M K Leung

# 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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*I concur with this proposal; however, I have the following comments:*

*(1) If the firm does not satisfy the criteria established temporarily, such as resignation of eligible supervisor(s), is there any clear provision to handle such similar situation? Any grace period? Given that the Exchange focuses the responsibility and experience of the eligible supervisors, I suggest that a grace period of not more than six months should be given provided that (1) there are at least two eligible supervisors remaining in the firm; (2) there are not more than two applications for listing having been submitted to the Exchange. Otherwise, the firm must be suspended from acting as a sponsor or suspended from the processing of certain applications for listing until the criteria established are satisfied again.*

*(2) How soon should the firm report to the Exchange if the firm does not satisfy the criteria established? I suggest that such reporting should be done within 3 working days from the date the firm becomes aware of such situation.*

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*(3) If the Exchange refuse an application as a sponsor or cancel a sponsor's admission to the list, will the Exchange provide the reasons or grounds for such decision to the relevant firm or individual? I suggest that the reasons or grounds for such decision should be clearly addressed to the relevant firm or individual and an appropriate appeal or review mechanism should be in place.*

## 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.*

*I concur with this proposal; however, I have the following queries:*

1. *I am not sure whether or not this proposal is applicable to an IFA in relation to the transaction involving the Takeover Code or any other transaction, though not a connected transaction, which the Exchange may consider an opinion of IFA is necessary. If no, I suggest that there should be a similar list in accordance with certain criteria to be established.*

2. *If the firm does not satisfy the criteria established temporarily, such as resignation of eligible supervisor(s), is there any provision to handle such similar situation? Any grace period? Given that the Exchange focuses the responsibility and experience of the eligible supervisors, I suggest that a grace period of not more than six months should be given provided that (1) there is at least one eligible supervisor remaining in the firm; (2) there are not more than one connected transaction or transaction which requires the opinion of an IFA. Otherwise, the firm must be suspended from acting as am IFA or suspended from the processing of certain IFA advisory work until the criteria established are satisfied again.*

3. *How soon should the firm report to the Exchange if the firm does not satisfy the criteria established? I suggest that such reporting should be done within 3 working days from the date the firm becomes aware of such situation.*

4. *If the Exchange refuse an application as an IFA or cancel an IFA's admission to the list, will the Exchange provide the reasons or grounds for such decision to the relevant firm or individual? I suggest that the reasons or grounds for such decision should be clearly addressed to the relevant firm or individual and an appropriate appeal or review mechanism should be in place.*

## 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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*I concur with the spirit of the Exchange; however, I have the following comments:*

1. *Those acceptable individuals should have an appropriate professional qualification, such as solicitor, barrister, ACCA, HKSA or CFA or academic background, such as accounting and law degree; or*

2. *There must be a clear guidance notes or procedure manual which the Exchange satisfies that such acceptable individuals are under the supervision of the eligible supervisors.*

*The reason is that the due diligence review procedure is highly technical and should be performed by duly trained personnel. On-the-job training provided by eligible supervisors would provide such acceptable individuals skills and techniques to perform such due diligence review unless there are clear standard benchmark to justify objectively the sufficiency of such on-the-job training, because those training are usually unstructured. A well-written technical procedure manual should be provided for review by the Exchange.*

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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.*

*I concur with the view of the Exchange. Please also refer to my comments on Q.1 and Q.2. In addition, I suggest that the number of eligible supervisors may be required to increase if there are more than a certain number of applications for listing, say four cases, concurrently submitted to the Exchange which are under progress. Similar increase in the number of eligible supervisors may be required in the case of IFA if there are more than a certain number of IFA submissions, say two cases, concurrently submitted to the Exchange which are under progress.*

*Competence of the sponsor firm or IFA firm should be considered in terms of capital requirement, compliance system, operation system to handle IPO deals such as settlement procedure and any insurance or risk management system rather than the experience of those firms.*

**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.*

*I concur with the spirit of the Exchange in this proposal; however, I have the following comments:*

*1. Given that sponsor and co-sponsor in practice equally have the overall level of responsibility in relation to an application for listing or an IPO, I consider that both sponsor and co-sponsor bear the same risks if their due diligence work are not up to professional standards, therefore both should be counted equally. I don't consider the level of effort or work actually spent by the sponsor or co-sponsor,*

*since we don't have an objective measurement of amount of efforts or work done by the relevant sponsor or co-sponsor.*

*In order to avoid redundancy or any unnecessary puzzles on the division of work among the sponsor and the co-sponsor, I suggest that the Exchange should be set out the maximum number of sponsors or co-sponsors involved in an IPO, which may depend on the work load involved, which are in turn depending on the market capitalization of the issuer or the applicant or other relevant factors.*

*2. It seems that no clear definition of "completed corporate finance transaction" is given in the Consultation Paper. I consider that sponsors or IFAs are taking the role as a professional involved in the corporate finance activity. As such, I suggest that completion of a transaction should be defined as "obtaining the approval-in-principle by the Listing Committee or the Exchange" rather than "listing" or "actual completion of a transaction" which may depend on the then market sentiment or other factors which are not related to the standard and quality of the professionalism of the sponsor or IFA.*

*3. Regarding Paragraph 78 of Part B of the Consultation Paper, I suggest that a duly authorization must be given in writing to authorize the senior staff have the full capacity to carry out his professional sponsorship activities on behalf of the Company and that such senior staff, of course, should be liable personally for his own faults.*

*4. I don't know if transaction involving listing by way of introduction or spin-off should be counted within the definition of "significant transaction". I suggest that it should be counted since similar level of thorough due diligence should be made in those transactions.*

*5. Regarding the minimum of 4 years of relevant corporate finance advisory experience, I don't know if there are any pre-determined method of calculations. Given that relevant experience would not vanish or would not be lost if the eligible supervisors for whatsoever reasons do not engage in any corporate finance advisory for some time, I suggest that a minimum of a total of 4 years (whether consecutive or not) of relevant corporate finance advisory experience should be adopted. Or as an alternative proposal, if the 4 years of relevant corporate finance advisory experience are not consecutive, a minimum of 5 or 6 years of relevant corporate finance advisory experience may be adopted.*

**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.*

*I concur with this proposal except that the IFA firms should also have the minimum capital requirement or professional liability insurance coverage to protect the shareholders of the listed companies. Please refer to my comments on Q.8.*

**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.*

*I concur with the spirit of the Exchange; however, I have the following comments:*

1. *I don't know how the minimum capital requirements are set out, but I suggest that there should be a minimum capital requirement for sponsor firms. In addition to this, such requirement should be increased based on the transaction amount and/or underwriting commitment involved (This amount would be tentatively determined before the hearing of the transaction or the publication of public announcements). As an alternative, the sponsor firms may buy an insurance policy with insured amount sufficient to cover the potential liability of the sponsor firms or to satisfy such capital requirement.*

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

~~*Yes*~~

*No*

*Please state reason(s) for your view.*

*Please refer to my comment on Q.6 except the term "sponsor firms" should be replaced by "IFA firms". As mentioned in my comments on Q.5, I consider that IFA firms should have the similar minimum capital requirements or insurance coverage.*

**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.*

*I concur with the view of the Exchange; however, I think that such proposal should be applicable only if .a clear guidance or practice notes with explanatory notes are to be issued after wide consultation with the practitioners and any concerned parties. A series of training or seminar should be held for eligible supervisors of the sponsor firm or IFA firm to make sure that they understand the requirements or guidance on this proposal.*

## 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.*

*I concur with the view of the Exchange.*

## 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.*

*I concur with the view of the Exchange.*

## 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.*

*I concur with the view of the Exchange; however, I have the following comments:*

1. *Guidance notes, code of practice or practice notes with detailed explanatory notes should be issued to help the sponsor firms or IFA firms, if applicable to accomplish their due diligence task.*

2. *A technical committee with good reputation and recognition should be established to promulgate a set of standard requirements to which a reasonable man would consider appropriate. The practices in legal field or audit and accounting field can be taken as a reference.*

3. *I in principle agree the spirit as set out in the proposed "Conduct of Conduct of Sponsors and Independent Financial Advisers". However, I consider that a technical committee as mentioned above should be established, since some technical difficulties or impossibilities would be arisen during the due diligence review. In addition, the term "which a reasonable man may ...." is too vague unless there are case precedents or reference cases or decisions to be taken as a reference and what is the time frame for the validity of such term. Arguments would most likely be arisen if there are failures, fraud or unacceptable corporate acts occurring.*

## 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.*

*I concur with the view of the Exchange. Please also refer to my comments on Q. 11.*

**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.*

---

*I concur with the view of the Exchange; however, I have the following comments:*

1. *Lead underwriter should make such declaration only if (1) there is no sponsor involved; (2) a prospectus (as defined under the Companies Ordinance) is required to be issued.*

2. *Should the sponsor firms or IFA firms are required to make a declaration, there should be sufficient guidelines or practice note for them to follow. Such declaration is highly technical and may have the effect of legal obligations, therefore, clear guidance or practice notes should be given and should be consulted with the practitioners and their respective advisers. In addition, the minimum scope of work expected for making such declaration must be determined. Prevailing practices in the legal field or accounting / auditing field can be taken as a reference.*

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3. *In order to raise the professional standards, I suggest that a statutory recognition should be considered and a professional body of those eligible supervisors should be established by law. Another alternative is that only eligible supervisors or individuals under the supervision of such supervisors with professional qualification, such as CFA, CPA, ACCA, etc. or satisfy certain academic qualification, such as accounting or law should be eligible for registration or are permitted to take part in the significant transactions. Or a professional examination or continuous professional training or development should be attended by eligible supervisors or those individuals under the supervision of such supervisors for a certain period of time, such as two years.*

   *In the existing practice, there are no specific academic requirements for individuals taking part in those significant transactions. Individuals with academic qualifications such as marketing, engineering, general business administration, etc. are eligible to work for an IPO or corporate finance advisory. I don't understand why such general disciplines or training can allow an individual to perform due diligence to a professional standard since due diligence review is highly technical. I suggest that unless the sponsor firm or the IFA firm can satisfy the Exchange that appropriate structured training has been given to the individuals involved in the execution of the significant transactions or suitable examinations should be passed, I don't understand why they should be allowed to work for the significant transaction.*

**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.*

---

*I concur with the view of the Exchange; However, I have the following comments:*

1. *In the prevailing market practice, there has already been always a statement stating that "[the IFA firm] consider that the information which [the IFA firm] has received is sufficient for it to reach its opinion as set out in the [IFA letter]" or similar wordings. Maybe, a standard wording can be formulated as a reference.*

2. *As mentioned before, clear guidance or practice notes with detailed explanatory notes should be given to and should be consulted with the practitioners. A technical committee should be established to set out the reference standard scope of work expected for making such declaration. Prevailing practices in the legal field or accounting / auditing field can be taken as a reference.*

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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.*

*I concur with this proposal. Please also refer to my comments on Q. 1 and Q.2.*

## 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.*

---

*I concur with the proposal of the Exchange; However, I have the following comments:*

*1. As mentioned before, clear guidance or practice notes with detailed explanatory notes should be given to and should be consulted with the practitioners. A technical committee should be established to set out the reference standard scope of work expected for making such declaration. Prevailing practices in the legal field or accounting / auditing field can be taken as a reference.*

*2. A clear sanction procedure should be set out. As the disciplinary action mentioned above would prohibit an individual or a firm from acting as an acceptable sponsor or an acceptable IFA which seriously affect the career of the individual or the business of the firm, an appeal mechanism should be incorporated.*

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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?*

*N/A*