ANNEX 3

SUMMARY OF QUESTIONS

ACCEPTABLE SPONSOR FIRMS

(Paragraphs 50 to 52 of Part B of the Consultation Paper)

We propose that to be eligible to act as a sponsor to a new applicant or a listed issuer, the firm is required to be accepted by the Exchange for such purposes and admitted to a list of acceptable sponsors maintained by the Exchange. The Exchange may refuse an application as a sponsor or cancel a sponsor's admission to the list if the Exchange considers that the sponsor or applicant does not satisfy the criteria established in order for the firm to be included on the list of acceptable sponsors maintained by the Exchange. We propose that all first instance decisions in relation to eligibility on application; on-going eligibility and independence of a sponsor should be made by the Listing Division and subject to review, if necessary, by the Listing Committee.

Q.1 Do you agree with our proposal?

☑ *Yes*

No

Please state reason(s) for your view

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ACCEPTABLE IFA FIRMS

(Paragraphs 52 to 53 of Part B of the Consultation Paper)

We propose that only firms on the list of acceptable sponsors or acceptable IFAs be eligible to act IFAs to issuers in relation to a connected party transaction. We propose that a process similar to that for admitting firms to the list of acceptable sponsors be adopted for IFA firms.

Q.2 Do you agree with our proposal?

☑ *Yes*

No

Please state reason(s) for your view.

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ACCEPTABLE INDIVIDUALS

(Paragraphs 54 to 59 of Part B of the Consultation Paper)

We propose that only individuals who:

(a) are appropriately licensed/registered under the SFO;

(b) work for a sponsor firm or IFA firm (whichever is applicable) and are eligible supervisors or perform work under the supervision of an eligible supervisor; and

(c) are not on the list of unacceptable individuals

may do sponsor work or IFA work.

Q.3 Do you agree with our proposal?

☑ *Yes*

No

Please state reason(s) for your view.

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CRITERIA FOR INCLUSION ON THE LIST OF SPONSORS AND IFAs

Competence and experience of the sponsor and IFA firms
(Paragraphs 60 to 66, 73 and 79 of Part B of the Consultation Paper)

We propose that the focus of our requirements will be on the experience of the individual member of staff, rather than the sponsor firm or IFA firm and that sponsor firms have at least four eligible supervisors and IFA firms have at least two eligible supervisors.

Q.4 Do you agree with our proposal?

☑ *Yes*

No

Please state reason(s) for your view.

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Qualification and experience criteria of eligible supervisors
(Paragraphs 67 to 79 of Part B of the Consultation Paper)

We propose to merge the requirements relating to qualification and experience criteria for Principal Supervisors and Assistant Supervisors into a single new category called "eligible supervisors". We also propose to recognize overseas experience derived from recognized overseas exchanges (such as NYSE, NASDAQ, SGX, ASX, London Stock Exchange and Toronto Stock Exchange) for the purposes of assessment of individuals. Accordingly, the experience requirement of the four eligible supervisors required in each sponsor firm is proposed to be as follows:

> must have a minimum of 4 years of relevant corporate finance advisory experience derived in respect of companies listed on recognized stock exchanges or from other channels, such as corporate finance experience gained from employment with an issuer listed on the Exchange;

substantive involvement in at least 3 significant transactions, which have been completed. At least one of those transactions must be in respect of a company listed on the Exchange. At least one transaction must have been an IPO and at least one of the transactions must have been completed within the previous two years. These requirements will be on-going requirements.

A substantive role means a role as a member of the sponsor firm's core transaction team in delivering or managing the delivery of one or more of the major components of due diligence work undertaken in respect of an engagement.

The definition of "significant transactions" is proposed to include: (i) IPOs; (ii) very substantial acquisitions or disposals (or their equivalent under the rules applicable to listing on other recognised stock exchanges); (iii) major transactions (or their equivalent under the rules applicable to listing on other recognised stock exchanges); (iv) connected and major transactions (or their equivalent under the rules applicable to listing on other recognised stock exchanges); (v) a rights issue or open offer by a listed company (or their equivalent under the rules applicable to listing on other recognised stock exchanges); and (vi) takeovers subject to the Takeover Code (or its equivalent in other recognised jurisdictions). Guidance will be provided to clarify that transactions involving the production of an exempt listing documents and the listing of investment companies will not be regarded as significant transactions.

We propose that the qualification and experience criteria for the two IFA eligible supervisors in an IFA firm be the same as for sponsor eligible supervisors save for the one IPO transaction experience requirement.

Q.5 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.

The wordings in the Consultation Paper is not clear so please clarify that for eligibility, if one has completed an IPO in Hong Kong within the previous two years plus two other significant transactions as defined above from other recognised overseas Exchanges, then that person would be qualified as an eligible supervisor.

Other factors relevant to the eligibility criteria
(Paragraphs 80 to 81 and 86 to 94 of Part B of the Consultation Paper)

We propose to retain discretion for the Exchange to refuse or cancel a sponsor's acceptance. The Exchange may ask a sponsor or prospective sponsor to provide further information during the assessment of their application. To provide clarity about the circumstances in which the Exchange may consider exercising this discretion we will publish details of the factors we will take into account in making an evaluation. The proposed factors include the following:

> The eligibility criteria requirements, including minimum capital, number of eligible supervisors, experience of individual eligible supervisors, are not met;
>
> The applicant is unable to satisfy the Exchange that it will be able to discharge the obligations in paragraph 7 of the proposed Code of Conduct for Sponsors and Independent Financial Advisers (these obligations include having effective supervisory, monitoring and reporting controls, an effective compliance function, adequate competence, professional expertise and human and technical resources and maintaining proper books and records);
>
> Current suspension or revocation of regulatory status (including where this is self-imposed as a result of settlement); and
>
> Suspension or revocation of regulatory status (including where this is self-imposed as a result of settlement) that has expired but in relation to which, the applicant is unable to satisfy the Exchange that appropriate and sufficient remedial steps have been taken.

We propose that the same factors be taken into account in determining the acceptability of IFAs as are taken into account for sponsors, save for the minimum capital adequacy requirement.

Q.6 Do you agree with our proposal?

☑ *Yes*

No

Please state reason(s) for your view.

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Minimum Capital Requirement of Sponsor Firms
(Paragraphs 82 to 85 of Part B of the Consultation Paper)

We propose that sponsor firms are required to meet and maintain a minimum capital requirement of "total paid-up share capital and/or non-distributable reserves of not less than HK$10 million represented by unencumbered assets and a net tangible asset value after minority interests of not less than HK$10 million". Should the sponsor firm be unable to meet the capital requirement, we propose to accept as an alternative an unconditional and irrevocable guarantee from a company within the sponsor group or an authorized institution of not less than HK$10 million.

We do not propose that IFA firms should be subject to a similar requirement.

Q.7 (a) Do you agree with our proposal for sponsor firms?

☑ *Yes*

No

Please state reason(s) for your view.

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_____
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_____

Q.7 (b) Do you agree with our proposal for IFA firms?

☑ *Yes*

No

Please state reason(s) for your view.

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_____
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Undertakings to the Exchange
(Paragraphs 95 to 97 of Part B of the Consultation Paper)

We propose that each of the sponsors and IFAs seeking to be admitted to the list of Sponsors or list of IFAs be required to declare that the contents of its application to be admitted to the list is true and does not omit any material fact. We also propose that each of the sponsors and IFAs seeking to be admitted to the list must sign an undertaking to the Exchange to comply with the relevant Listing Rules applicable to sponsors or IFAs, including the proposed Code of Conduct for Sponsors and Independent Financial Advisers; and to assist the Exchange with investigations, including by producing documents and answering questions fully and truthfully. Furthermore, we propose that eligible supervisors be required to provide the Exchange with a written undertaking in similar terms to that provided by sponsors firms and IFA firms. This will include an obligation to comply with the Listing Rules and the proposed Code of Conduct for Sponsors and Independent Financial Advisers. The proposed Code of Conduct for Sponsors and Independent Financial Advisers includes an obligation that the eligible supervisors and directors of sponsor firms and IFA firms use their best endeavours to ensure the sponsor firm or IFA firm complies with its obligations under the Listing Rules and the proposed Code of Conduct for Sponsors and Independent Financial Advisers. A breach of the undertaking will be deemed to be a breach of the Listing Rules and will be subject to disciplinary action.

Q.8 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.

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_____

APPOINTMENT

(Paragraphs 98 to 113 of Part B of the Consultation Paper)

We propose to retain the requirement that new applicants (including deemed new applicants) will be required to appoint a sponsor to assist them through the application process.

After the new applicant is listed, we propose that:

(a) For Main Board: the new applicant must appoint a sponsor firm as a financial adviser for a period ending on publication of the financial results for the first full financial year after the listing.

(b) For GEM: the new applicant must appoint as sponsor firm as a financial adviser for at least the remainder of the financial year during which the listing occurs and the 2 financial years thereafter (i.e. we propose to retain the period stipulated in the existing GEM Listing Rules).

The issuer will not be obliged to appoint the same sponsor firm who handled their IPO. During this period, the issuer will be obliged to seek, on a timely basis, advice from the sponsor in relation to a number of prescribed events. The prescribed circumstances and services are proposed to include the publication of any regulatory announcement; publication of any circular or financial report; where a notifiable transaction (connected or otherwise) is contemplated including share issues and share repurchases; and monitoring the use of the proceeds and adherence to the business plans as detailed in the prospectus.

We also propose to retain the discretion to direct an issuer to appoint a sponsor firm to provide it with advice for any period it specifies. This discretion may be used in the event of a breach of the Listing Rules or investigation of a possible breach of the Listing Rules.

We also propose to retain the requirement that listed issuers are required to appoint an IFA in relation to connected party transactions that require any shareholders to abstain from voting and transactions or arrangements that require controlling shareholders to abstain form voting. We will clarify that an IFA must be a firm either on the list of acceptable Sponsors or list of acceptable IFAs.

Q.9 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.
Please clarify that for deemed new applicants, they do not include those technical one such as change of domicile.

INDEPENDENCE

(Paragraphs 114 to 123 of Part B of the Consultation Paper)

We propose that a sponsor must not act for any new applicant or listed issuer, whether as a sponsor or joint sponsor, from which it is not independent. The Exchange will expect a sponsor to consider a broad range of factors that might impact on its ability to act independently of an issuer. Some of these factors are considered below, but sponsors should note that this list of factors of when a sponsor will not be regarded as independent is not exhaustive and the existence of other relationships or interests which might give rise to a material interest in the success of a transaction will be considered. The specified circumstances are:

a sponsor or any member of the sponsor's group is holding more that 5% of the issued share capital of a new applicant;

the fair value of shareholding referred to above exceeding 15% of the consolidated net tangible assets of the sponsor group;

a sponsor or any member of the sponsor's group is controlling the majority of the board of directors of the new applicant;

a sponsor is controlled by or is under the same control as the new applicant;

15% or more of the proceeds raised from an IPO is applied to settle debts due to a member of the sponsor's group;

a significant portion of the listing applicant's operation is funded by the banking facilities provided by a member of the sponsor's group;

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; and

where the sponsor or a member of the sponsor's group is the new applicant's auditor or reporting accountant.

In addition to fulfilling the independence requirement as mentioned above, we also propose that the Exchange will generally preclude from concluding that an IFA is independent if it has served as a financial adviser to the relevant listed issuer, its subsidiaries or any of its connected persons any significant assignment within two years of appointment.

We also propose to require sponsors and IFAs to submit a declaration in respect of their independence, addressing each category of potential conflict, at the beginning of any assignment, which requires the appointment of a sponsor or an IFA.

Q.10 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.
But please clarify what constitute as "has an interest in or business relationship with the new applicant" in particular for "an interest" does it refer to even having one share in the new applicant. Please quantify the restriction if possible.

RESPONSIBILITIES

Reasonable investigations
(Paragraphs 124 to 152 of Part B of the Consultation Paper)

We propose that the Main Board and GEM Listing Rules be amended to require sponsors to conduct reasonable investigations to satisfy themselves that:

> the new applicant is suitable for listing, the new applicant's directors appreciate the nature of their responsibilities and the new applicant and its directors can be expected to honour their obligations under the Exchange Listing Rules and the Listing Agreement;
>
> "non-expert sections" contained in the new applicant's listing application and listing documents are true and that they do not omit to state a material fact required to be stated or necessary to avoid the statements being misleading; and
>
> there are no reasonable grounds to believe that the "expert sections" contained in the new applicant's listing application and listing documents are not true or omit to state a material fact required to be stated or necessary to avoid the statements being misleading.

We propose that sponsors be required to comply with a Code of Conduct that will set out, among other things, the minimum due diligence a sponsor would be expected to undertake to satisfy the obligations to conduct reasonable investigations we propose including in the Listing Rules.

We propose that the Main Board and GEM Listing Rules be amended to require IFAs:

> to take all reasonable steps to satisfy themselves that the terms and conditions of the transaction or arrangement are fair and reasonable and in the interest of the issuer and its shareholders as a whole and that there are no grounds to believe that any expert advice or opinion relied on in relation to the transaction are not true or omit a material fact; and
>
> to make a declaration in their report of the due diligence they have performed in order to reach a conclusion that the terms of the relevant transaction or arrangement are fair and reasonable and in the interest of the issuer and its shareholders as a whole.

Q.11 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.
It is a modified "yes"! For the "non-expert" section, sponsor cannot confirm that the entire section is true since true means exact and accurate. For example, how can sponsor confirm that Industry Background is true. The word "true" should be replaced by "fair and reasonable".

CODE OF CONDUCT FOR SPONSORS AND INDEPENDENT FINANCIAL ADVISERS

(Annex 2)

At Annex 2 we set out the proposed Code of Conduct for Sponsors and Independent Financial Advisers.

Q.12 Do you agree with the approach adopted in the proposed Code of Conduct for Sponsors and Independent Financial Advisers?

☑ *Yes*

No

Please state reason(s) for your view.
It is a qualified "yes"! Please refer to our separate comments on the Proposed Code of Conduct.

Declaration by sponsors and lead underwriters in listing documents to be registered
(Paragraphs 153 to 165 of Part B of the Consultation Paper)

We propose that both sponsors and lead underwriters (where the latter are different from the former) should make a statement in listing documents regarding the extent of their due diligence which would track the form of statement currently given to the Exchange on a private basis by sponsors subject to the modification noted below. A sponsor is also expected to ensure that the document presents a fair impression of the issuer and that it has been written in plain language. The sponsor's due diligence obligation is modified in respect of reports and information published in a listing document with the consent of an expert. The form of declaration proposed recognises this distinction. In respect of "non-expert sections" of a listing document we propose that the following statement should be made "[Sponsor firm and underwriter] confirm(s), at the date of this document, that after reasonable investigation it believes/they believe and have reasonable grounds to believe that the information set out in this listing document at [make specific references] is not materially false or misleading" and, in respect of "expert sections", an alternative test of due diligence that "it/they have no grounds to believe and do not believe that the information set out in those sections of the listing document at [make specific references], which have been prepared and authorised by [name], is materially false or misleading".

Q.13 Do you agree with our proposals?

☐ *Yes*

☑ *No*

Please state reason(s) for your view.

As stated on pages 46 to 47 of the Consultation Paper, the Exchange reckons that in Hong Kong it is the sponsors who fulfill that gate keeper role unlike its counterpart in the US that it is the underwriters that play a "gate keeper" role. Therefore, in Hong Kong it would be unreasonable to ask the lead underwriters to make same declaration as the sponsors because the role is different. To a large extent, the underwriters rely on the sponsor's due diligence and representations on deciding whether or not to take up the underwriters' role.

IFA Due Diligence Declaration
(Paragraph 147 of Part B of the Consultation Paper)

We propose that IFAs are required to take all reasonable steps to satisfy themselves that the terms and conditions of the transaction or arrangement are fair and reasonable and in the interest of the issuer and its shareholders as a whole, and that there are no grounds to believe that any information, expert advice or opinion relied on in relation to the transaction or arrangement are not true or omit a material fact. IFAs should include in their reports a signed declaration setting out the due diligence they have performed in order to reach a conclusion that the terms of the transaction or arrangement are fair and reasonable and in the interest of the issuer and its shareholders as a whole.

Q.14 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.

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_____
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_____

REPORTING OBLIGATIONS AND MONITORING

(Paragraphs 166 to 170 of Part B of the Consultation Paper)

We propose to replace the requirement for an annual review with a certification process and a targeted programme of monitoring.

We propose to require sponsor firms and IFA firms and their eligible supervisors to submit annual confirmations that they remain eligible to act in such capacity. In addition, they are required to report to the Exchange as soon as they became aware if they no longer satisfy the eligibility criteria set out in the Listing Rules or any information provided by them in connection with their application or continued inclusion on the list of Sponsors or the list of IFAs has changed. The Exchange may also conduct a specific review in relation to the continued inclusion of the sponsor firm or IFA firm (or any of it's employees) if it becomes aware or has reason to believe that the suitability of the firm/individual may be in question.

The monitoring tools we propose to use will vary according to circumstances and may include one or more of the following:

Complaints;

Desk based reviews of transactions;

Reviews of referrals;

Liaison with other agencies, professional or regulatory bodies;

Meetings with management and other representatives from a sponsor firm or IFA firm;

On-site visits after prior notification;

Reviews of notifications and confirmations from sponsors or IFAs; and

Reviews of past services provided, and documentation produced, pursuant to the Listing Rules by a sponsor or an IFA.

Q.15 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.
The monitoring process should be transparent.

COMPLIANCE AND SANCTIONS

(Paragraphs 171 to 181 of Part B of the Consultation Paper)

We propose that sponsors and IFAs and their eligible supervisors and staff all be subject to disciplinary sanction. As noted in paragraph 54 we do not propose having a list of acceptable directors and individual staff members who are not eligible supervisors. Thus, all persons licensed as representatives to advise on corporate finance will be entitled to do sponsorship or IFA work under the supervision of an eligible supervisor, unless they have been declared to be an unacceptable person.

We propose disciplinary sanctions for sponsors and IFAs similar to those under the current GEM Listing Rules, but with some variations for individuals. As with our sanctions for issuers and directors, we propose a graduated hierarchy of shaming and disabling sanctions that provide the flexibility to ensure the sanction is appropriate to the circumstances. Our proposed sanctions are:

Private reprimand;

Public statement with criticism;

Public censure;

Declaration that an individual is an unacceptable person or cannot be an eligible supervisor for a specified period of time;

Suspension of a firm from the list of acceptable sponsors or list of acceptable IFAs for a specified period of time;

Declaration that an individual is an unacceptable person or cannot be an eligible supervisor; and

Removal of a firm from the list of acceptable sponsors or list of acceptable IFAs.

Q.16 Do you agree with our proposals?

☑ *Yes*

No

Please state reason(s) for your view.

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ABILITY OF EXISTING GEM AND MAIN BOARD SPONSORS AND IFAS TO MEET ELIGIBILITY CRITERIA FOR ACCEPTABLE LISTS

(Paragraphs 186 to 189 of Part B of the Consultation Paper)

For those respondents to this Consultation Paper who are currently on the list of GEM Sponsors or who currently perform or who have in the past 2 years performed work as Sponsor to Main Board applicants for listing or have in the past 2 years acted as an IFA, we would appreciate your response to the following questions:

Q.17 Would you meet the proposed eligibility requirements for sponsor firms or IFA firms (whichever is applicable), including the requirement that sponsor firms have four eligible supervisors and HK$10 million capital or that IFAs have two eligible supervisors if those requirements:

(a) *were in effect today?*

☑ *Yes*

No

(b) *were in effect in 6 months time?*

☑ *Yes*

No

(c) *were in effect in 18 months time?*

☑ *Yes*

No

(d) *were in effect in 30 months years time?*

☑ *Yes*

No

Q.18 If your answer to any of questions 17 (a)-(d) was negative, please state which criteria would cause your firm not to meet the requirements and comment on whether the proposed transitional arrangements would give you a sufficient opportunity to meet all the requirements? Would this change if the second transition period (in which existing GEM sponsors would only be required to have 3 eligible supervisors to be on the list of acceptable sponsors) was 2 years instead of 1 year? Do you have any other suggestions or comments on how to address the issues arising out of the impact analysis at paragraphs 186 to 188 of Part B of this Consultation Paper?

BNP Comments

Please also find below our comments on the Proposed Code of Conduct for Sponsors & Independent Financial Advisers:

Paragraph	Comments
20 (b)	Please clarify what "arrangements" that the Exchange refers to that the sponsor must make to ensure that all of the public shareholders are genuinely unconnected to, and not financially supported by connected person. In practice, the reliance is on confirmation from placees in relation to their independence and from controlling shareholders and directors that they have not financed any of their connected persons in subscription of the shares. We believe this arrangement is sufficient.
21 (d)	We are of the view that the auditor is the most appropriate party to investigate the effectiveness of the internal control procedures of the new applicant. Sponsor should be able to rely on the auditor's report on assessing the effectiveness of the internal control procedure and accounting and management information of the listing applicant instead of conducting its own investigation.
22 (c)	Most companies seeking listing on the Exchange are from the Mainland China, the reference checking would largely depend on the availability of the data base searches and its completeness in China.
22 (g) & (h)	These two are repetition of 21 (b) and too general in scope and subjective as well. Also, how far should we go for "past" conduct, need a cut-off point.
22 (i) & (j)	The wordings again are too subjective for sponsor to make a judgment on such person's characters.
23 (b)	In China the legal actions are still segmented, and there may be no available database to perform search on the controlling shareholders and companies.
24 (b)	The word "integrity" of financial information should be replaced by "fair and reasonable".
24 (f)	The word "analysis" should be replaced by "review". It would be beyond the scope of the sponsor to do an analysis of the issuer's production methods which imply an indepth analysis.
24 (g)	Same as 24 (f) above that the word "analysis" should be replaced by "review".
24 (l)	The sponsor can do analysis of the industry and target markets but not "investigation" as investigation is too wide and deep.
24 (m)	The investigation and confirmation of the existence of any proprietary interests, intellectual property rights and licensing arrangements material to the issuer's business should be done by lawyer and valuer. Sponsor should be allowed to rely on lawyer and valuer's investigations and representations after making a reasonable review of work done by these professional parties.
24 (n)	Firstly, not every industry would have qualified expert to conduct a technical feasibility study for all kinds of products in particular for new products; secondary, it may due to commercial and trade secrets that the company would be reluctant to allow others to conduct technical feasibility study, and lastly, even with technical feasibility study, it does not guarantee its success.
24 (o)	It would be unreasonable to expect sponsor to assess commercial viability of products or technology and be liable and accountable if they fail.

25 (b)	Sponsor has no contractual relationship with experts, therefore sponsor cannot agree on the scope of work other than to review the scope.
25 (c)	Sponsors are not experts so they cannot assess the reasonableness of the assumptions in particular for very technical business valuations other than discussing the assumptions with the experts.
25 (e)	Sponsor can only rely on confirmation from the expert or professional and the issuer that they do not have a relationship with each other.
26 (a)	It would depend on when the Exchange make such request - i.e. whether the confirmation requested is for **after** the listing or **before** the listing. If it's the latter, then sponsor cannot confirm the Review Procedures have been conducted and completed until they themselves have completed the review.
26 (c)	This requirement is too wide. Besides what constitute as significance to the Exchange in determining the suitability of the listing of the issuer is not transparent, therefore suggest to delete the word Exchange from the text.
28	The word "investigation" implies that sponsor must do all reasonable investigation themselves instead of relying on confirmation from third party i.e. the valuer, that the transactions are conducted at arm's length and on normal commercial terms, it is suggested that the word "review" to replace investigation.
29	The word "true" in general means exact and accurate, therefore sponsors are not in a position to investigate and confirm that the non-expert sections are true, for example, how can sponsor confirm that industry background is true other than confirming that the non-expert sections are fair and reasonable.
30 (d) (i)	The word "investigation" is too wide and deep, therefore should be replaced by the word "review".
30 (d) (ii)	Sponsors are not expert to assess the appropriateness of the scope of work other than to review the reasonableness of the scope.
30 (e)	Please clarify the word "assessing" the alternative offers, is it referring to open bid situations?