~~procedures~~ input screen are complete, ~~placed~~ located close to each other and cannot be tampered with;
- (d) ~~if where~~ a hyperlink to ~~an electronic prospectus~~ the public offer documents on the issuer's website is provided, the matters in paragraph 4.2 are ~~addressed~~ satisfied;
- (e) the ~~electronic prospectus, supplemental prospectus and announcements~~ public offer documents (or a hyperlink to these documents) on the ESP's website ~~is~~ are first displayed or made available at the same time as ~~the paper copies of the prospectus~~ are made available to the public by the issuer;
- (f) information on its website relating to the ePO is in both ~~the~~ English and Chinese language;
- (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 ~~prospectus~~ public offer documents or processes for collection and handling of applications have been tampered with, or ~~(where applicable) if there are~~ duplicate or multiple applications have been made to the issuer;
- (h) information ~~if~~ reasonably required by the sponsor (or, where there is none, the issuer); ~~information requested in relation to the level of securities applications and volume the ESP processes during the ePO is provided to the issuer to enable their issuer 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 electronic prospectus 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 electronic prospectus public offer documents before being given access to the webpages where the particulars relating to the application information (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 prospectus public offer documents and the information disclosed in the prospectus 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 instructions 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 prospectus public offer documents rather than other information, particularly promotional or marketing information 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 electronic prospectus 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 indication as to of~~ the area containing the ~~electronic prospectus~~public offer documents and a warning to applicants that any information falling outside those areas is not part of the ~~prospectus~~public offer documents and the securities are offered solely on the basis of the information in the ~~prospectus~~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 ~~prospectus-public offer documents~~ prior to making an investment decision and should make the investment decision based on the ~~public offer documents~~prospectus 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 ~~prospectus and application forms including paper or electronic copies~~public offer documents¹²; and

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).

- 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.

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 also take the responsibility to seek the issuer's prior consent to do so¹³ display the prospectus or electronic prospectus on its website, ensure that the electronic prospectus is identical to that provided by the issuer (if it is provided) and if not provided by the issuer, that it is identical to the prospectus registered under the Companies Ordinance. 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 The intermediary will also have to ensure that any supplemental prospectus and announcements are made available on its website at the same time as and when these documents go 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) ~~are~~have been made

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.

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 ~~is~~ collected by the intermediaries and delivered to the issuer, the share registrar or receiving bank (as the case may be) will not be rejected by them. These intermediaries should liaise with the issuer for details of to ascertain the details in relation to the format of the downloaded and printed application forms which that will be accepted by 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.

~~3.2.3 If the issuer's consent and the required information are not given, the intermediary will be unable to offer this service.~~

~~3.2.4 There are also some public offerings (e.g., public offering of retail bonds) where clients submit application instructions to intermediaries (by e-mail or via a website), which are then aggregated (with application instructions from other clients of the intermediary) and translated by the intermediary into an application made by the intermediary to the issuer (or receiving bank) on behalf of the clients. Intermediaries offering this type of service are reminded that a copy of the prospectus (electronic or paper and any supplemental prospectus and announcements) should accompany the facility enabling the collection of such application instructions.~~

4. Other matters

4.1 *Electronic prospectus*

4.1.1 ~~Subject to paragraph 4.1.2 below, the application procedures and the electronic prospectus (including supplemental prospectus and announcements) Public offer documents in both English and Chinese versions must be displayed or accessible by hyperlink on an ESP's or the intermediary's website should be in both the English and Chinese language and identical to that provided by the issuer (where the ePO is issuer driven) or to the registered paper prospectus (where the ePO is registrant driven).~~

4.1.2 The following enhancements or differences between the ~~registered~~ paper prospectus version and an electronic prospectus 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 the electronic prospectus document. The prompts should not contain any ~~prospectus~~ information that does not appear in the registered paper prospectus 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 ~~and announcements~~ in an issuer-driven ePO, in a registrant-driven ePO, the intermediary is expected to ensure that a copy^{ies} of any supplemental prospectus and announcements are^{is} provided on its website at the same time as it is when they are 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 ~~electronic prospectus~~public offer documents on its website, an ~~ESP or an~~ intermediary may establish a hyperlink from its website to the website of the issuer (~~including or any~~ standalone website set up by the issuer for the duration of the public offering) or that of a suitable third party. Any ~~person~~intermediary wishing to use this method should: ~~(the following only apply where a hyperlink to an electronic prospectus on the issuer or a third party's website is offered instead of providing of a copy of the electronic prospectus on the issuer's website. These do not apply to additional hyperlinks to other webpages):-~~

(a) consider obtaining prior consent from the issuer (or the third party) to establish the hyperlink¹⁵. The ~~ESP~~, intermediary should indicate on its webpage containing the hyperlink ~~that whether~~ consent has been obtained;

(b) ensure that the webpage or the ~~icon~~² containing the hyperlink contains a clear message to inform applicants that they are leaving the ~~ESP~~/intermediary's website and entering the website of anthe other person ~~and any appropriate disclaimers~~;

(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) must provides direct access to the front cover or table of contents of a full and up to date version of the electronic prospectus (from which other pages can be accessed)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 additional to the prospectus or to only certain parts of the prospectus document are generally-not acceptable for these purposes;

(d) put in place procedures to monitor the performance of the hyperlink to ensure that applicants using the ~~ESP's~~, the intermediary's webpage can access the electronic prospectus public offer documents on the issuer/third party'srelevant website for the duration of or for so long as applications are being accepted through that intermediaryduring the offering period; and

(e) immediately cease to accept applications through its website if the hyperlink fails to provide applicants with proper access to the ~~electronic prospectus~~public offer documents on the issuer/third party's website.

¹⁵ Please refer to footnote 13 above.