

Guidelines for Registered Persons Using the Internet to Collect Applications for Securities in an Initial Public Offering

1. Introduction

- 1.1 The Guidelines are intended to provide guidance to those registered persons who use the Internet to collect applications from their clients or the public for securities in an initial public offering (IPO). Registered persons who offer such services are referred here as eIPO service providers. The Guidelines do not have the force of law. However, any securities application collection services which are offered not in accordance with the Guidelines may be in breach of the relevant laws (e.g. Companies Ordinance).
- 1.2 An eIPO service provider should also refer to and comply with the Guidance Note on Internet Regulation issued by the Commission when conducting its business on the Internet.

2. Electronic Prospectus

- 2.1 An eIPO service provider which uses a website to collect applications for securities from its clients or the public (“applicants”) should ensure that a full copy of the electronic prospectus (including both the Chinese and English language text) of the company whose securities are being offered to the public is available on its website.
- 2.2 An eIPO service provider should take all reasonable steps to ensure that the prospectus which is available on its website is identical to the paper prospectus or the electronic prospectus provided by the issuing company.
- 2.3 An eIPO service provider should ensure that the sections of its website relating to the collection of applications for securities are presented in both the Chinese and English language.
- 2.4 An eIPO service provider should clearly specify on its website the areas which contain only the electronic prospectus. It should also include a statement on its website to alert applicants that any information falling outside the specified areas does not form part of the electronic prospectus and the securities are offered solely on the basis of the information contained in the electronic prospectus.
- 2.5 An eIPO service provider should put out a statement on the first page of the areas covering the securities application collection services on its website to alert applicants:
 - (a) that the website is that of the eIPO service provider and not of the issuing company or its agents or otherwise authorised by any of them;

- (b) that persons wishing to apply for securities using the eIPO service provider's website assume the risks associated with conducting transactions over the Internet;
- (c) that in applying for securities using the eIPO service provider's website, the eIPO service provider acts as the agent of the applicant;
- (d) that persons wishing to apply for securities should read the prospectus prior to making an investment decision;
- (e) whether the electronic prospectus is also available on the website of the issuing company or its agents and, if so, the website address of the issuing company or its agents should be included for reference purposes; and
- (f) that paper copies or CD-ROMs of the electronic prospectus are available at certain locations (e.g. receiving banks) specified by the issuing company or its agents. Applicants should be reminded that the addresses of such locations are available in the section of the prospectus which covers how to apply for securities offered in Hong Kong.

2.6 An eIPO service provider should make arrangements with the issuing company with a view that an electronic copy of the prospectus is available on the eIPO service provider's website no later than the opening of the public offering period.

3. **Application Procedures and Contents of Website**

3.1 An eIPO service provider should specify clearly the terms and conditions¹ governing the relationships between itself, the issuing company, the vendor of the securities (if applicable) and the applicant regarding the securities application collection service. The terms and conditions must, among others, clearly state that the eIPO service provider, not the issuing company or the vendor of the securities (if applicable) is responsible to the applicant in the event that the eIPO service provider fails to make a valid application in the offering.

¹ The terms and conditions are matters for each eIPO service provider to determine possibly after taking legal advice. The eIPO service provider in making an application to the company issuing securities or to the vendor selling securities will agree to be bound by the terms and conditions set by that company or vendor. Accordingly, the eIPO service provider may choose to reflect some of the terms and conditions set by the issuing company or vendor for persons providing the eIPO services.

- 3.2 An eIPO service provider should specify clearly the procedures regarding the application of securities of the issuing company or the vendor by applicants through the eIPO service provided by it including, without limitation:
- (a) the procedures for payment² to the eIPO service provider;
 - (b) the procedures for refunding money to applicants;
 - (c) the procedures for distribution of securities certificates or crediting the applicant's securities account in the event that an application is successful;
 - (d) a description of any additional remuneration (such as fees, charges) that is to be paid by the applicants to it other than the standard brokerage fee and transaction levy already specified in the prospectus³;
 - (e) the deadline for the submission of application to it by the applicants.
- 3.3 An eIPO service provider should take reasonable steps to ensure that no applications or monies can be accepted once the offer closes.
- 3.4 An eIPO service provider should comply with the terms and conditions which are specified in the application forms issued by the issuing company or the vendor.
- 3.5 An eIPO service provider should comply with any reasonable request by the issuing company to make specified disclosures in its website in connection with a prospectus. For example, such disclosure may include statements as to the intended jurisdiction to which the public offering of the securities is made and in which the electronic prospectus can be lawfully distributed. The issuing company should supply the text of such disclosures with the electronic prospectus to eIPO service providers.

4. Website Design and Operation

- 4.1 An eIPO service provider should ensure that, in designing the application collection procedures to be followed by applicants on the website:

² Where the eIPO service provider is making loan facilities available, the terms of the facilities should be disclosed.

³ As set out in the SFC's Code of Conduct for Persons Registered with the Securities and Futures Commission "charges, mark-ups, or fees affecting a client shall be fair and reasonable under the circumstances, and be characterised by good faith."

- (a) the applicants must be given an opportunity to read or access the electronic prospectus before being given access to the webpages where the application information (e.g. number of securities to be applied for, selection of payment methods) is collected; and
 - (b) the applicants must be required to confirm separately the following before being given access to the webpages where the application information is collected:
 - (i) they have been provided with sufficient opportunity to access the prospectus and the information disclosed in the prospectus;
 - (ii) they have read and agree to be bound by the terms and conditions set out in the eIPO service provider's website; and
 - (iii) they are eligible to apply.
- 4.2 An eIPO service provider should give a confirmation to the applicants as soon as possible once it has received the application information submitted by them.
- 4.3 An eIPO service provider should ensure that 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.
- 4.4 An eIPO service provider should ensure that information obtained from the applicants is handled in compliance with the Personal Data (Privacy) Ordinance.

5. System Integrity

- 5.1 An eIPO service provider should take all reasonable measures to ensure that its computer systems have sufficient capacity and adequate security to protect the integrity of the transactions. Moreover, an eIPO service provider should put in place contingency plans to enable it to deal with the situation where the securities application collection service provided through the Internet is disrupted.
- 5.2 An eIPO service provider should ensure that reasonable and adequate safeguards are put in place to prevent tampering with the contents of the electronic prospectus and to ensure that applicants are given access to a complete and unaltered copy of the electronic prospectus.
- 5.3 An eIPO service provider should display a warning message on its Internet webpages to alert applicants to the potential risk of conducting transactions through the Internet. The message should include, among other things,

warnings to the effect that transactions over the Internet 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.