

HKE_x GUIDANCE LETTER
HKE_x-GL51-13 (February 2013)

Subject	Cornerstone Investment – No Direct or Indirect Benefits to Cornerstone Investors other than Guaranteed Allocation at IPO price
Listing Rules	Main Board Rules 2.03(2) and (4), and 2.13 GEM Rules 2.06(2) and (4), and 17.56
Author	IPO Transactions Department

Important note: *This letter does not override the Listing Rules and is not a substitute for advice from qualified professional advisers. If there is any conflict or inconsistency between this letter and the Listing Rules, the Listing Rules prevail. You may consult the Listing Division on a confidential basis for an interpretation of the Listing Rules, or this letter.*

1. Purpose

1.1 Some market participants have asked the Exchange to remind applicants that it does not allow any direct or indirect benefits by side letter or otherwise, other than a guaranteed allocation of shares at the IPO price, to be given to cornerstone investors to participate in the placing tranche of a listing applicant’s share offering.

2. Background

2.1 It is not uncommon in an IPO that a portion of IPO shares under the placing tranche are preferentially placed to certain investors, usually referred to as “cornerstone investors”. Cornerstone investors, usually larger institutions and well-known individuals including asset management funds, sovereign wealth funds and Hong Kong tycoons, are introduced to an IPO to signify that these investors have confidence in the applicant, and the investment is worthwhile such that they are willing to take up shares at the IPO price. These are preferential placings where the cornerstone investors are guaranteed to receive allocation of shares irrespective of the final offer price.

2.2 Placings to cornerstone investors are generally permitted based on the following principles:

- (a) the placing must be at the IPO price;
- (b) the IPO shares placed are subject to a lock-up period generally for at least six months following the listing date;
- (c) each investor will not have any board representation in the listing applicant, and is independent of the listing applicant, its connected persons and their respective associates;

- (d) details of the placing arrangement, including the identity and background of the investors, are disclosed in the listing document; and
 - (e) notwithstanding the minimum six-month lock-up period, the shares will be part of the public float under Main Board Rule 8.08 (GEM Rule 11.23) provided the investor is a member of the public for the purpose of Main Board Rule 8.24 (Notes 2 and 3 to GEM Rule 11.23).
- 2.3 In 2012, among the 50 newly listed Main Board companies (excluding listing of investment funds, GEM transfers, and new listings under VSA), the cornerstone placings ranged between 6% and 66% of the total offering size of IPO shares. In 2011, the range was between 9% and 76%. We tend to see more cornerstone placings when market conditions are difficult.

3. Relevant Listing Rules

- 3.1 Main Board Rules 2.03(2) and (4) (GEM Rules 2.06(2) and (4)) require the issue and marketing of securities to be conducted in a fair and orderly manner and that all holders of listed securities be treated fairly and equally.
- 3.2 Main Board Rule 2.13 (GEM Rule 17.56) requires that information contained in the prospectus must be accurate and complete in all material respects and not be misleading or deceptive.

4. No Direct or Indirect Benefits to Cornerstone Investors other than Guaranteed Allocation at IPO Price

- 4.1 The Exchange considers that cornerstone investors provide an impression of voluntary commitment to an IPO by these investors and that the investment is worthwhile. They in fact can make an IPO very successful as retail investors are incentivised to invest in the applicant after finding out these cornerstone investors' commitment. Preferential placings to the cornerstone investors will not violate the fair and equal treatment under Main Board Rules 2.03(2) and (4) (GEM Rules 2.06(2) and (4)) if they follow the principles set out in paragraph 2.2 above.
- 4.2 Because the existence of cornerstone investors is sometimes critical to the success of an IPO, including when market sentiment is weak, some applicants and their controlling shareholders, sponsors or other syndicate members may be willing to offer to some cornerstone investors direct or indirect benefits by side letter or otherwise, other than a guaranteed allocation at IPO price.
- 4.3 We consider it misleading to the public if these investors receive some direct or indirect benefits by side letter or otherwise, other than a guaranteed allocation, to take up shares in an IPO and yet being considered cornerstone investors. Accordingly, where there is any form of direct or indirect benefits by side letter or otherwise, other than a guaranteed allocation, given to investors, for example, waiver of brokerage commission, a put option from the controlling shareholder or any other person to buy back the shares after listing, sharing of underwriting commissions, an assurance that the applicant will re-invest the IPO proceeds in funds managed by the cornerstone investor, an agreement to allow allocation of shares in another IPO, or any other transaction or arrangement entered into on non-arm's length commercial terms in connection with the acquisition of

the shares, these investors should be reclassified as pre-IPO investors and the requirements under the Interim Guidance on Pre-IPO Investments issued in January 2012 (<http://www.hkex.com.hk/eng/rulesreg/listrules/listguid/Documents/gl29-12.pdf>) apply. Please also refer to Guidance Letters HKEx-GL43-12 and HKEx-GL44-12 for the Exchange's policies on pre-IPO investment.

- 4.4 In addition, the non-disclosure of any form of direct or indirect benefits by side letter or otherwise, other than a guaranteed allocation, given to cornerstone investors violates the principles under Main Board Rule 2.13 (GEM Rule 17.56). This guidance letter does not intend to preclude the entering into of arm's length commercial arrangements between applicants and investors, such as when the investors are major customers and suppliers, or formation of joint ventures for business development with such investors. These are considered as strategic dealings and/ or arrangements with strategic investors. Details of any commercial arrangements should however be fully disclosed in the listing document.
