VC CEF CAPITAL LIMITED (A Wholly-owned Subsidiary of Value Convergence Holdings Ltd) A member of the Melco Group
滙盈加怡融資有限公司 (滙盈控股有限公司之全資附屬公司) 新濠集團成員

31 July 2003

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

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

Dear Sirs,

Re : Response to Consultation Paper on Regulation of Sponsor and Independent Financial Advisers issued in May 2003

We refer to the Consultation Paper on Regulation of Sponsors and Independent Financial Advisers issued by The Stock Exchange of Hong Kong Limited and the Securities and Futures Commission jointly in May 2003 (the "Consultation Paper"). Unless otherwise defined, terms used herein shall have the same meanings as in the Consultation Paper.

We would like to express our view and to point out our concerns and reservations to the following issues as proposed in the Consultation Paper:

1. Undertaking and due diligence declaration to the Exchange

While we are aware that the principal functions of the Stock Exchange is to provide a fair, orderly and efficient market for the trading of securities, we doubt whether "the Sponsor (and also its eligible supervisors) to make the proposed undertakings to the 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" would in any way further assist the Stock Exchange in discharging such functions bearing in mind that the existing listing rules and Companies Ordinance (Chapter 32 of the Laws of Hong Kong) have already conferred sufficient similar protection on the investors including but not limited to the imposition of personal obligations and responsibilities on the directors of the listed issuer, jointly and severally, for ensuring the accuracy of the contents of the public documents.

We are doubtful as to whether the listing rules which are designated for governing the listing of securities (and also their issuer) will be subject to a consistent interpretation if the statement of "a breach of the undertaking will be deemed to be a breach of the Listing Rules ....." is so established. We do not see the reason for the Listing Rules,

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which govern the listing of securities on the Exchange should be extended to govern corporate finance advisers when they are currently subject to the regime and regulation of the SFC.

2. Responsibilities

We have reservation that there is an expectation gap between the Exchange's view of the responsibilities of Sponsors and the manner in which many Sponsors are discharging those responsibilities.

It is currently set out in the Model Code for Sponsors of the Listing Rules (Main Board) that the purpose of the model code is to give guidance on the Exchange's minimum expectations of the Sponsor's role. It is also specified in the model code that failure by a Sponsor to meet such expectations without reasonable ground may render it unacceptable to perform the role of Sponsor in future. This is what Sponsors in Hong Kong have been doing all along.

It appears from the Consultation Paper that the rationale for the proposal as stated in paragraph 133 of the Consultation Paper is that "recent experience in Hong Kong suggests that some Sponsors to issues of securities on the Exchange are not performing their role to an adequate standard". In a number of cases in which problems have been identified with the accuracy of statements made in IPO prospectuses and listing application documents, Sponsors have sought to disavow responsibility by saying that they relied on information provided by directors or officers at face value." It is further stated in that paragraph that the Exchange does not view such level of due diligence as adequate due diligence in the context of what is recognized as such in developed markets. The Consultation Paper does not stipulate as to what evidence was being accepted on face value in respect of those IPO prospectuses where problems concerning accuracy of certain statements are identified. Nevertheless, no matter how in depth a due diligence review is, the starting point is always information provided by the potential listed issuer. It is correct to state that certain information provided can be cross checked with information available in public records. However, there is no perfect way to cross check all information by the potential listed issuers with public data. Furthermore, it is not unusual for companies not to keep everything in writing. We believe that whether or not the level of due diligence is adequate is a matter to be determined in the context of the particular issue taking into account the practical constraints.

Under the Consultation Paper, the Exchange proposes that Sponsors should conduct reasonable investigations in several areas of concern, namely (i) suitability of listing, (ii) "non-expert sections", and (iii) "expert sections" which allow the Exchange to rely upon during its assessment of the applicant's listing application and listing document. Given the role as a Sponsor, we believe that it is not unreasonable that Sponsors should be required to take certain review procedures regarding the suitability of listing of the issuers. It is yet to be seen that the Stock Exchange would accept prima facie that an issuer is suitable for listing in the event that the Sponsor consider an issuer is suitable for listing and proceeds to file an application with the Stock Exchange. We learn from press articles that Stock Exchange did reject listing of issuers from time to

time but without publication for reasons resulting therein.

The proposal also states that a Sponsor should take responsibility to ensure that certain sections of the prospectus are true and no material fact is omitted therefrom to make the same misleading is unreasonable. In respect of "non-expert sections", Sponsors may have difficulty in assessing the correctness and completeness of certain information notwithstanding that they have exhausted all possible avenues to ascertain the truth and completeness of the information. In most instances, Sponsors would expressly warn readers of the practical difficulty although it is the practice of the Exchange to request the deletion of such warning statements or inclusion of any mitigation factor in total disregard of the practical difficulty facing Sponsors and the consequence of not having such a warning statement. There is always a limitation as to what a Sponsor can do and a Sponsor cannot predict unforeseeable circumstances which may later prove the statement to be incorrect or that there may be lack of official statistics in the industry, as a result of which the Sponsor would have to rely on unofficial statistics. As such, notwithstanding that the Sponsor has done what it reasonably can do in the circumstances, it can still never be able to fully satisfy itself and/or to assure the Exchange that all the information set out in the "non-expert sections" is without any omission or not misleading. It is unreasonable for the Sponsor and its "Eligible Supervisors" be an expert in every aspect including but not limited to legal advisers, reporting accountants, property valuers, trade mark and business valuers, etc.

A prospectus is prepared with contribution of all professionals contributing their respective professional expertise and advice. The legal advisers and the reporting accountants are subject to the regime of the Law Society and Hong Kong Society of Accountants respectively. As to what extent that a due diligence exercise is considered perfect is quite subjective, it would be extremely useful, practical and meaningful for the Stock Exchange to set precise and user friendly guidelines for the market practitioners to follow instead of putting exhaustive burden on Sponsors. On the other hand, if the experts so appointed are independent from the issuer and qualified for providing the information set out in the "expert sections", we believe that it is sufficient for the Stock Exchange and the Sponsor or the IFA to rely upon their statements. In fact, it is not possible to confirm whether or not the statements in the "expert sections" are true and there is no omission of material fact required to be stated or necessary to avoid the statements being misleading without going through the working papers of the experts. However, working papers of "experts" in most instances are confidential information governed by client confidentiality and cannot be disclosed to a third party by the expert. Moreover, most experts are reluctant to hand over their internal working papers to a third party for review which would render it inherently impossible to conduct the necessary review so as to give the required statement to the Exchange.

3. IFA due diligence declaration

We do not see the reasons for the IFA to include in its report a signed declaration setting out the due diligence it has performed in order to reach a conclusion that the transaction or arrangement is fair and reasonable. In our view, it is suffice for the IFA

to state the basis upon which its recommendation and opinion is formulated.

4. Reporting obligation and monitoring

It is suggested that the Stock Exchange may conduct a "specific" review in relation to the continued inclusion of the Sponsor or IFA and its eligible supervisor if it becomes aware or has reason to believe that the suitability of the firm/individual may be in question. We, as one of the market practitioner, must be informed specifically what criteria or circumstance that such "specific" review will be made. The monitoring tools as suggested are duplicating the role of the SFC in the firm's annual license renewal formalities.

5. Qualification and experience criteria of Eligible Supervisors

It is the autonomy of the Sponsor firm to engage professional staff to perform the role of an "eligible supervisor". A firm can formulate its strategies to engage in what kind of transactions. We consider that as long as the firm, as a whole, has "eligible supervisors" who collectively have relevant corporate finance advisory experience, the Sponsor firm is qualified. We understand in the market that there are firms which maintain separate teams in doing one particular kind of transaction such as M & A, IPO or advisory.

6. Discretionary power

We do not agree that the Exchange should retain an overall discretionary power. It is yet to determine how such discretionary power be exercised fairly, consistently and transparently at all times. It would be helpful that market practitioners be informed under what circumstance that it would be exercised in a fair and orderly manner.

We would be grateful that the above view and concerns could draw your serious re-consideration and look forward to receiving a consolidated result of this Consultation Paper from the securities industry soon. We further suggest that consultation from market practitioners will be constructive before implementation of the new rules in January 2004.

We are happy to share our views in great detail. Please feel free to contact the undersigned at 3151 3933 or our Mr. Edmond Choi at 3151 3935.

Yours faithfully
For and on behalf of
VC CEF Capital Limited

Catherine Wong
Managing Director