

Watterson Asia Limited

5th Floor, 8 Queen's Road Central, Hong Kong
Tel: (852) 2525 1990
Fax: (852) 2526 1990

By Hand

5 June 2003

Head of Listing Division
Hong Kong Stock Exchanges and Clearing Limited
11/F, One International Finance Centre
One Harbor View Street
Central
Hong Kong

Head of Corporate Finance Division
Securities and Futures Commission
12th Floor, Edinburgh Tower
The Landmark
15 Queen's Road Central
Hong Kong

066795

TH
OFF
11

03 JUN -5 PM 2:33

RECEIVED

Dear Sirs,

Re: Response to the Consultation Paper on the Regulation of Sponsors and Independent Financial Advisors (IFAs)

We are a regulated firm under the Securities and Futures Ordinance in the categories of Type 1, 4, 6 and 9. We have been active in acting as lead managers in IPOs and as financial advisers (including IFAs) in corporate finance advisory transactions in Hong Kong. We wish to respond to your consultation paper as captioned above in the same sequence as set out in Annex 3 of your paper.

Q1. Acceptable sponsor firms

Yes, we agree to the establishment of an approved Main Board sponsors' list, given that we already have one for GEM board.

However, we do not agree that all first instance decisions in relation to eligibility as listed sponsors be made by the Listing Division alone, without endorsement or review by the Listing Committee. We are of the view that, as in current GEM sponsorship applications, all such first instance decisions should be endorsed by the Listing Committee. The Listing Committee, an independent body, should be given the power to accept or reject the Listing Division's recommendation. Main reasons are: (1) the Listing Committee, which has members from a more diverse background including those with actual investment banking experience, as opposed to the Listing Division where most of its senior staff has limited such experience, is more experienced in granting such applications. (2) This creates checks and balances of Listing Division's decisions.

Q2. Acceptable IFA firms

Yes, we agree.

Q3. Acceptable individuals

Yes, we agree.

Q4. Competence and experience of the sponsor and IFA firms

Yes, we agree.

Q5. Qualification and experience criteria of eligible supervisors

We do not agree entirely with your proposal.

- (a) We don't think it is necessary to change the existing criteria of having 2 principal supervisors and 2 assistant supervisors under the GEM Listing Rule. We suggest keeping the current 2 + 2 model as in GEM.
- (b) We agree that the Exchange should recognize overseas experience derived from recognized overseas exchanges. However, we wish to point out the Exchange currently takes a very narrow and restrictive approach in recognizing relevant corporate finance experiences in GEM individual sponsor applications. We understand that the Exchange currently does not recognize time served in arranging significant capital market transactions for companies in Asia other than those listed in Hong Kong and Singapore. As such, they deduct the time served in those transactions when calculating the 3 or 5 year requirement under current GEM individual sponsor applications. We are afraid the Exchange will apply the same restrictive approach in qualifying "Eligible Supervisors" if the proposal is proceeded with.

Case in point: One of our proposed GEM assistant supervisor, who had 4 years of investment banking experience at Credit Suisse First Boston in Hong Kong before joining us, was deemed by the Listing Division that he had not served out his 3-year experience requirement as he had spent more than a year of his time in completing a US\$5.8 billion merger and acquisition transaction and a US\$438 million zero coupon convertible bond offering for a large Taiwanese financial conglomerate with its shares listed on the Taiwan Stock Exchange and its GDS listed on the London Stock Exchange. This was despite the fact that the above transactions were lead managed by Credit Suisse First Boston and that the bonds were sold pursuant to an offering document in the United States and internationally in reliance on Rule 144A and Regulation S under the US Securities Act. The reason given by the Listing Division was that the above transactions were not transactions from a recognized exchange and so the period worked on this transaction does not count.

Having worked at a major US investment bank in Hong Kong previously, I believe it is not practical to expect a corporate finance professional who has served significant amount of time at a US global investment bank in Hong Kong to have his experience derived solely from transactions of companies listed in Hong Kong and Singapore (the only two "recognized" exchanges by the Exchange in Asia). This is because Hong Kong is an international financial centre in Asia and US investment banks set up their offices here not only for Hong Kong and PRC "H" share businesses but also to serve companies in Asia including Taiwan, Malaysia, Thailand, India, Philippines and Indonesia and Korea.

The Exchange does not appear to understand that, in a sizeable global offering, US investment banks normally put in the same amount of due diligence and care in preparing the offering prospectus, with emphasis on full and proper disclosure, just like any initial public offering. This attitude is taken regardless of the listing place of the issuer. Such care and diligence are meant to protect the lead manager from being sued by litigious US institutional investors to whom they have sold the securities.

Also, to suggest experiences in advising reputable Asian companies such as Philippine Long Distance Telephone (PLDT), Formosa Plastics, Acer, Samsung, Genting Berhad in international capital market transactions are not corporate finance experience comparable to those companies listed in Hong Kong is beyond our understanding.

Suggestion

We suggest expanding the overseas experience in assessing individual's qualification from those recognized exchanges in the proposal to include experiences derived from (1) substantial transactions, such as those raising not less than say US\$50 – 100 million, from countries other than those currently listed in the proposal and (2) IPO or significant fund raising transactions with global offerings including the US with a US "10b-5 legal opinion". This "10b-5 legal opinion" states that, subject to stated qualifications, the prospectus, offering memorandum or other offering materials do not contain "an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein not misleading."

- (c) We agree to quantify the minimum number of significant transactions under the proposed 4-year period. However, we are of the view that the Exchange should have some flexibility in this regard; particularly to those who have completed more than the minimum 3 transactions within a shorter period than the current proposed 4 years.

Suggestions

A minimum 3-year corporate finance advisory experience can be accepted if the individual can prove that he or she has completed, say, 4 transactions during the shorter period.

We also suggest the definition of "significant transactions" to include those qualified significant equity and equity related fund raising exercises as mentioned in our suggestion in (b) above.

Q5. Other factors relevant to the eligibility criteria

Yes, we agree.

Q6. Minimum capital requirement of Sponsor Firms

Yes, we agree.

Q7. No similar minimum capital requirement fro IFA firms

Yes, we agree.

Q8. Undertakings to the Exchange

Yes, we agree.

Q9. Appointment of Sponsor firms and IFAs

Yes, we agree.

Q10. Independence

We do not totally agree with some of the specified circumstances upon which the prospective sponsor firm will render by the Exchange not independent.

- (a) One of those specified circumstances is that 15% or more of the proceeds raised from an IPO is applied to settle debts due to a member of the sponsor's group. We thought it should be made clear in this clause to exclude financial advisory fees due to the sponsor in relation to listing work.

If this is debt due to members of the sponsor's group, we accept that the sponsor should no long be able to serve as the main sponsor but should be able to serve as a co-

sponsor. But we suggest the percentage mentioned be raised to 50%, as the proposed 15% threshold is too low to affect the impartiality of any sponsor.

- (b) We have problem with the suggestion that a "significant portion of the listing applicant's operation is funded by the banking facilities provided by a member of the sponsors' group". This language is too vague as it is difficult to define "significant portion of the listing applicant's operation".

Suggestion

We suggest quantifying the level of borrowings from member of the sponsor's group. For instance, borrowings from member(s) of the sponsor's group should be not more than 50% of total borrowings, excluding trade debt, of the listing applicant on a consolidated basis.

Q11. Reasonable investigations

Yes, we agree.

Q12. Code of Conduct for sponsors and IFAs

Yes, we agree.

Q13. Declaration by sponsors and lead underwriters in listing documents to be registered

Yes, we agree.

Q14. IFA due diligence declaration

Yes, we agree.

Q15. Reporting obligations and monitoring

Yes, we agree.

Q16. Compliance and sanctions

Yes, we agree.

Q17. Ability of existing GEM and Main Board Sponsors and IFAs to meet eligibility criteria for acceptable lists

- (a) No.
- (b) No.
- (c) Yes.
- (d) Yes.

The criteria under which we would fail the eligibility test are the proposed requirement to have four eligible supervisors that have a minimum of four years of "relevant" experience under your current definition. We would suggest an 18 months' grace period be granted for the implementation of the proposal, if they are to be adopted.

Transitional arrangement

Watterson Asia Limited

5

We welcome transitional arrangement will be in place for existing GEM sponsors who currently can not meet the new eligibility requirement, if adopted. We would however urge the Exchange to continue to admit new GEM sponsors until the end of the transitional period where all GEM sponsors, if qualified under the new requirement, will be transferred to the new Sponsors' list.

Thank you in advance for your consideration.

Yours truly,



David Tsang
Managing Director