

A RESPONSE TO THE JOINT CONSULTATION PAPER ON THE REGULATION OF SPONSORS AND INDEPENDENT FINANCIAL ADVISERS BY THE SECURITIES AND FUTURES COMMISSION AND THE STOCK EXCHANGE OF HONG KONG

by

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OVERVIEW

As previously advised, I am rather out of my depth as regards the foregoing topic. In fact, such is the depth of my ignorance that I found both the proposals and the proposed code of conduct to be highly reasonable in light of the stated objectives. I believe that both of the foregoing is necessary if we are to move towards a true disclosure based system of regulation in which the regulators simply slip into the background to facilitate the development of the markets. In the interim, the proposals will hopefully establish a framework that will minimize unpleasant incidents such as that which arose from Euro-Asia Agricultural Holdings.

I would therefore **SUPPORT** both of the foregoing but hope that some consideration may be directed to the issues that I have raised under the section '**Comments**' below. Nonetheless, I can foresee considerable objections to the proposals on the grounds that they:

- i. allow the Stock Exchange of Hong Kong to 'pass on' some of their duties and responsibilities to the sponsors and independent financial advisers; and
- ii. may give rise to the practical issue of who would want to be a sponsor and/or independent financial adviser within the proposed regime, which imposes 'onerous' responsibilities on these professionals. This may in turn reduce the number of such professionals available, which ramifications may need to be assessed in more detail.

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COMMENTS

a. *Provide more 'teeth' to enforcement*

While the proposals reduce the 'expectation gap' by enhancing the standards of sponsors and independent financial advisers, the enforcement thereof may possibly turn out to be less effective than desired. This is so because the *Listing Rules* are contractual in nature, and although the dual filing regime has enjoyed a relatively smooth implementation, I am of the opinion that enforcement would be more effective if statutory backing were accorded to the *Listing Rules*.

b. *Enhanced deterrence*

Due consideration should be given to an amendment of section 40 of the *Companies Ordinance* to include sponsors as persons who authorize the issue of a prospectus. This would expose them to liability for compensation to investors who lost money when subscribing for securities on the strength of the contents of a prospectus. I believe that such an amendment is but a logical conclusion of the enhanced responsibilities that will be imposed upon sponsors by the proposals.

c. *Setting an objective benchmark*

I am of the opinion that there ought to be an objective benchmark couched in broad terms for sponsors and independent financial advisers. This can be attained by the inclusion of an additional requirement that they perform to the standards expected of 'reasonable professionals' in their respective fields. This would introduce an objective test in benchmarking the performance of these professionals and would contribute towards a more efficient regime of enforcement by reducing the scope for uncertainty.

d. *Transparent process*

Last but not least, although it is always assumed, I believe that there should be clear and objective guidelines as regards criteria and appeals process with the rules of natural justice to apply before an individual or firm is deemed 'unacceptable'.