SFC's Consultation Paper on
Proposed Amendments to the Companies Ordinance
To Facilitate Offers of Shares and Debentures

Introduction

This paper is submitted by the financial institutions listed below in response to the SFC's Consultation Paper and draft 6 of the Companies (Amendment) Bill. We set out below our comments on the above Consultation Paper and (where relevant) the draft Companies (Amendment) Bill.

While we generally support the overall direction of the major proposals set out in the Consultation Paper, we have set out in this paper our comments on some of the detailed changes proposed by the SFC.

Comments on SFC's Proposals

Consult-ation Paper Para. No.	**Relevant Section of Bill**	**Comments**
Offers Excluded from the Prospectus Regime		
19 & 20	17th Sch. Pt 1	We welcome the proposed clarification as to the types of offers that can be made without triggering the prospectus regime. If the justification for excluding the categories of offers set out in paragraph 20 of the Consultation Paper from the definition of "prospectus" is that those offers are not regarded as offers to the public, then it would be better for the legislation to provide that those offers are not to be regarded as offers to the public (similar to the existing "professional investors" exemption for overseas companies in section 343(2) of the Companies Ordinance and the existing "domestic concern" exemption in section 48A of the Companies Ordinance). The exemptions make clear that an offer made outside Hong Kong to persons outside Hong Kong will not be subject to the prospectus requirements. It would be appreciated if the new legislation made clear the position with regard to an offer made from Hong Kong to a person outside Hong Kong, which it is presumed is also intended to be exempt from the prospectus requirements. Our interpretation is that the conditions of the exemptions from the prospectus requirements need only be applied to offers to relevant persons in Hong Kong. It would be better if the new legislation clarified this interpretation. We agree with all of the proposed changes set out in the new Seventeenth Schedule to the Companies Ordinance, subject to the following comments:

17th Sch Pt 1 Para 1	It is proposed that the existing "professional investors" exemption for overseas companies will be repealed (see page 33 of the Consultation Paper) and will be replaced by the new exclusion from the definition of "prospectus" for offers made to professional investors as defined in the Securities and Futures Ordinance ("**SFO**"). The existing "professional investors" class exemption available to Hong Kong companies set out in section 3 of the Companies Ordinance (Exemption of Companies and Prospectuses from Compliance with Provisions) Notice should similarly be repealed.
17th Sch Pt 1 Para 3	We believe that the proposed cap of HK$1,000,000 on total funds raised is too low. In order for this exception to be of practical use, we suggest that the cap be raised to HK$10,000,000.
17th Sch Pt 1 Para 4	In order for this exception to be of practical use, we believe that the proposed floor on the amount to be paid by subscribers or purchasers should be lowered to HK$250,000. We note that the corresponding minimum under equivalent UK legislation is €40,000. We also note that the usual minimum subscription amount for retail bonds is about HK$50,000 and that the minimum subscription amount we have proposed above is five times this number already.
17th Sch Pt 1 Para 5	This provision excludes an offer made outside Hong Kong by a company incorporated in or outside Hong Kong to persons outside Hong Kong. We note that s.103(3)(j) of the SFO excludes documents made in respect of securities which are or are intended to be disposed of only to persons outside Hong Kong, without distinguishing between offers made in/from Hong Kong and offers made outside Hong Kong. We suggest that para. 5 of the 17th Schedule should be correspondingly expanded to cover offers made in/from Hong Kong to persons outside Hong Kong.
17th Sch Pt 1 Para 7	We suggest that the word "genuine" should be changed to "in good faith" to reflect the language set out in s.103(3)(d) of the SFO.
17th Sch Pt 1 Para 8	Since the content of an offer document for a share repurchase by way of a general offer is also prescribed by s. 4.1 of the Share Repurchase Code, this exclusion should also cover an offer in connection with a share repurchase by way of a general offer. This exemption should also apply to takeovers, mergers and share repurchases according to equivalent overseas legislation.
17th Sch Pt 1 Para 11 & Pt 4 Para 5	The exclusion applies to an offer to "qualifying persons" of shares in or debentures of a company by the company, or by another company which is a member of the same group of companies. Qualifying persons include former employees, directors and consultants. The legislation should clarify the meaning of "former" - how long ago must the relevant employees, directors and

consultants have worked for the company concerned to come within the definition of "qualifying persons"?

A consultant is defined in para. 5(b) of Part 4 of the 17th Schedule as a person who "pursuant to a contract for services, renders services to a company which are commonly rendered by an employee of the company or a like company". This limits the exemption to people acting in a similar capacity to employees (except that they are "independent contractors"). Some companies (especially Internet companies) may also wish to offer shares to consultants in a wider sense, such as members of an advisory board or people providing professional services (rather than services similar to those provided by an employee). The current definition of consultants would not cover such situations and limits the ability of companies which may wish to offer shares to such consultants for incentive or remuneration purposes.

"Qualifying person" is defined "in relation to a company". It is not entirely clear which company the definition is referring to. It could be:

- the company whose shares are the subject of the offer; or
- the company making the offer.

It would make more sense for "a company" to refer to the latter. It would be helpful if the legislation could clarify this point to avoid any argument that only offers to employees of the company whose shares are the subject of the offer are exempted.

Trusts can be used in connection with employee share plans in two ways:

- sometimes a trust is used as a holding vehicle for shares, in which case the offer may be made by the trustees. Please clarify whether the "qualifying persons" exemption would apply in this case.
- where there are legal or foreign exchange restrictions on a person in another jurisdiction (e.g. the PRC) acquiring shares in a company, a trust or another investment vehicle may be used to acquire the shares on the employee's behalf (i.e., the trust or investment vehicle would be the offeree). Please clarify whether this would fall within the "qualifying persons" exemption.

It would also be useful if the drafting of the exemption could make clear that it covers an offer of shares in a group company to employees, directors, consultants, etc. of any group company (which is presumably what is intended).

Clarification of the scope of "same group of companies" would also be helpful. Frequently, companies wish to offer shares to employees of joint ventures and affiliates (in which the holding

company may hold an interest of 50% or less). If these joint ventures and affiliates fall outside the definition of "group companies", the company concerned would have to seek to rely on another exemption, which could be inconvenient or impossible. We submit that "same group of companies" should be defined to cover joint ventures and affiliates.

It is generally accepted that where a company offers shares to employees, the offer comes within the "domestic concern" exemption in s. 48A. This exemption is notoriously vague. We would welcome any clarification as to the scope of this exemption.

The draft Companies (Amendment) Bill 2003 does not repeal the "domestic concern" exemption in s. 48A. It could be argued that the existence of a clear exemption in the 17th Schedule would raise a presumption that cases falling outside the exemption should not be regarded as falling within the "domestic concern" exemption. It would be helpful if the SFC could clarify whether one could rely on the "domestic concern" exemption if the relevant offer does not fall under the categories of offers set out in the 17th Schedule.

It is generally accepted that the "domestic concern" provision would also cover an offer of options in a company to employees. Please confirm that this is the case. Please also clarify whether the new "qualifying person" exemption would also cover offers of options to qualifying persons.

21 Agreed.

22	s. 38AA	Given that the shares or debentures offered may be fungible with shares or debentures which are already in issue and held by the relevant shareholder and "the cascading effect" through the purchasers on-selling such securities, how does the SFC envisage that these restrictions will be administered and policed in practice? We believe that there would be difficulties in implementing such restrictions in practice. It would be helpful if the SFC could clarify what mischief this provision is aimed at addressing. If its aim is to stop persons from circumventing the prospectus regime through on-sales by persons who received shares under an excluded offer, is this not already covered by s. 41? If the SFC decides to retain this provision, we believe that the SFC's exemption power should be extended to cover s. 38AA to allow for some flexibility on a case-by-case basis. Since sales to persons outside Hong Kong will be excluded from the definition of prospectus (see para. 5 Pt 1 of 17th Schedule), s. 38AA should only restrict on-sale of the restricted securities to the public in Hong Kong, and should be correspondingly amended. In relation to s.38AA(b), what is the justification for the distinction between listed shares or debentures and those that are unlisted? On-sales of listed and unlisted shares or debentures should both be permitted after the prescribed period. In addition, we suggest that this provision be extended to cover shares or debentures which are listed on overseas stock markets. Further, s. 41 of the Companies Ordinance only provides for a rebuttable presumption that if shares or debentures are offered to the public within 6 months after allotment, the original allotment was made with a view to an offer for sale to the public. By requiring holders of shares or debentures under a 17th Sch offer to retain their shares or debentures for 6 months, s.38AA goes beyond the requirements of s.41. If the SFC believes that some period is required, we would suggest a shorter period of 1 month. S.41 will still apply to avoid the risk of abuse by issuers. S. 41 should also clarify that where, within six months of the original allotment, the shares or debentures are offered in the manner set out in Part 1 of the 17th Schedule, then that offer would not be considered as an offer to the public for the purposes of s. 41.

Flexible Implementation of the Prospectus Regime

23 & 24

Agreed. We note that the SFC will be given a wide discretion to grant an exemption from compliance with the relevant provisions when the exemption would not be prejudicial to the interest of the investing public. The SFC should consider providing guidance as to how it intends to exercise its discretion.

25

Agreed. The SFC should consider providing guidance as to the circumstances under which SFC may consider granting the relevant exemptions from the relevant prospectus requirements.

In addition, we believe that the SFC should also be granted a discretion to exempt companies from the following requirements:

- s. 37 - under s. 342A, the SFC has the power to exempt an overseas company from compliance with s. 342(1) which provides, among other things, that a prospectus shall be dated. The SFC currently does not have the power to grant an exemption in relation to the equivalent provision for Hong Kong companies, i.e., s. 37.
- s. 38(1A) - this relates to the legend to be inserted in the prospectus. There should be flexibility as to the terms of the legend, its applicability, the language required and where the legend should be inserted. We note that this has been added to the proposed language to amend s.38(1A) in the 6th draft of the Companies (Amendment) Bill 2003, but was not set out in the Consultation Paper);
- ss. 38D(2) & (3) / ss. 342C(2) & (3) - this relates to the statements which are to appear in the prospectus and the documents to be endorsed on the prospectus. It may be desirable for the SFC to preserve some flexibility as to compliance with these provisions by reserving the power to grant exemptions on a case-by-case basis.
- s.44B(2) - this relates to refunds of application monies if listing approval is not granted. There should be flexibility as to when the application monies are required to paid back and the amount of interest to be charged. The SFC currently has the power to grant an exemption from compliance with a similar provision, s.42(4).

26 to 28	19th Sch (18th Sch in the draft Companies (Amendment) Bill 2003)	We submit that the current formulation of the statement in para. 1(1)(d)(i) is incorrect. We submit that it should read as follows: "no application for any shares or debentures mentioned in the advertisement should be made by any person, nor would such application be accepted, without the completion of a formal application form or other application procedure that is to be issued with or in respect of a prospectus". The proposed language in 19th Schedule also omits to include (and should add back) one of the categories of permissible content set out in para. 4.02 of the Offer Awareness Guidelines, namely, legends to clarify the legal nature of the materials (provided the legends are consistent with the materials not being a prospectus or otherwise prohibited under the relevant securities regulations). Paragraph 3.05 of the Offer Awareness Guidelines requires the inclusion of a statement that the issuer of the prospectus or its directors take responsibility for the contents whereas the legislative provisions require the directors of the company to take responsibility for the contents of offer awareness publicity. In view of the very limited nature of offer awareness publicity, we believe it would be unnecessary to require directors' responsibility in the form of a responsibility statement to be included in the offer awareness materials. Such inclusion is likely to lead to this type of publicity requiring board approval, which may not be appropriate in light of its extremely limited content.
29 & 30	20th Sch of draft Companies (Amendment) Bill 2003	We support the introduction of a "dual prospectus" structure. In relation to the definition of "programme prospectus" in para 29(d), we believe that issuers may wish to update their programme prospectus within a certain period of time after the annual report has been issued. We suggest that legislation should allow for programme prospectus issuers to do so within a certain period of time after the issue of the annual report (e.g. within three months). It is not clear to what extent the constituent prospectuses must be kept up to date during the term of a program. Where issuers offer securities from a program on a continuous basis, it is impractical to expect issuers to revisit the constituent prospectuses on a daily basis during the life of the program.

Level Playing Field for Offers Made by Local and Overseas Companies and Other Miscellaneous Revisions

31	Agreed.
32	While the introduction of flexibility not to register material contracts is generally welcomed, we submit that it is more appropriate for the requirement to be waivable on a case-by-case

basis in the context of initial public share offerings, since we have found that the requirement for those contracts to be publicly available helps focus people's minds on the material contracts. We have also found that issuers may not allow copies of material contracts to be made when documents are only available for inspection even if the investor wished to retain a record of such contracts. For debt issues, this issue may not be as relevant. Corresponding changes should be made to para. 17 of the Third Schedule to the Companies Ordinance.

We note that there is currently a discrepancy between the prospectus signing requirement for a Hong Kong company (s. 38D(3)) and an overseas company (s.342C(3)). The SFC may consider simplifying the signing requirement applicable to Hong Kong companies by bringing it in line with the requirement for overseas companies.

Prospectus Liabilities Provisions

33-35	Annex C Amendments to ss. 40 & 342E	The draft s.40(6) provides that "persons who subscribe for any shares or debentures *on the faith of the prospectus"* (emphasis added) include persons who acquire the shares or debentures in an offer for subscription *or an offer for sale* (emphasis added) through an agent *or intermediary* (emphasis added). This would have the result that a person who subscribes or purchases shares through an agent or intermediary need not prove that he or she did so "on the faith of the prospectus", and he or she would be in a better position compared to other investors who would have to prove their reliance on the prospectus to make out the claim for compensation under s.40. Either everyone should have to show that he acted "on the faith of the prospectus" or none should. Section 40 (as proposed to be amended and assuming the suggested amendments set out above are made) would provide a civil remedy for persons who (a) subscribed for; or (b) subscribed *or purchased* (emphasis added) through an agent or intermediary, shares or debentures on the faith of a prospectus containing an untrue statement and who thereby suffered loss. Section 342E (as proposed to be amended) would extend s. 40 to prospectuses of overseas companies which are issued in Hong Kong that offer shares or debentures for subscription *or sale* (emphasis added). Whilst prospectuses for offers for sale come within the ambit of s.40, s.40 would not provide a remedy for persons who *purchase* (as distinct from subscribe for) shares *directly* (as distinct from indirectly through an agent or intermediary) from the selling shareholders in the offers for sale. Although s.342E purports to extend s.40 to a prospectus for an offer for sale by overseas companies, s.40 would not make the civil remedy available to persons who purchase shares directly in an offer for sale. The SFC should consider whether this is the intended effect of the

		proposed amendments. Contrary to the proposed amendments set out in the Consultation Paper, we note that the proposed amendments to s.40 set out in s.10 of the draft Companies (Amendment) Bill 2003 omit the words "or an offer for sale". However, the words "or purchase" is retained in s.23 of the Companies (Amendment) Bill 2003 (which contains the corresponding proposed amendment to s. 342E of the Companies Ordinance which applies to overseas companies). The proposed amendments need to be modified to make it clear whether or not offers for sale are intended to be caught. In relation to an international share offering with a Rule 144A (US Securities Act) tranche, the shares in that tranche which are to be offered to "qualified institutional buyers" must first be sold to the managers as principal and then resold by the managers to such buyers. As such buyers would not be acquiring the shares through "an agent" (the managers acquire and resell the shares as principal), please clarify whether the managers would be considered as "intermediaries" so that the remedy in s.40 would be available to such buyers. Contrary to the proposed amendments set out in the Consultation Paper, we note that the proposed amendments to s.40 set out in s.10 of the draft Companies (Amendment) Bill 2003 omit the word "intermediary". This would result in purchasers of shares under the Rule 144A tranche not being entitled to the remedy under s.40 because the managers from which they bought the shares would be acting as principal and not as an agent. Does this reflect the intentions of the SFC?
36 & 37	Annex C Amendments to s. 41A & 343	We submit that the introduction of prospectus liability for pure omission is a matter that should be tackled in the third phase rather than during the present phase. Prospectus liability (especially criminal and civil liability for untrue statements in a prospectus) for pure omissions should not be attached until the overall standard for disclosure is clearly defined against which the omission can be tested. We note, for example, that s. 80 of the UK Financial Services and Markets Act 2000 prescribes a sophisticated disclosure standard. While para. 3 of the Third Schedule goes some way to defining a standard, that standard is not tied to the civil and criminal prospectus liability provisions such as ss. 40 and 40A, and contravention of the Third Schedule content requirements would currently result in liability to pay a fine and not other civil or criminal remedies. The language of the disclosure standard to be adopted would benefit from further public consultation.

38 & 39	Annex D	Agreed. However, where a guarantee or similar credit enhancement is effectively purchased by an issuer from an unrelated guarantor (which will be doing so as part of its ordinary business for a fee), the SFC may consider using its powers to waive the disclosure requirements relating to guarantor corporations. (Please refer to our comment on para. 31(3) of the Third Schedule in the section headed "Other Comments on the Companies Ordinance" below).

Comments on Other Parts of the Consultation Paper

7		The SFC proposes to grant a class exemption to exempt all prospectuses relating to offers of debentures which are to be listed on the Stock Exchange from compliance with the Third Schedule requirement to the extent that such requirements are the same as or similar to the requirements under the Listing Rules, provided that no waiver, modification or other dispensation in relation to such requirements has been granted by Stock Exchange. First, we suggest that the same class exemption should also be made available to offers of shares which are to be listed on the Stock Exchange. Secondly, as it would be pointless to obtain a waiver from one regulatory authority only to have the corresponding waiver refused by the other authority, it would be more helpful to issuers if the Companies Ordinance would also exempt prospectuses from compliance with Third Schedule requirements where the Stock Exchange has granted a waiver, modification or other dispensation. This way, issuers would only have to deal with one regulator. The regulators could coordinate and agree as between themselves as to whether or not such a waiver should be granted.

Other Comments on the Prospectus-Related Requirements of the Companies Ordinance

We have taken this opportunity to present to the SFC our comments on other sections of the Companies Ordinance with which we have encountered difficulties in practice and which would benefit from amendment during this round of proposed changes to the Companies Ordinance.

Topic	**Relevant Section of the Companies Ordinance**	**Comments**
Definition of "debenture"	s. 2(1)	The current inclusive definition of "debenture" is unnecessarily wide. Since the defined meaning covers "any other securities",

		we suggest that the word “includes” be replaced by “means”. Further, we suggest that the word “debt” should be added after “other” to clarify that “any other securities” means “any other debt securities”. The legislation should make provision for the SFC to exclude by Gazette notice, specified types of security from the definition. It is generally accepted by the market that “plain vanilla” certificates of deposits are not debentures. The view is held, however, that “structured” certificates of deposit are debentures. Hence, it is unclear whether a particular certificate of deposit would or would not be considered a debenture. The definition of debentures should also clarify that it does not include certificates of deposit issued by an authorised institution. Certificates of deposit issued by authorised financial institutions (whether structured or not) are an ordinary banking business product and should not be regulated under the Companies Ordinance. We understand that the Stock Exchange has plans to introduce capital protected instruments. Listed capital protected instruments should be excluded from the definition of debenture because the listing regime would provide adequate protection to the investing public for this product.
Application Forms	ss. 38(3) & 342(3)	If a Hong Kong company issues an offer document in relation to an offer that comes within the 17th Schedule, s.38(3) would not allow application forms to be sent to such offerees. In order to do so, issuers would need to apply for a case-by-case exemption under s.38A(1). We submit that s.38(3) should not apply to prohibit the sending of application forms to such offerees. The Companies Ordinance should be amended to make this clear or a corresponding class exemption should be introduced under s.38A(2). With respect of s.342(3), since documents making offers which come under the 17th Schedule will not be “prospectuses”, can application forms be issued to those offerees? Although one can argue that “such a company mentioned in subsection (1)” points to an overseas company issuing a prospectus in Hong Kong, and because the offer document would not be a prospectus, the company issuing the offer document cannot be a company mentioned in s.342(1) and therefore s.342(3) would not apply, it would be preferable for the legislation to clarify that such application forms can be sent to offerees in relation to offers set out in the 17th Schedule.
Submission of certified copies to the Registrar of	Proposed draft ss. 39C & 342CC	These proposed new sections allow the filing of certified true and legible copies of documents which are required to be submitted to the Registrar of Companies under Parts II and XII of the Companies Ordinance. In addition to certification by lawyers and accountants, certification can also be made by two directors or by

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a director and a company secretary.

We presume that the legislative intention is for these sections to apply only to documents required to be submitted to the Registrar for prospectus registration purposes and not, e.g., apply to submission of returns of allotment (s.45) or notices of changes in capital (ss.54 and 55). Currently, these sections are drafted to cover "any document (howsoever described) [which] is required under this Part to be submitted to the Registrar", and will therefore need to be amended to reflect the intended scope.

The proposed provisions are unlikely to be of much practical use. The prospectus-related documents which are required to be submitted to the Registrar (taking into account the proposed amendments) would include: the prospectus, application forms, expert consent letters, a list of selling shareholders and the statement of adjustments. Presumably, these sections are proposed to be introduced to allow certified copies to be filed when originals are not yet available at the time of prospectus registration, e.g. if the prospectus and application forms are still being printed or the original expert consent letters have been signed but the originals are in the process of being sent to Hong Kong. However, these sections are unlikely to help resolve these timing issues since no person should be able to certify that a copy of the prospectus is a true copy of the original prospectus unless the original prospectus is bought into existence; similarly, no one should be able to certify that a copy of the expert consent letter is a true copy of the original without having sighted the original consent letter. We believe that the requirements set out in the "Guidelines on applying for a relaxation from the procedural formalities to be fulfilled upon registration of a prospectus under the Companies Ordinance" would be more workable in practice.

Further, the minimum requirement for certification by directors/company secretary under these sections is 2 directors or 1 director and a company secretary. This is similar to the prospectus certification requirement for overseas companies under s.342C(3). For the purposes of a "true and legible copy" certification, it should be sufficient for one director or a company secretary to make the certification.

Further, a director or a company secretary should be able to sign by his or her agent authorised in writing, similar to the prospectus certification requirements under ss.38D(3) and 342C(3).

It is also unclear how these sections interact with the "Guidelines on applying for a relaxation from the procedural formalities to be fulfilled upon registration of a prospectus under the Companies Ordinance" issued by the SFC and the prospectus signing requirements under ss.38D(3) and 342C(3). The SFC should consider clarifying this in the legislation.

Statement in lieu of a prospectus	s. 43	Since a Hong Kong company (assuming it is not a private company) which issues an offer document containing an offer set out in the 17th Schedule would not be issuing a prospectus, that company would not be exempt from delivering a statement in lieu of prospectus to the Registrar of Companies before allotment of its shares or debentures. We request the SFC to confirm whether or not this is the intended effect of s.43. We note that there are no similar provision requiring overseas companies which are making such offers to file such a statement with the Registrar of Companies.
Prospectus content require-ments	Third Schedule	***Paragraph 27*** The requirements under para. 27 as to gross trading income or sales turnover should be incorporated into the requirements under para. 31 (which relates to the content requirements of an accountants' report). The timing requirement for para. 27 is different from the timing requirement for the financial information to be included in the accountants' report set out in para. 31. Para. 27 requires the information to be presented for the three preceding years, whereas (unless a statement to the contrary is added) the information required under para. 31 must be for a period of three years ending on a date [no more than] three months prior to the issue of the prospectus. This discrepancy can be resolved by incorporating the content requirement in para. 27 into para. 31 and applying the timing requirement under para. 31. Further, Rule 8.06 of the Listing Rules requires the latest financial period reported on by the reporting accountants to have ended no more than six months before the date of the listing document whereas para. 31 requires a negative statement where the accountants' report is more than three months' old. Since, in practice, issuers are generally permitted to present accounts which are not more than six months out of date, the Companies Ordinance requirement should be amended to bring it in line with the Listing Rule requirement. When an issuer is undergoing an offering shortly after its financial year-end, it generally would not have sufficient time to prepare accounts up to the end of the previous financial year in order to comply with the requirements of paras. 27 and 31. In practice, a waiver is usually granted from strict compliance with such timing requirements when the prospectus is issued within the first three months of the new financial year. To avoid the necessity of seeking a waiver each and every time this occurs, the SFC may consider clarifying in the legislation that the issuer need not update its accounts to previous financial year-end when the prospectus is to be issued within three months after financial year-end.

Paragraph 31(3)

Where a company has subsidiaries, paragraph 31(3) requires that **(1)** profits and losses must be disclosed **either** (A)(i) by showing the results of the holding company separately + showing the combined results of its subsidiaries, or (ii) by showing the results of the holding company separately + showing results of each subsidiary individually **or** (B) by showing the combined results of the holding company and its subsidiaries; and **(2)** assets and liabilities must be disclosed **either** (i) by showing the position of the holding company separately + showing the combined position of its subsidiaries (with or without the holding company's assets and liabilities), **or** (ii) by showing the position of the holding company separately + showing the position of each subsidiary individually.

There is a choice between disclosing the profit and loss account on a combined basis or separately, but the balance sheet of the holding company must be separately disclosed. Please clarify the rationale for the different ways of presenting profits and losses/ assets and liabilities.

We also note, in connection with a number of previous initial public share offerings, that companies have not disclosed the balance sheet of the holding company separately; instead, the combined balance sheet of the group is disclosed. If it is the intention to allow companies to disclose the balance sheet on a group basis rather than insisting on separate disclosure of the holding company's balance sheet, para. 31(1) should be amended to clarify this.

Paragraph 34(2)(h)

Please clarify whether this paragraph applies to properties owned and actually rented out, or to all properties owned (whether held for investment, development or sale). Please also clarify, where the property is actually rented out, whether the estimated current net rental would be calculated pursuant to the requirements of this paragraph or should the actual current net rental be disclosed.

Paragraph 34(4)

We submit that, where the issuer has obtained more than one valuation report regarding any of the company's interests in land or buildings within 6 months before the issue of the prospectus, it may not be helpful to include such other valuation reports in the prospectus as it might be confusing to investors to see different valuations within a short period of time without any explanation as to the effect of the various methods used in valuation, the impact of intervening events, the differences in the scope of properties valued and other factors which might have contributed to the difference in valuation. However, to require issuers to include such information in the prospectus may be unduly burdensome.

We submit that only the latest valuation of the properties should be included in the prospectus.

Paragraph 45

Directors have often been reluctant to disclose their residential address for privacy reasons. The corresponding requirement under the Listing Rules (Appendix 1A para. 41) permits a choice between disclosing their residential and business addresses. We suggest that this paragraph should be changed to provide for a choice between disclosing the business address or the residential address of a director. If it is necessary to disclose a director's place of residence, the Companies Ordinance should only require disclosure of the country of residence.

Paragraph 46(c)(ii)

The requirement that property valuers must have paid-up capital of no less than HK$1 million and net assets of at least HK$1 million should be deleted because these requirements would in practice provide little assurance that any claim against the professional valuers would be met. We note that there are no similar capital or net asset requirements in the Companies Ordinance in relation to other professionals.

List of submitting financial institutions

Citigroup Global Markets Asia Limited

Credit Suisse First Boston (Hong Kong) Limited

JP Morgan Securities (Far East) Limited

Merrill Lynch (Asia Pacific) Limited

Morgan Stanley Dean Witter Asia Limited