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THE STOCK EXCHANGE OF HONG KONG LIMITED LISTING DIVISION

29 July 2003

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

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

073270

Dear Sirs,

Consultation Paper On The Regulation Of Sponsors And Independent Financial Advisers

We refer to your "Consultation Paper On The Regulation Of Sponsors And Independent Financial Advisers" ("Consultation Paper") and wish to present our views on such proposals.

In general, we are supportive of your views to improve the quality of the sponsors and independent financial advisers ("IFAs") by increasing their responsibilities and requirements. For example, we absolutely agree with your views that sponsors and IFAs should perform more due diligence to gain a better understanding when preparing a candidate for listing or assessing a connected transaction of a listed issuer. Hopefully, the increased responsibilities and requirements will result in improving the quality of listing candidates on the Main Board and the GEM Board of The Stock Exchange of Hong Kong Limited. However, the sponsors and IFAs should not be viewed as the one professional with overall encompassing knowledge, expertise, training and experience to certify all information included in a prospectus or a circular, including reports and certificates issued by professionals with specialized expertise (eg. accountants, lawyers, valuers and other professionals), is complete and accurate, contains all material information regarding a listed issuer, its business, its directors and its transactions, that no information has been omitted, and that the reports and certificates of professionals included in the listing document can or can not be relied upon.

We set out below our comments on specific aspects of the Consultation Paper.

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Part B – Eligibility Criteria For And Responsibilities Of Sponsors And Independent Financial Advisers

Paragraph 75

An Eligible Supervisor needs to have at least 4 years of relevant corporate finance experience where he has played a substantive role in "3 significant transactions"

We agree with the SFC's and HKE's views in Paragraphs 63, 65 and 66 that one should focus on the experience of the individual rather than the experience of the firm to determine whether the firm meets the requirements for being a sponsor or IFA. Given that the SFC and HKE consider that the individual's experience is more relevant, we believe that the experience level of a corporate finance professional is better measured by the number and variety of transactions that he has executed rather than the number of years he has spent in the industry. Therefore, in the case where the individual has worked on numerous corporate finance transactions in the past few years, less emphasis should be placed on the "4 years" requirement and more emphasis should be placed on the number of "significant transactions" completed in the past few years.

According to the seminar presented by the SFC and HKE on the Consultation Paper, the SFC and HKE will only consider the individual's most recent 4 years' experience in assessing whether he meets the requirements for Eligible Supervisors. We strongly believe that the SFC and HKE should look beyond the individual's most recent 4 years' experience. Although the Listing Rules have changed in the past few years, it has not been substantially revamped. His past experience should be considered. If he has had extensive experience working on a numerous corporate finance transactions which required a detailed working knowledge of the Listing Rules and such experience demonstrates that he has been involved in numerous "significant transactions", then he should be considered to meet the requirements for Eligible Supervisor. The individual should not be penalized for not meeting the "4 recent consecutive years" requirement simply because he has had a career break during the most recent 4 years of his corporate finance career despite having many years of corporate finance experience prior to the career break or because he was not involved in "3 significant transactions" in the most recent 4 years. It does not make sense to allow an individual who only completed 3 significant transactions in the past 4 years to be an Eligible Supervisor while an individual with, say, 10 years' active corporate finance experience working on numerous "significant transactions", but recently had a career break or has not recently completed "3 significant transactions" in the last 4 years to be ineligible to meet the requirements for Eligible Supervisor.

In both the above cases, there should be a mechanism for the individual to apply for a waiver from the "4 years" requirement by looking at his experience and the number of "significant transactions" he has been involved in during the past. Where it can be demonstrated that he has had an abundance of experience working with the Listing Rules and executed numerous "significant transactions", the "4 years" requirement should be waived.

Paragraphs 98 to 113
Appointment of continuing sponsor

We agree with the proposal of requiring an issuer to retain a sponsor for a prescribed period of time after the issuer first becomes listed. The reason is that the management of an issuer may be good at doing business, but may not be familiar with the Listing Rules. However, there should be additional rules and regulations on directors and listed companies to be fully transparent to the sponsor, and to keep the sponsors fully informed on a regular basis. Otherwise, it is impossible for sponsors to learn about the latest developments of the issuer and to provide the directors and the listed company with advice on how to comply with the regulatory requirements. In addition, the responsibility of the continuing sponsor should not include the monitoring of use of proceeds or the adherence of the issuer to the business plans as described in the prospectus. It is the responsibility of the directors to monitor the use of proceeds and to ensure adherence to the business plans. The sponsor is neither in the position to monitor the use of proceeds nor adherence to the business plans on a daily or timely basis. By the time the sponsor learns about the application of the use of proceeds or the non-adherence to the business plan, it is already a past event.

In Paragraph 108, the Consultation Paper proposes that a new issuer can dispense with a continuing sponsor if it has two directors who have more than 5 years experience in the previous 10 years as directors of listed company(ies). However, we believe that one should also consider the role of those 2 directors who have worked as a listed company's director for 5 of the past 10 years. Often the directors of listed companies have roles and responsibilities with certain aspects of business and are not involved in dealing with the regulatory authorities and do not understand the regulatory requirements. If that director is not familiar with the Listing Rules or has not been involved with dealing with the regulatory authorities, we suggest that the listed company should still retain a continuing sponsor despite the board comprising at least 2 directors who have been directors of listed companies for 5 out of the past 10 years.

Paragraphs 145 and 146
Sponsor to make separate declarations on the "expert" and "non-expert" sections of the prospectus

We strongly disagree that a declaration should be made by a sponsor to: (i) certify that "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 (ii) certify that there are no reasonable grounds to believe that the "expert sections" contained in listing documents are not true or omit to state a material fact required to be stated or necessary to avoid the statements being misleading.

It is the responsibility of the sponsors to conduct reasonable investigations to satisfy themselves that the new listing applicant is suitable for listing. However, it is clearly the responsibility of the directors of the new listing applicant to ensure that the information contained in the listing application and listing documents are true and

there is no material omission. If the directors were determined to withhold information from the sponsor, it may not be detected no matter how much due diligence was performed. Even professional accountants admit that an audit may not reveal fraud or material misstatements if there was a willful attempt by management to conceal them.

The minimum due diligence procedures laid out under the "Proposed Code of Conduct for Sponsors and Independent Financial Advisers" are good professional practice which sponsors and IFAs should have been following before the issue of this Consultation Paper. However, sponsors should not be held liable for making the declaration statements on the basis of these (and other) due diligence procedures. For example, there are many "directors' belief" statements under the "non-expert" section, which, by definition, are the directors' own assessment of the business and industry of the issuer. These statements take the form of declarations by directors because they cannot be practically verified from external sources. How could a sponsor take responsibility for these statements? Similarly, the "expert" section of the prospectus is so-called because it contains the views of experts. Experts such as professional accountants, valuers and lawyers are appointed by a new applicant or listed company to give expert opinions contained in the prospectus or circular because they possess expertise, training and experience to give expert opinions in their areas of specialization. A sponsor or IFA is neither in the position nor possess necessary expertise, training and experience to make a comment to the effect that there are no reasonable grounds to believe that the "expert sections" are not true or omit to state material fact required to be stated or necessary to avoid the statement being misleading. The due diligence procedures conducted by the sponsor or IFA may serve as a "check-and-balance" to prevent gross negligence of the expert, but will fail to uncover intentional and sophisticated schemes which have deceived the expert himself or to detect hidden yet significant areas which the expert has missed. If the SFC and HKE think a declaration on the expert section is necessary, it should be the expert who should be making this declaration.

Paragraph 146
Reasonable investigation by sponsors to satisfy themselves that the new applicant and its directors can be expected to honour their obligations under the Listing Rules

We do not agree that the Listing Rules should be amended to require sponsors to conduct reasonable investigations to satisfy themselves that the new applicant and its directors can be expected to honour their obligations under the Listing Rules and the Listing Agreement. The sponsor is not able to guarantee a "future event" and force a new applicant and its directors to honour their obligations under the Listing Rules and the Listing Agreement. A sponsor can only conduct reasonable investigations to satisfy themselves the suitability of listing of a new applicant and the suitability of a person acting as a director of a listed company. No investigation of a sponsor can ensure that the new applicant and its directors will continue to honour their obligations under the Listing Rules and the Listing Agreement in the future.

Paragraph 156
Declaration by sponsors and lead underwriters in listing documents

It is proposed in Paragraph 156 that in case the sponsor and the lead underwriter are different parties, the lead underwriter is also requested to make a statement in the listing document regarding the extent of its due diligence. However, in some cases, the lead underwriter is introduced at a much later stage of the listing application process and therefore, it is impracticable for the lead underwriter to carry out a full scope due diligence within the short period of time. Furthermore, in a poor market environment for IPOs, the requirement for lead underwriters to make a declaration regarding the extent of due diligence will make it difficult to find underwriters to underwrite the IPO.

Moreover, we do not understand the rationale for requiring the sponsor and lead underwriter to make a declaration regarding the extent of their due diligence, when other professional experts providing reports or opinions in the listing document are not required to disclose the extent of their work or due diligence. As mentioned above, sponsors (and lead underwriters) do not possess the experience, training and expertise of such experts. Accordingly, the sponsor must rely on the work performed and the reports and opinions issued by such experts.

Paragraph 182
Resignation/termination of sponsors and IFAs

We note that in Paragraph 182, the SFC and HKE acknowledges that the sponsor must have a right to resign. However, we believe that such right to resign should not be restricted to disputes over the sponsor's fees or the unpaid sponsor's fees. We believe that there are other important considerations such as the lack of cooperation by the listed issuer and its directors to work with the sponsors, the reluctance by the listed issuer and its directors to keep the sponsor fully informed of all developments, and the lack of information provided to the sponsor by the listed company or its directors. These factors will prevent the sponsor in fulfilling its duties and responsibilities as a continuing sponsor. In such case, the sponsor should have the right to terminate its role and responsibilities as the continuing sponsor.

Proposed Code Of Conduct For Sponsors And IFAs

Paragraph 28
Continuing sponsor must conduct reasonable investigations to satisfy themselves that ongoing connected transactions are conducted at arms length and on normal commercial terms

We believe that Paragraph 28 needs to be clarified. The waiver is for future ongoing connected transactions. Accordingly, neither the sponsor or any professional can conduct sufficient investigations to satisfy themselves or to the regulatory authorities that future connected transactions will be at arm's length and on normal commercial terms. The sponsor, IFA or professional expert can only review the connected

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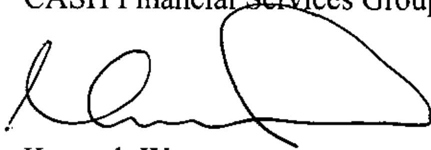
transaction after it is completed to advise whether it was conducted at arm's length and on normal commercial terms.

Under the current requirements, a continuing sponsor will use reasonable care to review all announcements and circulars prepared by the issuer. In the case of ongoing connected transactions, the question of whether such transactions are conducted at arm's length and on normal commercial terms is the job of the IFA. An IFA is appointed because its opinion is more reliable than the sponsor's due to its independence. It should not be the responsibility of the continuing sponsor to advise whether connected transactions were conducted at arm's length and on normal commercial terms due to the lack of independence.

We thank you for giving us this opportunity to provide you with our comments. If you need further clarification on any of the above points, please feel free to contact us.

Yours faithfully,
For and on behalf of
CASH Financial Services Group Limited



Kenneth Wong
Chief Executive Officer