



Strictly private and confidential

30<sup>th</sup> July, 2003

By fax (2810 5385) and by hand  
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Corporate Finance Division  
8<sup>th</sup> Floor  
Chater House  
8 Connaught Road Central  
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By fax (2295 3599)  
Hong Kong Exchanges and Clearing Limited  
Listing Division  
11<sup>th</sup> Floor  
One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

Dear Sirs,

**Consultation paper on the regulation of sponsors and independent financial advisers (the "Consultation Paper")**

In response to your invitation of comments on the recommendations proposed in the Consultation Paper, we, First Shanghai Capital Limited, is pleased to provide below our comments thereon for your consideration. First Shanghai Capital Limited is a deemed licensed corporation licensed to perform type 6 regulated activity (i.e. advising in corporate finance) under the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong). Unless defined otherwise, terms used in this letter shall have the same meanings as defined in the Consultation Paper.

**No. Our views**

**Reasons for our views**

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|----|--------------|--|
| 1. | Partly agree | <i>We believe that a list of acceptable sponsors can be maintained by the Stock Exchange. However, we have strong concerns on (i) the admission criteria; (ii) on-going eligibility; (iii) independence; and (iv) the transitional process. Will all current GEM sponsors automatically be included in the new list? If not, those investment bankers which would like to continue to act as sponsors will be required to make their own application. It is anticipated that the application process may take several months or years.</i> |
|----|--------------|--|

2. Partly agree *We believe that a list of acceptable IFAs can be maintained by the Stock Exchange. However, we also have strong concerns on (i) the admission criteria; (ii) on-going eligibility; and (iii) the formation of the new list. Can those investment bankers which would like to be sponsors as well as IFAs make a single application for both qualifications? Although not all investment bankers are interested in the smaller IFA market, they may apply for such qualification so that they are flexible enough to provide a wide range of activities for marketing purpose. As such, in addition to the applications launched by those investment bankers which have a focus on IFA market or are not currently qualified as sponsors, the number of applications can be significant which takes longer processing time.*

3. Disagree *If the "List of unacceptable individual" is made to the public, it would be unfair to the corporate finance company employing such individual because the corporate image of the whole firm would be jeopardised or adversely affected notwithstanding all or other employees are capable or not. Further, it would also be difficult for that individual to continue work in the area of investment banking, or even mean the end of his/her corporate finance career. In addition, we also have concern about the criteria to include an individual into the "Unacceptable List" and under what circumstances would an individual be removed from the List?*

*We suggest that the Stock Exchange may consider to establish a "List of Acceptable Individual" as we believe that the Stock Exchange is stringent in approving such list.*

4. Disagree *The requirement of having four Eligible Persons and their qualifications effectively means that a firm must have at least four senior management staff (i.e. equivalent to positions of senior manager and above). It may pose immediate problem to a number of smaller firms.*

*We are of the opinion that the requirements of two Principal Supervisors and two Assistant Supervisors as currently used in GEM would be more appropriate.*

5. Disagree *We wonder whether a person is eligible if he has significant involvement in three or more significant transactions in the recent one year but does not have four years of corporate finance experience. Further, the definition of "significant involvement" shall also be stated clearly.*

*We suggest that there shall be flexibility in terms of "number of*

*years of corporate finance experience".*

6. Partly agree *We consider that should an objective assessment and a clear explanation be provided by the Stock Exchange on the non-acceptance of a firm to the list of sponsors, the Stock Exchange can make such refusal or cancellation (but subject to the firm's objection).*

*We think that it may be appropriate to adopt a Code of Conduct for Sponsors and IFAs. However, it must be viewed as a code of practice to help the firms improve their corporate governance and operations rather than criteria for admission.*

7. Partly agree *We consider that as long as it is not creating an uneven playing field for smaller firms, such requirement is acceptable. However, we do not know the rationale of having such a HK\$10 million capital requirement.*

*We concur with the present proposal that IFA firms should not be subject to a similar requirement.*

8. Disagree *We note from the Consultation Paper that such undertakings are not currently required by the Main Board and the UKLA while most of them are also not needed by the GEM Board. Chapter 2 the GEM Listing Rules sets out that "the principal function of the Stock Exchange is to provide a fair, orderly and efficient market for the trading of securities. In furtherance of this, the Stock Exchange has made the GEM Listing Rules under section 23 of the Securities and Futures Ordinance prescribing the requirements for the listing of securities on GEM. These comprise requirements which have to be met before securities may be listed and also continuing obligations with which an issuer and, where applicable, a guarantor must comply once listing has been granted." As such, we have doubts that "the sponsor (and also its eligible supervisors) to make the proposed undertakings to the Stock Exchange of complying with (i) the relevant Listing Rules applicable to sponsors and (ii) the proposed Code of Conduct for Sponsors and Independent Financial Advisers" is essential to the Stock Exchange for providing a fair, orderly and efficient market for the trading of securities.*

*Moreover, we are uncertain as to whether the Listing Rules which are designated for governing the listing of securities (and also their issuers) will be exploited if the statement of "a breach of the undertaking will be deemed to be a breach of the Listing Rules and will be subject to disciplinary action" is so established.*

9. Partly disagree *It is realised that should there be an acceptable list of sponsors, those co-sponsors (i.e. firms which are not qualified as sponsors for the time being to act as co-sponsors in IPOs) are no longer retained. In particular, a joint sponsorship is not encouraged unless such IPO is large enough.*

*We suggest that the reasoning for not encouraging joint sponsorship shall be clearly stated.*

10. Partly disagree *Where a director or employee of the sponsor or a close family member of either a director or employee of the sponsor has an interest in or business relationship with the new applicant, it would be sufficient if such director or employee, not the sponsor firm is not involved in the listing process.*

11. Disagree *While a sponsor can perform reasonable investigation as to whether statements in the prospectus are correct in the "non-experts section", it may not be practical to ascertain whether there is any omission. Often, whether a material fact has been omitted is subjective. Also, if information is deliberately withheld by the new applicant and its directors, the sponsor may never find out. Regarding the "experts section", as long as the experts are governed by their respective professional bodies and are independent from the new applicant, there should not be any need for the sponsor to provide further assurance.*

*We may have difficulty in assessing the correctness and completeness of some information in the non-expert section, say, industry overview. Therefore, it is impracticable for sponsor to fully satisfy itself whether information in "non-experts section" is without omission or not misleading.*

12. Strongly disagree *We consider that it shall be applicable to sponsor or IFA "firm" rather than "individual" as it is the firm which accepts or performs the work for its client.*

13. Disagree *We notice that there is no such kind of declaration required to be made by the sponsors and the lead underwriters in the listing documents to be registered in other stock exchanges, such as the UKLA, the TSX and the ASX. In particular, for the related "expert sections" found in the ASX, if the prospectus includes a statement purporting to be made by an expert, the prospectus can be issued once the expert has provided its written consent (and being stated therein). It seems to us that the expert itself is responsible for its statement or opinion expressed in the*

*prospectus.*

*We note that the Stock Exchange proposes to request the sponsors for conducting reasonable investigations on several areas of concern, namely (i) suitability of listing, (ii) "non-expert sections", and (iii) "expert sections" which allow the Stock Exchange to rely upon during its assessment of the applicant's listing application and listing document. While, according to the proposed requirement herein, the Stock Exchange would like the sponsor to make a declaration regarding its reasonable investigations on "non-expert sections" and "expert sections" in the prospectus subsequent to its vetting process. We do not see justification for the sponsors to make such declarations as the sponsors are not experts in such area. Otherwise, there is no need to use experts. Nevertheless, as discussed earlier, notwithstanding that we, as a sponsor, can make investigations (or any applicable review procedures), it is impracticable for us to fully satisfy itself and/or to assure the Stock Exchange whether all the information set out in the "non-expert sections" is without any omission or not misleading. Given the aforesaid limitation, we consider that the sponsor (or the lead underwriter) is not able to provide such declaration. It may be more appropriate to advise the investors to be fully aware of the particular nature of the information set out in the "non-expert sections".*

14. Strongly disagree *Given the role as an IFA, we believe that it is not unacceptable to us to take certain steps regarding the assessment of the fairness and reasonableness of the terms and conditions of the subject transaction or arrangement. However, according to the proposed requirement herein, the Stock Exchange would also like the IFA to perform due diligence work in assessing the correctness and completeness of all the information (including expert advice or opinion relied on) in relation to a transaction or an arrangement and to make a declaration thereon in its letter as enclosed in the circular subsequent to its vetting process. Again, notwithstanding that we, as an IFA, can make appropriate steps and due diligence work, it is impracticable for us to fully satisfy itself and/or to assure the Stock Exchange whether all the information (including expert advice or opinion relied on) in relation to a transaction or an arrangement is without any omission or not misleading. Given the aforesaid limitation, we consider that the IFA is not able to provide such declaration.*
15. Partly agree *We agree that it is appropriate to streamline the administration of the sponsor and IFA regime. However, using a certification process and a targeted program of monitoring may not serve as a*

*"complete" system for assessing the suitability of a firm as a sponsor or an IFA. As such, we suggest that the review of its ongoing eligibility can be made in every two years.*

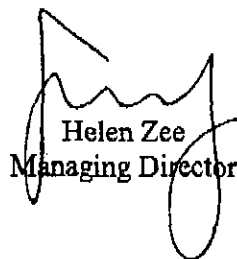
16. Disagree *It is impracticable to extend to "individual" as it is the "firm" to accept and perform the work for its client. It is the responsibility of a firm to ensure high standard or quality of its staff. Further, the Stock Exchange shall have made assessment to the individual when considering whether such individual shall be included in the "List of Acceptable Individual".*

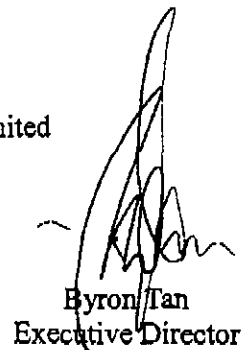
*We therefore are of the view that it is the role of the firm to discharge its duty as a sponsor. Extending disciplinary sanctions to individuals in the firm would be too harsh.*

17. No *Not applicable*  
comment
18. No *Not applicable*  
comment

Should you wish to discuss any of the foregoing, please do not hesitate to contact our Helen Zee on 2532 1536 or our Byron Tan on 2532 1529.

Yours faithfully,  
For and on behalf of  
First Shanghai Capital Limited

  
Helen Zee  
Managing Director

  
Byron Tan  
Executive Director