Quam
Financial Services Group

Quam Capital Limited 華富嘉洛證券融資有限公司

Member of Quam Group

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

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

Dear Sirs,

SEHK/SFC Consultation Paper on the Regulation of Sponsors and Independent Financial Advisers

We are certainly in favour of improving the quality of work provided by all professional firms and directors involved in company flotations and public transactions. However, we are against the recommendations proposed in the consultation paper because, although some of the housekeeping points are useful, much is unworkable, unrealistic, superceded by recent regulation and, in places, unnecessarily punitive.

The adoption of GEM style sponsor controls to the main board is sensible. However, to place all of the burden of an IPO, CPT or RPT on the shoulders of the sponsors or independent financial advisers is a mistake. This is an abrogation of responsibilities of the directors in particular, but also auditors, lawyers and valuers.

Hong Kong Inc. has correctly, in our view, decided that its future lies in attracting PRC companies to our financial markets. This initiative brings with it the significant risks of an emerging market. To simply push blame for malpractice primarily onto the sponsors is counter productive. It remains clearly established international and Hong Kong practice that directors assume primary accountability and responsibilities for their companies.

To establish a "name and shame" regime with a black list of discredited sponsors and independent financial advisers who fall foul of remiss directors is demeaning and simply not appropriate to a world class financial market of Hong Kong's status. To our knowledge there is no equivalent list of vetoed advisers worldwide nor a black list for other professions in Hong Kong. Will similar lists be prepared for audit partners, valuers and legal advisers?

The proposals do contain sensible and useful housekeeping matters including pre-qualification criterion, and approved panel of sponsors. However, certain aspects are clearly excessive and will drive quality down and costs up and make our market less attractive to all parties.

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If implemented in their current form, the proposals would have the following effects:

- Drive away larger, and the more diligent investment banks from the Hong Kong market who are not prepared to assume sole audit style responsibilities for China Risk or underwrite the shortcoming of others;

- Add significant costs to an already expensive IPO environment in that investment banks will be driven to require lawyers to take over responsibilities for prospectuses. Such lawyers will adopt 10b(5) style levels of due diligence and charge accordingly;

- Prospectuses will become increasingly bland, US style documents consisting largely of legal protections for underwriters and devoid of useful corporate information including profits forecasts, business plans etc. ;

- The focus of attention will shift from directors, who, under law and established practice, should assume primary responsibility;

- Lead to a deterioration of the good working relationship generally enjoyed between financial advisers and the Listing Division.

In our opinion many of the initiatives in the paper are unnecessary, following the introduction of the Securities and Futures Ordinance ("SFO") and SFC Code of Conduct for Financial Advisers, both released in April 2003. The SFO introduces legal process for errors and omissions in public documents under the dual filing system. The Code of Conduct gives the SFC more than sufficient power to police financial adviser activities. It is inappropriate to add another layer of regulation and confusing to establish a further group of regulators within the Hong Kong Exchange. The SFC is the correct institution to regulate advisers under their statutory powers. To empower the Stock Exchange Listing Division and Committee as executive, judge, jury and executioner of financial advisers goes contrary to world practice and recent recommendations.

We address the particular questions outlined in the consultation paper in the attached report. We are happy that this letter and the report be posted on the Hong Kong Exchange website, and are available for any further consultation as deemed appropriate.

Yours faithfully,
for and on behalf of
QUAM CAPITAL LIMITED

Richard D. Winter
Managing Director

Q1	Yes to list. But registration as a sponsor or IFA should remain with the SFC.
Q2	As above.
Q3	Yes, but (i) the supervision of the licensing regime of corporate financiers should be under the SFC as it is part of its statutory functions and (ii) there should be no list of unacceptable individuals. Such is demeaning and inappropriate to a world class international market.
Q4	Yes, on individual but no to the requirement for sponsors firms to have at least four eligible supervisors. A better approach is that currently adopted in the GEM Listing Rules – at least two principal supervisors and two assistant supervisors. IFA firms should have at least one principal supervisor and one assistant supervisor.
Q5	Yes, but flexibility must be maintained. In weak markets, the 2 year rule will only be met by the "production line" houses.
Q6	Yes, but under the SFC's auspices. Also, disciplinary actions in which a breach has not been proven, or a settlement has been reached, should be excluded from the reporting requirements.
Q7	Yes.
Q8	Yes to declaration of facts in application form. No to individual undertakings. This is already covered in SFC Code of Conduct for advisers. There is no similar requirement for other professionals.
Q9	Yes.
Q10	Yes.
Q11	No. Agree with the "reasonable care" and "reasonable investigation" concepts. However, (i) the proposed code is unworkable. Inter alia, it is impossible to conduct investigations to satisfy oneself that "directors can be expected to honour their obligations"; (ii) it is unrealistic to expect sponsors to be able to carry out investigations to satisfy themselves that there are no reasonable grounds for believing that "expert sections" are untrue or omit to state a material fact required to be stated to avoid the statement being misleading. How can the sponsor be expected to investigate the financial information stated in the accountants' report? Should they

	engage another firm to review the work carried out by the reporting accountants? Can sponsors double guess a PRC legal opinion given in respect of a valuation of property situated in the PRC? Should the sponsor engage another PRC law firm to review the work done by the PRC lawyer giving the opinion? Clearly the sponsor itself cannot be expected to have the expert knowledge and expertise itself to review the work of an expert in a specialised field. The experts should take responsibility for their own work; and (iii) the Exchange should recognise that in many instances it is impossible to positively satisfy oneself of the truth and completeness of non-experts statements.
Q12	No. The SFC Code of Conduct for advisers issued April 2003 already is sufficient. The proposed Code of Conduct seeks to impose totally inappropriate and unrealistic obligations on sponsors.
Q13	No. It is unrealistic to expect sponsors to take responsibility for the so-called "expert sections". Also, there are practical difficulties to ensure that a document is written in "plain language" when it is often subject to substantial editorial amendment initiated by the Exchange.
Q14	No. How can the IFA satisfy itself as to whether any third party expert advice or opinion relied upon is untrue or omits a material fact? They cannot, they are not the experts in the relative fields and they have not carried out the work which the expert will have carried out.
Q15	No, the monitoring programme is currently taken up by the SFC and it is more efficient for the SFC to continue this work.
Q16	No. The "Name and Shame" list of unacceptable persons is vindictive, and demeaning to an international stock exchange. There is no parallel for other professionals, or other world markets.
Q17	Not sure. 4 supervisors with IPO experience in last two years too inflexible, especially for startups. By definition, 30 months transition will not help. Flexibility must be established to recognise previous experience and other aspects of corporate finance experience.