

Publicity, Advertising, and Communications During an IPO (Hong Kong)

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A Practice Note examining the regulatory requirements applicable to publicity, advertising, and communications in relation to initial public offerings in Hong Kong, including the liability and other potential consequences of violating these requirements. This Note also discusses the application of these regulatory requirements in specific types of publicity and marketing activities, such as media reports, premarketing, research reports, and road shows.

A company (also referred to as a listing applicant) undertaking an initial public offering (IPO) in Hong Kong typically launches a marketing campaign to persuade the public and key investors to invest in the company. These campaigns are regulated by various corporate and securities laws and stock exchange listing rules that impose marketing restrictions and prohibit disclosure of unauthorised information. These laws and rules aim to protect potential investors from making their investment decisions based on the influence of information not set out in the listing applicant's prospectus.

This Note outlines the regulatory requirements applicable to publicity, advertising, and communications that companies must comply with when undertaking an IPO in Hong Kong with a concurrent listing on the [Hong Kong Stock Exchange](#) (Stock Exchange). It also discusses rules applicable to specific types of publicity and marketing activities, such as media reports, premarketing, research reports, and road shows.

This Note does not discuss publicity, advertising, and communications issues related to alternative ways of going public, such as listings by way of introduction or business combinations with listed companies.

This Note also does not cover securities offerings (either public or private) conducted by companies already subject to ongoing disclosure requirements in Hong Kong, which involves an analysis of the tension between these public disclosure requirements of listed companies and the publicity restrictions in securities offerings.

Regulatory Framework Governing Publicity, Advertising, and Communications

In Hong Kong, the release of publicity, advertising, and communications in relation to an IPO are subject to the legal restrictions set out in the [Companies \(Winding Up and Miscellaneous Provisions\) Ordinance \(Cap 32\)](#) (CWUMPO) and the [Securities and Futures Ordinance \(Cap 571\)](#) (SFO). Certain provisions contained in the Listing Rules (see [Stock Exchange: Main Board Listing Rules](#)) and guides issued by the Stock Exchange and the [Securities and Futures Commission](#) (SFC) are also applicable to the release of these publicity materials.

The CWUMPO provides that a prospectus must be issued where the public is invited to subscribe for shares in Hong Kong, and a listing applicant must obtain an authorisation from the Stock Exchange and register the prospectus at the [Companies Registry](#) before distributing it to the public. A prospectus, as defined in the CWUMPO, includes any prospectus, notice, circular, brochure, advertisement, or other document that offers (or calculates to offer) any shares of a company to the public for subscription or purchase in Hong Kong. However, the definition excludes any prospectus, notice, circular, brochure, advertisement, or other document to the extent it relates to an offer to professional investors (as defined in the SFO). The CWUMPO further prohibits any person from publishing or causing to be published (by way of an advertisement) any abstract

from or abridged version of a prospectus or an advertisement in relation to a prospectus or proposed prospectus on shares of a company (section 38B(1), CWUMPO).

The SFO prohibits the issue or possession for the purposes of issue, of an advertisement, invitation, or document that is or contains an invitation to the public to enter into (or offer to enter into) an agreement to acquire or subscribe for securities unless the issue is authorised by the SFC (section 103(1), SFO). An advertisement, invitation, or document includes every form that is made orally or produced mechanically, electronically, magnetically, optically, manually, or by any other means, but does not include a prospectus that has been registered under the CWUMPO (section 102(1), SFO).

Under the Listing Rules, publicity materials relating to an issue of securities must comply with all statutory requirements and can be released only after they are reviewed by the Stock Exchange, and the Stock Exchange has confirmed that it has no comments on these publicity materials. Publicity materials are not considered to be related to an issue of securities if their purpose is to promote the listing applicant or its products or business and not the securities to be issued.

An IPO in Hong Kong is typically a global offering comprising a subscription tranche to the public in Hong Kong and an international placing tranche. Apart from the legal and regulatory restrictions in Hong Kong, legal restrictions under the securities laws of the United States and other jurisdictions may also apply to the release of publicity, advertising, and communications to investors regarding the international placing tranche of the IPO. Cautions should be exercised when handling publicity, advertising, and communications relating to a Hong Kong IPO that are distributed outside Hong Kong or targeting non-Hong Kong investors.

In particular, section 5 of the [US Securities Act of 1933](#) (Securities Act) effectively requires every offer and sale of securities to be either registered with the [US Securities and Exchange Commission](#) (SEC) or made under an available exemption from registration. In a Hong Kong IPO, a listing applicant typically sells its securities without registration with the SEC to investors outside the US in reliance on [Regulation S](#) under the Securities Act, or to [qualified institutional buyers](#) (QIBs) in the US in reliance on [Rule 144A](#) under the Securities Act (or both). For more information on US registration exemptions, see [Practice Note, Private Placements and Other Unregistered Offerings: Overview \(US\)](#).

Improper use of publicity, advertising, and communications in or targeting the US can destroy the availability of exemptions from registration on which a Hong Kong IPO typically relies, resulting in an illegal offer of securities in violation of section 5 of the Securities Act. If relevant, the listing applicant and other participants of an IPO in Hong Kong should consult US counsel on how to comply with US securities law regarding publicity, advertising, and communications. For more information on US publicity guidelines, see [Practice Note, Publicity, Communications and Offers](#).

Timing

The listing applicant and all other participants of an IPO (including the sponsors, underwriters, legal advisers, reporting accountants, valuers, professional experts, financial printers, and public relations firms), should observe all restrictions on publicity, advertising, and communications throughout the IPO process. These restrictions commence after the kick-off of the listing process' preparation and typically end when the IPO is completed and the securities of the listing applicant are listed on the Stock Exchange (this is known as the "restricted period").

The following is a description of the activities that are permitted or restricted during the process of an IPO.

Before Submission of Listing Application

Typically, the listing applicant's legal advisers circulate a publicity memorandum shortly after the IPO kick-off meeting. This memorandum sets out the key publicity requirements under Hong Kong and US laws and the procedures that should be adopted

by the listing applicant and all IPO participants on the confidentiality, preparation, contents, and release of any information relating to the listing applicant and IPO.

The listing applicant and all IPO participants should, throughout the listing process, keep confidential the proposed listing application and IPO and should not disclose any information concerning the IPO, including its proposed timetable, to the public.

The making of the listing application becomes known to the public once a redacted version of the application proof of the prospectus is published on the Stock Exchange website on the same day the listing application is submitted to the Stock Exchange. All information relating to securities offering, including offer price, number of securities to be offered by the listing applicant, and the means to subscribe for the securities in the application proof, is redacted to ensure that the document does not constitute a prospectus or an advertisement under the CWUMPO or an invitation to the public under the SFO.

After Submission of Listing Application but Before Registration of the Prospectus

During the vetting process of the listing application, the IPO vetting team of the Stock Exchange and the SFC can make comments and raise queries on the listing application and the draft prospectus. Concurrent with the vetting process, the preparation of analyst presentations and research reports commence based on the information contained in the draft prospectus. Non-deal road shows (which are meetings or presentations with investors when no specific offering is planned or before a planned offering has been announced) can also be organised during this period to foster communications between the listing applicant and potential investors.

At this stage, even though the listing application is made public, the listing applicant and all IPO participants should continue to observe all restrictions on publicity, advertising, and communications. Information provided to parties other than the IPO participants should be confined to what is included in the prospectus without referring to any securities offer-related information.

The premarketing stage commences after the comments from the IPO vetting team of the Stock Exchange and SFC are satisfactorily addressed, and the listing application passes the hearing before the Listing Committee of the Stock Exchange. Underwriters often meet with potential investors to gauge investor demand for the offering. The process is commonly preceded by the research analysts of the syndicate members distributing their pre-deal research reports to potential investors under the international placing tranche.

Following the premarketing process, the underwriters commence the book-building process and approach potential institutional investors and professional investors to obtain expressions of interest to purchase securities in the IPO at various prices. This process is usually conducted contemporaneously with a management road show.

A listing applicant can distribute a "red herring" prospectus, which is a near-final draft prospectus but without pricing terms of the IPO, to assist in the book-building and road show process. Under the Listing Rules, before the book-building process commences and a red herring is distributed, a listing applicant must publish a post-hearing information pack, which is a near-final draft prospectus with all offer-related information redacted, on the Stock Exchange website to allow the public access to substantially the same information as provided to institutional investors and professional investors.

After Registration of the Prospectus

Once the registration of the prospectus is complete, the IPO can be launched. The final prospectus must be published on the Stock Exchange website and made available to the public in Hong Kong. The Listing Rules also require a listing applicant to publish a formal notice on the Stock Exchange website, which sets out the basic information of the structure of the IPO and the procedures to apply to the securities offered in the IPO. The listing applicant and all IPO participants should continue to observe all restrictions on publicity, advertising, and communications and be cautious not to include any information that could be inconsistent with the disclosure in the prospectus.

Content

As a principle, a listing applicant should disclose material information in the form of a prospectus to enable an investor to make an informed assessment of the listing applicant's:

- Business activities.
- Assets and liabilities.
- Financial position.
- Management.
- Prospects.

All information disclosed in any material that is made public during an IPO, whether in an oral or written form, must be consistent with the information contained in the prospectus. The information must:

- Be true and accurate in all material respects.
- Contain no misleading information (including misleading statements due to an omission of any material information).
- Be properly verified or supported by experts.

Publicity, advertising, and communications during an IPO should also avoid including projections or forward-looking information (whether qualitative or quantitative) concerning the listing applicant that is not reasonably expected to be included in the prospectus, including its prospective financial information (such as profit forecast).

Further, publicity, advertising, and communications made during an IPO (other than the formal notice) should not refer to any offering or issue of securities of the listing applicant to avoid being construed as an offer or an invitation to subscribe for securities and to ensure that these communications do not constitute a contractual basis or proof for the subscription of the listing applicant's securities.

However, a listing applicant can continue to advertise products and services and issue press releases regarding factual business and material developments (other than forward-looking statements) in accordance with past practice, to customers, suppliers, and other non-investors.

Liabilities and Other Adverse Consequences of Violation

Liabilities

Under the SFO, a person will be subject to imprisonment and a fine if they issue, or have in possession for the purposes of issue, an advertisement, invitation, or document that is or contains an invitation to the public to enter into (or offer to enter into) an agreement to acquire or subscribe for securities unless the issue is authorised by the SFC (section 103(4), SFO). Where the person has taken all reasonable steps and exercised all due diligence to avoid committing the offence, that person is not guilty of an offence.

Similarly, under the CWUMPO, any person who is found publishing or causing to be published (by way of an advertisement) any abstract from or abridged version of a prospectus, or an advertisement in relation to a prospectus or proposed prospectus for shares of a company, is liable for a fine (section 38B(3), CWUMPO).

Under the SFO, where a person makes any fraudulent, reckless, or negligent misrepresentation by which another person is induced to enter into an agreement to acquire or subscribe for securities, that person is liable to pay compensation to the other person for any pecuniary loss that the other person sustained (section 108(1), SFO).

Any information released in publicity materials can also subsequently form a contractual basis for the subscription of securities. If this information is later proved to be inaccurate or misleading, the listing applicant and any person authorising the release of the information, may be subject to civil or criminal liability in accordance with the statutory or common law in Hong Kong or other jurisdictions.

Other Consequences

The Listing Rules provide that all publicity materials released in Hong Kong relating to an issue of securities by a new applicant must be reviewed by the Stock Exchange before release. The publicity materials must be in the form that has been reviewed and approved by the Stock Exchange in advance. Any publicity material referring to a proposed listing by a listing applicant issued before the Listing Committee's hearing, must state that an application has been or will be made to the Stock Exchange for listing of and permission to trade the securities concerned.

In practice, the Stock Exchange closely monitors media reports and news articles to ensure there is no leakage of news relating to the IPO during the vetting of a listing application. If the Stock Exchange finds any media reports or news articles covering the IPO, it requests the listing applicant and the sponsors to explain the leakage and carry out investigations to ascertain the reasons for the leakage. Further, it requests appropriate actions to be taken accordingly, including, clarifying or disclaiming these reports publicly, or disclosing additional information in the prospectus.

The Stock Exchange will take stringent measures against unauthorised publicity materials, including suspending vetting of the listing application until all unauthorised publicity materials are withdrawn and delaying the listing timetable so that the influence of unauthorised promotion has cooled off. The Stock Exchange can delay the timetable for the proposed Listing Committee's hearing by up to one month if it believes that a listing applicant or its advisers have permitted information on the listing of the new applicant's securities to leak. If a listing application remains outstanding for more than six months after the date of the initial application form, the listing applicant must submit a new application form together with a further non-refundable listing fee to the Stock Exchange. Further, the listing applicant must update its audited financial information in the prospectus if the delay results in the latest financial period reported on by the reporting accountants being more than six months from the proposed date of the prospectus.

Specific Applications During an IPO

Advertising

The CWUMPO and the SFO stipulate that issuing an advertisement, invitation, or document that contains invitations to the public to acquire securities of a listing applicant is prohibited without registration as a prospectus, unless the issue is authorised by the SFC (section 38B(1), CWUMPO and section 103(1), SFO).

It is customary practice for listing applicants to issue advertisements by electronic methods for subscription of IPO shares (E-IPO Advertisements) at the time when the IPO is launched to increase the awareness of the IPO.

The SFC has issued the [Guidelines on Use of Offer Awareness and Summary Disclosure Materials in Offerings of Shares and Debentures](#) under the CWUMPO (Offer Awareness Guidelines). According to these guidelines, the SFC considers that certain publicity materials issued by the listing applicant to raise investor awareness of the IPO, which may assist the listing

applicant in the efficient conduct of the IPO and facilitate greater retail investor participation, do not constitute a prospectus (or an extract from or abridged version of a prospectus) within the CWUMPO, or a prohibited advertisement within the SFO. The contents of these materials must be strictly limited to communicating procedural and administrative information regarding the IPO (including a description of the securities offered, date and location at which the prospectus is available, and details of procedures to assist investors' participation). The materials must not promote the listing applicant or the IPO and must be removed as soon as practically possible after the close of the offer period.

Under the [Guide for New Listing Applicants](#) (Listing Guide), the Stock Exchange further provides that its consent is normally not required for E-IPO Advertisements. However, listing applicants and sponsors should ensure that the advertisement fully meets the criteria under the Offer Awareness Guidelines and the [Guidelines for Electronic Public Offerings](#) issued by the SFC.

Publicity materials released for the purpose of promoting the listing applicant or its products or business, and not for promoting the securities to be issued, are not required to be reviewed by the Stock Exchange (Listing Guide).

Even though certain publicity materials may on their face appear to be for the purpose of promoting the listing applicant, its products, or its business, the Stock Exchange normally considers materials as relating to an issue of securities and is inclined not to consent to their publication if these materials are:

- Not commensurate with the particular nature of the listing applicant's business, products, customers, or markets.
- Presented in a manner that makes them likely to be read together with information related to the public offering.
- Likely to condition the market ahead of the issue of the prospectus and affect perceptions of the upcoming IPO. In assessing whether the information may condition the market, the Stock Exchange considers all relevant circumstances, including:
 - the nature of the listing applicant's business;
 - its advertising history;
 - the form of the publicity materials; and
 - the way the publicity materials are presented.

For example, if a listing applicant did not put on substantial advertisements on its business in the past but, inconsistent with its prior practice, has conducted significant advertising campaigns during the IPO application process, then the Stock Exchange is likely to consider these advertising campaigns made for the purpose of promoting its upcoming IPO. Accordingly, advertisements of a listing applicant's business, products, and services during the restricted period should be conducted in a manner and form materially consistent with its past practices. Further, the listing applicant should not commence or materially increase any programme of publicity, even if there is a legitimate business purpose for the publicity.

Media Reports

Generally, press conferences, meetings, and interviews are allowed, although they should not mention the IPO until after the prospectus has been registered with the Companies Registry. The content of any materials or discussions at these events should be consistent with the disclosure in the prospectus.

A listing applicant should not commence or materially increase any form of publicity and should refrain from delivering any public speeches on or discussing its financial condition, operation results, or plans in a way that is inconsistent with its past

practices or involves discussions on the IPO. Any information released (including responses to any general inquiries) relating to the business, operations, assets, financial situation, or development prospects of the listing applicant must:

- Be restricted to information disclosed in the prospectus.
- Be genuine, accurate, and non-misleading.
- Not include previews, prospects, forecasts, estimates, other speculative representations and opinions, or any material that, directly or indirectly, encourages participation in the IPO or investment in the listing applicant's securities.

To avoid contravening these restrictions, all inquiries regarding the IPO from newspapers or other media should receive a "no comment" response, and representatives of a listing applicant should not meet with, or answer questions from, the media. In the early stages of the IPO process, any response by a listing applicant to any inquiry from the public, including the press, regarding the IPO should generally be resisted.

It is customary practice for listing applicants in Hong Kong to engage a public relations firm to assist the listing applicant with:

- Press releases.
- Presentations.
- Question and answer briefings.
- The creation of a dedicated investor relations website.
- Arrangements for press interviews and coverage.

If the release of publicity materials outside Hong Kong results in media coverage in Hong Kong, or if the publicity materials enter Hong Kong via a third party or under any other circumstances, even though they have not been authorised by the listing applicant or other IPO participants, the Stock Exchange can consider this as a breach of the publicity requirements under the Listing Rules.

Websites and Other Electronic Media

A listing applicant should ensure that the information on its websites and other electronic media is valid and delete information that is inconsistent with the information disclosed in the prospectus. All updates to the websites and other electronic media should be consistent with the information disclosed in the prospectus.

Under the Listing Rules, listing applicants are required to maintain a website to publish certain information in advance of the completion of the IPO, which includes its prospectus and formal notice. The listing applicant should not publish on its websites or other electronic means, any material on the IPO that can be accessed by potential investors or hyperlinks to these documents.

Further, a listing applicant is not only responsible for the content on its websites and social media accounts, but also responsible for the content of any websites linked to from its websites and social media accounts. No website and social media account operated by the listing applicant should include any materials or hyperlinks to materials that may be viewed as an offer of securities. Further, its websites and social media accounts should not direct or link to any information released by analysts or any similar third parties to avoid linkage to any conclusion, description, or forecast made by those parties on the IPO.

In practice, throughout the listing process, particularly before submitting the listing application and the registration of the prospectus, the sponsors and legal advisers of the listing applicant and the sponsors carefully scrutinise the listing applicant's

websites and social media accounts to make sure that the content therein is consistent with the disclosures in the prospectus and no offer-related information is included. Some listing applicants may opt to temporarily suspend the operations of its website or social media accounts and only update their content in one session before the launch of the IPO based on the near-final draft prospectus.

Communications with Employees and Shareholders

The restrictions also apply to publicity materials addressed to the employees and existing shareholders of a listing applicant on the basis that they are considered to be members of the public under the CWUMPO and the SFO. Accordingly, the listing applicant should treat all information about the IPO as strictly confidential.

It is common practice for a listing applicant to assign a small group of personnel (for example, staff responsible for advertising and public relations) to deal with the legal restrictions and procedures on handling publicity to control the access and dissemination of information within the company and respond to questions raised by the press and existing shareholders. Information about the IPO should only be disclosed to the employees and existing shareholders of the listing applicant on a confidential and need-to-know basis once they have been made aware of the publicity restrictions.

Pre-Marketing

The pre-marketing stage can commence once the comments from the IPO vetting team of the Stock Exchange and SFC have been satisfactorily addressed and the listing application has passed the Listing Committee's hearing. Pre-marketing or "investor education" meetings can take place where underwriters meet with potential investors to determine investor demand for the securities being offering.

Pre-marketing meetings in Hong Kong should only be attended by professional investors who may potentially have an interest in the securities to be offered in the IPO. Invitations for these meetings should only include information relating to the logistics (such as the date, time, and place of the meetings). Attendees should acknowledge their confidentiality obligations about the information shared with them during the meetings and be advised that the information must not be disclosed even if it is already publicly available.

All content, whether delivered orally, through projection slides, or other similar promotional materials, must be restricted to the disclosure contained in the prospectus. Information not contained in the prospectus should not be disseminated, and the mentioning of any offer-related information, including the indicative size, timing, or valuation of the IPO, should be avoided. Generally, the sponsors and legal advisers review the pre-marketing materials, including the disclaimers and legends, and flag areas of possible inconsistency between the content of the materials and the disclosure in the prospectus.

Analyst Presentations and Research Reports

Paragraph 16 of the [Code of Conduct for Persons Licensed by or Registered with the SFC](#) (Code of Conduct) imposes restrictions on the disclosure or provision to any investment research analyst of any material information, including forward-looking information (whether quantitative or qualitative) that is not reasonably expected to be contained in a prospectus and is not publicly available.

While preparing the research reports, an analyst should only use information that is reasonably expected to be included in the prospectus or that is publicly available. The analyst must refrain from seeking to obtain any of the information from the listing applicant or its directors, employees, or substantial shareholders, or any of their respective advisers.

In determining whether a piece of information is material, the SFC will consider whether the information is material to an investor in forming the valid and justifiable opinion of the listing applicant and its financial condition and profitability.

The research reports should not discuss or refer to the IPO. Forecasts, projections, and valuations included in research reports must be prepared by the research analysts independently of the listing applicant and not based on, or derived from, any material information, including forward-looking information (whether qualitative or quantitative) obtained from the listing applicant that is not reasonably to be expected to be included in the prospectus or publicly available. They must not contain any specific target price or a specific valuation of the company (either on a per-share basis or whole-company basis) that would enable the reader to work out a target share price, except for valuation ranges developed independently by research analysts.

To avoid the risk of liability due to omission of material information in the prospectus, the listing applicant must ensure that no material information about itself or its securities is provided to any research analyst, unless the information is reasonably expected to be included in the prospectus or is publicly available. The restriction covers any information provided to an analyst, directly or indirectly, formally or informally, in writing or orally, and under all circumstances.

The restriction applies to all research analysts. Paragraph 16 of the Code of Conduct requires firms that employ research analysts to have written policies and control procedures to ensure that the firms do not provide the analysts with any impermissible information.

It is the common practice for the sponsors' and underwriters' legal advisers to circulate research report guidelines that set out the procedures to be followed by all prospective syndicate members that want to distribute research reports about a listing applicant. Before the distribution of the research reports, syndicate members also submit the advanced drafts to the sponsors' and underwriters' legal advisers to review the disclaimers and legends, confirm compliance with the research report guidelines, and flag areas of possible inconsistencies between the disclosure in the prospectus and the research reports for the research analysts' attention.

Distribution of the research reports in Hong Kong is permitted only during the period after the listing application has passed the hearing of the Listing Committee and before the blackout period has commenced. Syndicate members are notified by the overall co-ordinators (that is, the lead banks of the IPO) when this blackout period has commenced.

In Hong Kong, research reports should only be distributed to professional investors. Research reports can only be circulated to a limited number of persons to whom the relevant syndicate member (or its associate analyst) customarily gives research reports. This list of recipients should be restricted to include only institutional investors whom its sales or equity capital markets departments deem may potentially have an interest in the securities to be offered in the IPO. Research reports must not be sent to the general public, the press (including information vendors and wire services), or other media. Further, they must not be distributed at, or with any invitation to, any road show presentations or other investor meetings.

If the research report is distributed to persons outside of Hong Kong, the securities laws of the jurisdiction into which the research reports are sent, apply. Further, care should be taken to ensure that the research report or its contents do not "flow back" into Hong Kong (electronically or otherwise).

A firm that acts as a manager, sponsor, listing agent, or underwriter of an IPO should not issue any investment research covering the listing applicant at any time within a period of 40 days immediately following the day on which the specific price of the IPO is determined (Code of Conduct). This does not apply if the firm has been issuing investment research on the listing applicant with reasonable regularity in its normal course of business or on occurrences of major events that would affect the price of the securities and the events are known to the public.

Road Shows

Road shows can take place after the listing application passes the Listing Committee's hearing and following the end of the pre-marketing stage. They are usually conducted contemporaneously with the book-building. Under the Listing Rules, before the

book-building process commences, a listing applicant must publish a post-hearing information pack, which is a near-final draft prospectus with all offer-related information redacted, on the Stock Exchange website.

Syndicate members meet with potential investors to gauge investor demand for the offering. Road shows in Hong Kong should only be attended by professional investors who may potentially have an interest in the securities to be offered in the IPO. Media members or financial analysts should not be invited to attend road shows.

All content, whether delivered orally, through projection slides, or other similar promotional materials, must be restricted to the information disclosed in the prospectus. Information that is not contained in the prospectus cannot be disseminated to any participants of the road shows. Accordingly, road show materials are normally prepared at an advanced stage during the listing process based on the information disclosed in a near-final draft prospectus and are reviewed by the sponsors and legal advisers to avoid inconsistencies between the content of the road show materials and the information disclosed in the prospectus. A red herring prospectus may be distributed to the attendees of the road shows in Hong Kong who are professional investors. All other written information distributed during road shows should be returned to the listing applicant and not retained by the road show participants.

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