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Deloitte & Touche Corporate Finance Ltd

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4 August 2003

Hong Kong Exchanges and Clearing Limited
11th Floor
One International Finance Centre
1 Harbour View Street
Hong Kong

Attn: Listing Division

Securities and Futures Commission
8th Floor, Chater House
8 Connaught Road Central
Hong Kong

Attn: Corporate Finance Division

Dear Sirs,

SEHK/SFC Consultation Paper on the Regulation of Sponsors and Independent Financial Advisers

We write to supplement our submission of 23 July 2003.

Although we believe that the quality of work provided by all professional firms and directors involved in company flotations and public transactions should be improved, we are against various recommendations proposed in the consultation paper. This is because many of them are unworkable, unrealistic, superseded by recent regulation or in some cases unnecessarily harsh or punitive.

It is wrong, to place all of the burden of an IPO, CPT or RPT on the shoulders of the sponsors or independent financial advisers. This is an abrogation of responsibilities of the directors in particular, but also auditors, lawyers and valuers. It assumes that an outsider such as a sponsor can know more than the directors about the relevant company. This is not reasonable.

Hong Kong decided that its future lies in attracting PRC companies to our financial markets, no doubt because the Hong Kong market is mature and new candidates from Hong Kong are more thin on the ground. This initiative brings with it the significant risks of an emerging market. To simply push blame for malpractice primarily onto the sponsors is counter productive and wrong in principle. It remains clearly established international and Hong Kong practice that directors assume primary accountability and responsibilities for their companies.

To establish a "name and shame" regime with a black list of discredited sponsors and independent financial advisers who fall foul of remiss directors is demeaning and simply not appropriate to a world class financial market of Hong Kong's status. To our knowledge there is no equivalent list of vetoed advisers worldwide nor a black list for other professions in Hong Kong.

The proposals if implemented in their current form have the potential for the following effects:

- Larger and more diligent investment banks will be driven away from the Hong Kong market because they are not prepared to assume much a heavy responsibility for China Risk or underwrite the shortcoming of others;

- Add significant costs to an already expensive IPO environment in that investment banks will be driven to require lawyers to take over responsibilities for prospectuses. Such lawyers will adopt 10b(5) style levels of due diligence and charge accordingly;

- Prospectuses may become increasingly bland, US style documents consisting largely of legal protections for underwriters and devoid of useful corporate information including profits forecasts, business plans etc. ;

- The focus of attention will shift from directors, who, under law and established practice, should assume primary responsibility;

In our view many of the initiatives in the paper are now unnecessary, because of the introduction of the Securities and Futures Ordinance ("SFO") and SFC Code of Conduct for Financial Advisers, both released in April 2003. The SFO introduces legal process for errors and omissions in public documents under the dual filing system. The Code of Conduct gives the SFC more than sufficient power to police financial adviser activities. It is inappropriate to add another layer of regulation and confusing to establish a further group of regulators within the Hong Kong Exchange. The SFC is the correct institution to regulate advisers under their statutory powers. To empower the Stock Exchange Listing Division and Committee as executive, judge, jury and executioner of financial advisers goes contrary to world practice and notions of justice and fairness.

We address the particular questions outlined in the consultation paper in the attached report.

Yours faithfully,
for and on behalf of
Deloitte & Touche Corporate Finance Limited

Lawrence Chia
Managing Director

Q1	Yes to list. There should be mechanisms to ensure that sponsors cannot be removed from the list without due process.
Q2	As above.
Q3	Yes, but (i) the supervision of the licensing regime of corporate financiers should be under the SFC as it is part of its statutory functions and (ii) there should be no list of unacceptable individuals. It is demeaning and inappropriate in a world class international market.
Q4	Yes, on individual but no to the requirement for sponsors firms to have at least four eligible supervisors. A better approach is that currently adopted in the GEM Listing Rules – at least two principal supervisors and two assistant supervisors. IFA firms should have at least one principal supervisor and one assistant supervisor.
Q5	Yes, but flexibility must be maintained.
Q6	Yes, but under the SFC's auspices. Also, disciplinary actions in which a breach has not been proven, or a settlement has been reached, should be excluded from the reporting requirements.
Q7	Yes.
Q8	Yes to declaration of facts in application form. No to individual undertakings. This is already covered in SFC Code of Conduct for advisers. There is no similar requirement for other professionals.
Q9	Yes to some but the we refer to our submission of 23rd July 2003 on details of our views on independence issues.
Q10	Yes.
Q11 .	No. Agree with the "reasonable care" and "reasonable investigation" concepts. However, (i) the proposed code is unworkable. Inter alia, it is impossible to conduct investigations to satisfy oneself that "directors can be expected to honour their obligations"; (ii) it is unrealistic to expect sponsors to be able to carry out investigations to satisfy themselves that there are no reasonable grounds for believing that "expert sections" are untrue or omit to state a material fact required to be stated to avoid the statement being misleading. How can the sponsor be expected to know the very issue on which expert assistance is sought? Should they engage

	another firm to review the work carried out by the reporting accountants or a PRC law firm giving a legal opinion? Clearly the sponsor itself cannot be expected to have the expert knowledge and expertise itself to review the work of an expert in a specialised field. The experts should take responsibility for their own work; and (iii) the Exchange should recognise that in many instances it is impossible to positively satisfy oneself of the truth and completeness of non-experts statements.
Q12	No. The SFC Code of Conduct for advisers issued April 2003 already is sufficient. The proposed Code of Conduct seeks to impose totally inappropriate and unrealistic obligations on sponsors.
Q13	No. It is unrealistic to expect sponsors to take responsibility for the so-called "expert sections". Also, there are practical difficulties to ensure that a document is written in "plain language" when it often has to refer to technical issues relating to a company's business. Also the Exchange itself has editorial amendments.
Q14	No. How can the IFA satisfy itself as to whether any third party expert advice or opinion relied upon is untrue or omits a material fact? They are not the experts in the relative fields and they have not carried out the work which the expert will have carried out.
Q15	No, the monitoring programme is currently taken up by the SFC and it is more efficient for the SFC to continue this work.
Q16	No. The "Name and Shame" list of unacceptable persons is vindictive, and inappropriate. There is no parallel for other professionals, or other world markets.
Q17	4 supervisors with IPO experience in last two years is too inflexible It could require a large number of IPO in the year. By definition, 30 months transition will not help. Flexibility must be established to recognise previous experience and other aspects of corporate finance experience.

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Attn.: Corporate Finance Division

23 July 2003

Dear Sirs,

Re: Consultation paper on the regulation of sponsors and independent financial advisers

We refer to the consultation paper (the "Consultation Paper") on the regulation of sponsors and independent financial advisers issued in May 2003. We would like to submit our views on various issues regarding the Consultation Paper.

Sponsor independence

We consider that the proposed list of factors of when a sponsor will not be regarded as independent is vague and uncertain. In assessing any professional firm's independence, we believe that the primary consideration factor is whether the firm has any financial interest in the new listing. In the circumstances where the sponsor or any member of the sponsor's group holds shares in or controls the majority of the board of the new applicant or the sponsor and the new applicant are in the same group or where the proceeds raised from an IPO are to be applied to settle debts of the sponsor's group, we fully support your view that the sponsor should not be considered as independent since the sponsor clearly has a financial interest under these circumstances. We would tend to think that the

percentage limit proposed in respect of the use of IPO proceeds to settle debts owed to the sponsors group to be too high, a figure of not more than 5% may be more appropriate.

Also, we disagree with the inclusion in the list of independence impairing factors of the situation where the sponsor or a member of the sponsor's group is the new applicant's auditor or reporting accountant. It is specifically stated that this requirement mirrors practice set out in codes of ethics for accountants. This is incorrect. The Hong Kong Society of Accountants' ethical guidance in this area is set out in Statement 1.292 on Professional Ethics "Corporate Finance Advice". This Statement is explicit that it is not inappropriate for an auditor or reporting accountant to fulfil the responsibilities of a sponsor set out in Chapter 3 of the Listing Rules; a role not involving the promotion of an issue or sale to the public of shares or securities. Perhaps this serves to highlight that sponsor firms which also act as the lead underwriter to an IPO may in fact be less independent due to their financial interest in the new listing.

Due diligence by Sponsors and IFAs

It is proposed in the Consultation Paper that the sponsors and lead underwriters should make a statement in listing documents regarding the extent of their due diligence. We believe that it is an onerous obligation for the sponsor to make such declaration given that it is unclear to what extent of materiality is required. We suggest that there should be a reasonable estimate of materiality in order to decide what is material for disclosure in the listing document.

Further, competition between sponsor firms has intensified and sponsorship fees have been driven down dramatically in recent years. Sponsor firms often cannot cover their costs incurred due to the time involved in new listings. As mentioned in the Consultation Paper, the introduction of new standards of due diligence will lead to increased professional fees. We are concerned that the increased work to be done by sponsors and consequent fees will not be welcomed in the market and competition by firms offering low fees may undermine the effectiveness of the new rules. We propose that the Exchange should set minimum fees consistent with the extent of due diligence required of sponsors. We believe that this would also create a level playing field for sponsor firms.

As for IFAs, we propose that the Exchange should also set similar minimum fees consistent with the extent of due diligence required. The level of fees should be commensurate with the work done.

Continuing sponsorship for Main Board

We do not consider it necessary for the continuing sponsorship requirement to be extended to Main Board listing applicants. Whereas a new applicant on the GEM board is often an emerging company, a new applicant on the Main Board is a mature business that should not require any handholding. As stated in the Consultation Paper, the purpose of the proposed retention of sponsors is to provide guidance and advice to directors of new applicants, in particular, the requirements and application of the Listing Rules and the

responsibilities and obligations of directors of listed issuers. We believe that the preparation for directors' responsibility should be done before the company gets listed, not after. We believe that in the PRC, there is a one-year sponsorship period before a company can apply for listing. We understand that there is a similar requirement in Taiwan. We consider that a similar "pre-sponsorship period" would be more appropriate for new listing applicants in Hong Kong.

We hope you find our comments helpful to your deliberations and look forward to receiving the consultation results and conclusions. Should you require any further clarification regarding our comments, please feel free to contact us.

Yours faithfully,
For and on behalf of
Deloitte & Touche Corporate Finance Limited

Lawrence Chia
Managing Director