



SECURITIES AND FUTURES COMMISSION
證券及期貨事務監察委員會

Consultation Conclusions on the regulation of IPO sponsors

12 December 2012



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Introduction

1. On 9 May 2012 the Securities and Futures Commission (**SFC**) issued a Consultation Paper inviting public comment on a number of proposals designed to enhance Hong Kong's sponsor regulatory regime.
2. The Consultation Paper invited comments on two broad areas: (i) the regulatory regime for sponsors' conduct; and (ii) legislative amendments relating to sponsors liability.
3. In response to market requests we extended the consultation period from 6 July 2012 to 31 July 2012.
4. We received 71 written responses from sponsor firms, the investor community, lawyers, accountants and various corporate governance bodies. There were six respondents who represented groups of sponsor firms, investment banks or pension funds. A profile and a list of the respondents (other than those who requested anonymity) are set out in **Appendix E**.
5. As part of the consultation process we met with members of the sponsor community and interested groups, for instance the Public Shareholders Group. Many of them provided general comments and proposed new initiatives on a number of aspects of the sponsor and IPO regulatory regime in addition to addressing specific consultative issues.
6. We welcome the responses and would like to thank everyone who has taken the time and effort to provide us with their detailed and thoughtful comments. Your suggestions have been very useful in helping us refine many key aspects of the regime and the framing of specific provisions.
7. The Consultation Paper, the responses and this Conclusions Paper are available on the SFC website (www.sfc.hk).



Executive summary

8. Initial public offerings (**IPOs**) have been an important feature in the growth of Hong Kong's stock market and its overall development as a leading international financial centre. In order to help Hong Kong maintain its position as a leading venue for fund-raising it is vital that the IPO regulatory regime enables market participants to invest and raise new funds with confidence. A critical aspect of this regime concerns the role of sponsors.
9. Many respondents echoed concerns expressed in the Consultation Paper that standards of sponsor work have fallen short of expectations. In some cases sponsors did not substantially complete their due diligence before making a listing application and draft listing documents did not contain relevant and meaningful disclosure about the applicant. Against this background the SFC consulted the market on proposals aimed at improving market confidence and the overall quality of sponsor work.
10. Respondents from the buy-side (mainly fund managers and other institutional investors) welcomed the SFC's initiative. They agreed that there is a need to strengthen regulations to protect investors who rely on sponsors to act as crucial gatekeepers of market quality in an IPO process. The proposals are seen as a step in the right direction in reinforcing Hong Kong's position as a major international financial centre and in helping to prevent IPO failures which would have a damaging effect on its reputation. They were also united in the view that any proposal for the regulation of IPOs should be made in the best interests of all concerned and should not be overly burdensome.
11. Respondents generally welcomed the proposals to consolidate and centralise the key obligations of sponsors in a new paragraph 17 (**Provisions**) of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**). The Provisions, which aim to add clarity and enhance efficiency, will serve as a useful guide to sponsor firms. They are designed to provide a regulatory basis for defining the expected quality of work of a sponsor and are therefore in the interests of public investors and all other stock market participants.
12. The issue of sponsors' prospectus liability was one of the most controversial topics of the consultation. Responses were diverse. Responses from the buy-side were supportive of the proposals. They considered sponsors' prospectus liability to be critical and the proposal to clarify existing law was welcomed, although a few considered a clarification to be unnecessary as they believed that the law is sufficiently clear to include sponsors. Objections to the proposal were mainly made by sponsors and law firms.
13. Set out below is a discussion of the main comments raised by respondents in written submissions and during our soft consultation under four headings: (i) impact on Hong Kong; (ii) new issues; (iii) refinements to paragraph 17 and related proposals; and (iv) prospectus liability. Respondents' detailed comments on the specific consultative proposals and our responses to those comments are set out in the section entitled "Comments received and the SFC's responses".
14. We recognise that the IPO market in common with other areas of the financial services industry is currently going through challenging times, with substantially lower transaction volumes. Notwithstanding this we believe it is important to press ahead with the reforms as they are intended to endure through future market cycles during which there is every expectation of a healthy pipeline of IPOs in Hong Kong. The



current low level of activity enables firms to concentrate on how they will comply with the reforms. These changes, together with a streamlined regulatory process, underpin a quality market and incentivise sponsors to pick the right deals and manage them well. This should lead to an environment which reduces risks for investors and all those involved in IPOs including sponsors and other professionals.

Impact on Hong Kong

15. Sponsor firms expressed concerns that implementation of the proposals would lead to an increase in the cost of acting as a sponsor and the overall costs of listing given that sponsors may be required to perform additional due diligence work before a listing application is made. Sponsors may therefore be less willing to pursue smaller scale IPO work and may even advise clients not to list in Hong Kong. There were comments that severe penalties and onerous requirements may have the undesired effect of stifling the IPO market and marginalising the smaller sponsor firms. In particular concerns were raised that the implementation of the proposals may adversely affect the attractiveness and competitiveness of Hong Kong as an international financial centre and a preferred listing venue.
16. The proposals are aimed at encouraging best practice across sponsor firms. In most respects they represent a consolidation of key sponsor obligations in the Code of Conduct and clarification of existing law and practices. We have introduced a number of provisions to help reinforce the role of sponsors and to enhance the quality of disclosure. These include the minimum period for which a sponsor must be appointed before a listing application may be made, the obligation of sponsors to provide information to the regulators in specified circumstances, the publication of the Application Proof and the initiative to streamline vetting procedures (as discussed further in paragraphs 51 to 70 below). We believe that the proposals, when implemented, will help parties involved in IPOs to focus on better and earlier preparation of listing applications and enable sponsors to take a more proactive and authoritative role when managing IPOs.
17. The new standards in the Provisions are comparable to those in other leading IPO markets and are unlikely to lead to regulatory arbitrage to Hong Kong's detriment. We expect that the proposals should not have a significant impact on sponsor firms which have already been complying with the expected standards. For others whose behaviour and conduct have fallen short of the expected standards, adjustments will be necessary. The proposals will therefore be beneficial for a healthy and quality market which will in turn enhance, rather than hamper, Hong Kong's attractiveness as a premier listing venue.
18. A few respondents raised a concern that larger international financial groups may seek to decouple the sponsor function from the bookrunning and underwriting function to reduce the risks associated with the sponsor role whilst retaining management of the public offer itself.
19. We have concluded that it would be premature to assume that this will occur in the near future; sponsors have considerable control over an IPO process and for this reason are routinely also the lead underwriters, bookrunners, managers or global co-ordinators of the public offer. Sponsors also operate as the main line of communication between the regulators and the listing applicant. We have no basis on which to conclude that our proposals will alter applicants' appointment of the principal underwriters as sponsors in most cases.



20. There is a view that if a sponsor is also within the same firm as a lead underwriter this enhances the integrity of the bookbuilding, pricing and related aspects of the public offer, provided that the sponsor work is of sufficient quality. However if market practice develops such that firms decouple the sponsor function and give it off to specialised sponsor firms whilst maintaining control over the underwriting process and exercising influence over disclosures in a prospectus, we may need to consider whether it is appropriate, amongst other measures, to clarify prospectus liability in respect of underwriters. This is in line with the practice in many major markets where underwriters are subject to liability provisions.

New issues

21. Respondents from the sponsor community emphasised that the preparation of a listing document is a collaborative process involving not only the sponsor but also the directors and senior management of the listing applicant and other professionals such as reporting accountants, legal advisers, financial advisers, valuers and other experts. They submitted that it would be unfair and unrealistic to require them to assume sole or ultimate responsibility for prospectus accuracy as sponsors are not in a position to influence or control the standard of work of other professionals in an IPO process.
22. In our soft consultation with sponsor firms many respondents expressed concerns about the limitations that a sponsor faces in discharging its duties during an IPO. One that was frequently mentioned relates to a sponsor's increasingly limited authority to manage the IPO process and guide the listing applicant. Sponsor firms claimed that their influence over listing applicants has diminished partly as a result of intense competition amongst sponsors which has led to, in some cases, degraded due diligence standards.
23. Whilst a sponsor certainly collaborates with other parties in the course of an IPO it plays a unique role in leading and co-ordinating the entire process. We therefore agree that it is important that a sponsor should be afforded adequate authority and appropriate support to enable it to discharge its role effectively. Some sponsor firms have proposed a number of new initiatives to address this concern.
24. After careful consideration and discussion with sponsor firms and market practitioners we agree with a number of the proposals and have decided to adopt them. Under the initiatives (see paragraphs 51 to 70):
- (a) a sponsor is required to be formally appointed by a listing applicant for a minimum period of two months before submission of a listing application;
 - (b) sponsor fees are required to be specified in a sponsor's terms of engagement and be based solely on a sponsor's role as such and not on unrelated services;
 - (c) a financial adviser who is appointed to advise a listing applicant is required to fully co-operate with, and should not adversely affect, the sponsor in discharging its duties; and
 - (d) a sponsor is required to notify the regulators under specified circumstances including where the sponsor ceases to act for a listing applicant.
25. Although sponsor firms recognised and agreed with criticisms that the standard of prospectuses has fallen short of expectations in recent years, they attributed this shortcoming partly to increasingly stringent disclosure requirements and the meticulous



regulatory commenting process. They were concerned that the manner in which regulators comment on documents and how sponsors have configured disclosure as a reaction to these comments have given rise to more cumbersome and lengthy prospectuses and reduced the incentive to submit a substantially complete and carefully drafted listing application after completing proper due diligence on the applicant. In short, there is a concern that the volume of detailed comments by the regulators is driving critical aspects of disclosure rather than a thorough understanding of the applicant by the sponsor prior to the application.

26. Regulators are not responsible for the overall quality of a prospectus. The scope and extent of regulatory comments raised depend on the quality of draft documents submitted for review. We expect that the proposed requirements set out in the Provisions together with other measures discussed in this paper will result in the submission of better quality initial drafts which will in turn attract considerably fewer comments from the regulators. In light of this the SFC and the Stock Exchange of Hong Kong Limited (**Stock Exchange**) will work together to streamline and shorten the regulatory commenting process (see paragraphs 66 to 70 below).

Refinements to paragraph 17 and related proposals

27. Respondents generally supported the proposals to amend the Code of Conduct which are aimed at encouraging best practices across all sponsor firms and improving the quality of listings. The majority of them supported most of the proposals. The main dissenting views came from sponsor firms, who although disagreeing with some of the proposals, were nevertheless in broad agreement with many aspects and the underlying principles. In many instances respondents provided detailed comments on areas where they felt that the proposed wording was too broad, or where they felt that clarification or guidance was necessary or would be helpful.
28. Taking account of respondent's comments we have modified the proposals and have refined certain Provisions to enhance the clarity and certainty of the requirements. We believe that the revised proposals are a realistic reflection of what can and should reasonably be expected of sponsors and listing applicants in an IPO process. The amended paragraph 17 of the Code of Conduct is attached as **Appendix A**.
29. We have summarised all the key refinements to the proposals in paragraph 73 below. A discussion of the respondents' detailed comments and our responses to those comments is set out in paragraphs 74 to 299. The proposals which attracted more contentious comments are highlighted below.

Expert reports

30. Sponsor firms were concerned about the proposal to require a sponsor to be able to demonstrate that it is reasonable to rely on the expert sections of a listing document. They pointed out that they cannot reasonably be expected to possess the level of knowledge and expertise of an expert in order to properly verify the information in expert reports. Nevertheless they agreed that a sponsor should critically assess expert reports with a questioning mind. We believe that the proposed requirement for sponsors in respect of expert reports is an important measure to help assure the integrity of information disclosed in a listing document. We consider that sponsors should act proactively when assessing expert reports. We have modified the proposal so that at the time of issue of a listing document a sponsor, as a non-expert, after performing the due diligence discussed in paragraph 31 below (as more fully set out in revised paragraph 17.7 of the Code of Conduct), should have no reasonable grounds to



believe and should not believe that the information in the expert report is untrue, misleading or contains any material omission.

31. In light of comments received we have refined the guidance on the work expected of sponsors to explain that in reaching its conclusion regarding an expert's report, a sponsor should consider four main aspects:
- (a) the expert's qualification, experience and independence;
 - (b) the expert's scope of work;
 - (c) the bases and assumptions underlying the report; and
 - (d) the expert's opinion together with the rest of the information contained in the report.
32. We emphasise that a sponsor should first of all critically review the expert's opinion together with the rest of the information disclosed on the face of the report against the totality of all other information known to the sponsor about the listing applicant, including the business model, track record, operations and sector performance. This other information may be sourced through due diligence as well as, for example, the sponsor's knowledge and experience of the listing applicant, the market in which it operates and of comparable companies. The sponsor should be alert to any material discrepancies, irregularities or inconsistencies and conduct follow up work to resolve any problems.
33. In considering the scope of an expert's work, one aspect the sponsor should consider is whether it adequately covers the reliability of information provided to the expert. If not the sponsor should either request that the scope be expanded, seek the assistance of a third party to check the information or alternatively extend its due diligence to cover the information provided to the expert. For example, it is not necessary to carry out any additional work on information provided to the reporting accountant in arriving at the accountant's report since the scope of work is defined by relevant professional standards. On the other hand it may be necessary to engage a legal adviser to confirm legal title to properties dealt with in a valuer's report as discussed in paragraphs 156 to 162.
34. As regards the disclosure of financial information commonly known as "Management Discussion and Analysis of Financial Performance and Condition" (**MD&A**), a sponsor is expected to work closely with the management of a listing applicant and its other advisers on relevant, adequate and comprehensible MD&A, and to avoid excessive or irrelevant disclosure that might overwhelm investors or obstruct them from identifying easily and understanding material and critical information. The sponsor should also consider, amongst other things, the following (see paragraph 163 below):
- (a) whether there were any matters that have materially affected the listing applicant's historical financial performance;
 - (b) whether there are any material factors or events that are likely to affect the applicant's future financial performance; and
 - (c) whether there are any exceptional items or unusual accounting treatments that require further enquiry or disclosure in the MD&A.



Publication of Application Proof

35. Sponsor firms and market practitioners commented that if there is still a significant period between the date of a listing application and the actual listing, the publication of the Application Proof¹ might give rise to a number of practical issues, for example premature disclosure of company information. They took the view that some of these issues must be adequately addressed before the proposal could be implemented. We envisage that the Provisions will result in better quality initial drafts, which, coupled with a more streamlined IPO application process, should shorten the time between the date of the listing application and the actual listing.
36. After taking account of responses, for the reasons set out in paragraphs 198 to 204 below, we consider it appropriate to proceed with the proposal to publish the Application Proof on the Hong Kong Exchanges and Clearing Limited (**HKEx**) website alongside the implementation of related measures to streamline the regulatory process.

Multiple sponsors

37. We agree with respondents' views that the appointment of sponsors is a commercial decision for the listing applicant and, depending on the circumstances of a listing applicant, there may be good reasons to retain multiple sponsors, for example to involve different types of expertise. Respondents were also opposed to the proposal that only independent sponsors should be appointed. In light of the comments received and for the reasons set out in paragraphs 255 to 258 below, we have decided not to proceed with the proposals to require a sole sponsor or to impose a limit on the number of sponsors that may be appointed to the same transaction. We also consider it appropriate to maintain the current requirement under the Listing Rules² that one of the sponsors must be independent pending a separate review of these rules.

Prospectus liability

38. The proposals dealing with civil and criminal prospectus liability received mixed responses with general support from buy-side market participants and opposition from sponsors and law firms.
39. Although some respondents argued that the proposal was not a clarification but an extension of prospectus liability to sponsors because in their view it is clear that existing provisions do not apply, there were also respondents who were of the view that the existing Companies Ordinance (**CO**) provisions already apply to sponsors. These diverging views and the lack of case law on the issue demonstrate the need to clarify whether sponsors are subject to existing civil and criminal prospectus liability provisions. It would not be credible to clarify that sponsors do not have legal liability; to do so would be out of line with the approach to liability in other major markets and would harm Hong Kong's profile as a market founded on the rule of law and high standards of regulation. We therefore consider it appropriate to state with certainty that sponsors have statutory liability by amending the civil liability provision (i.e. section 40) and the criminal liability provisions (i.e. section 40A and section 342F) in the CO so that a person who has authorized the issue of a prospectus includes a sponsor.
40. One issue on which many respondents agreed concerns the way in which the criminal liability provisions are currently drafted in the CO. This criticism relates to the structure

¹ An advanced proof of the listing document submitted with the listing application under the Listing Rules.

² The Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited.



of these provisions – i.e. the prosecution only has to prove that a prospectus contains an untrue statement, and in response the defendant has to establish that he had reasonable grounds to believe, and did believe at the time of the issue of the prospectus that an untrue statement was true or that the statement was immaterial. We will, in line with comparable SFO provisions, recommend that the criminal prospectus liability provisions be amended so that the prosecution will bear the burden of proving that: (a) a person authorizing the issue of the prospectus knew that, or was reckless as to whether, a statement in the prospectus identified by the prosecution was untrue; and (b) the untrue statement was materially adverse from an investor's perspective.

41. There seemed to be confusion as to whether individuals in a sponsor firm, including more junior staff, would be subject to the criminal liability provisions. We wish to clarify that the criminal liability provisions under section 40A will only apply directly to a sponsor firm. Nevertheless, in situations where there is evidence that an individual (not limited to directors or senior management) in the sponsor's firm has colluded in the making of an untrue statement in a prospectus, or where a director or other officer has participated in or consented to the commission of the offence, it is possible for these individuals to be prosecuted for aiding and abetting, consenting or conniving to commit an offence under general law.

Outcome of the reforms

42. We believe that with the implementation of the new proposals, including the Provisions:
- (a) sponsors will have more authority over an IPO and there will be a streamlined or shorter regulatory process;
 - (b) sponsors will be able to manage the listing process more effectively; enabling the production of a better quality first proof listing document and better management of overall deal risk;
 - (c) civil and criminal prospectus liability will be clarified and the criminal liability provisions will be aligned with comparable SFO provisions; and
 - (d) market confidence and investor protection will be enhanced.

Amendments and transitional arrangements

43. The Provisions will become effective on 1 October 2013. The amendments to the Corporate Finance Adviser Code of Conduct (**CFA Code**, see **Appendix B**) and the Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers (**Sponsor Guidelines**, see **Appendix C**) will also become effective on the same day.
44. The Stock Exchange and the SFC have discussed, and agreed in principle, the amendments to the Listing Rules required to dovetail the rules with the Provisions and to remove relevant listing requirements, where appropriate, to avoid duplication. The Stock Exchange will make appropriate changes to the Listing Rules to implement the proposal to publish the Application Proof. The Stock Exchange will also make appropriate amendments to relevant Listing Rules with a view to bringing the revised rules into force when the Provisions become effective. Finally, the SFC will work closely with the Stock Exchange to formulate specific measures to streamline the regulatory commenting and other aspects of the IPO process. Details of these measures will be the subject of a separate announcement.



45. A sponsor which submits a listing application on or after 1 October 2013 is required to comply with the Provisions. We believe this effective date will give sponsors sufficient preparation time to ensure compliance. However we strongly encourage sponsors to follow the new provisions as soon as practicable.
46. The SFC will recommend that the CO be amended so that it is clear that the civil and criminal prospectus liability provisions apply to sponsors and that criminal liability requires the prosecution to bear the burden of proving that: (a) a person authorizing the issue of the prospectus knew that, or was reckless as to whether, a statement in the prospectus identified by the prosecution was untrue; and (b) the untrue statement was materially adverse from an investor's perspective. The legislative amendments will follow a separate timetable.



Discussion of new issues

47. In our soft consultation with sponsor firms many respondents commented on the overall role of a sponsor and the limitations that a sponsor faces in discharging its duties in an IPO. Their comments and proposed initiatives to address some of these concerns are discussed below.

Collaborative process

48. Respondents from the sponsor community in general emphasised that the preparation of a listing document is a collaborative process involving not only the sponsor but also the directors and senior management of the listing applicant and other professionals such as reporting accountants, legal advisers, financial advisers, valuers and other experts. They submitted that it would be unfair and unrealistic to require them to assume sole or ultimate responsibility for prospectus accuracy as sponsors are not in a position to influence or control the standard of work of other professionals in an IPO process. It was suggested that the proposals should be broadened to take account of the role of other participants in an IPO.
49. We recognise that apart from sponsors, others have important roles to play in an IPO. Primary responsibility for the information in the listing document undoubtedly rests with the directors of a listing applicant. Their obligations to investors are contained in statute (principally the Securities and Futures Ordinance (**SFO**) and the CO), in the common law as well as the Listing Rules (see Chapter 3A). Lawyers and accountants are subject to their own professional standards and ethics. Auditors are subject to criminal sanctions under section 408 of the new CO if they knowingly or recklessly omit certain required statements from an audit report. Lawyers and accountants are also subject to the disciplinary procedures of their respective professional bodies. The SFC will not hesitate to take appropriate action in the interests of investors against directors, experts and other persons who breach statutory provisions relevant to IPOs.
50. In practice any proposals for wholesale changes to the IPO regime as it applies to professionals and others would inevitably involve a more complex and lengthy reform. Moreover no changes that may affect others who contribute to a prospectus would reduce or otherwise affect the obligations and responsibilities of sponsors. In light of the unique, central role played by sponsors and given that they are licensed and regulated by the SFC we consider it appropriate to deal only with the role of sponsors at this stage.

Sponsors' role

51. A number of respondents from the sponsor community commented that their authority as sponsors has diminished significantly over the years as the contest for significant roles in an IPO became increasingly competitive. As a result they admitted that at times they felt they had little choice but to accede to the demands or preferences of listing applicants, which at times impacted on the sponsor's role.
52. We consider that sponsors should be given appropriate support to enable them to perform their role effectively. Some of the respondents have suggested possible ways in which this issue may be addressed. These suggestions, which complement the proposals in the Consultation Paper, are set out below.



Minimum appointment period and related matters

53. We were advised that whilst firms may work on a sponsor engagement over a long period, often for months, formal appointment is generally made much later, sometimes after the listing application and even on or close to the date of listing. Recently there have been instances where sponsors have been brought in at the closing stages of IPOs. Given that sponsors are required to perform the vast majority of due diligence work early in an IPO process it has been proposed that a sponsor should be formally appointed by a listing applicant sufficiently before the listing application is made (**minimum appointment period**). In determining the time of appointment a sponsor should consider all relevant circumstances including the size and complexity of the listing applicant and the time required to enable the sponsor to undertake the work necessary to meet its obligations and responsibilities, including due diligence.
54. The actual lead-time needed depends on the specific circumstances of the listing applicant. We believe however that a sponsor firm is unlikely to have sufficient time to perform the necessary due diligence work in any IPO if it is formally appointed less than two months before a listing application. Whilst we think that two months should be the minimum time in many cases this will not be sufficient to complete the listing application properly including detailed planning, engagement of other professionals and due diligence. If the sponsor considers that it is unable to complete the work required in the time available, even if this is more than two months, the firm should decide whether to delay submitting the listing application or, if the listing applicant insists on a shorter timetable, whether it is appropriate to accept appointment as sponsor in the first place.
55. A sponsor will be required to notify the Stock Exchange when it is formally appointed or when it ceases to act for the listing applicant at any time after its formal appointment, regardless of whether a listing application has been submitted. In response to concerns about potential breaches of confidentiality to a listing applicant we propose that a sponsor should ensure that its terms of appointment contain clear provisions whereby the applicant acknowledges that the sponsor will provide information to the Stock Exchange or the SFC where this is required under the Provisions (see paragraphs 190 to 194). In the event that more than one sponsor is appointed in respect of the same IPO, each of them will be required to comply with the minimum appointment period and therefore the listing application may only be made not less than two months from the date the last sponsor is formally appointed. However if one sponsor's appointment terminates the requirement will still be satisfied if all the remaining sponsors have satisfied the minimum appointment period requirement.
56. A listing applicant should disclose all information requested by a sponsor relevant to its role in a fully transparent and proactive manner, and otherwise fully assist the sponsor in the performance of its duties. A sponsor's mandate or terms of appointment should not contain any provisions that will inhibit it in carrying out its duties or complying with all relevant regulatory requirements including the Code of Conduct. The appointment should specify an applicant's obligations to facilitate the sponsor in discharging its responsibilities under the Code of Conduct, including an acknowledgement that the sponsor may be required to provide information to regulators, in which case the applicant shall extend all necessary assistance to enable the sponsor to comply. The applicant should also be required to assist, and procure all relevant parties engaged by the applicant in connection with its listing (including experts) to assist, the sponsor in discharging its other responsibilities. We will liaise with the Stock Exchange on whether amendments to the Listing Rules are necessary to strengthen the applicant's obligations to assist the sponsor in an IPO.



57. The above requirements are set out in revised paragraph 17.11(b)(i).

Specify sponsor fees in terms of engagement

58. Many sponsor firms commented that recent practices relating to fees for sponsors, underwriters and other experts have adversely impacted the role of sponsors. It is common for large financial institutions to provide other services, such as underwriting, in addition to their role as sponsor. In these cases the far greater proportion of total compensation typically consists of underwriting commission whilst the amount that relates to sponsor work does not properly reflect the responsibility associated with the role or the time and resources required to discharge that responsibility. Downward pressure on sponsor fees means that there may be a disincentive for a sponsor to carry out proper due diligence. An added risk is that a sponsor's role may be viewed as being less important than the other services provided by the firm, such as bookbuilding, hampering further a sponsor's authority to carry out its work properly.
59. Whilst we accept the observation made by some respondents that the determination of sponsor fees is a commercial decision and therefore the regulators should not give prescriptive guidance on how they are fixed, we agree that transparency is important. We note the requirement in paragraph 15 of Third Schedule of the CO to disclose in the prospectus the total amount of the expenses connected with an IPO.
60. We consider that sponsor fees should appropriately reflect the role and responsibilities to be discharged by a sponsor and should not be confused with other services, notably bookbuilding, pricing and similar functions governed by underwriting and related agreements. The sponsor fee should not be contingent on the success or the final size of the offering and any staged payments should be proportional to the amount of work done up to that stage. Any "no deal; no fee" arrangements (or arrangements to that effect) should be avoided. In this respect, sponsor fees should be clearly specified in every mandate or appointment letter, including the basis on which the fee is determined, the payment structure and timing and any other factors that would affect the fee. The total amount of sponsor fees paid and payable should be disclosed in the listing document.
61. The above requirements are set out in revised paragraph 17.11(b)(ii).

Role of financial advisers in an IPO

62. A number of sponsor firms raised the concern that at times, in addition to the many advisers that are already involved in an IPO process, a listing applicant may also appoint a financial adviser whose role would typically be to advise the listing applicant on matters relating to the IPO and to protect its interests. There are concerns that financial advisers, in some cases, may effectively assume the role of a sponsor without being subject to the same level of responsibilities and obligations as a sponsor. In other cases the financial adviser may come between a sponsor and the listing applicant in a manner that limits direct contact, inhibiting the ability of the sponsor to properly carry out its duties.
63. Financial advisers, including those who are involved in an IPO, must be licensed by the SFC to carry out activities under Type 6 of the SFO (advising on corporate finance). They are therefore governed by the CFA Code which sets out the conduct requirements for persons who are involved in advising on regulatory matters relating to the listing of securities.



64. In light of the comments made by the respondents we have amended the CFA Code to provide that whilst a financial adviser to a listing applicant in an IPO has to act in the interests of its client, it should co-operate fully with the sponsor and should not engage in conduct that could adversely affect the sponsor in discharging its duties. This is designed to address any misalignment of responsibilities or incentives between a sponsor and a financial adviser.
65. Please see revised paragraph 5.4 of the CFA Code (see **Appendix B**).

Involvement of regulators

66. Sponsor firms and law firms raised concerns about the unpredictability and length of the regulatory commenting process. They noted that the commenting process may take months to complete and the draft listing document is often subjected to rounds of comments. Against this background it is often easier simply to accept comments rather than question their relevance or materiality. This may also encourage the submission of sub-standard listing applications on the assumption that much disclosure will be driven by the regulators' comments rather than the product of thorough due diligence before the application is made. The regulatory review usually includes numerous questions on disclosure matters and requests for the sponsor to justify its due diligence work.
67. Regulators are not responsible for the accuracy of disclosure or the adequacy of due diligence. However the quality of many draft listing documents submitted with listing applications has been poor. In a significant number of cases the draft contained material misstatements, omissions and other deficiencies. In these cases the regulators have had to raise significant numbers and rounds of comments which then prolonged the process. Conversely we have also seen well-prepared documents where the regulatory commenting process was shorter.
68. In order to incentivise listing applicants and sponsors to submit quality documents at the time a listing application is made the Stock Exchange will strengthen its practice to reject a sub-standard document and will consider imposing a "cooling-off" period within which the submission of a revised draft will be disallowed (see paragraph 115 below). A draft document is considered to be sub-standard if it fails in material respects to comply with the Listing Rules, the Provisions, the rules and regulations under the SFO and the requirements of the CO.
69. The SFC and the Stock Exchange will work together on measures to streamline and shorten the commenting process, allowing regulatory effort to be devoted to more important issues or involve public interest concerns. Details of these measures will be the subject of a separate announcement.
70. As discussed in paragraphs 198 to 204 below, we will require the Application Proof to be published on the HKEx website when the listing application is made. We will then assess the effect of this requirement on developing IPO practice and overall market-readiness before considering whether it may be appropriate to require publication of successive amended drafts, regulatory comments and responses from the applicant.



Other matters

71. A number of respondents from the investor community and corporate governance organisations indicated that while the proposals should help assure the integrity of the Hong Kong listed market they believe that this should only be the first stage of a broader review of the whole IPO process. This would cover issuer and syndicate responsibility through marketing, bookbuilding, allocation, pricing and after-marketing. We will continue to review these areas and consider whether it is appropriate to address them in future.



Comments received and SFC's responses

Refinements to paragraph 17 and related proposals

72. We have refined the Provisions taking account of the comments received so that the Provisions are not overly wide and to provide more clarity and certainty. Comments raised by respondents together with our responses are discussed in detail from paragraph 74 onwards.
73. The key refinements to the proposals are:
- (a) Understanding a listing application – we have clarified in paragraph 17.3(a) that the duty to have a sound understanding of a listing applicant should be “based on reasonable due diligence” performed by the sponsor;
 - (b) Advice and guidance – we have replaced the phrase “other applicable regulatory requirements” in paragraph 17.3(b)(i) with “other regulatory requirements which apply to a Hong Kong listed company and its directors”;
 - (c) Material deficiencies – we have added a new paragraph 17.3(b)(iii) to provide that where deficiencies cannot be remedied prior to the submission of a listing application, the sponsor should include adequate disclosure in the application, including the nature of the deficiencies, reasons for non-rectification and remedial actions taken or to be taken;
 - (d) Reasonable due diligence – we have aligned the standard used in paragraphs 17.4(a) and 17.4(b) so that a sponsor, after performing all reasonable due diligence, should ensure that all material information as a result of this due diligence has been included in the Application Proof; and that a sponsor should come to a reasonable opinion that the information in the Application Proof is substantially complete except in relation to information that by its nature can only be finalised and incorporated at a later date;
 - (e) Resolving fundamental compliance issues – we have changed the phrase “all applicable listing conditions” to “all relevant listing qualifications under Chapter 8 of the Listing Rules” in paragraph 17.4(c)(i). We have removed the phrase “and other applicable legal and regulatory requirements” from paragraph 17.4(c)(iv);
 - (f) Overall disclosure – we have replaced the word “ensure” with the phrase “have reasonable grounds to believe and should believe” in paragraph 17.5(a);
 - (g) Disclosure in non-expert sections – we have added materiality criteria in paragraph 17.5(b) to provide that the information in the non-expert sections of a listing document should not be misleading or deceptive “in any material respect” and there should not be omissions that would make any information misleading in “a material respect”;
 - (h) Disclosure in expert reports – we have modified the proposal in paragraph 17.5(c) so that a sponsor as a non-expert, after performing the due diligence specified in revised paragraph 17.7, should have no reasonable grounds to believe and should not believe that the information in the expert reports is untrue, misleading or contains any material omission;



- (i) Seeking assistance from third parties – we have added a new procedure in revised paragraph 17.6(g) to require a sponsor to assess the results of a third party's work to ensure that they are consistent with other information known to the sponsor;
- (j) Due diligence on expert reports – we have revisited the proposals in revised paragraph 17.7 to specify due diligence covering four main aspects:
 - (i) the expert's qualification, experience and independence;
 - (ii) the expert's scope of work;
 - (iii) the bases and assumptions underlying the report; and
 - (iv) the expert's opinion together with the rest of the information contained in the report.
- (k) MD&A - we have provided guidance on the preparation of the MD&A in revised paragraph 17.8;
- (l) Communication with the regulators – we have added a materiality criterion in revised paragraph 17.9(a) in relation to the information provided to the regulators. We have clarified that the duty to report material information concerning non-compliance in revised paragraph 17.9(c) continues after the sponsor ceases to act for a listing applicant if the information came to the knowledge of the sponsor whilst it was acting as the sponsor. We have extended the provision in revised paragraph 17.9(d) so that a sponsor is required to inform the Stock Exchange if it ceases to act for a listing applicant after its formal appointment;
- (m) Publication of Application Proof – we will implement the proposal to publish the Application Proof on the HKEx website together with related measures to streamline the commenting process;
- (n) Proper records – we have replaced the phrase “all applicable legal and regulatory requirements” in revised paragraph 17.10(a) with “the Code”;
- (o) Resources, systems and controls – we have transferred all relevant provisions relating to resources, systems and controls in the Sponsor Guidelines to the Code of Conduct (see revised paragraphs 17.11 to 17.12);
- (p) Management³ oversight – we have refined the requirements so that: (i) Management should formulate clear and effective reporting lines and channels to ensure that critical matters are escalated to it; and (ii) Management should establish appropriate systems and procedures to govern key aspects of sponsor work (see revised paragraphs 17.11(d) and 17.11(e));
- (q) Sponsor Principals – we have expanded the eligibility criteria for Principals. We have introduced additional options whereby individuals may qualify as Principals if they, amongst other things; (i) are highly experienced in the area of due diligence through leading IPOs in Australia, the United Kingdom (**UK**) or the

³ As defined in the Sponsor Guidelines, Management includes a sponsor's Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers and other senior management personnel.



United States (**US**); or (ii) have participated actively and substantially in due diligence work in at least four IPOs in Hong Kong within the preceding five years (see paragraph 1.4 of the Sponsors Guidelines (**Appendix C**));

- (r) Multiple sponsors – we will not proceed with the proposals to require a sole sponsor or impose a limit on the number of sponsors appointed on the same IPO. The current requirement under the Listing Rules that one of the sponsors must be independent remains unchanged pending a separate review of the relevant rules.



Advising a listing applicant

Understanding a listing applicant (paragraph 17.3(a))

Q1. Do you agree a sponsor should have a sound understanding of a listing applicant for which it acts*?

If not, why not?

* Including the listing applicant's history and background, business and performance, financial condition and prospects, operations and structure, procedures and systems as well as the directors, key senior managers and (where applicable) controlling shareholders of the listing applicant.

Public comments

74. Most respondents agreed with the proposal. Many of them considered that having a thorough understanding of a listing applicant is at the core of proper due diligence work. They added that a sponsor should also have a sound understanding of corporate governance matters relating to an applicant.
75. Some respondents commented that the proposed requirement is an enhancement of the "know your client" provisions in the CFA Code. Whilst they generally agreed with this proposal, they sought clarification on the meaning of "sound" understanding and questioned whether the standard could be measured objectively. In their view the duty to have a "sound" understanding should be considered in the context of an IPO where a sponsor performs what is reasonable and practicable in the circumstances and where it may be impossible for a sponsor to detect or reveal fraud if a listing applicant deliberately conceals facts and information. Accordingly it was suggested that the term should be appropriately qualified.
76. A respondent also sought clarification on what is meant by "understanding the directors, key senior managers and controlling shareholders of a listing applicant".

SFC's response

77. The current "know your client" rules in the CFA Code set out the minimum standard that a licensed entity should meet when operating its business. Since investors rely heavily on the information provided in a listing document there are good reasons to go beyond the minimum standard.
78. In order for a sponsor to perform its role properly, it is essential that the sponsor should acquire a sufficient understanding of a listing applicant's business. To achieve this, a sponsor should exercise its professional judgment in determining the nature and extent of due diligence appropriate for the particular circumstances of the applicant. In response to comments received we have clarified that the duty to have a sound understanding of a listing applicant should be "based on reasonable due diligence" performed by the sponsor.
79. As stated in the Consultation Paper the requirement to perform reasonable due diligence cannot be expected to guarantee an absence of fraud, forgery or deliberate non-disclosure. Accordingly the duty to have a sound understanding based on reasonable due diligence would be assessed from an objective perspective. (see paragraph 106 below)



80. We have clarified that a sponsor should understand “the personal and business backgrounds” of the directors, key senior managers and controlling shareholders of a listing applicant. This underpins a sponsor’s duty to assess whether they have the integrity, experience and competence to fulfil their designated roles.
81. Paragraph 17.3(a) has been revised to reflect the above changes.

Advice and guidance (paragraph 17.3(b)(i))

Q2. Do you agree that a sponsor should advise and guide a listing applicant and its directors as to their responsibilities under the Listing Rules and other applicable regulatory requirements and take all reasonable steps to ensure that at all stages of the listing application process they understand and meet these responsibilities?

If not, why not?

Public comments

82. Most respondents agreed with the proposal. Many respondents, including some sponsor firms, acknowledged that sponsors have always taken an active role in advising and guiding a listing applicant throughout a listing.
83. Whilst supportive of the proposal, some respondents emphasised that an IPO is a collaborative process among various parties including lawyers and accountants. They possess expertise in their respective disciplines and owe professional duties to their clients, and so any advice and guidance given by a sponsor to a listing applicant should be viewed from that perspective.
84. A number of respondents raised concerns that the requirement that a sponsor should advise a listing applicant as to its responsibilities under the Listing Rules and “other applicable regulatory requirements” is too broad. This might be taken to include regulations outside Hong Kong and other requirements unrelated to a listing which might be beyond the competence of a sponsor. A few respondents sought clarification of the meaning of “all reasonable steps” and “at all stages of the listing application process”.
85. A group respondent disagreed with the requirement that a sponsor has a duty to “ensure” that the directors understand and meet their responsibilities as this effectively amounts to a guarantee of compliance. It was also noted that a sponsor cannot ensure compliance if the directors choose to disregard its advice.

SFC’s response

86. A sponsor is expected to take a lead role in providing advice and guidance to a listing applicant in relation to the Listing Rules and all relevant regulatory requirements. As part of the process they will normally co-ordinate advice from all parties who are involved in an IPO. Whilst lawyers and accountants will advise and work on matters specifically falling within the ambit of their professional disciplines the sponsor retains a key role in advising and assisting the applicant to prepare itself for an IPO and to operate as a listed entity.



87. To alleviate concerns that the provision as proposed is too broad we have replaced the expression “other applicable regulatory requirements” in paragraph 17.3(b)(i) with “other relevant regulatory requirements which apply to a Hong Kong listed company and its directors” to confine the scope of advice and guidance that a sponsor provides to regulatory requirements that are applicable to companies that are listed in Hong Kong.
88. The terms “all reasonable steps” and “at all stages of the listing application process” have been amended to “reasonable steps” and “during the listing application process”. These changes are not expected to distort the substantive meaning of the provision.
89. The duty to “ensure” that the directors understand and meet their responsibilities will be subject to “reasonable steps” taken by the sponsor; a sponsor is not obliged to guarantee compliance. A sponsor is likely to have sufficiently discharged its duties if it were able to demonstrate that it had made reasonable efforts even if a director ignores its advice. However in these circumstances we believe that the sponsor should normally reconsider whether it should continue to act for the applicant.
90. Paragraph 17.3(b)(i) has been revised to reflect the above changes.

Material deficiencies (paragraph 17.3(b)(ii))

Q3. Do you agree that a sponsor should provide appropriate advice and recommendations to a listing applicant on any material deficiencies identified in relation to its operations and structure, procedures and systems, or its directors and key senior managers and ensure that any material deficiencies are remedied prior to the submission of a listing application?
If not, why not?

Public comments

91. The majority of the respondents were in favour of the proposal. Respondents who supported the proposal agreed that a sponsor should ensure that material deficiencies of a listing applicant should be adequately reviewed and addressed before submission of a listing application.
92. In contrast some respondents took the view that a sponsor should not be obliged to provide advice and recommendations to remedy material deficiencies but rather that they should be fully disclosed in the listing document so that investors can decide whether or not to invest in the company. If deficiencies are so material as to affect the suitability of the applicant the listing application should not be allowed to proceed.
93. A group respondent strongly objected to the proposal for fear that the term “material deficiencies” is overly wide and might cover day-to-day operational matters that are beyond the professional competence of a sponsor. The respondent argued that rectification of all material deficiencies before submission of the listing application is impractical and unrealistic and it should suffice if relevant problems and remedial measures taken are disclosed in the listing document. Concerns were also raised that the proposed provisions in paragraph 17.3 as a whole relating to, among others, material deficiencies and advising and guiding the listing applicant are likely to lead to



an undue increase in the number of preliminary enquiries with the regulators prior to filing the listing application.

94. Some sponsor firms who supported the proposal commented that, as a matter of practice during an IPO process, an independent third party adviser is often engaged to conduct an internal control review on a listing applicant to identify weaknesses. Where deficiencies are identified the sponsor, in consultation with the internal control reviewer, will advise and assist the applicant to implement remedial steps prior to listing.
95. However they raised concerns that some remedial actions may take time to implement (e.g. court proceedings) and certain measures may only be adopted at a time closer to, or upon, listing (e.g. appointment of independent non-executive directors and establishment of various board committees). Accordingly it should not be mandatory that all material deficiencies should be resolved completely before submission of the application as long as these deficiencies can be, and will be, remedied prior to listing.

SFC's response

96. The proposed Provision does not derogate from the principle that material deficiencies, where appropriate, should be fully disclosed in the listing document to allow an investor to reach an informed investment decision on an applicant. Nor does it imply that any material deficiency that might raise concerns about the viability of a listing would automatically be resolved by way of disclosure. If material deficiencies affect the suitability of an applicant's listing the application will be rejected.
97. To alleviate fears of possible far-reaching implications of the term "material deficiencies" we wish to clarify that it refers to deficiencies in relation to a listing applicant which would reasonably be expected to affect the consideration of the applicant's suitability by the regulators or which, if disclosed, would reasonably be expected to materially and adversely affect an investor's decision.
98. We note concerns raised by market practitioners that even though measures may have been implemented to address material deficiencies it may still be impracticable to expect that all such deficiencies will be resolved conclusively prior to submission of a listing application. In our view, where a material deficiency is identified, it is critical that the sponsor discusses the position with the applicant and provides advice and recommendations to assist the applicant whenever possible to address the deficiency before the application is made. We have therefore revised paragraph 17.3(b)(ii) to reflect this requirement.
99. Where the deficiencies cannot be remedied prior to the application, the sponsor should include adequate disclosure in the application, including the nature of the deficiencies, reasons for non-rectification and remedial actions taken or to be taken (see revised paragraph 17.3(b)(iii)). The sponsor should explain why it believes that the applicant is still suitable for listing despite any material deficiencies that cannot be remedied prior to listing and, where appropriate, seek guidance from the regulators.



Work required before submitting a listing application

Reasonable due diligence (paragraph 17.4(a))

Q4. Do you agree that before submitting a listing application a sponsor should complete all reasonable due diligence on the listing applicant save only any matters that by their nature can only be dealt with at a later date?
If not, why not?

Public comments

100. Respondents were generally supportive of the proposal. A number of sponsor firms stated that in the majority of the cases due diligence and verification work are substantially completed before a listing application is submitted.
101. Nevertheless some sponsor firms sought clarification on the meaning of the terms “all reasonable due diligence” and “matters that by their nature can only be dealt with at a later date”. They contended that new issues that are beyond a listing applicant’s control frequently arise and circumstances often change following submission of a listing application. As a result due diligence should be viewed as an on-going process and any assessment of what constitutes “all reasonable due diligence” would need to be made at the time the listing application is made having regard to the facts then available.
102. Other respondents took the view that due diligence continues after submission of the listing application. Rather than performing “bring-down” diligence to check the listing document just before bulk-printing or at a late stage in the IPO they believed that the sponsor has to “keep digging” to review and ascertain relevant information.
103. A few respondents were concerned that the standard of “reasonable” due diligence will be determined subjectively and with the benefit of hindsight.
104. One respondent pointed out that as currently drafted paragraph 17.4(a) requires a sponsor to complete all reasonable due diligence before making a listing application whilst paragraph 17.4(b) requires an Application Proof which is substantially complete. It was uncertain whether these two provisions were implying different standards.

SFC’s response

105. We consider that completion of all reasonable due diligence before submitting a listing application is of fundamental importance to the quality of the application.
106. We do not intend to assess sponsor work from the perspective of hindsight and agree that the reasonable due diligence standard should be determined based on what a sponsor’s peers would consider to be objectively appropriate having regard to all relevant facts and circumstances at the time of making a listing application.
107. “Matters that by their nature can only be dealt with at a later date” would be those which cannot be ascertained, finalised or fulfilled at the time a listing application is submitted. Common examples include:
- (a) the treatment of waivers;



- (b) determination of the size and structure of an offering;
- (c) preparation of an indebtedness statement or a working capital forecast;
- (d) a change in financial position since the most recent reporting period; and
- (e) changes in circumstances and developments or events arising subsequent to the submission of the application.

However these examples should not be taken as a definitive list and each matter should be assessed on a case-by case basis.

108. Whether a sponsor has performed all reasonable due diligence would be assessed having regard to all facts and circumstances available at the time of making the listing application. Clearly a sponsor has to update the due diligence after submission of the application to capture subsequent changes. However if a specific matter exists before the submission, the sponsor should reach a view that all reasonable due diligence on that matter has been completed even if changes may occur subsequently and it is therefore noted as a “keep-in-view” item that must be revisited before the listing.
109. For the sake of clarity and to ensure that the same standard is applied in paragraphs 17.4(a) and 17.4(b) the two provisions have been aligned so that a sponsor, after performing all reasonable due diligence, should ensure that all material information as a result of this due diligence has been included in the Application Proof and that the Application Proof is substantially complete save for matters that by their nature can only be dealt with at a later date.
110. Paragraphs 17.4(a) and 17.4(b) have been revised to reflect the above changes.

Information in Application Proof (paragraph 17.4(b))

<p>Q5. Do you agree that before submitting a listing application a sponsor should come to a reasonable opinion that the information in the Application Proof is substantially complete?</p> <p>If not, why not?</p>

Public comments

111. Respondents were generally supportive of the proposal. Respondents agreed that information relating to matters set out in paragraph 107 above which is subject to change or has not been finalised should not render the Application Proof incomplete.
112. A number of sponsor firms sought clarification of the practical or technical differences between an “advanced proof” under the Listing Rules and an Application Proof that is “substantially complete” under the proposed Provisions. It was noted that as a matter of practice the Stock Exchange regularly accepts a draft listing document which has not included all necessary information, e.g. information regarding independent directors who are yet to be appointed. They questioned whether this practice would continue after the implementation of the proposal. There were also concerns that there will be an overlap of different rules under the Listing Rules and new Provisions regulating the draft listing document and how this will be resolved.



113. Some respondents considered that the existing power of the Stock Exchange to reject a sub-standard draft provides a sufficient deterrent; it is thus inappropriate and unnecessary for the proposal to result in a regulatory breach on the part of a sponsor should a draft document be regarded as inadequate. Nonetheless respondents indicated that they would find the proposal less objectionable if detailed guidance on the meaning of “substantially complete” is given.

SFC’s response

114. Revised paragraph 17.4(b) provides that a sponsor should come to a reasonable opinion that the information in the Application Proof is substantially complete except in relation to matters that by their nature can only be dealt with at a later date. Information in an Application Proof that is liable to be amended or updated in light of subsequent changes or developments should not render the document incomplete. This is in line with the concept of “bring-down” diligence to check prior disclosures and conclusions during the course of the application process.
115. As stated in Listing Rule 9.03(3) the Stock Exchange expects to receive an “advanced proof” of a listing document containing the information set out in Chapter 11 of the Listing Rules, which must be substantially complete. These requirements governing an “advanced proof” will therefore remain unaltered. In order to incentivise listing applicants and sponsors to submit quality draft documents the Stock Exchange will strengthen its practice to reject a draft document which fails to meet the requisite standard. A draft document may be rejected if it fails in material respects to comply with the Listing Rules, the Provisions or the rules and regulations under the SFO and the requirements of the CO.
116. As with other requirements in the Code of Conduct a sponsor’s failure to submit an Application Proof up to the required standard will put in question whether the sponsor has exercised due skill and care in the performance of its duties but will not of itself necessarily render the sponsor liable to disciplinary action. When considering a sponsor’s non-compliance, the SFC will take account of all relevant facts and circumstances.

Resolving fundamental compliance issues (paragraph 17.4(c))

Q6. Do you agree that before submitting a listing application a sponsor should come to a reasonable opinion that the applicant has complied with all applicable listing conditions (except to the extent that waivers from compliance have been applied for), has established adequate systems and procedures and the directors have the necessary experience, qualifications and competence?

If not, why not?

Public comments

117. The majority of respondents agreed with this proposal. Many noted that the proposed Provision is premised on Listing Rule 3A.15. A number of respondents proposed that it should be extended to explicitly include a sponsor’s confirmation as to whether the applicant has established adequate corporate governance procedures. They suggested a list of criteria on governance structures and procedures that a listing



applicant should have in place well before an IPO, e.g. the appointment of independent non-executive directors some months prior to listing.

118. A number of sponsor firms who supported the proposal agreed that as part of their due diligence work they would consider, among other things, whether the listing applicant has: (i) complied with the applicable listing conditions; (ii) undertaken a review of the company's internal systems and procedures (normally by engaging an independent reviewer); and (iii) assessed the credentials of, as well as trained (together with legal counsel), its directors.
119. A group respondent raised concerns that a number of listing conditions relate to circumstances that can only be ascertained on the date of listing (e.g. the requirement to have an adequate spread of public shareholders) whilst others might only be fulfilled upon or shortly before listing (e.g. the appointment of a share registrar). Accordingly it was suggested that the proposed requirement be modified to allow a sponsor to come to a reasonable opinion that on the date of the listing application the applicant has either complied "or will comply" with all listing conditions at the time of listing.
120. The same respondent commented that proposed paragraph 17.4(c)(iv) has been crafted more widely to require a sponsor to come to a reasonable opinion that the directors have the experience, qualifications and competence to comply with the Listing Rules "and other applicable legal and regulatory requirements" whereas the equivalent in Listing Rule 3A.15(6) confines the opinion to the directors' compliance with the Listing Rules only.
121. Some respondents took the view that structures and procedures are typically finalised closer to, or upon listing (e.g. the appointment of independent non-executive directors and the formation of various board committees) and that it would be impracticable to require these to be established before the listing application is filed. Accordingly, it was suggested that the proposal be modified to allow the sponsor to come to a reasonable opinion that on the date of the listing application the applicant has either established "or will have established" necessary systems and procedures to meet the listing requirements by the time of listing.

SFC's response

122. We note the comments that sponsors have generally complied with the requirement of proposed paragraph 17.4(c) except in cases where there are practical difficulties. We wish to clarify that to meet the requirement under paragraph 17.4(c)(i) a sponsor should come to a reasonable opinion that a listing applicant complies with all relevant listing qualifications as set out in Chapter 8 of the Listing Rules, except to the extent that waivers have been applied for, having regard to all facts and circumstances available at the time of making the listing application. Paragraph 17.4(c)(i) has been revised to clarify the waiver point. We consider that the sponsor's responsibility under this paragraph will not be affected by a change in or evolution of circumstances after the application is made. In respect of any matters that can only be ascertained or fulfilled at a later date (e.g. the appointment of a share registrar), we take the view that the listing applicant will be deemed to have complied with all relevant listing qualifications for the purposes of paragraph 17.4(c)(i) on the basis that adequate measures have been taken to ensure that it will be in compliance by the time of listing.
123. The Listing Rules include requirements for governance structures, procedures and systems that apply once an entity becomes listed. It is therefore possible that some may not have become operational when the listing application is made. For the



purposes of paragraphs 17.4(c)(ii) and (iii), it would suffice if the procedures have been formulated and agreed and that adequate measures have been taken to ensure that they will become fully operational once listing takes place. We therefore do not propose to adopt the suggestion to include the words “or will have established” in the Provisions.

124. Notwithstanding the above it is our view that an applicant should address key corporate governance issues well before an IPO including the appointment of independent non-executive directors and the formation of governance committees. Independent non-executive directors should be appointed at a sufficiently early stage so that they can fully understand their obligations in relation to the IPO and become familiar with the applicant’s business. Whilst we see merit in proposals to enhance an applicant’s pre-IPO governance preparations, in particular the appointment of all independent non-executive directors; introducing this as a regulatory requirement will require further analysis. They involve implications for listing applicants and directors that are wider than the focus of this consultation on sponsors. The SFC and the Stock Exchange have discussed this matter and the Stock Exchange has agreed to consider these proposals as part of its periodic review of corporate governance practices.
125. In response to comments we have deleted the phrase “and other applicable legal and regulatory requirements” in paragraph 17.4(c)(iv) to alleviate concerns that the requirement is too broad.

Identifying material issues (paragraph 17.4(d))

Q7. Do you agree that a sponsor should ensure that all material issues known to it which, in its reasonable opinion, are necessary for the consideration of the application as described in paragraph 57* above are disclosed to the regulators when submitting a listing application?

If not, why not?

* This relates to whether a listing applicant is suitable for listing and whether the listing of the applicant’s securities is contrary to the interest of the investing public or to the public interest

Public comments

126. Respondents generally supported the proposal. Those in favour were of the view that the proposal would enhance the transparency of information which is essential for the regulators to properly determine whether a listing applicant is suitable for listing. Some sponsor firms commented that sponsors generally already adopt this practice.
127. Sponsor firms which opposed the proposal said that the Stock Exchange has an unfettered discretion to determine whether a listing should be approved. It would be difficult for sponsors to gauge what information will be necessary for the regulators to consider whether an applicant is suitable for listing or whether the listing of an applicant’s securities is contrary to the public interest. They also argued that the concepts of “suitability of listing” and “public interest” are too vague.



128. Several respondents noted that this proposal duplicates one of the listing procedural requirements⁴ that are currently administered by the Stock Exchange.

SFC's response

129. To properly assess the suitability of an applicant for listing, the regulators rely principally on the sponsor to provide sufficient information about the applicant. We wish to stress the importance of highlighting to the regulators at the outset material issues which might affect the prospects of a listing application.
130. The proposed requirement is subject to the “reasonable opinion” of the sponsor that these are material issues necessary for the regulators’ consideration of the listing application. The concepts of “suitability for listing” and “public interest” have been embedded in the Listing Rules and the SFO respectively for many years and have been consistently applied by the regulators when considering listing applications. Under the Securities and Futures (Stock Market Listing) Rules, the SFC may reject a listing of the securities of a listing applicant if it appears to us that, among other things, it would not be in the interest of the investing public or in the public interest for the securities to be listed. The proposal is similar to one of the current procedural requirements of the Stock Exchange. We therefore do not consider there are valid grounds for concern.

Sponsor's responsibility for disclosure in a listing document

Overall disclosure (paragraph 17.5(a))

Q8. Do you agree that a sponsor, after reasonable due diligence, should ensure that at the time of issue a listing document contains sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion of the financial condition and profitability of the listing applicant?

If not, why not?

Public comments

131. Most respondents agreed with this proposal. It was noted that the proposal replicates the current requirement under the Listing Rules.
132. Sponsor firms raised concerns about the proposal, especially in relation to a sponsor's responsibility for information about the financial condition and profitability of the listing applicant as they consider this responsibility should rest principally with the directors of the applicant and experts, including reporting accountants. They also considered that a sponsor should be able to rely on expert reports.
133. Several respondents were concerned that the word “ensure” imposes an excessive burden on sponsors who would not be in a position to ensure the sufficiency of the information in the listing document even after extensive due diligence. It was suggested that the word “ensure” should be replaced by the phrase “have reasonable grounds to believe and does believe” which also ties in with the current requirement of the Listing Rules.

⁴ See paragraph G27 of Checklist I.B. “Additional information to be submitted” in connection with a listing application.



SFC's response

134. The proposal reinforces the current standard that a sponsor has responsibility for all parts of a listing document. As discussed in paragraphs 156 to 162 below a sponsor is expected to perform reasonable due diligence in connection with expert reports in order to form a view as to whether a listing document contains sufficient particulars and information.
135. The word “ensure” has been replaced with “should have reasonable grounds to believe and should believe” in revised paragraph 17.5(a).

Disclosure: non-expert sections (paragraph 17.5(b))

Q9. Do you agree that a sponsor, after reasonable due diligence, should have reasonable grounds to believe and does believe that at the time of issue of a listing document the information in the non-expert sections is true, accurate and complete in all material respects and that there are no material omissions?

If not, why not?

Public comments

136. Most respondents agreed with the proposal. It was noted that the provision replicates the current requirement under the Listing Rules.
137. A number of respondents commented that sponsors have relied on industry studies typically provided by third party consultants in drafting key sections such as an industry overview. They considered that in some cases industry studies provided an overly optimistic presentation of a company's statistics, for example creating an impression that the company is a “leading” business in a hypothetical niche market. These respondents took the view that in these cases sponsors could not have conducted sufficient due diligence on the information prepared by third parties.
138. Sponsor firms who agreed generally with the proposal expressed a reservation that sponsors are not in a position to give comfort on information extracted from reports or opinions prepared by, or findings of, experts or other third parties. This would include expert opinions and industry information cited in the business section of the listing document.
139. A group respondent commented that the requirement in relation to the “completeness” of information, even with the materiality qualification, is practically unachievable even after extensive due diligence and suggested that the words “complete in all material respects” should be deleted. Some respondents pointed out that the proposal has not taken into account the “materiality” qualification in relation to omissions in listing documents.

SFC's response

140. The proposal reinforces the current requirements of the Listing Rules. The divergent views amongst respondents reflect an expectation gap in how a sponsor should conduct its due diligence as regards expert reports and third party findings.



141. We reiterate that mere or “blind” reliance on information provided by experts or third parties engaged to work on an IPO does not mean that a sponsor has performed reasonable due diligence. A sponsor has to take necessary steps in respect of expert reports and third party findings, as more fully set out in the subsections entitled “Due diligence on expert reports” (see paragraphs 156 to 162) and “Reliance on non-expert third parties to conduct due diligence” (see paragraphs 170 to 175) below. Information and statistics extracted or quoted from sources other than from those formally engaged in the IPO are not expert or third party findings.
142. Information contained in a listing document should be sufficient for investors to make an informed decision. We do not believe the requirement for the information to be “complete in all material respects” imposes an excessive standard. Taking account of respondents’ suggestions we have added materiality criteria in paragraph 17.5(b) to provide that the information in the non-expert sections should not be misleading or deceptive “in any material respect” and should not contain omissions which would make any information in the listing document misleading “in a material respect”.

Disclosure: expert reports (paragraph 17.5(c))

Q10. Do you agree that at the time of issue of a listing document a sponsor should be in a position to demonstrate that it is reasonable for it to rely on the expert sections of the listing document?
If not, why not?

Public comments

143. Responses were diverse. The investor community and corporate governance bodies who supported the proposal commented that sponsors should demonstrate that it is reasonable for them to rely on experts and their work by performing appropriate due diligence. They considered that sponsors should adopt a cautious approach in critically reviewing financial information which is heavily relied on by investors to properly assess the financial soundness of the listing applicant. Some investment houses observed that sponsors customarily place too much reliance on reports prepared by experts without making adequate enquiry of the bases, assumptions and factual information used in the preparation of the reports. Respondents welcomed a clarification of the standard required.
144. Respondents who disagreed with the proposal were mainly from the sponsor community. They took the view that whilst a sponsor co-ordinates the preparation of a listing document it is essential that the expert should be fully responsible for the parts of the document that are under its purview. Due to the specialised nature of the expertise required for expert engagements a sponsor could not reasonably be expected to possess the same level of knowledge and expertise as an expert. Notwithstanding the above they agreed that sponsors must not blindly rely on experts and should exercise professional scepticism when reviewing expert reports. They also agreed that sponsors need to critically assess expert reports with a questioning mind and should be alert to situations indicative of possible misstatement in expert reports.
145. Some sponsor firms and market practitioners argued that the US and Australian models of “reasonable reliance” do not support the proposal to impose a positive obligation on sponsors to demonstrate reasonable reliance. In their view, US and Australian laws provide a defence to underwriters for omissions or disclosure issues in a listing



document if they can show that they had reasonably relied on the expert information and therefore this would only trigger a duty on a sponsor to satisfy itself that the expert information was not untrue or incomplete. It was suggested that the proposal be amended to allow a sponsor to rely on expert reports unless it is unreasonable for it to do so.

146. Other sponsor firms raised concerns that the proposed “reasonable reliance” test lacks sufficient detail. They sought guidance on specific steps, that if performed, would constitute “reasonable reliance” and that sponsors who have performed all of those steps as set out in the Provisions would then be released from liability even if a material misstatement is found subsequently in the expert report.

SFC’s response

147. We consider the proposed requirement for sponsors to demonstrate reasonable reliance on expert reports to be an important measure to maintain the integrity of information disclosed in a listing document. The investor community enthusiastically supported this proposal which is aimed at raising the standard of due diligence.
148. We note the views expressed by sponsor firms that experts should be fully responsible for the reports that they issue and sponsors, who are themselves not experts, are not in a position to demonstrate whether it is reasonable to rely on an expert’s work. Nonetheless most market practitioners, including those who objected to the proposal, took the view that sponsors must exercise professional scepticism about an expert’s work and should be alert to red flags.
149. Whilst an expert is engaged to provide a specific opinion or report, a sponsor has its own distinct role and obligations in relation to the listing applicant including assessing the applicant’s compliance with all relevant requirements and its suitability for listing. To fulfil this role the sponsor must be closely involved and assume responsibility for the overall due diligence exercise and related disclosure in the listing document. Specifically a sponsor must critically review the report made by an expert applying its own knowledge and experience of the applicant and the environment in which it operates. It should then have no reasonable grounds to believe and should not believe that the information in the expert report is untrue, misleading or contains any material omission.
150. We recognise that in some circumstances the scope of services which form the basis on which an expert issues its opinion may be narrower compared to the scope of responsibilities that apply to a sponsor. For example, a sponsor’s responsibilities towards an applicant, including the requirement to assess its business model, the adequacy of financial disclosure and the implementation of financial reporting procedures, go beyond the scope of the opinion issued by a reporting accountant that is engaged to perform an audit of a company’s financial statements.
151. Accordingly it will be necessary for a sponsor proactively to assess an expert’s report. This would include critically reviewing the expert’s report, making appropriate enquiries and soliciting all necessary assistance from relevant parties. The sponsor should also be involved in agreeing the scope of the expert’s work at the outset or, where appropriate, engaging the expert to perform additional work. As discussed more fully in paragraphs 156 to 162 below, we have set out in revised paragraph 17.7 of the Code of Conduct the due diligence that a sponsor should perform in respect of expert reports.



152. To reflect our expectation that a sponsor should act proactively and bearing in mind the role and limitations of a sponsor as a non-expert, we have amended the Provisions so that at the time a listing document is issued, after performing the due diligence as set out in revised paragraph 17.7 of the Code of Conduct a sponsor, from the perspective of a non-expert, should have no reasonable grounds to believe and should not believe that the information in the expert reports is untrue or misleading or contains any material omission. The amendments are reflected in revised paragraph 17.5(c) and paragraph 17.7.

Due diligence

Due diligence on expert reports (previous paragraph 17.6(g), revised paragraph 17.7)

Q11. Do you agree that the sponsor should take these steps* in connection with an expert's report? Are the steps set out in paragraph 17.6(g) of the draft Provisions sufficient and appropriate?

If not, why not?

* The steps as set out in paragraph 17.6(g) of the Code of Conduct in the Consultation Paper.

Public comments

153. Responses were mixed. Respondents who were supportive considered that the proposed procedures are sufficient and appropriate in order for a sponsor to demonstrate that it is reasonable for it to rely on an expert's report. Several respondents suggested that the proposed steps should be suggestions rather than mandatory requirements as it is not possible to set out an exhaustive list of all of the required steps and sponsors should have flexibility in implementing steps that may be appropriate in specific situations. Some of them were of the view that these steps reflect or clarify existing requirements or sponsors' practices.
154. Respondents who objected to the proposal took the view that the existing requirements under Listing Rule 3A.16 and Practice Note 21 are already sufficient and appropriate. They were concerned that the proposed requirements are more onerous than the existing obligations under the Listing Rules and raised practical difficulties. For example, the requirement to "confirm" under the proposed Provisions imposes a higher standard than the existing requirement to "confirm that it has reasonable grounds to believe and does believe (to the standard reasonably expected of a sponsor who is not itself expert in the matters dealt with)" under the Listing Rules.
155. Comments on the specific provisions of paragraph 17.6(g) are set out below:
- (a) *Paragraph 17.6(g)(i) - confirming that the expert is appropriately qualified and experienced, the bases and assumptions adopted by the expert are fair and reasonable, the expert's scope of work is appropriate to the opinion and the expert is independent from the listing applicant;*
- Most respondents endorsed this procedure which codifies current Listing Rules 3A.16(2)-(5). However some respondents considered it impracticable to require a sponsor to determine whether the bases and assumptions used by an expert are fair and reasonable as it does not have the necessary knowledge and expertise to make the assessment.



- (b) *Paragraph 17.6(g)(ii) - as regards financial information, work with the reporting accountants to understand the critical accounting policies and estimates, review relevant accounting systems and controls, assess the financial information against business performance and other operating aspects and assess the veracity of any management discussion and analysis of financial performance and condition;*

Respondents from the investor community who supported the proposal commented that a sponsor should critically assess key accounting issues and information relating to the operational and financial performance of the listing applicant.

Market practitioners who disagreed with the proposal maintained that a sponsor does not have the requisite expertise and knowledge to assess the financial information of the listing applicant. They were specifically concerned that a sponsor has no control over a reporting accountant's performance and does not have access to the underlying working papers. Concerns were raised about a sponsor's duty to review accounting systems and controls which should and can only be carried out by the reporting accountant or the internal control review consultant, if appointed.

- (c) *Paragraph 17.6(g)(iv) - ensure that factual information on which an expert relies in preparing its report is consistent with the sponsor's knowledge including that derived from its other due diligence work;*

Market practitioners were concerned that it would be difficult for a sponsor to identify what information an expert has relied on in preparing its opinion especially where the work of reporting accountants involves a large volume of documents (vouchers, invoices) and where the accountants do not normally reveal or share their field work documents or working papers with the sponsors or any other third parties.

An expert would also commonly obtain information from sources other than the listing applicant, for example, industry statistics or sector comparisons. Therefore it is unrealistic to require a sponsor to gain access to, or verify such other information.

- (d) *Paragraph 17.6(g)(v) - where factual information on which an expert relies is solely or primarily derived from management's representations and confirmations, unless the expert has done so, make independent inquiries or assessments or obtain independently sourced information to verify the accuracy and completeness of the information;*

A group respondent believed that sponsors have generally been adopting this practice. Another group respondent noted that the proposed paragraph is based on the current requirement of Listing Rule 3A.16(1). However the provision should be amended to require verification of "material" factual information and should be confined to factual information which "the expert states" is derived solely or primarily from management's representations and confirmations - otherwise sponsors will have no means of identifying what factual information has been relied on by the expert.



SFC's response

156. The majority of the respondents who did not agree with the proposal came from the sponsor community and they maintained that sponsors do not have the knowledge and expertise to assess and evaluate expert sections. Nevertheless sponsors agreed that they have to exercise professional scepticism and judgment in reviewing the information contained in expert reports. These comments reflect an expectation gap about sponsor due diligence involving expert reports.
157. Specifically we note that there are varying degrees of expectations and practices when sponsors review expert reports, and a lack of detailed requirements in the Listing Rules. Therefore we think it is imperative to indicate the typical areas of due diligence to be carried out in connection with expert reports.
158. We consider that due diligence required of a sponsor in connection with expert reports covers four main aspects (see revised paragraph 17.7):
- (a) the expert's qualification, experience and independence;
 - (b) the expert's scope of work;
 - (c) the bases and assumptions underlying the report; and
 - (d) the expert's opinion together with the rest of the information contained in the report.

Revised paragraph 17.7(a)

159. This provision deals with a sponsor's due diligence in relation to the expert's qualification and experience and whether the expert is sufficiently resourced and independent of the listing applicant. The provision is substantially similar to the current provisions under Listing Rules 3A.16(3) and (5).

Revised paragraph 17.7(b)

160. This provision relates to due diligence in relation to the scope of the expert's work; a sponsor should assess whether the scope is appropriate to the opinion given by the expert and adequately covers the reliability of information provided to the expert. If not the sponsor should either request that the scope be expanded, seek the assistance of a third party to check the information or alternatively extend its due diligence to cover the information having regard to the procedures set out in paragraph 17.6. This is similar to the provisions in Listing Rule 3A.16(1) and (4). The extent to which experts verify information they receive varies. For example, a sponsor is not expected to carry out any further due diligence work on information provided to a reporting accountant since it performs audit procedures on this information under applicable professional standards. On the other hand a property valuer does not normally check legal title to properties in which case it is usually necessary to engage a legal adviser to confirm title. It may also be necessary for the sponsor to extend its due diligence to other information relating to a property which has not been subject to due diligence or confirmed by a valuer or a third party and which may, for example, involve site visits. If an expert who relies on information prepared by a third party checks that information by reference to standards which are at least equivalent to those required under paragraph 17.6(g), the sponsor may rely on the work performed by the expert without doing more.



Revised paragraph 17.7(c)

161. This provision deals with a sponsor's due diligence on the bases and assumptions used in an expert report. The provision is substantially similar to current Listing Rules 3A.16(2). We disagree with respondents' view that it is impracticable to require sponsors to determine whether the bases and assumptions used by an expert are fair and reasonable. Given a sponsor's accumulated knowledge of an applicant, its commercial and financial expertise and its role in assessing the applicant and its business sector (often including sector experts within the sponsor firm) it is important that a sponsor has an independent view. We have revised the provision to confine a sponsor's opinion to "material" bases and assumptions. We have also clarified that in the case of financial information, the sponsor should assess "critical accounting policies and estimates" instead of "material bases and assumptions".

Revised paragraph 17.7(d)

162. This provision reflects the essential steps that a sponsor should take in respect of the expert's opinion and the rest of the information disclosed in the report. We emphasise that a sponsor should first of all critically review the expert's opinion and the rest of the information contained in the report against the totality of all other information known to the sponsor about the listing applicant, including the business model, track record, operations, forecasts and sector performance. This other information may be sourced through due diligence as well as, for example, the sponsor's knowledge and experience of the listing applicant, the market in which it operates and of comparable companies. The sponsor should be alert to any material discrepancies, irregularities or inconsistencies and conduct follow up work to resolve any problems.

Revised paragraph 17.8

163. We have also provided additional guidance on the preparation of MD&A. A sponsor should work closely with the management of a listing applicant and its other advisers on relevant, adequate and comprehensible MD&A, and to avoid excessive or irrelevant disclosure that might overwhelm investors or obstruct them from identifying easily and understanding material and critical information. The sponsor should also consider, amongst other things, the following:
- (a) whether there were any matters that have materially affected the listing applicant's historical financial performance;
 - (b) whether any material factors or events that are likely to affect the applicant's future financial performance; and
 - (c) whether there are any exceptional items or unusual accounting treatments that require further enquiry or disclosure in the MD&A.



Reliance on non-expert third parties to conduct due diligence (previous paragraph 17.6(h), revised paragraph 17.6(g))

- Q12. Do you agree that a sponsor cannot delegate responsibility for due diligence?
If not, why not?
- Q13. Are the steps we propose a sponsor should take when seeking assistance from a third party in its due diligence work sufficient and appropriate?
If not, why not?

Public comments

164. Respondents generally agreed with these proposals. Those in support commented that responsibility for overall due diligence is a key aspect of a sponsor's role and is vital in providing assurance to investors on the reliability of information in the listing document. Whilst sponsors are permitted to delegate due diligence tasks to non-expert third parties it does not follow that they may delegate responsibility to these parties. When seeking third party assistance a sponsor must form its own assessment of the work performed to determine whether it has adequately satisfied its own due diligence obligations. The specific steps set out in paragraph 17.6(h) are regarded as sufficient and appropriate.
165. One of the respondents commented that a sponsor should undertake such due diligence it considers appropriate, whether it does so itself or by engaging third parties. But in determining whether the sponsor has met the requisite standard of due diligence any work performed by such a third party should, in effect, be attributed to the sponsor.
166. Some sponsor firms commented that sponsors have generally been adopting the suggested practices and added that sponsors should adopt a critical approach when assessing the results of work performed by third parties to determine whether further due diligence is required.
167. Sponsor firms who objected to the proposals maintained that sponsors should be able to rely on the work of other professional third parties because due diligence is a collaborative exercise and sponsors lack technical expertise in specialised areas. Proper delegation allows the utilisation of expertise from different specialists thereby improving the overall quality of the due diligence exercise and the entire listing process.
168. A number of respondents considered that the historical classification of experts and non-experts is confusing and sought clarification on the two categories of work. They believed that the proposed steps would apply differently depending on whether the third party is acting as an expert or a non-expert.
169. A group respondent suggested replacing the word "delegate" with "abrogate" to reflect the spirit of the provision that the sponsor retains overall control and responsibility over due diligence notwithstanding any permitted delegation of tasks to third parties.

SFC's response

170. An IPO requires the collaboration of many professional advisers with some, especially lawyers and accountants, making important contributions outside the narrow confines



of their professional competencies in areas such as due diligence and drafting. It is for a sponsor to determine on a case by case to what extent it is appropriate to involve other professionals in meeting its obligations provided that the sponsor maintains control over the contribution of other advisers and does not abrogate its responsibilities. However, as we made clear in the Consultation Paper we were concerned that undue reliance may be placed on comfort letters from lawyers following the US practice of obtaining “10-b-5” letters⁵, where it is customary not to retain records of due diligence work. We do not consider that the existence of such a letter can have any bearing on whether a sponsor has in fact met its obligations given that the regulatory obligation in Hong Kong to conduct due diligence rests with the sponsor. Giving undue weight to such letters might give rise to concerns that a sponsor has over-relied on legal counsel during the due diligence process, and as a result has not met its obligations to conduct reasonable due diligence.

171. We would also like to clarify that, as noted in the Consultation Paper, “expert sections” refer to any part of a listing document that reproduces a self-standing report or opinion made on the authority of, and with a consent issued by, an expert. Examples are the reporting accountant’s report, valuer’s report or competent person’s report⁶. All other parts of the listing document are referred to as “non-expert sections”. Non-expert sections may contain statements made within the general competence of third parties. For example, lawyers may advise on property titles, accountants may review internal controls and consultants may provide market research.
172. Many respondents supported the overriding principle that sponsors are ultimately responsible for due diligence notwithstanding the use of third parties to perform specific tasks. This is not to say that third party work cannot be used to help a sponsor to come to a reasonable opinion. However the fact that a third party has been appointed to undertake the work will not in itself be sufficient evidence that a sponsor has discharged its obligation to do reasonable due diligence. Consideration would need to be given to the nature of the work performed, the sponsor’s oversight of the work and its response to any findings.
173. As pointed out by a respondent a sponsor is generally responsible for the work performed by non-experts on its behalf. In other words a sponsor will not be relieved of its responsibility to ensure reasonable due diligence where work performed by a third party to whom it has assigned some tasks is inadequate. However there are areas where delegation is appropriate. For example, a sponsor may need to rely on legal expertise as part of due diligence, including legal advice and opinions on proprietary rights. This specialist work is clearly only within the competence of the adviser and if it is negligent the sponsor would not normally have any responsibility. However other areas of due diligence including understanding the business model or preparing the MD&A would fall outside the ambit of legal advice. In seeking the assistance of a legal adviser or other professionals a sponsor should carefully distinguish between matters that fall within a person’s professional competency and those that do not in order to determine whether it is appropriate to delegate the work to that party.
174. There was a general consensus that a sponsor must closely review and monitor the work assigned to third parties and retain control of due diligence. The specific

⁵ A 10-b-5 letter is a fairly standard statement by US counsel that “upon reviewing the offering circular, and having conducted business and documentary due diligence, nothing has come to their attention to suggest that the offering circular contains any untrue statement of a material fact or fails to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.”

⁶ This may include a competent person (or where appropriate a competent evaluator) that is appointed under Chapter 18 of the Listing Rules.



procedures in paragraph 17.6(h) have been endorsed by most respondents including those who disagreed with the proposal. As further guidance we have made clear that a sponsor should assess whether the results of a third party's work are consistent with other information known to the sponsor including that derived from its other due diligence (see revised paragraph 17.6(g)).

175. As suggested by a respondent we have used the word "abrogate" in place of "delegate" in revised paragraph 17.6(g).

Communication with the regulators (previous paragraph 17.7, revised paragraph 17.9)

- Q14. Do you agree that a sponsor should reasonably satisfy itself that all information provided to the Stock Exchange and the SFC during the listing application process is accurate, complete and not misleading and, if it becomes aware that the information provided does not meet this requirement, the sponsor should inform them promptly?
If not, why not?
- Q15. Do you agree that a sponsor should deal with all enquires raised by the regulators in a cooperative, truthful and prompt manner?
If not, why not?
- Q16. Do you agree that a sponsor should disclose to the Stock Exchange in a timely manner any material information relating to a listing applicant or listing application of which it becomes aware which concerns non-compliance with the Listing Rules or other applicable legal or regulatory requirements?
If not, why not?
- Q17. Do you agree that if a sponsor ceases to act for a listing applicant during the listing application process, it is required to inform the Stock Exchange in a timely manner of the reasons for ceasing to act?
If not, why not?

Public comments

176. Respondents commented that the proposals are broadly consistent with current principles and provide clear and consolidated standards governing communication between sponsors and regulators. Comments on specific proposals are set out below.

Paragraph 17.7(a) (Q14)

177. Most respondents supported this proposal. It was noted that the proposal is broadly consistent with the current requirements and General Principle 2 of the Code of Conduct.
178. A group respondent commented that the draft provision is more onerous than the current Listing Rule 3A.05 and suggested amending the provision to refer to information which is accurate and complete "in all material respects" and not misleading "in any material respect".



179. Another group respondent expressed concern that the requirement for the information to be “complete” is excessive, which should be replaced by the concept of “no material omissions”.

Paragraph 17.7(b), (Q15)

180. Almost all respondents supported this proposal and raised no substantive comments.

Paragraph 17.7(c) (Q16)

181. Most respondents favoured the proposal. They believed that there are good reasons to go beyond the current standard which only requires a sponsor to advise a listing applicant to notify the regulator of any material non-compliance. The proposal that obliges a sponsor to report material non-compliance is a valuable measure to alert regulators to possible red flags which may otherwise go undetected. It was suggested that resignation would not be an adequate substitute for disclosure to the regulators.
182. Those who disagreed were of the view that the requirement to report non-compliance with “other applicable legal and regulatory requirements” is too wide and may cover the laws and regulations in local and foreign jurisdictions which might not be relevant to the IPO. There could also be minor operational breaches which have no impact on the listing. It was suggested that the notification obligation should be confined to non-compliance with legal or regulatory requirements that are relevant to the consideration of a listing application.
183. Another concern was that the requirement to report the matter “in a timely manner” might oblige a sponsor to report non-compliance prematurely without first being afforded an opportunity to consider the issue and take remedial action.

Paragraph 17.7(d) (Q17)

184. Most respondents welcomed this proposal. Some emphasised that the requirement should not result in boilerplate statements and that more substantive explanation should be required. A few others commented that the proposed requirement provides a regulatory basis for a sponsor to disclose the reasons for ceasing to act and would effectively protect a sponsor from any potential legal action brought by its client.
185. A group respondent was concerned that compliance with the notification obligation would amount to a breach of duty of confidentiality to the listing applicant. The respondent expressed concerns that any follow-up action the regulators might take following receipt of the notification would create unintended adverse consequences. For example, if the notified reasons involve an unsubstantiated allegation against the listing applicant and the regulators pursue lines of enquiry on this basis, the listing applicant would be unfairly prejudiced. If any such reasons are subsequently revealed to the applicant as a result of the regulators’ enquiry the sponsor might be exposed to a potential defamation claim. The respondent believed that any proposal to ask a sponsor to whistle-blow should offer statutory legal protection for the sponsor.

SFC’s response

Paragraph 17.7(a) (revised paragraph 17.9(a)) (Q14)

186. We have adopted the suggestion to amend the provision to refer to information which is accurate and complete “in all material respects” and not misleading “in any material



respect”. We do not believe that the requirement for the information to be “complete in all material respects” is burdensome.

Paragraph 17.7(b) (revised paragraph 17.9(b)) (Q15)

187. We have adopted the proposal in the form as set out in the Consultation Paper.

Paragraph 17.7(c) (revised paragraph 17.9(c)) (Q16)

188. The proposal is intended to ensure material matters concerning non-compliance with laws and regulations that may affect the consideration of the listing application are brought to the attention of the regulators. This requirement is in line with the practice in the UK. In response to comments received we have amended the provision to confine the reporting obligation to material information relating to a listing applicant or listing application which concerns non-compliance with the Listing Rules or other legal or regulatory requirements “relevant to the listing”. Furthermore we have added in paragraph 17.9(c) that the duty to report to the Stock Exchange continues after the sponsor ceases to act for the listing applicant if the material information came to its knowledge whilst it was still acting as sponsor.

189. We wish to clarify that reporting “in a timely manner” does not preclude a sponsor from making enquiries or pursuing necessary remedial actions beforehand, taking account of all relevant circumstances including the progress of a listing application and whether any defect might realistically be cured.

Paragraph 17.7(d) (revised paragraph 17.9(d)) (Q17)

190. The majority of the respondents supported this proposal. However there were differing views as to whether a sponsor would be exposed to legal action brought against it by its listing client for reporting matters to the regulators in compliance with the proposed regulatory requirements.

191. The draft provision requires a sponsor to inform the Stock Exchange with reasons if it ceases to act for a listing applicant “during the listing application process”. As part of our initiative to enhance a sponsor’s ability to manage the IPO process (as discussed in paragraph 53) a sponsor should inform the Stock Exchange of its formal appointment which should be no less than two months before submission of the listing application. In circumstances where the sponsor steps down at any time after its appointment it is important that the sponsor informs the regulators of the reasons why it ceased to act regardless of whether a listing application has been submitted. Paragraph 17.9(d) has been amended to reflect this change.

192. We consider that concerns about breaches of confidentiality to a listing client are misconceived. A listing applicant is required under applicable regulatory requirements (see Listing Rule 3A.02) to appoint a sponsor to assist it with its listing application; the prospective applicant would not otherwise be able to list on the Stock Exchange. A sponsor performs a unique role as a key gatekeeper of market quality in an IPO and therefore has an explicit public interest function throughout the process. The relationship between a sponsor and a listing applicant is therefore distinct in character from other arrangements which may seem similar, for instance a bank-customer relationship, where confidentiality and fiduciary responsibilities to the customer predominate.



193. Notwithstanding the above we believe that it should not be difficult for sponsors to provide explicitly for such reporting in their terms of appointment. We therefore propose that a sponsor should ensure that the listing client acknowledges in the appointment that the sponsor is required, and should be given every assistance, to provide information to the Stock Exchange or the SFC under the Provisions (see revised paragraph 17.11(b)(i)(C)). We do not consider it necessary to provide for statutory protection for sponsors when making reports to the regulators.
194. We also consider the concerns about potential regulatory action following notification to the regulators are misplaced. The purpose of the provision is to ensure that any factors that have given rise to a sponsor's decision to cease to act on an engagement are reported to the regulators. We expect objective reporting of facts and reasons that resulted in a sponsor stepping down. Regulators have a statutory duty, upon notification, to pursue any necessary action with a view to ensuring market integrity and investor protection.

Publication of Application Proof

Q18. Do you agree that the Application Proof submitted with a listing application should be made publicly available when the application is made?
If not, why not?

Public comments

195. Responses were mixed with general endorsement from the investor community and reservations from sponsor firms and other market practitioners. Respondents who were in favour commented that publication of the first draft of a listing document would encourage significant changes in market behaviour. It should incentivise issuers and sponsors to produce a high quality draft, reduce over reliance on regulators' comments to identify issues and shorten the regulatory review process. The proposal would also enhance the transparency of information and would allow potential investors more time to assess the company more thoroughly before making an investment decision should the listing proceed.
196. Sponsor firms and market practitioners expressed concerns with the proposal. Their major concerns are summarised below:
- (a) At the time of filing a listing application there is little certainty as to the success of the application. Listing applicants may be concerned that publication of the listing document at an early stage would mean that business information which would not otherwise be disclosed if the company is not eventually listed would be divulged prematurely.
 - (b) Given that the information contained in the Application Proof may be amended or invalidated due to regulators' comments or subsequent developments investors may not be able to obtain a reliable understanding of the applicant. Without publishing the regulators' comments and successive amended drafts the public would not know whether changes have been made as a result of comments or as a result of subsequent developments. The utility of the Application Proof is therefore questionable given the potential for changes in its contents and the significant time gap between the filing of the application and the actual listing.



- (c) Applicants which are already listed on an overseas exchange might face practical difficulties given that any disclosure in Hong Kong might trigger a requirement to disclose under regulations of the overseas jurisdiction. The proposal might also contradict Listing Rule 9.08 which prohibits the publication of publicity material during the listing application process.
- (d) There is no equivalent obligation to publish an Application Proof in the UK, Australia and Singapore. This proposal goes against the recent development in the US which permits confidential filings of application proof registration statements made by emerging growth companies at the initial stage of the registration process under the Jumpstart Our Business Startups Act.
- (e) The quality of documents would not necessarily be enhanced. Instead, it may be more effective if objective measures are imposed to penalise the submission of sub-standard documents e.g. the introduction of a cooling-off period to bar the re-submission of revised drafts.

197. If the SFC were to proceed with this proposal, the respondents requested that the following practical concerns and operational details should be adequately addressed:

- (a) a more streamlined commenting process to shorten the time between the filing of the Application Proof and the issue of the final document;
- (b) public disclosure of the regulators' comments as well as successive amended proofs;
- (c) safe harbours for overseas listing applicants which might be constrained from publishing the Application Proof due to overseas regulations;
- (d) exemptions from producing Chinese translations; and
- (e) consequential changes to the Listing Rules, e.g. Listing Rule 9.08.

SFC's response

198. The proposal to publish the Application Proof was introduced primarily to encourage the submission of a quality first draft. This should attract fewer regulatory comments and require a minimal number of amendments in subsequent proofs thereby facilitating a shorter listing timetable. It also enhances transparency for investors.

199. We understand that listing applicants may be reluctant to disclose information to the public without a high degree of certainty that the listing will proceed. Nevertheless, a key element of the listing process is to facilitate the transformation of a company from a private enterprise that might operate in a relatively opaque manner into a listed entity with a culture of transparency. A listing applicant should be fully prepared at the time of the application to operate its business under all rules and regulations, including requirements for transparency, applicable to a listed entity. If it is not so prepared, it should not apply for a listing. The argument that information about the applicant should not be public because the applicant may not achieve an IPO is unsustainable.

200. The proposal enhances the transparency of the listing application process which should improve market efficiency. Public access to Application Proofs will allow market practitioners to understand key disclosures. Investors and research analysts will have



information on listing candidates to enable them to start work on investment analysis and assessments at an earlier stage.

201. A number of practical concerns are premised on the significant period between the submission of the listing application and the actual listing. We expect that the requirements described in this paper will result in better quality initial drafts that will attract fewer comments from the regulators. As noted in paragraphs 69 and 70, we will work with the Stock Exchange to formulate measures to streamline the regulatory process. This should shorten the time between the date of a listing application and the launch of an offering.
202. As stated in the Consultation Paper, as is the case with a Web Proof Information Pack (**WPIP**) an Application Proof, when published, will not be considered to be a prospectus, an extract from or abridged version of a prospectus, an advertisement in relation to a prospectus or proposed prospectus under the CO or a prohibited advertisement under the SFO⁷. We will work with sponsors and the Stock Exchange on other operational matters and consequential amendments to the Listing Rules to ensure smooth implementation of the new regime and to minimise administrative burdens. This may include confidential filings for overseas listed companies and the publication of draft documents in English only.
203. In light of the above we intend to proceed with the proposal to publish the Application Proof on the HKEx website at the time the listing application is submitted. As explained in paragraph 44 above we will work with the Stock Exchange on transitional arrangements to enable market practitioners to familiarise themselves with all related requirements and procedures before the publication regime is implemented.
204. It is our intention that ultimately all successive amended drafts, regulatory comments and the applicant's responses will be made public. We will assess the position after implementation of the new practice of publishing the Application Proof and seek to gauge market readiness before deciding whether it is appropriate to introduce this requirement.

Proper records

Key due diligence areas (previous paragraph 17.8(a), revised paragraph 17.10(a))

Q19. Do you agree that a sponsor's records should be sufficient to demonstrate that the sponsor has complied with all applicable legal and regulatory requirements and in particular compliance with the Provisions?
If not, why not?

Public comments

205. Many respondents supported the proposal to formalise the obligation of sponsors to keep records of due diligence. Some are hopeful that the requirements will change sponsors' behaviour and encourage them to keep records to show compliance, rather than relying on 10-b-5 type comfort letters which are principally used as liability management tools.

⁷ Please refer to a joint policy statement issued by the SFC and the Stock Exchange regarding the posting of a WPIP dated 5 November 2007.



206. A group respondent expressed concerns that the requirements are overly prescriptive and burdensome which would add to costs and distract a sponsor's focus on key issues. There were concerns that the requirements would encourage sponsors to adopt a "checklist mentality" as opposed to a more meaningful approach to record-keeping. The respondent requested adding materiality qualifications into the provisions so that only material items of documentation need to be retained and only material advice and discussions need to be documented.
207. Some respondents raised concerns that the requirement for sponsors to keep records to demonstrate the bases for opinions and assurances in relation to expert reports and third party work would seemingly require them to obtain and retain the working papers of experts to which they are generally denied access. They added that third parties engaged to perform some due diligence usually submit the final product (e.g. a report) to the sponsor without providing the underlying working papers.
208. Nevertheless some sponsor firms indicated that they would find the proposal acceptable if the provision refers to compliance with "the proposed Code and the Listing Rules" as opposed to "all applicable legal and regulatory requirements", which appears overly wide.

SFC's response

209. The proposed requirement sets out key areas of due diligence in respect of which proper records should be kept. It is framed as largely non-prescriptive principles to allow a sponsor to decide the type and form of documents it keeps within its control to demonstrate compliance. We therefore do not agree that the requirement will result in a box-ticking or mechanical approach. Materiality criteria were reflected in the draft Provisions, e.g. the requirement to keep records is in relation to (i) material opinions and advice given by sponsors as specified under the Provisions; (ii) "significant" matters arising in the course of the listing application process; and (iii) the involvement of Management in considering "critical" matters only.
210. As regards expert reports and third party work, we expect to see records that would show a sponsor's own enquiries, assessments and actions to demonstrate the basis upon which the sponsor's opinions or assurances in relation to these reports or findings are substantiated in accordance with paragraphs 17.5(c), 17.6(g) and 17.7. We do not believe that this would normally necessitate the retrieval or retention of underlying working papers of experts and third parties. As it is common for information to be transmitted and stored electronically it should not be difficult for sponsor firms to comply with the requirement to maintain proper records.
211. We have replaced "all applicable legal and regulatory requirements" with "the Code" in revised paragraph 17.10(a).



Record retention period (previous paragraph 17.8(b), revised paragraph 17.10(b))

Q20. Do you agree that a complete set of a sponsor's records in connection with a listing transaction should be retained in Hong Kong for at least seven years after completion or termination of the transaction?
If not, why not?

Public comments

212. Most respondents were in favour of the proposal. Sponsor firms however sought clarification on what constitutes "a complete set of records". Sizeable IPOs usually involve a very large volume of documents and records which a sponsor cannot practically retain. Respondents mentioned that in some cases, listing applicants set up data rooms and prohibit documents to be photocopied in which case a sponsor might not have any copy available for record-keeping purposes.
213. The obligation to keep records in Hong Kong was also regarded as too burdensome as many documents might be kept at the applicant's place of incorporation or business overseas.
214. Some respondents questioned the basis for prescribing a seven-year period, which was regarded by some to be excessively long and suggested a three-year period instead.

SFC's response

215. We believe that proposed requirement is relatively straightforward and many of the concerns are misplaced. "A complete set of records" refers to records that are sufficient to demonstrate the basis on which a sponsor's due diligence has been completed, including the basis on which opinions, assurances and conclusions are arrived at under the Provisions. As discussed above we do not expect that a sponsor will keep the underlying records of the listing applicant, working papers of experts and third parties or original documents not prepared by the sponsor. To the extent that these documents are examined to enable a sponsor to reach the opinions, assurances and conclusions that are required under the Provisions, it is sufficient for the sponsor to record the key aspects of the documents examined.
216. The requirement does not preclude the storage of documents in electronic form or in off-site storage facilities. We consider it important to retain the records in Hong Kong to ensure that they are readily accessible to the regulators when required. The retention period of seven years is in line with the record keeping requirement under the Securities and Futures (Keeping of Records) Rules.



Resources, systems and procedures

Sufficient resources and due diligence plan (previous paragraph 17.9(a) and (b), revised paragraph 17.11(a) and (b))

- Q21. Do you agree that before accepting any appointment as a sponsor, a firm should ensure that, taking account of other commitments, it has sufficient staff with appropriate levels of knowledge, skills and experience to devote to the assignment throughout the period of the assignment?
- If not, why not?
- Q22. Do you agree that the provisions of the Sponsor Guidelines concerning the Transaction Team* should be transferred to the Code of Conduct?
- If not, why not?
- Q23. Do you agree that a sponsor should maintain effective systems and procedures to ensure that an appropriate due diligence plan is formulated, updated as necessary and implemented in respect of each assignment and there are clear and effective reporting lines to ensure that key issues are escalated to Management for deliberation?
- If not, why not?
- * A team comprising corporate finance staff.

Public comments

217. Almost all of respondents supported these proposals. Most of them agreed that these are fundamental requirements on staffing and resourcing that underpin the delivery of quality work.
218. Amongst the few who disagreed it was argued whilst sponsor staff should have sufficient knowledge, skills and experience appropriate to advise on listing rule compliance matters they cannot be expected to have industry specific knowledge and skills. Others sought clarification that the proposal should not be viewed as imposing a limit on the number of assignments a sponsor may accept.
219. Suggestions were made that apart from the provisions concerning the Transaction Team, relevant provisions relating to systems and controls under the Sponsor Guidelines should also be transferred to the Code of Conduct so that all key obligations of sponsors relating to resources, systems and controls will be centralised.

SFC's response

220. We wish to clarify that it is for a sponsor firm to consider whether its staff members have the relevant knowledge, skills and experience to carry out a particular assignment. In this respect prior experience of a similar transaction or sector experience would be relevant.
221. While the proposals do not impose a limit on the number of assignments a sponsor firm may accept we stress that it is the responsibility of the firm to ensure appropriate staff and adequate resources are deployed to manage properly each of the assignments it undertakes.



222. We will implement the proposals in light of respondents' overwhelming support. For the sake of clarity and uniformity we have transferred all relevant provisions in the Sponsor Guidelines relating to resources, systems and procedures (i.e. paragraphs 1.1, 1.2 and 1.5 of the Sponsor Guidelines) to the Code of Conduct. The derivation table attached as **Appendix D** shows the source provisions in the Sponsor Guidelines and how they have been adopted in the Code of Conduct. The provisions that are included in the Code of Conduct will be deleted from the Sponsor Guidelines. These changes have been reflected in the amended Sponsor Guidelines and revised paragraphs 17.11 to 17.12.

Management oversight (previous paragraph 17.9(e), paragraph 17.11(d) and (e))

Q24. Do you agree that a sponsor's Management is obliged to adequately supervise the performance of due diligence including but not limited to the key issues discussed in paragraph 97*?

If not, why not?

* This relates to the provisions of paragraph 17.9(e)

Public comments

223. Responses were mixed. Some respondents who supported the proposal observed that there is a trend of declining seniority of sponsor staff engaged in executing due diligence work which has invariably led to a decline in standards. They considered that quality of work might be enhanced and the risks of a transaction reduced if senior management is directly involved in key aspects of due diligence.
224. Many respondents expressed concerns that the current definition of Management comprising senior management executives across different business divisions of a financial institution is overly wide. It is unrealistic and impracticable to expect top management to be involved in day-to-day execution tasks. There is a possibility that senior members might not have had the relevant experience in handling IPO transactions and some of those in global financial institutions might not reside in Hong Kong.
225. Although Management should be responsible to establish appropriate procedures and systems to monitor the quality of the due diligence work, responsibility for the day-to-day execution and supervision should rest with the Principal who has been assigned to manage the transaction and who has been accredited by the SFC to have the requisite experience to manage IPO transactions.
226. Respondents generally agreed that Management should be closely involved in the acceptance of a mandate and resolving suspicious circumstances and difficult or sensitive issues. Many felt that Management should not be expected to directly supervise daily operational matters including monitoring the implementation of the due diligence plan and reviewing the standard and extent of due diligence work.

SFC's response

227. We note the concerns relating to the requirement for Management to directly supervise specific aspects of due diligence especially in respect of matters which are operational in nature.



228. Taking account of the comments received we have amended the proposal to provide that Management should be responsible for formulating clear and effective reporting lines and channels so that decisions on critical matters, such as the acceptance of a mandate, appointment of the Transaction Team and the resolution of suspicious circumstances and difficult or sensitive issues are escalated to Management or a committee designated by Management. Members of the committee should be independent of the Transaction Team and should have appropriate seniority and expertise necessary to consider the issues.
229. Management is also required to put in place appropriate systems, controls and procedures to govern key aspects of sponsor work which include:
- (a) formulation of an appropriate due diligence plan;
 - (b) implementation of the due diligence plan;
 - (c) supervision and management of the staff who carry out the work;
 - (d) reviews of the standard and extent of due diligence work and the performance of the Principals and the Transaction Team; and
 - (e) escalation of critical matters to Management or its designated committee for decision.
230. The above changes are reflected in paragraphs 17.11(d) and (e).

Sponsor Principals

Q25. Which, if any, of the proposals in paragraph 103* would achieve the objectives of enlarging the category of individuals qualified to act as Principals whilst not affecting the overall quality of sponsor work?

Do you have alternative suggestions to address the issues?

* These proposals were:

- (a) that the eligibility criteria for Principals be expanded by the SFC recognising relevant experience acquired overseas in comparable jurisdictions;
- (b) that there be greater emphasis on experience in the area of due diligence either in Hong Kong or elsewhere; and
- (c) that new examinations be introduced for Principals which test an applicant's knowledge of sponsor work and the regulatory regime which governs the conduct of sponsors in Hong Kong.

Public comments

231. Respondents largely welcomed SFC's initiative to consider proposals to expand the eligibility criteria for Principals. Many attributed the problem of a shortage in available Principals to the requirement for a Principal to demonstrate a "substantial role" in the capacity of a sponsor in at least two completed IPO transactions on the Main Board or the Growth Enterprise Market Board of the Stock Exchange in the five years immediately preceding the application.



232. Many respondents considered that the proposal to recognise overseas experience offers the best opportunity to increase the pool of qualified individuals. In this respect, it is important for the SFC to identify jurisdictions which have comparable, relevant legal and regulatory standards to Hong Kong, e.g. the UK, the US, Australia and Singapore. A suggestion was made to select jurisdictions by referring to the Recognized Jurisdiction Schemes under the Code on Unit Trusts and Mutual Funds.
233. Some respondents however commented that the value of overseas expertise should not take precedence over local experience given the uniqueness of the Hong Kong market and specific local rules and regulations. Furthermore there were concerns that the rules should not be relaxed to admit persons who do not have the appropriate level of experience and expertise as Principals.
234. A number of respondents proposed that the experience requirement should be relaxed and be supplemented by a new stringent examination relating to ethics, knowledge of sponsor work and the regulatory regime governing the conduct of IPO transactions in Hong Kong. That is to say an individual can either take the route of accumulating experience or passing a new regulatory examination in order to qualify as a Principal. They believed that if the new examination can strike an appropriate balance in terms of practicality, content and difficulty, the pool of eligible professionals can be enlarged without compromising industry standards. However a majority of respondents disagreed with the introduction of a new examination as a standalone requirement.
235. Comments were also made about the practical difficulties in meeting the required level of experience. It has been increasingly difficult to satisfy the experience criterion in the current market climate where many IPO transactions which are close to completion (e.g. after the Listing Committee hearing) do not proceed due to unfavourable market conditions. It was suggested that the SFC should consider experience gained from transactions that have matured to a certain stage, such as receiving in principle approval from the Listing Committee, in determining whether the individual has acquired the relevant experience.
236. Another problem stems from the limitation placed on the number of applicants that may attribute experience to the same transaction. Different individuals from different teams (e.g. country coverage, sector coverage, corporation finance coverage) may all have played a “substantial role” in the same transactions. Respondents sought clarification on what would be regarded as “substantial” involvement or whether the limit on the number of applicants who may be attributed to the same transaction may be removed.

SFC’s response

237. We note the views expressed by the respondents on expanding the eligibility criteria for Principals. We also agree that the value of overseas expertise should not take precedence over local experience. With respect to the suggestion to introduce a new regulatory examination as an alternative to IPO experience, we are of the view that this, if implemented, should supplement rather than replace the current IPO experience requirements set out in paragraph 1.4 of the Sponsor Guidelines.
238. We propose to expand the eligibility criteria for Principals by accepting applications from individuals who can satisfy any one of the following three criteria:
- (a) The individual has satisfied the requirements set out in the current Sponsor Guidelines;



- (b) The individual:
- (i) is highly experienced in the area of due diligence as a result of leading IPOs in Australia, the UK or the US;
 - (ii) is highly experienced in the area of corporate finance in respect of companies listed in Australia, the UK, or the US;
 - (iii) has completed a refresher course or special examination on ethics, sponsor work, and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the six months preceding the appointment by a sponsor as a Principal; and
 - (iv) is accredited to a sponsor that has at least one other individual who is approved as a Principal pursuant to the criteria (a) above.

or

- (c) The individual:
- (i) has participated actively and substantially in due diligence work in at least four completed IPO transactions in Hong Kong within the five years preceding the appointment as a Principal;
 - (ii) has acquired a minimum of five years of corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the Stock Exchange preceding the appointment as a Principal;
 - (iii) has passed a special examination on ethics, sponsor work and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the six months preceding the appointment by a sponsor as a Principal; and
 - (iv) is accredited to a sponsor firm that has at least one other individual who is approved as a Principal pursuant to criteria (a) above.

239. We do not agree with the suggestion that we should refer to the Recognized Jurisdiction Schemes under the Code on Unit Trusts and Mutual Funds in determining a list of comparable jurisdictions as this Code serves an entirely different purpose. Given the difficulty in determining which jurisdictions should be recognised as comparable jurisdictions and to avoid any uncertainty in this respect we have decided to accept due diligence experience gained in the common law jurisdictions of Australia, the UK and the US.

240. We did not receive any negative comments about the proposal for a new regulatory examination for individuals seeking to be licensed as Type 6 representative or registered as a relevant individual and engaging in sponsor work. We therefore consider it appropriate to require licensed representatives or relevant individuals who intend to engage in sponsor work to pass an examination as a means to enhance their competency and to assure a required standard. They are required to pass the examination not more than three years before and not later than six months after the date of their first engagement in sponsor work.



241. As an one off grandfathering arrangement, individuals who have engaged in sponsor work as a Type 6 licensed representative or relevant individual within the three years preceding the effective date of this amendment to the Sponsor Guidelines in at least one completed IPO transaction are exempted from this examination requirement. Individuals who have passed the examination or are exempted from taking the examination will not be required to take the examination again unless the individuals cease to be licensed or registered for Type 6 regulated activity for more than three years. A sponsor should therefore ensure that its staff who will be engaged in sponsor work should have satisfied or be exempted from the examination requirement and be able to demonstrate this to the SFC upon request.
242. With respect to respondents' request for clarification of what would be regarded as "substantial role", we maintain the view that the term should be interpreted according to its ordinary meaning. A person who has not had a leading supervisory role in an IPO transaction is generally not considered to have played a substantial role. This is in line with the SFC's stance set out in Consultation Conclusions to the Consultation Paper on the Regulation of Sponsors and Compliance Advisers in April 2006 and in question 21 of the Frequently Asked Questions of the Sponsor Regime.
243. Apart from the factors set out in paragraph 1.3.3 of the Sponsor Guidelines the following matters will be taken into account in establishing whether an individual applying to be a Principal has been engaged in a substantial role in an IPO:
- (a) whether the individual was responsible for leading and supervising due diligence and participated in due diligence meetings and discussions with the listing applicant and other professional parties appointed;
 - (b) whether the individual was responsible for making key decisions relating to due diligence work carried out by the transaction team and was fully aware of key risks involved;
 - (c) whether the individual was responsible for signing off for the sponsor firm that due diligence had been completed;
 - (d) whether the individual was responsible for certifying the referral of any issues arising from due diligence or issues raising reputational risks or material changes in circumstances to the appropriate committee or senior management of the sponsor firm;
 - (e) whether the individual was responsible for determining the scope, review, and sign off of major documentation submitted to the regulators, e.g. the prospectus and formal notice of the IPO, Listing Application Form (Form A1), Sponsors' Declaration and Sponsor's Undertaking to the Stock Exchange and any waiver applications;
 - (f) whether the individual had a supervisory leading role in advising the client on IPO requirements under the Listing Rules including:
 - advising the listing applicant on corporate and financial structure and compliance with the Listing Rules;
 - formulating the listing timetable and related plans;
 - supervision of the transaction, including due diligence and IPO execution.



244. In light of conflicting information submitted by individuals for the purpose of substantiating their involvement in an IPO transaction and comments from some respondents that different individuals may have played a substantial role in the same IPO transaction, a sponsor should be required to submit to the SFC, within two weeks after the first day of dealing, an IPO team structure chart in respect of that particular listing countersigned by a Principal who supervised the transaction. The chart should show the reporting line of each of the licensed or registered staff within the team together with their respective names, business titles and responsibilities including in advising the listing applicant on the Listing Rules and the performance of due diligence. The SFC may seek further details from intermediaries and individuals to substantiate their submissions. This requirement has been reflected in revised paragraph 17.11(g).
245. With regard to respondents' requests that we remove the limit on the number of individuals who may attribute their substantial role to the same IPO transaction we would like to clarify that the leading supervisory role should normally be undertaken by a very limited number of senior management staff.
246. We understand that adverse market conditions may impact on an individual's ability to meet the required level of IPO experience. We also note that it is common for an IPO transaction to be subject to numerous uncertainties, conditions, risks and issues that need to be addressed and resolved by the sponsor up to the point of listing. Accordingly our view has been that an IPO should not be deemed to be complete simply because it has been through a hearing of the Listing Committee of the Stock Exchange or obtained an in-principle approval from the Listing Committee. An IPO would only be regarded as having been completed if the issuer has successfully been listed on the Stock Exchange.

Multiple sponsors

- Q26. Do you agree that there should only be one sponsor on each engagement?
If you do not agree, should the number of sponsors be limited and, if so, to how many?
If you do not agree that the number of sponsors should be limited, why not?
- Q27. If more than one sponsor is allowed, do you agree that they should all be required to meet the Listing Rules independence requirements?
- Q28. Do you agree that if more than one sponsor is appointed each sponsor's responsibilities should remain unaffected and that each sponsor should comply with all the expectations of a sponsor?
If not, why not?

Public comments

247. The majority of respondents objected to the proposal. Respondents who were in favour agreed with the spirit of the proposal which is to ensure clearer accountability. The existence of multiple sponsors obscures primarily responsibility for due diligence and complicates the sponsors' advisory role. They believe that the proposal would remove any confusion that may arise amongst sponsors as to their respective responsibilities and eliminate the difficulty of apportioning or attributing responsibility between multiple



sponsors when problems arise. The proposed requirement for a sole sponsor would confer more authority on the sponsor which might in turn help eliminate tactics used by listing applicants to “opinion shop” or exploit discord among multiple sponsors thereby impacting rigorous due diligence.

248. Amongst those who disagreed with the proposal the prominent argument was that the appointment of sponsors is a commercial decision for the listing applicant. Depending on the nature, scale or complexity of a transaction there may be legitimate reasons for retaining multiple sponsors as this can bring different areas of expertise (e.g. country familiarity and sector experience) to the transaction. Other advantages include access to multiple viewpoints on difficult issues and development of wider research coverage by more financial institutions after listing.
249. Respondents were not persuaded that the use of multiple sponsors dilutes the role and responsibility of sponsors given that each of the sponsors is required to meet all relevant obligations. They asserted that under the current regime a sponsor cannot rely on other sponsors’ work and must fully discharge its regulatory duties and keep all relevant records.
250. Some suggested that if more than one sponsor is allowed but subject to a limit, a cap of two or three sponsors should be set. This would make the sponsor group more manageable.
251. Respondents emphasised that independent and non-independent sponsors are subject to the same level of requirements and responsibilities. In most cases non-independent sponsors might have gained a better understanding of the listing applicant and therefore would be able to contribute to the formulation of a more comprehensive due diligence plan and bridge any communication gap between the applicant and other independent sponsors.
252. It was noted that the current criteria under the Listing Rules as to whether a firm is regarded as independent are elaborate and in some cases over-reaching. For example it would be inappropriate for global financial institutions, including Chinese banks, to be precluded from engaging as sponsors because of certain pre-existing banking relationships. Respondents took the view that in many circumstances the existence of effective Chinese walls and separate decision-making structures should adequately address any possible conflict that may arise.
253. Respondents supported the proposal to maintain the current requirement in the Listing Rules which provides that at least one of the sponsors must be independent.
254. Most of the respondents also agreed that multiple sponsors should be held jointly and severally responsible for complying with the Provisions. One of the respondents pointed out that holding sponsors jointly and severally liable for due diligence creates powerful incentives for them to co-operate.

SFC’s response

255. We appreciate that the engagement of sponsors is a decision for an applicant and depending on the circumstances there may be good reasons to retain multiple sponsors including the convergence of different experience and expertise. We also note the majority view that a limit should not be imposed on the number of sponsors although some respondents opted for a cap of two or three. In practice different sizes and types of IPO will have differing geographic, sectoral or other requirements which



need different areas of expertise that might be drawn from a larger or a smaller group of sponsors; there are no hard and fast rules that would justify a specific number of sponsors that could apply in all cases.

256. With respect to the concerns that multiple sponsors can compromise the proper performance of due diligence, the minimum appointment period applicable to each of the sponsors (see paragraph 53) should help discourage the late addition of multiple sponsors and enable all sponsors to work together closely at an early stage of the transaction.
257. In light of the comments received and the other proposals concerning sponsor appointment, the SFC does not intend to proceed with the proposals to require a sole sponsor or impose a limit on the number of sponsors to the same transaction at this stage. However where multiple sponsors choose to act for the same listing applicant they must accept the consequences of doing so. Therefore, we intend to reinforce Listing Rule 3A.10(3) by providing in paragraph 17.1(e) of the Provisions that each sponsor is responsible for ensuring compliance with the regulatory requirements applicable to the transaction.
258. We agree that the current prescriptive tests concerning independence under the Listing Rules may often preclude larger firms that have diversified business operations. We note that large international firms will normally maintain internal policies and procedures to address specific conflicts of interest. We therefore consider it appropriate to maintain the current requirement that only one of the sponsors must be independent under the Listing Rules pending a separate review.

Other proposals

Overall management of a public offer (previous paragraph 17.10, revised paragraph 17.13)

<p>Q29. Do you agree that the provisions of the CFA Code relating to the management of a public offer should be transferred to the Code of Conduct?</p> <p>If not, why not?</p>

Public comments

259. Most respondents supported the proposal. Some respondents cautioned that the transfer of the provisions should not unintentionally result in any change in the requirements. One respondent questioned the need to transfer the relevant provisions from the CFA Code to the Code of Conduct given that both codes have the same legal standing.

SFC's response

260. It is clearer to consolidate all key obligations applicable to sponsors in one code. The provisions in paragraph 5.3 and 5.4 of the CFA Code will be transferred unchanged to the Code of Conduct save for one insignificant change in paragraph 17.13(b)(i) to reflect the permitted distribution of a listing document in electronic and printed form.



Information provided to analysts to new listings (previous paragraph 17.11, revised paragraph 17.14)

Q30. Do you agree that the obligation in the CFA Code relating to the provision of information to analysts should be transferred to the Code of Conduct?
If not, why not?

Public comments

261. Respondents supported the proposal in general. Some respondents cautioned that the transfer of the provisions should not unintentionally result in any change in the requirements. One group respondent suggested that paragraph 17.2(i) be amended to align with paragraph 17.11 that requires a sponsor to “take reasonable steps” to ensure information concerning a listing applicant disclosed or provided to analysts is contained in the relevant listing document.

SFC’s response

262. The provision in paragraph 5.10 in the CFA Code will be transferred to the Code of Conduct. The suggestion to add “take reasonable steps” in revised paragraph 17.14 has been adopted.

Scope of Provisions

Q31. Do you agree that the Provisions should equally apply to a listing agent appointed for the listing of a Real Estate Investment Trust (REIT)?
If not, why not?

Public comments

263. Respondents mostly supported the proposal. One respondent considered it unnecessary to extend the new requirements under the Code of Conduct to a listing agent which is regulated under separate codes.

SFC’s response

264. Although a REIT is regulated under other codes, and in particular the REIT Code, there are no specific requirements under these codes to govern the conduct of a listing agent when acting in a listing of a REIT. We consider it appropriate to extend the requirements governing sponsor work to a listing agent that assists the listing of a REIT.



Prospectus liability

- Q32. Do you agree that it should be made clear that sponsors are liable for untrue statements (including material omissions⁸) in a prospectus?
If not, why not?
- Q33. Do you have any views on the proposed definition of “sponsor”? Please explain your views.

Clarification of sponsors’ prospectus liability

Public comments

265. Some respondents commented that the proposal does not clarify uncertain existing prospectus liability provisions in the CO but rather expands these provisions. They were of the view that it is clear that sponsors are not currently subject to the prospectus liability provisions because they are neither persons who have authorized the issue of a prospectus nor are they promoters. They believe that only the listing applicant and its directors acting via requisite meetings properly convened and held or by resolutions properly passed are persons who have authorized the issue of a prospectus. They also consider that a “promoter” for the purposes of section 40 of the CO can only be a person involved with the formation of the company or its business.
266. Many respondents took the opposite view that the current provisions are sufficiently clear to cover sponsor liability and clarification of the CO is therefore unnecessary. Nevertheless some of these respondents supported the proposal to put the issue beyond doubt.

SFC’s response

267. The existence of conflicting comments from respondents and the lack of Hong Kong case law on whether or not sponsors are subject to these provisions demonstrate that there is considerable merit in removing any ambiguity. As explained in paragraph 39 it would not be credible to propose that an amendment is made to clarify that sponsors do not have legal liability. Accordingly, we will recommend that the current statutory liability provisions be amended so that a person who has authorized the issue of a prospectus⁹ includes a sponsor. The proposed clarification may only be made by amending the prospectus liability provisions. This process would be subject to the usual legislative process for amending primary law.

Responsibility of sponsors

Public comments

268. Sponsor firms and law firms objected to the proposal. They were of the view that it is unfair to make sponsors liable for untrue statements in a prospectus because a sponsor’s role is limited to advising and assisting the listing applicant in the listing process. They argued that disclosures in a prospectus are the main responsibility of a

⁸ Pursuant to section 41A(2) and section 343(2A) of the CO, for the purposes of the civil and criminal prospectus liability provisions, an untrue statement includes a material omission from the prospectus.

⁹ Currently, every person who has authorized the issue of a prospectus is subject to civil liability (section 40(1)(d)) and criminal liability (section 40A(1) and section 342F(1)).



listing applicant and its directors and that the preparation of a prospectus is a collaborative process. Sponsors cannot be expected to guarantee the work of other experts or professionals or be held responsible for irregularities arising from such work. Furthermore, in their view, it is unfair to single out sponsors to make them liable for disclosures provided by directors or work done by other professionals. They believe that the proposal is based on a misguided assumption that sponsors have a special status among professional parties in an IPO. If sponsors must be held liable, they argued that the SFC should require other professional parties to report to the sponsor firm and other parties in the IPO process should also be made primarily liable for untrue statements that are attributable to them.

269. Investor groups representing the buy-side supported the proposal. They were of the view that prospectus liability of sponsors is critical for market confidence. Investors must be able to rely on information provided in listing documents and the due diligence behind it, all of which involves sponsor responsibility.

SFC's response

270. Comments that a sponsor's role is limited to advising and assisting a listing applicant in the listing process and that a sponsor is not responsible for disclosures in a prospectus are incorrect. Sponsors have unique and clear responsibilities under existing non-statutory Listing Rules for the contents of a prospectus and have to provide the Stock Exchange with a declaration that the listing document contains sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion of the financial condition and profitability of a listing applicant. If a sponsor has no or insufficient control or responsibility over the information in a prospectus it would not be in a position to provide this declaration. These comments give rise to concerns about whether sponsors have properly discharged their regulatory duties and put into question their fitness and properness as licensed corporations or registered institutions.
271. Sponsors, in addition to advising and assisting listing applicants, have additional duties under non-statutory rules and requirements to confirm disclosures in a prospectus; as regulated market participants they are also obliged to act in the best interests of the integrity of the markets¹⁰. It is therefore clear that sponsors should be held liable, where appropriate, for inaccurate or insufficient disclosures in a prospectus.
272. The current civil liability provisions already apply to directors of the issuer and experts (for disclosures that are attributable to them). The categories of persons to whom criminal liability applies are different from civil liability. The current proposal is only to clarify the existing liability provisions in relation to sponsors, not to introduce additional liability for other persons. In any event the potential liability of others would have no relevance to the question of whether a sponsor is itself liable in a particular case; and neither would an absence of liability for others increase sponsor liability.

Adequacy of existing provisions

Public comments

273. Many respondents, again mainly sponsor firms and law firms, who disagreed with the proposal were of the view that the SFC's existing powers against sponsors under the SFO are sufficient. These include provisions such as sections 107 (offence to fraudulently or recklessly induce others to invest money), 277 and 298 (disclosure of

¹⁰ General Principle 1, SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.



false or misleading information inducing transactions). In addition, section 108 (civil liability for inducing others to invest money in certain cases) enables investors to claim compensation for loss. Respondents also referred to the fact that the SFC is empowered to take disciplinary proceedings against sponsors which are licensed by the SFC and against their licensed representatives. Fines as well as suspension or revocation of licences may be imposed as a result of disciplinary proceedings. In addition, reference was made to the fact that investors may rely on the laws of contract and tort. In their view the potential reputational risk of being the subject of a regulatory action also has deterrent effect.

274. They were of the view that the real issues are the lack of:
- (a) consistent and transparent enforcement rather than a deficiency in existing law; unless these provisions are shown to be inadequate, there is no reason to add further provisions to an already complex liability regime;
 - (b) effective mechanisms, such as class action suits, for investors to enforce their rights.
275. Some of these respondents were also concerned that since a large majority of listed companies are not incorporated in Hong Kong it may be difficult to bring action against directors who are located outside Hong Kong. Subjecting sponsors to prospectus liability would make sponsors convenient targets for civil suits and prosecutions.
276. These respondents suggested that instead of subjecting sponsors to prospectus liability, the SFC should focus on other avenues to facilitate clearer and more meaningful disclosures. These could include guidelines on the standard of due diligence work expected from sponsors, investor education and developing co-operative arrangements with other regulators, including those overseas, to ensure that action can be taken against those who are primarily responsible for prospectus disclosures.

SFC response

277. CO liability provisions are designed explicitly to deal with breaches of the specific prospectus disclosure requirements in the CO. The existing provisions in the SFO are no substitute because they are not tailored to prospectus law but rather focus more generally on misrepresentations or relate to market misconduct. We also note that those respondents who refer to the SFO provisions appear to accept in principle that civil and criminal liability should be applicable to sponsors albeit under different statutory provisions.
278. With respect to the criticisms of enforcement action, and the suggestions that the proposal will make sponsors an easy target, it must be noted that a prosecution would only be undertaken where there is sufficient evidence and it is in the public interest to do so. There are many reasons, including the sufficiency and quality of evidence available, as to why a prosecution would not be undertaken in a particular case.
279. While we sympathise with the point made about the inability to bring class action suits in Hong Kong, which may inhibit investors from taking action to enforce their rights under a clarified civil liability provision, this is not a persuasive argument to leave the law in an ambiguous state.
280. Regarding suggestions to provide guidance on the standards expected from sponsors, the proposals in the first part of this paper set out these standards. Under the Listing



Rules sponsors must provide a confirmation that the disclosures in a prospectus contain sufficient particulars and information to enable investors to make an informed decision on the viability of the listing applicant. Similarly the CO requires a prospectus to contain sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion on the financial condition and profitability of the company. Clarification of sponsors' prospectus liability makes plain the potential consequences when these standards are not met.

281. The SFC wishes to stress that these measures are not designed to make the sponsor liable for prospectus defects in lieu of issuers or their directors. Sponsors may have breached their Code obligations concerning due diligence without triggering civil or criminal liability, which can only be assessed under the CO. A sponsor may have criminal liability together with an issuer and other persons if there is evidence that each of them knowingly or recklessly participated in issuing a prospectus containing false or misleading information. It is not, however, intended that a due diligence failure will of itself involve criminal liability.

Detection or avoidance of fraud

Public comments

282. A few sponsor firms who objected to the proposal commented that fraud and deliberate non-disclosures are key risks. Sponsors may be subject to deception by directors of a listing applicant or other professional parties; they do not have resources to uncover deliberate concealment of information which is difficult to detect even with the most stringent due diligence.

SFC's response

283. We have stated in the Consultation Paper that we do not expect sponsors to be able to detect all attempts by the listing applicant or other parties to conceal information in order to mislead others. This is further discussed under the subsection entitled "Understanding a listing applicant" above (see paragraphs 74 to 81). The requirement to carry out reasonable due diligence cannot be expected to amount to a guarantee of an absence of fraud, forgery or deliberate non-disclosure. But a responsible and proactive due diligence exercise in line with the standards set out in the first part of this paper should in practice serve to expose instances of misconduct.

Quality of prospectus

Public comments

284. Some law firms and sponsor firms disagreed with the proposal because in their view sponsors' prospectus liability will result in more defensive drafting of prospectuses where the focus is on avoiding the risk of being prosecuted or sued for untrue statements. They considered that this will result in even more legalistic, complicated and lengthy prospectuses which is contrary to the SFC's objective of improving the quality of prospectuses.

SFC's response

285. We do not believe that sponsor liability should exacerbate this problem; on the contrary it may well encourage sponsors to prepare and review disclosures in a prospectus



critically so as to ensure that it is accurate, relevant, concise and meaningful for investors.

Standards of culpability, burden of proof, defences in the liability provisions

Public comments

286. Most respondents, including those who supported the proposals as well as those objecting, commented that the current approach to criminal liability under section 40A and section 342F of the CO is more onerous than in other markets. This is because:
- (a) the standard applied is effectively that of negligence;
 - (b) the structure of the criminal liability provisions is unfair; under section 40A and section 342F, the burden of proof is shifted to the defendant to establish that he had reasonable grounds to believe, and did believe at the time of the issue of the prospectus that an untrue statement was true or that the statement was immaterial. The prosecution only has to prove that a prospectus contains an untrue statement;
 - (c) a sponsor should not be held criminally liable for errors of judgment unless it knowingly or recklessly permitted an untrue statement, or where it had acted dishonestly or fraudulently or where there is collusion with the listing applicant or other parties in providing untrue statements.
287. A few respondents suggested that negligence should be a pre-requisite for civil liability and that defences should be made available for both civil and criminal liability.
288. Some respondents asked whether compliance with the proposed requirements in the Provisions would provide a sponsor with a due diligence defence against civil and criminal liability.

SFC response

289. We agree with comments which are critical of the way the current criminal liability provisions are framed. Accordingly, we will recommend to the Government that section 40A and section 342F are amended so that the prosecution will bear the burden of proving that: (a) a person authorizing the issue of the prospectus knew that, or was reckless as to whether, a statement in the prospectus identified by the prosecution was untrue; and (b) the untrue statement was materially adverse from an investor's perspective. This proposed formulation is consistent with that in other SFO provisions such as sections 107 and 298 and will address most of the comments relating to the burden of proof and the apparent absence of a specific requirement for "mens rea", or mental element of the offence.
290. In our view it is unnecessary and inappropriate to specify fraud or dishonesty as part of the *mens rea* as there are already criminal law provisions that deal with fraud. The liability provisions are not aimed at prevention of fraud but are to deter inaccurate or incomplete disclosures in a prospectus. References to knowledge or recklessness are consistent with analogous provisions in the SFO.
291. With respect to the suggestion to adopt negligence as a pre-requisite for civil liability, our view is that the concept is already reflected in section 40. Under section 40, a defence against liability is provided if the person had reasonable grounds to believe



that the statement was true¹¹. If a sponsor has conducted reasonable due diligence then it is difficult to see how it could be found liable under section 40.

292. Regarding whether compliance with the Provisions will provide a sponsor with a defence to civil liability we are of the view that full compliance is likely to do so, depending on the circumstances of the case. In view of the proposals to amend the criminal liability provisions so that the prosecution will bear the burden of proving that a defendant who had authorised the issue of a prospectus knew that or was reckless as to whether a statement in the prospectus was untrue, we believe that it is highly unlikely that the prosecution would be able to establish knowledge or recklessness where a sponsor has fully complied with the Provisions.

Liability of individuals in a sponsors firm

Public comments

293. Many respondents asked for clarification about the potential criminal liability of individuals in a sponsor firm. While some were of the view that individuals should not be liable at all others believed that they should not be liable unless they failed to follow firm policies or there was collusion or fraud. There were also views that the maximum fine of \$700,000 under the criminal liability provisions is not a sufficient deterrent and responsible individuals should be imprisoned.

SFC's response

294. For the purposes of prospectus liability, we proposed that the term "sponsor" be defined to be any licensed corporation or registered institution that is licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor and that is appointed as a sponsor under the Listing Rules.
295. Since the proposed definition of "sponsor" relates to the firm and not individuals, the sponsor firm and not individuals will be subject to the proposed civil and criminal liability provisions.
296. Although the criminal liability provisions of the CO will only apply directly to a sponsor firm, the general criminal law would also extend to situations where there is evidence that an individual (not limited to directors or senior management), whether or not in the sponsor firm, has colluded in the making of an untrue statement in a prospectus. It would then be possible for that individual to be prosecuted for aiding and abetting under section 89 of the Criminal Procedure Ordinance. In addition, the general criminal law would extend to directors and other officers concerned in the management of a sponsor firm. If there is evidence that the sponsor firm committed the criminal offence with their consent or connivance such directors and officers could also be guilty of a criminal offence under section 101E of the Criminal Procedure Ordinance. These provisions apply generally when companies or other entities are subject to specific statutory criminal liability under any Ordinance.
297. We note concerns that the existing penalties of a \$700,000 fine and three years' imprisonment are not high enough to have a sufficiently deterrent effect. We do not propose to amend the existing penalties under the criminal liability provisions but will

¹¹ Section 40(2)(d).



include this topic in a forthcoming overall review of the prospectus regime and seek to align them with penalties for similar offences in the SFO.

Other matters

Public comments

298. A large majority of IPOs involve emerging or growth market issuers. Investors inevitably face a greater degree of risk than is customary for developed market issuers. Sponsors should be responsible for due diligence but often information is difficult to access or is unreliable. The SFC and investors need to accept this if Hong Kong wants to continue to list companies from these markets.

SFC's response

299. It is critical that prospectuses contain complete and accurate disclosures to enable investors to make informed investment decisions. Sponsors are required to provide a confirmation prior to listing that the prospectus contains sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion of the financial condition and profitability of a listing applicant. If information is unavailable or unreliable to a degree that prevents sponsors from performing sufficient due diligence, the confirmation should not be made. Sponsors must exercise care in client selection and in meeting the standards of work expected. Of course it may be appropriate in some cases to deal with uncertainty through specific (rather than generic or boilerplate) risk factors bearing in mind that a prospectus must always ensure that investors are able to form a valid and justifiable opinion.



Appendix A – Revised draft of a new paragraph 17 of Code of Conduct

Sponsors

17.1 Introduction

- (a) This paragraph applies to a licensed corporation or registered institution, licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor and which is appointed as a sponsor by an applicant seeking a listing of its securities on the Stock Exchange under the Listing Rules¹.
- (b) A sponsor's primary role is to provide assurance to the Stock Exchange and the market generally that the listing applicant complies with the Listing Rules and other relevant legal and regulatory requirements and that the listing document provides sufficient particulars and information for investors to form a valid and justifiable opinion of the listing applicant's shares², financial condition and profitability. A sponsor also advises and guides the listing applicant as to the Listing Rules and other relevant regulatory requirements.
- (c) The Commission attaches a great deal of importance to maintaining the integrity of the market and the transparency in fund raising and other listing exercises. This paragraph sets out the responsibilities and obligations which a sponsor should fulfil when discharging its functions as a sponsor. This paragraph also contains standards and provides guidance on due diligence procedures in respect of a listing application. In assessing whether a sponsor is fit and proper to remain licensed or registered and permitted to carry out its sponsor work, the Commission will have regard to the provisions of this paragraph.
- (d) Sponsors are reminded of their other obligations under the Listing Rules, the Sponsor Guidelines and the CFA Code. In case of any conflicts amongst the Listing Rules, the Sponsor Guidelines, the CFA Code and this paragraph, the provisions of this paragraph shall prevail.
- (e) If a listing applicant appoints more than one sponsor in relation to a listing application:
 - (i) the joint appointments do not relieve any of the sponsors of any of their responsibilities and obligations under this paragraph; and
 - (ii) each of the sponsors is responsible for ensuring that the requirements set out in this paragraph in relation to the listing application are fully discharged.

¹ Under Listing Rule 3A.02, an applicant seeking a listing of its securities on the Stock Exchange must appoint a sponsor to assist it with its application for listing. References to the Main Board Listing Rules in this paragraph should be taken to cover the equivalent GEM Listing Rules.

² In some cases a listing will involve other securities such as debentures or equity interests other than shares, for example units in a REIT. Where a listing agent is appointed for a listing of units in a REIT, the provisions under this paragraph will equally apply to the listing agent.



17.2 Key requirements

A sponsor should comply with the following key requirements in order to discharge its role satisfactorily.

(a) Advising a listing applicant

A sponsor should advise and guide a listing applicant in preparation for a listing.

(b) Reasonable due diligence

A sponsor should take reasonable due diligence steps in respect of a listing application; before submitting a listing application a sponsor should complete all reasonable due diligence on a listing applicant except in relation to matters that by their nature can only be dealt with at a later date.

(c) Disclosure to the market

A sponsor should take reasonable steps to ensure that true, accurate and complete disclosure about a listing applicant is made to the public.

(d) Communication with the regulators

A sponsor should deal with the regulators in a truthful, cooperative and prompt manner.

(e) Proper records

A sponsor should maintain proper books and records that are sufficient to demonstrate its compliance with the Code.

(f) Resources, systems and controls

A sponsor should maintain sufficient resources and effective systems and controls for proper implementation and adequate management oversight of the sponsor work.

(g) Overall management of a public offer

A sponsor should act as the overall manager of a public offer to ensure that the public offer is conducted in a fair and orderly manner.

(h) Information provided to analysts in new listings

A sponsor should take reasonable steps to ensure analysts do not receive material information not disclosed in the listing document.

17.3 Advising a listing applicant

(a) Understanding a listing applicant

Based on reasonable due diligence, a sponsor should have a sound understanding of:



- (i) a listing applicant, including its history and background, business and performance, financial condition and prospects, operations and structure, procedures and systems; and
 - (ii) the personal and business backgrounds of the directors, key senior managers and (where applicable) controlling shareholders of the listing applicant.
- (b) Advice and guidance
- (i) A sponsor should advise and guide a listing applicant and its directors as to their responsibilities under the Listing Rules and other relevant regulatory requirements which apply to a Hong Kong listed company and its directors and take reasonable steps to ensure that during the listing application process they understand and meet these responsibilities.
 - (ii) Where material deficiencies are identified in relation to the operations and structure, procedures and systems, or directors and key senior managers of a listing applicant, a sponsor should provide adequate advice and recommendations to assist the listing applicant to remedy these material deficiencies.
 - (iii) Where these material deficiencies cannot be remedied prior to the submission of a listing application, a sponsor should make adequate disclosure as part of its submission of the listing application, including the nature of these deficiencies, reasons for non-rectification and remedial actions taken or to be taken.

17.4 Work required before submitting a listing application

(a) Reasonable due diligence

Before submitting an application on behalf of a listing applicant to the Stock Exchange a sponsor should have (i) performed all reasonable due diligence on the listing applicant except in relation to matters that by their nature can only be dealt with at a later date, and (ii) ensure that all material information as a result of this due diligence has been included in the Application Proof.

(b) Completeness of information in an Application Proof

Before submitting an application on behalf of a listing applicant to the Stock Exchange a sponsor should come to a reasonable opinion that the information in the Application Proof is substantially complete except in relation to matters that by their nature can only be dealt with at a later date.

(c) Resolving fundamental compliance issues

Before submitting an application on behalf of a listing applicant to the Stock Exchange a sponsor should come to a reasonable opinion that:

- (i) the listing applicant is in compliance with all relevant listing qualifications under Chapter 8 of the Listing Rules (except to the extent



that waivers from compliance with those requirements have been applied for to the Stock Exchange in writing);

- (ii) the listing applicant has established procedures, systems and controls (including accounting and management systems) which enable the listing applicant and its directors to comply with the Listing Rules and other relevant legal and regulatory requirements on an ongoing basis;
- (iii) the listing applicant has established procedures, systems and controls (including accounting and management systems) which provide a reasonable basis for the directors to make a proper assessment of the financial position and prospects of the listing applicant on an ongoing basis; and
- (iv) the directors of the listing applicant collectively have the experience, qualifications and competence to manage the listing applicant's business and comply with the Listing Rules, and individually have the experience, qualifications and competence to perform their individual roles, including an understanding of their obligations and those of the listing applicant as an issuer under the Listing Rules and other legal and regulatory requirements relevant to their role.

(d) Identifying material issues

When submitting an application on behalf of a listing applicant to the Stock Exchange, a sponsor should ensure that all material issues known to it which, in its reasonable opinion, are necessary for the consideration of:

- (i) whether the listing applicant is suitable for listing; and
- (ii) whether the listing of the applicant's securities is contrary to the interest of the investing public or to the public interest;

are disclosed in writing to the Stock Exchange.

17.5 Disclosure to the market

(a) Overall disclosure

At the time of issue of a listing document, a sponsor, after reasonable due diligence, should have reasonable grounds to believe and should believe that the listing document contains sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares and the financial condition and profitability of the listing applicant.

(b) Disclosure: non-expert sections

At the time of issue of a listing document, a sponsor, after reasonable due diligence, should have reasonable grounds to believe and should believe that:

- (i) the information in the non-expert sections of the listing document is true, accurate and complete in all material respects and not misleading or deceptive in any material respect; and



(ii) there are no matters or facts the omission of which would make any information in the non-expert sections of a listing document or any other part of the listing document misleading in a material respect.

(c) Disclosure: expert reports

At the time of issue of a listing document, a sponsor as a non-expert, after performing the due diligence set out in paragraph 17.7, should have no reasonable grounds to believe and should not believe that the information in the expert reports is untrue, misleading or contains any material omissions.

17.6 Due diligence

(a) Reasonable judgement

A sponsor should conduct due diligence in order to have a thorough knowledge and understanding of a listing applicant and to satisfy itself in relation to the disclosure in the listing document. A sponsor should exercise reasonable judgement on the nature and extent of due diligence work needed in relation to a listing applicant having regard to all relevant facts and circumstances. A sponsor should recognise that the nature and extent of due diligence varies from case to case depending on the facts and circumstances and there is no exhaustive list of due diligence steps that would apply in all circumstances.

(b) Professional scepticism

In undertaking its role a sponsor should examine with professional scepticism the accuracy and completeness of statements and representations made, or other information given, to it by a listing applicant or its directors. An attitude of professional scepticism means making a critical assessment with a questioning mind and being alert to information, including information from experts, that contradicts or brings into question the reliability of such statements, representations and information.

(c) Appropriate verification

A sponsor should not merely accept statements and representations made and documents produced by a listing applicant or its directors at face value. Depending on the nature and source of the information and the context in which the information is given, the sponsor should perform verification procedures that are appropriate in the circumstances, such as reviewing source documents, inquiring of knowledgeable persons or obtaining independently sourced information. Where the sponsor becomes aware of circumstances that may cast doubt on information provided to it or otherwise indicate a potential problem or risk, the sponsor should undertake additional due diligence to ascertain the truth and completeness of the matter and information concerned. Over reliance on management's representations or confirmations for the purposes of verifying information received from a listing applicant cannot be regarded as reasonable due diligence.

(d) Preparation of a listing document

Regarding the preparation of a listing document, a sponsor should perform,



without limitation, each of the following:

- (i) oversee, and be closely involved in, the preparation of the listing document;
 - (ii) achieve a thorough understanding of the listing applicant, including its business, history, background, structure and systems;
 - (iii) gain a sufficient understanding of the industry in which the listing applicant operates, including reviewing key characteristics of the industry and data about competitors;
 - (iv) examine and consider the integrity, qualifications and competence of the directors, including reviewing internal records, board minutes and public filings;
 - (v) examine and consider the accuracy and reliability of the financial information, including reviewing the financial statements of major subsidiaries, internal financial records, tax certificates, regulatory filings and public records;
 - (vi) assess the business performance, financial condition, development, prospects and any financial projection or profit forecast;
 - (vii) assess the legality and compliance of the business operations and whether the listing applicant is subject to any material legal proceedings or disputes;
 - (viii) assess whether there has been any material change since the date of the last audited balance sheet, including any matter that might impact upon the listing applicant's business model, performance, prospects or financial condition; and
 - (ix) undertake independent verification of all material information, including documents provided, and statements and representations made, by the listing applicant and its directors.
- (e) Independent due diligence steps

A sponsor should conduct the following independent due diligence steps:

- (i) inquire directly of knowledgeable persons within or outside the listing applicant e.g. directors, key management staff, consultants and controlling shareholder(s);
- (ii) conduct inspection of key physical assets including where appropriate production facilities;
- (iii) interview major business stakeholders such as the listing applicant's customers, suppliers, creditors and bankers;
- (iv) in relation to material matters, review relevant underlying records and supporting documents of the listing applicant; and



- (v) in relation to material matters, independently obtain information from sources outside the listing applicant, such as searches of public filings and databases, external confirmations, third-party data about competitors and the engagement of external agents to perform relevant checks.

(f) Interview practices

Where a sponsor interviews major business stakeholders (e.g. customers, suppliers, creditors and bankers), the sponsor should adopt effective and adequate measures to ensure that the records of the interviews are reasonably accurate, complete and reliable in all material respects. In conducting interviews, the sponsor should:

- (i) select independently those to be interviewed based on objective and proportionate criteria, e.g. those with whom the listing applicant has entered into high value transactions or entities with special or unusual characteristics;
- (ii) carry out the interview directly with the person or entity selected for interview with minimal involvement of the listing applicant;
- (iii) confirm the bona fides of the interviewee (including establishing the identity of the interviewee and other relevant information) to satisfy itself that the interviewee has the appropriate authority and knowledge for the interview;
- (iv) hold an in-depth discussion with a view to obtaining adequate and satisfactory responses to all questions raised and follow up on any incomplete or unsatisfactory responses or outstanding matters; and
- (v) identify any irregularities noted during the interview (e.g. interview not taking place at the registered or business address of the person or entity selected for interview, reluctance on the part of the interviewee to cooperate) and ensure any irregularities are adequately explained and resolved.

(g) Seeking assistance from third parties

A sponsor cannot abrogate responsibility for due diligence. Where a sponsor engages a third party to assist it to undertake specific due diligence tasks (e.g. engaging lawyers to undertake verification of title to properties, accountants to review internal controls, consultancy firms to undertake market research, agencies to perform investigative work), the sponsor remains responsible in respect of the matters to which the specific tasks relate. A third party's work³, in itself, would not be sufficient evidence that a sponsor has discharged its obligation to conduct reasonable due diligence. The degree to which a third party's work can be relied on may depend on the professional qualifications of the third party to conduct the work. As a minimum the sponsor should:

³ It should be noted that for a particular listing application an entity may be assisting in connection with due diligence tasks as well as being responsible for an expert report. For instance an accounting firm may be tasked with reviewing the internal controls as well as being the reporting accountant; in this case the guidance for sponsors in paragraph 17.6(g) applies to the review of internal controls and the guidance in paragraph 17.7 to the work as the reporting accountant.



- (i) assess whether the third party is appropriately qualified and competent for the tasks assigned to it;
 - (ii) consider the scope and extent of the tasks to be performed by the third party;
 - (iii) assess the results of the work performed by the third party and arrive at its own opinion whether the work provides a sufficient basis to determine that reasonable due diligence has been conducted and whether further due diligence is required;
 - (iv) assess whether the results of the work are consistent with other information known to the sponsor including that derived from its other due diligence work; and
 - (v) assess whether the results of the work should be incorporated in the listing document and whether they should be brought to the attention of the regulators.
- (h) Stock Exchange Listing Rules

The Stock Exchange sets out its expectations of due diligence sponsors would typically perform in PN21. PN21 explains that it is not in any way intended to set out the actual steps that may be appropriate in any particular case. Each listing applicant is unique and so will be the due diligence appropriate for the purpose of its listing application. The scope and extent of appropriate due diligence by a sponsor may be different from (and considerably more extensive than) the more typical examples in PN21. The sponsor should exercise its judgement as to what investigations are appropriate for a particular case and the extent of due diligence. Sponsors are reminded of their obligations to comply with the Listing Rules and the relevant practice notes and guidelines on due diligence standards.

17.7 Due diligence on expert reports

For the purposes of paragraph 17.5(c), the sponsor should:

- (a) satisfy itself that:
 - (i) the expert is appropriately qualified, experienced and competent to give the opinion;
 - (ii) the expert is sufficiently resourced; and
 - (iii) the expert is independent from the listing applicant and its directors and controlling shareholder(s);
- (b) assess whether the scope of the expert's work:
 - (i) is appropriate to the opinion given by the expert; and
 - (ii) adequately covers the reliability of information provided to the expert, if not, the sponsor should:



- (A) request that the scope of the expert's work be expanded;
- (B) seek the assistance of a third party; or
- (C) extend its due diligence having regard to the procedures set out in paragraph 17.6,

to cover the information provided to the expert;

Note 1: As a reporting accountant performs audit procedures on information received from a listing applicant under applicable professional standards, a sponsor is not expected to carry out any further due diligence on this information. Nevertheless if a sponsor is aware of any matters which raise concerns relating to the information underlying the accountant's report, the sponsor should conduct further enquiries necessary to satisfy itself that these concerns are addressed; these enquiries may involve obtaining relevant supporting information and documents.

Note 2: If an expert relies on information prepared by a third party, for example where a legal adviser is engaged to confirm the title of properties, the sponsor should follow the procedures set out in paragraph 17.6(g). If an expert who relies on information prepared by a third party also follows standards which are at least equivalent to those required under paragraph 17.6(g), the sponsor may rely on the work performed by the expert in that respect.

- (c) assess whether material bases and assumptions (in the case of financial information, critical accounting policies and estimates) on which the expert report is founded are fair, reasonable and complete; and
- (d) as regards the expert's opinion and the rest of the information contained in the report, the sponsor should:
 - (i) critically review the expert's opinion and the rest of the information in the report against the totality of all other information known to the sponsor about the listing applicant (including the business model, track record, operations, forecasts, sector performance and any relevant information publicly available) through due diligence and the sponsor's knowledge and experience of the listing applicant, the market in which the listing applicant operates and of comparable companies;
 - (ii) corroborate the information in the expert report with the information disclosed in non-expert sections and the sponsor's knowledge and experience of the listing applicant to ascertain whether the information throughout is consistent and coherent; and
 - (iii) conduct follow up work to resolve any material discrepancies, irregularities or inconsistencies.
- (e) The performance of each of the procedures in paragraph 17.7(a) to (d) above should be to the standard expected of a sponsor which is not itself expert in the matters dealt with in the relevant expert report.



17.8 Management Discussion and Analysis of Financial Information and Condition (MD&A)

A sponsor should in conjunction with the management of a listing applicant and its other advisers prepare relevant, adequate and comprehensible MD&A that should:

- (a) avoid excessive or irrelevant disclosure that may overwhelm investors and act as an obstacle to identifying and understanding material matters and critical information;
- (b) focus on matters that materially impacted upon historical financial performance or condition;
- (c) analyse and explain material fluctuations in the financial items and amounts with specific and substantive reasons;
- (d) discuss material factors or events that are likely to impact future financial performance or condition; and
- (e) identify and discuss from an investor's perspective any exceptional items or unusual accounting treatments that require further enquiry or disclosure by, amongst other things, making reference to disclosure or treatments adopted by comparable companies.

17.9 Communications with the regulators

- (a) A sponsor should reasonably satisfy itself that all information provided to the Stock Exchange and the SFC during the listing application process is accurate and complete in all material respects and not misleading in any material respect and, if it becomes aware that the information provided does not meet this requirement, the sponsor should inform the Stock Exchange and the SFC (as the case may be) promptly.
- (b) A sponsor should deal with all enquiries raised by, and provide all relevant information and documents requested by the Stock Exchange and the SFC (as the case may be) promptly, including answering any questions addressed to the sponsor in a cooperative and truthful manner.
- (c) Where a sponsor becomes aware of any material information relating to a listing applicant or listing application which concerns non-compliance with the Listing Rules or other legal or regulatory requirements relevant to the listing (except as otherwise disclosed pursuant to paragraph 17.4(d)), it should report the matter to the Stock Exchange in a timely manner. Such duty continues after the sponsor ceases to be the sponsor of the listing applicant, if the material information came to the knowledge of the sponsor whilst it was acting as the sponsor.
- (d) Where a sponsor ceases to act for a listing applicant before completion of the listing, the sponsor should inform the Stock Exchange in a timely manner of the reasons for ceasing to act.



17.10 Proper records

- (a) A sponsor should maintain adequate records so as to demonstrate to the SFC its compliance with the Code and in particular compliance with this paragraph. A sponsor should document its systems and controls governing sponsor work and the annual assessment required under paragraph 17.12.
- (b) A sponsor should keep a record of all sponsor work. On request by the SFC a sponsor should be able to provide an up-to-date list of sponsor work undertaken setting out the names of client companies, the composition of Transaction Teams (including any variations) and the names, titles and roles of staff assigned to each listing.
- (c) In respect of each listing assignment, a sponsor should keep records, including relevant supporting documents and correspondence, within its control relating to:
 - (i) the Transaction Team under paragraph 17.11(c) and any subsequent variations within the Transaction Team;
 - (ii) due diligence
 - (A) a due diligence plan identifying the required time and skill sets of persons needed to implement the plan;
 - (B) changes to the due diligence plan and reasons;
 - (C) the nature, timing and extent of due diligence procedures; and
 - (D) the results of due diligence performed together with its assessment of these results;
 - (iii) for due diligence procedures conducted by third parties, information relating to the matters in paragraph 17.6(g);
 - (iv) the bases for the opinions, assurances and conclusions required under paragraphs 17.3, 17.4, 17.5 and 17.7, including internal discussions and any actions taken prior to these opinions and assurances being given or conclusions being reached;
 - (v) all significant matters arising in the course of the listing process, including internal discussions and actions taken, regardless of whether or not the relevant matters are disclosed in the final listing document; and
 - (vi) the involvement of Management in considering critical matters as referred to in paragraph 17.11(d).
- (d) A complete set of a sponsor's records in connection with a listing assignment should be retained in Hong Kong for at least seven years after completion or termination of the relevant transaction.



17.11 Resources, systems and controls

A sponsor should maintain sufficient resources and effective systems and controls to ensure that the sponsor is able to meet and does meet all its obligations and responsibilities under the Code and in particular this paragraph and the Listing Rules. In respect of each listing assignment:

- (a) before accepting any appointment as a sponsor of an assignment, taking account of other commitments, the sponsor should ensure that it has sufficient staff with appropriate levels of knowledge, skills and experience to devote to the assignment throughout the period of the assignment;
- (b) a sponsor should ensure that it is appointed to act for a listing applicant sufficiently in advance of the expected date of a listing application. Taking account of the nature, scale and complexity of the assignment and any other factors that may affect the standard of work, the sponsor should ensure that it has adequate time to undertake the work necessary to meet its obligations and responsibilities under the Code and the Listing Rules. The appointment should clearly:
 - (i) specify the listing applicant's responsibilities to facilitate the sponsor to perform its duties and to meet its obligations under the Code and the Listing Rules. In particular provisions should be set out to the effect that the listing applicant should:
 - (A) fully assist the sponsor to perform due diligence;
 - (B) procure all relevant parties engaged by the listing applicant in connection with the listing application (including financial advisers, experts and other third parties) to cooperate fully with the sponsor to facilitate the sponsor's performance of its duties;
 - (C) acknowledge that the sponsor is required, and should be given every assistance, to meet its obligations and responsibilities under the Code and the Listing Rules to provide information to the regulators including without limitation, notifying the regulators of reasons when the sponsor ceases to act under paragraph 17.9(d); and
 - (D) enable the sponsor to gain access to all relevant records in connection with the listing application.
 - (ii) specify the terms of the sponsor's fees, including the basis on which the fees are determined, the payment structure and timing and any other factors that would affect the fees. No provisions should be made for any "no deal; no fee" arrangements (or arrangements to that effect).

All terms of an appointment should be agreed as early as possible and in sufficient time for the sponsor to meet its obligations and responsibilities under the Code and the Listing Rules. It is for a sponsor to determine whether its appointment is made in sufficient time to meet its client's expected timetable. If insufficient time is made available to complete the work required a sponsor



should not accept appointment as a sponsor. A sponsor should not submit a listing application less than 2 months after all the terms of its appointment as a sponsor are agreed. When a sponsor is appointed, it should advise the Stock Exchange as soon as practicable.

(c) taking account of the nature, scale and complexity of the assignment and any other factors that may affect the standard of work, the sponsor should appoint a Transaction Team which:

- (i) comprises staff with appropriate levels of knowledge, skills and experience; and
- (ii) includes at least one Principal who acts as the supervisor of the Transaction Team

to carry out the assignment throughout the period of the assignment.

Note 1: A Transaction Team should have sufficient knowledge and experience of Hong Kong regulatory requirements.

Note 2: Members in one Transaction Team may work in other Transaction Teams of the sponsor provided that:

- (A) *Management and the Principals of the respective Transaction Teams are satisfied that the sponsor can properly discharge its responsibilities in all the sponsor work that it undertakes;*
- (B) *If a Principal is assigned to supervise more than one Transaction Team, Management is satisfied that each team is properly and adequately supervised by at least one Principal who has the necessary capacity, capability and competence to supervise; and*
- (C) *The sponsor complies with General Principle 6 and paragraph 10.1 of the Code in respect of conflicts of interest.*

(d) there must be clear and effective reporting lines and channels so that decisions on critical matters are not made by the Transaction Team but by Management or a committee designated by Management for this purpose. Members of such designated committee should be independent of the Transaction Team and should have appropriate seniority and expertise necessary to consider the following matters as a minimum:

- (i) acceptance of a mandate to act as a sponsor;
- (ii) appointment of the Transaction Team and any significant variation to such appointment; and
- (iii) resolution of suspicious circumstances, difficult or sensitive issues, conflicting information and material non-compliance by a listing applicant.

(e) Management is ultimately responsible for the supervision of the sponsor work and for compliance with all relevant legal and regulatory requirements, it may



delegate operational functions to its staff but cannot abrogate its responsibilities. Accordingly, Management must put in place appropriate systems, controls and procedures to govern sponsor work, which include:

- (i) formulation of an appropriate due diligence plan, amended or updated as necessary;
 - (ii) allocation of sufficient persons with appropriate levels of knowledge, skills and experience to each assignment over the period of the assignment;
 - (iii) implementation of the due diligence plan, with any outstanding steps or steps which deviate from the original plan identified, explained and followed up;
 - (iv) adequate supervision and management of the staff who carry out the work; and that the staff do not act beyond their proper authority;
 - (v) reviews of the standard and extent of due diligence work, and the performance of the Principals and the Transaction Team; and
 - (vi) escalation of critical matters including but not limited to those set out in paragraph 17.11(d) to Management or its designated committee for decision.
- (f) Upon completion of a listing transaction, a sponsor should submit to the SFC, within 2 weeks after the first day of dealings, its team structure chart in respect of that listing transaction countersigned by a Principal who supervised the transaction. The chart should show the reporting line of each of the licensed or registered staff within the team together with their respective names, business titles and responsibilities, including in advising the listing applicant on compliance with the Code and the Listing Rules and the performance of due diligence. The SFC may seek further details from firms and individuals to substantiate their submissions.

17.12 Annual assessment of systems and controls

A sponsor should carry out an assessment annually in order to ensure that its systems and controls remain effective. Any material non-compliance issue should be reported to the SFC promptly.

Note: The annual assessment may take the form of an internal and/or external audit. A sponsor should devise its own programme based on its assessment of risks related to its operations, the firm's business structures, its own internal systems and the track record of compliance including, but not limited to, any complaints received either from within or from third parties and any regulatory concerns raised by the regulators in the period under review.

17.13 Overall management of a public offer

- (a) Overall management

Where a listing application involves a public offer, a sponsor should act as the



overall manager of the public offer. In doing so, the sponsor should:

- (i) assess the likely interest in, or the reception of, the offer by the public; and
- (ii) put in place sufficient arrangements and resources to ensure that the public offer and all matters ancillary thereto are conducted in a fair, timely and orderly manner.

(b) Sufficient arrangements and resources

In discharging its obligations under paragraph 17.13(a) above, the sponsor should have regard to at least the following matters:

- (i) whether there are sufficient arrangements to ensure that listing documents (in both electronic and printed form) and application forms (in printed form) are made readily available to the public during the public offer period;
- (ii) without derogating from the sponsor's obligation to act as the overall manager of the public offer, whether specific responsibilities in relation to the public offer should be delegated to other parties; and if so, whether these parties are competent and have sufficient capacity and resources to handle the relevant responsibilities;
- (iii) whether sufficient measures have been put in place to ensure that:
 - (A) the distribution of prospectuses and application forms to the public;
 - (B) the collection of completed application forms from the public; and
 - (C) the despatch of unsuccessful applications, refund cheques and share certificates after the public offer period closes,can be made in a timely and orderly fashion;
- (iv) the need to avoid events of disorder or failure which may arise during the public offer period and before the trading of securities commences or otherwise in connection with the public offer, and ensure that appropriate contingency plans have been drawn up to deal with any such events; and
- (v) where balloting is required to determine the successful applications under a public offer, whether appropriate arrangements have been put in place to ensure that balloting would be conducted fairly and independently of the listing applicant and parties associated with it.

17.14 Information provided to analysts in new listings

A sponsor should take reasonable steps to ensure that all material information, including forward-looking information (whether quantitative or qualitative) concerning a listing



applicant or listing application disclosed or provided to analysts is contained in the relevant listing document.

17.15 Glossary

For the purpose of this paragraph,

- (a) “Application Proof” means an advanced proof of the listing document submitted with the listing application under the Listing Rules
- (b) “CFA Code” means Corporate Finance Adviser Code of Conduct
- (c) “expert” includes accountant, engineer, appraiser and any other person whose profession gives authority to a statement made by him
- (d) “expert report” means, in relation to a listing document, any part of the listing document purporting to be made on the authority of an expert or purporting to be a copy of or extract from a report, opinion, statement or valuation of an expert where the expert gives consent for the inclusion in the listing document of the copy or extract and the listing document includes a statement that he has given and has not withdrawn such consent
- (e) “listing applicant” means an applicant applying for a listing of its securities on the Stock Exchange
- (f) “listing application” means an application submitted by a listing applicant in connection with the listing of its securities and all documents in support of or in connection with the application, including any replacement of, and amendment and supplement to, the application
- (g) “listing document” means a prospectus, a circular and any equivalent document (including a scheme of arrangement and introduction document) issued in connection with a listing application
- (h) “Listing Rules” means the Rules Governing the Listing of Securities on the Stock Exchange (“Main Board Listing Rules”); references to the Main Board Listing Rules in this paragraph should be taken also to refer to the equivalent GEM Listing Rules
- (i) “Management” includes a sponsor’s Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers and other senior management personnel
- (j) “non-expert sections” means, in relation to a listing document, any part of the listing document that is not part of any expert report
- (k) “PN21” means Practice Note 21 of the Listing Rules
- (l) “Principal” means an individual that meets the criteria stipulated under the Sponsor Guidelines appointed by a sponsor to act as a Principal; in respect of a listing assignment, a Principal means an individual appointed by a sponsor to supervise the Transaction Team



- (m) “public offer” means, in relation to a listing application, an offer for subscription or an offer for sale of securities to the public
- (n) “Regulators” means the SFC and/or the Stock Exchange as appropriate
- (o) “REIT” means Real Estate Investment Trust
- (p) “SFC” means Securities and Futures Commission
- (q) “Sponsor Guidelines” means Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying for or continuing to act as Sponsors and Compliance Advisers
- (r) “Stock Exchange” means The Stock Exchange of Hong Kong Limited
- (s) “Transaction Team” means the staff appointed by a sponsor to carry out a listing assignment



Appendix A – Revised draft of a new paragraph 17 of Code of Conduct

Sponsors

17.1 Introduction

- (a) This paragraph applies to a licensed corporation or registered institution, licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor and which is appointed as a sponsor by an applicant seeking a listing of its securities on the Stock Exchange under the Listing Rules¹.
- (b) A sponsor's primary role is to provide assurance to the Stock Exchange and the market generally that the listing applicant complies with the Listing Rules and other ~~applicable~~relevant legal and regulatory requirements and that the listing document provides sufficient particulars and information for investors to form a valid and justifiable opinion of the listing applicant's shares², financial condition and profitability. A sponsor also advises and guides the listing applicant as to the Listing Rules and other ~~applicable~~relevant regulatory requirements.
- (c) The Commission attaches a great deal of importance to maintaining the integrity of the market and the transparency in fund raising and other listing exercises. This paragraph sets out the responsibilities and obligations which a sponsor should fulfil when discharging its functions as a sponsor. This paragraph also contains standards and provides guidance on due diligence procedures in respect of a listing application. In assessing whether a sponsor is fit and proper to remain licensed or registered and permitted to carry out its sponsor work, the Commission will have regard to the provisions of this paragraph.
- (d) Sponsors are reminded of their other obligations under the Listing Rules, the Sponsor Guidelines and the CFA Code. In case of any conflicts amongst the Listing Rules, the Sponsor Guidelines, the CFA Code and this paragraph, the provisions of this paragraph shall prevail.
- (e) If a listing applicant appoints more than one sponsor in relation to a listing application:
- (i) the joint appointments do not relieve any of the sponsors of any of their responsibilities and obligations under this paragraph; and
- (ii) each of the sponsors is responsible for ensuring that the requirements set out in this paragraph in relation to the listing application are fully discharged.

¹ Under Listing Rule 3A.02, an applicant seeking a listing of its securities on the Stock Exchange must appoint a sponsor to assist it with its application for listing. References to the Main Board Listing Rules in this paragraph should be taken to cover the equivalent GEM Listing Rules.

² In some cases a listing will involve other securities such as debentures or equity interests other than shares, for example units in a REIT. Where a listing agent is appointed for a listing of units in a REIT, the provisions under this paragraph will equally apply to the listing agent.



17.2 Key requirements

A sponsor should comply with the following key requirements in order to discharge its role satisfactorily.

(a) Advising a listing applicant

A sponsor should advise and guide a listing applicant in preparation for a listing.

(b) ~~Due~~Reasonable due diligence required before submitting

A sponsor should take reasonable due diligence steps in respect of a listing application~~Before; before~~ submitting a listing application a sponsor should complete all reasonable due diligence on a listing applicant ~~save only any~~except in relation to matters that by their nature can only be dealt with at a later date.

(c) Disclosure to the market

A sponsor should take reasonable steps to ensure that true, accurate and complete disclosure about a listing applicant ~~be~~is made to the public.

~~(d)~~ Due diligence

~~A sponsor should take reasonable due diligence steps in respect of a listing application.~~

~~(e)~~(d) Communication with the regulators

A sponsor should deal with the regulators in a truthful, cooperative and prompt manner.

~~(f)~~(e) Proper records

A sponsor should maintain proper books and records that are sufficient to demonstrate its compliance with ~~all applicable legal and regulatory requirements~~the Code.

~~(g)~~(f) Resources, systems and ~~procedures~~controls

A sponsor should maintain sufficient resources and effective systems and ~~procedures~~controls for proper implementation and adequate management oversight of ~~due diligence~~the sponsor work.

~~(h)~~(g) Overall ~~manager~~management of a public offer

A sponsor should act as the overall manager of a public offer to ensure that the public offer is conducted in a fair and orderly manner.

~~(i)~~(h) Information provided to analysts in new listings



A sponsor should take reasonable steps to ensure analysts do not receive material information not disclosed in the listing document.

17.3 Advising a listing applicant

(a) Understanding a listing applicant

~~A~~Based on reasonable due diligence, a sponsor should have a sound understanding of:-

- (i) ~~_____ a listing applicant, including its history and background, business and performance, financial condition and prospects, operations and structure, procedures and systems, as well as; and~~
- (ii) ~~_____ the personal and business backgrounds of~~ the directors, key senior managers and (where applicable) controlling shareholders of the listing applicant.

(b) Advice and guidance

- (i) A sponsor should advise and guide a listing applicant and its directors as to their responsibilities under the Listing Rules and other ~~applicable~~relevant regulatory requirements which apply to a Hong Kong listed company and its directors and take ~~all~~ reasonable steps to ensure that ~~at all stages of~~during the listing application process they understand and meet these responsibilities.
- (ii) ~~A sponsor should provide appropriate advice and recommendations to a listing applicant on any~~Where material deficiencies are identified in relation to ~~its~~the operations and structure, procedures and systems, or ~~its~~ directors and key senior managers of a listing applicant, a sponsor should provide adequate advice and ensure that any recommendations to assist the listing applicant to remedy these material deficiencies are.
- ~~(ii)~~(iii) Where these material deficiencies cannot be remedied prior to the submission of a listing application, a sponsor should make adequate disclosure as part of its submission of the listing application, including the nature of these deficiencies, reasons for non-rectification and remedial actions taken or to be taken.

17.4 Work required before submitting a listing application

(a) ~~Completion of reasonable~~Reasonable due diligence

Before submitting an application on behalf of a listing applicant to the Stock Exchange a sponsor should ~~complete~~have (i) performed all reasonable due diligence on the listing applicant ~~save only any~~except in relation to matters that by their nature can only be dealt with at a later date, and (ii) ensure that all material information as a result of this due diligence has been included in the Application Proof.



(b) Completeness of information in an Application Proof

Before submitting an application on behalf of a listing applicant to the Stock Exchange a sponsor should come to a reasonable opinion that the information in the Application Proof is substantially complete except in relation to matters that by their nature can only be dealt with at a later date.

(c) Resolving fundamental compliance issues

Before submitting an application on behalf of a listing applicant to the Stock Exchange a sponsor should come to a reasonable opinion that:

- (i) the listing applicant is in compliance with all ~~the applicable~~ relevant listing ~~conditions~~ qualifications under Chapter 8 of the Listing Rules (except to the extent that waivers from compliance with those requirements have been applied for to the Stock Exchange in writing);
- (ii) the listing applicant has established procedures, systems and controls (including accounting and management systems) which enable the listing applicant and its directors to comply with the Listing Rules and other ~~applicable~~ relevant legal and regulatory requirements on an ongoing basis;
- (iii) the listing applicant has established procedures, systems and controls (including accounting and management systems) which provide a reasonable basis for the directors to make a proper assessment of the financial position and prospects of the listing applicant on an ongoing basis; and
- (iv) the directors of the listing applicant collectively have the experience, qualifications and competence to manage the listing applicant's business and comply with the Listing Rules ~~and other applicable legal and regulatory requirements~~, and individually have the experience, qualifications and competence to perform their individual roles, including an understanding of their obligations and those of the listing applicant as an issuer under the Listing Rules and other ~~applicable~~ legal and regulatory requirements relevant to their role.

(d) Identifying material issues

When submitting an application on behalf of a listing applicant to the Stock Exchange, a sponsor should ensure that all material issues known to it which, in its reasonable opinion, are necessary for the consideration of:

- (i) whether the listing applicant is suitable for listing; and
- (ii) whether the listing of the applicant's securities is contrary to the interest of the investing public or to the public interest;

are disclosed ~~with sufficient prominence in the Application Proof or otherwise in writing to the Stock Exchange.~~



17.5 Disclosure to the market

(a) Overall disclosure

At the time of issue of a listing document, a sponsor, after reasonable due diligence, should ~~ensure~~ have reasonable grounds to believe and should believe that the listing document contains sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the shares and the financial condition and profitability of the listing applicant.–

(b) Disclosure: non-expert sections

At the time of issue of a listing document, a sponsor, after reasonable due diligence, should have reasonable grounds to believe and ~~does~~ should believe that:

- (i) the information in the non-expert sections of the listing document is true, accurate and complete in all material respects and not misleading or deceptive in any material respect; and
- (ii) there are no matters or facts the omission of which would make any information in the non-expert sections of a listing document or any other part of the listing document misleading in a material respect.

(c) Disclosure: expert ~~sections~~ reports

At the time of issue of a listing document, a sponsor as a non-expert, after performing the due diligence set out in paragraph 17.7, should be in a position to demonstrate that it is ~~have no~~ reasonable for it to rely on the expert sections of grounds to believe and should not believe that the listing document— information in the expert reports is untrue, misleading or contains any material omissions.

17.6 Due diligence

(a) Reasonable judgement

A sponsor should conduct ~~reasonable~~ due diligence in order to have a ~~proper~~ and thorough knowledge and understanding of a listing applicant and to satisfy itself in relation to the disclosure in the listing document. A sponsor should exercise reasonable judgement on the nature and extent of due diligence work needed in relation to a listing applicant having regard to all relevant facts and circumstances. A sponsor should recognise that the nature and extent of due diligence varies from case to case depending on the facts and circumstances and there is no exhaustive list of due diligence steps that would apply in all circumstances. _

(b) Professional scepticism

In undertaking its role a sponsor should examine with professional scepticism the accuracy and completeness of statements and representations made, or other information given, to it by a listing applicant or its directors. An attitude of



professional scepticism means making a critical assessment with a questioning mind and being alert to information, including information from experts, that contradicts or brings into question the reliability of such statements, representations and information.

(c) Appropriate verification

A sponsor should not merely accept statements and representations made and documents produced by a listing applicant or its directors at face value. Depending on the nature and source of the information and the context in which the information is given, the sponsor should perform verification procedures that are appropriate in the circumstances, such as reviewing source documents, inquiring of knowledgeable persons or obtaining independently sourced information. Where the sponsor becomes aware of circumstances that may cast doubt on information provided to it or otherwise indicate a potential problem or risk, the sponsor should undertake additional due diligence to ascertain the truth and completeness of the matter ~~concerned~~ concerned and information concerned. Over reliance on management's representations or confirmations for the purposes of verifying information received from a listing applicant cannot be regarded as reasonable due diligence.

(d) Preparation of a listing document

Regarding the preparation of a listing document, a sponsor should perform, without limitation, each of the following:

- (i) oversee, and be closely involved in, the preparation of the listing document;
- (ii) achieve a ~~proper and~~ thorough understanding of the listing applicant, including its business, history, background, structure and systems;
- (iii) gain a sufficient understanding of the industry in which the listing applicant operates, including reviewing key characteristics of the industry landscape ~~and comparable data about competitors~~;
- (iv) examine and consider the integrity, qualifications and competence of the directors, including reviewing internal records, board minutes and public filings;
- (v) examine and consider the accuracy and reliability of the financial information, including reviewing the financial statements of major subsidiaries, internal financial records, tax certificates, regulatory filings and public records;
- (vi) assess the business performance, financial condition, development, prospects and any financial projection or profit forecast;
- (vii) assess the legality and ~~state of~~ compliance of the business operations and whether the listing applicant is subject to any material legal proceedings or disputes;



- (viii) assess whether there has been any material change since the date of the last audited balance sheet, including any matter that might impact upon the listing applicant's business model, performance, prospects or financial condition; and
- (ix) undertake independent verification of all material information, including documents provided, and statements and representations made, by the listing applicant and its directors.

(e) Independent due diligence steps

A sponsor should conduct the following independent due diligence steps:

- ~~(i)~~ ~~review material underlying records and supporting documents of the listing applicant such as tax certificates, bank statements, contracts etc;~~
- ~~(ii)~~(i) inquire directly of knowledgeable persons within or outside the listing applicant e.g. directors, key management staff, consultants and controlling shareholder(s);
- ~~(iii)~~ ~~conduct site visits~~ inspection of key physical assets including where appropriate production facilities and other key physical assets;
- ~~(iv)~~(ii) ~~obtain written confirmations from third parties;~~
- ~~(v)~~(iii) interview major business stakeholders such as the listing applicant's customers, suppliers, creditors and bankers; and
- (iv) wherein relation to material matters, review relevant underlying records and supporting documents of the listing applicant; and
- ~~(vi)~~(v) in relation to material matters, independently obtain information from sources outside the listing applicant, ~~including such as~~ searches of public filings and databases, external confirmations, third-party data about competitors and the engagement of external agents to perform relevant checks.

(f) Interview practices

Where a sponsor interviews major business stakeholders (e.g. customers, suppliers, creditors and bankers), the sponsor should adopt effective and adequate measures to ensure that the ~~results~~records of the interviews are reasonably accurate, complete and reliable in all material respects. In conducting interviews, the sponsor should:

- (i) select independently those to be interviewed based on objective and proportionate criteria, e.g. those with whom the listing applicant has entered into high value transactions or entities with special or unusual characteristics;



- (ii) carry out the interview directly with the person or entity selected for interview with minimal involvement of the listing applicant;
- (iii) ~~ascertain~~confirm the bona fides of the interviewee (including establishing the identity of the interviewee and other relevant information) to ~~ensure~~satisfy itself that the interviewee has the appropriate authority and knowledge for the interview;
- (iv) hold an in-depth discussion with a view to obtain~~obtaining~~ adequate and satisfactory responses to all questions raised and follow up on any incomplete or unsatisfactory responses or outstanding matters; and
- (v) identify any irregularities noted during the interview (e.g. interview not taking place at the registered or business address of the person or entity selected for interview, reluctance on the part of the interviewee to cooperate) and ensure any irregularities are adequately explained and resolved.

~~(g)~~ — Reliance on an expert report

~~In order for a sponsor to demonstrate that it is reasonable for it to rely on an expert report of a listing document, the sponsor should perform, without limitation, each of the following:—~~

- ~~(i) — confirming that the expert is appropriately qualified and experienced, the bases and assumptions adopted by the expert are fair and reasonable, the expert's scope of work is appropriate to the opinion and the expert is independent from the listing applicant;~~
- ~~(ii) — as regards financial information, work with the reporting accountants to understand the critical accounting policies and estimates, review relevant accounting systems and controls, assess the financial information against business performance and other operating aspects and assess the veracity of any management discussion and analysis of financial performance and condition;~~
- ~~(iii) — as regards valuation, work with the valuer to understand the bases, assumptions and methodology, assess the valuation against business performance and other operating aspects and compare the valuation with independent publicly available valuations of corporate assets;~~
- ~~(iv) — ensure that factual information on which an expert relies in preparing its report is consistent with the sponsor's knowledge including that derived from its other due diligence work;~~
- ~~(v) — where factual information on which an expert relies is solely or primarily derived from management's representations and confirmations, unless the expert has done so, make independent inquiries or assessments or obtain independently sourced information to verify the accuracy and completeness of the information;~~
- ~~(vi) — corroborate information obtained from different sources to ensure the consistency of information disclosed in the expert report with~~



~~information disclosed in the non-expert sections and any information known to the sponsor including that derived from its other due diligence work; and~~

~~(vii) where discrepancies or irregularities or suspicious circumstances are identified, thoroughly follow up to ensure they are resolved.~~

~~(h)~~(g) Seeking assistance from third parties

A sponsor cannot ~~delegate~~abrogate responsibility for due diligence. Where a sponsor engages a third party to assist it to undertake specific due diligence tasks (e.g. engaging lawyers to undertake verification of title to properties, accountants to review internal controls, consultancy firms to undertake market research, agencies to perform investigative work, etc), the sponsor ~~is~~remains responsible for ~~ensuring reasonable due diligence~~ in respect of the matters to which the specific tasks relate. ~~The~~A third party's work³, in itself, would not be sufficient evidence that a sponsor has discharged its obligation to conduct reasonable due diligence. The degree to which a third party's work can be relied on may depend on the professional qualifications of the third party to conduct the work. As a minimum the sponsor should:

- (i) assess whether the third party is appropriately qualified and competent for the tasks assigned to it;
- (ii) ~~determine~~consider the scope and extent of the tasks to be performed by the third party;
- (iii) assess the results of the work performed by the third party and arrive at its own opinion whether the work provides a sufficient basis to determine that reasonable due diligence has been conducted and whether further due diligence is required; ~~and~~
- ~~(iv)~~ assess whether the results of the work are consistent with other information known to the sponsor including that derived from its other due diligence work; and
- ~~(iv)~~(v) assess whether the results of the work should be incorporated in the listing document ~~or~~ and whether they should be brought to the attention of the regulators.

~~(i)~~(h) Stock Exchange Listing Rules

The Stock Exchange sets out its expectations of due diligence sponsors would typically perform in PN21. PN21 explains that it is not in any way intended to set out the actual steps that may be appropriate in any particular case. Each listing applicant is unique and so will be the due diligence appropriate for the purpose of its listing application. The scope and extent of appropriate due diligence by a sponsor may be different from (and considerably more extensive

³ It should be noted that for a particular listing application an entity may be assisting in connection with due diligence tasks as well as being responsible for an expert report. For instance an accounting firm may be tasked with reviewing the internal controls as well as being the reporting accountant; in this case the guidance for sponsors in paragraph 17.6(g) applies to the review of internal controls and the guidance in paragraph 17.7 to the work as the reporting accountant.



than) the more typical examples in PN21. The sponsor should exercise its judgement as to what investigations are appropriate for a particular case and the extent of due diligence. Sponsors are reminded of their obligations to comply with the Listing Rules and the relevant practice notes and guidelines on due diligence standards.

17.7 Due diligence on expert reports

For the purposes of paragraph 17.5(c), the sponsor should:

(a) satisfy itself that:

(i) the expert is appropriately qualified, experienced and competent to give the opinion;

(ii) the expert is sufficiently resourced; and

(iii) the expert is independent from the listing applicant and its directors and controlling shareholder(s);

(b) assess whether the scope of the expert's work:

(i) is appropriate to the opinion given by the expert; and

(ii) adequately covers the reliability of information provided to the expert, if not, the sponsor should:

(A) request that the scope of the expert's work be expanded;

(B) seek the assistance of a third party; or

(C) extend its due diligence having regard to the procedures set out in paragraph 17.6,

to cover the information provided to the expert;

Note 1: As a reporting accountant performs audit procedures on information received from a listing applicant under applicable professional standards, a sponsor is not expected to carry out any further due diligence on this information. Nevertheless if a sponsor is aware of any matters which raise concerns relating to the information underlying the accountant's report, the sponsor should conduct further enquiries necessary to satisfy itself that these concerns are addressed; these enquiries may involve obtaining relevant supporting information and documents.

Note 2: If an expert relies on information prepared by a third party, for example where a legal adviser is engaged to confirm the title of properties, the sponsor should follow the procedures set out in paragraph 17.6(g). If an expert who relies on information prepared by a third party also follows standards which are at least equivalent to those required under paragraph 17.6(g), the sponsor may rely on the work performed by the expert in that respect.



- (c) assess whether material bases and assumptions (in the case of financial information, critical accounting policies and estimates) on which the expert report is founded are fair, reasonable and complete; and
- (d) as regards the expert's opinion and the rest of the information contained in the report, the sponsor should:
 - (i) critically review the expert's opinion and the rest of the information in the report against the totality of all other information known to the sponsor about the listing applicant (including the business model, track record, operations, forecasts, sector performance and any relevant information publicly available) through due diligence and the sponsor's knowledge and experience of the listing applicant, the market in which the listing applicant operates and of comparable companies;
 - (ii) corroborate the information in the expert report with the information disclosed in non-expert sections and the sponsor's knowledge and experience of the listing applicant to ascertain whether the information throughout is consistent and coherent; and
 - (iii) conduct follow up work to resolve any material discrepancies, irregularities or inconsistencies.
- (e) The performance of each of the procedures in paragraph 17.7(a) to (d) above should be to the standard expected of a sponsor which is not itself expert in the matters dealt with in the relevant expert report.

17.8 Management Discussion and Analysis of Financial Information and Condition (MD&A)

A sponsor should in conjunction with the management of a listing applicant and its other advisers prepare relevant, adequate and comprehensible MD&A that should:

- (a) avoid excessive or irrelevant disclosure that may overwhelm investors and act as an obstacle to identifying and understanding material matters and critical information;
- (b) focus on matters that materially impacted upon historical financial performance or condition;
- (c) analyse and explain material fluctuations in the financial items and amounts with specific and substantive reasons;
- (d) discuss material factors or events that are likely to impact future financial performance or condition; and
- (e) identify and discuss from an investor's perspective any exceptional items or unusual accounting treatments that require further enquiry or disclosure by, amongst other things, making reference to disclosure or treatments adopted by comparable companies.



17.717.9 Communications with the regulators

- (a) A sponsor should reasonably satisfy itself that all information provided to the Stock Exchange and the SFC during the listing application process is accurate, and complete in all material respects and not misleading in any material respect and, if it becomes aware that the information provided does not meet this requirement, the sponsor should inform the Stock Exchange and the SFC (as the case may be) promptly.
- (b) A sponsor should deal with all enquiries raised by, and provide all relevant information and documents requested by the Stock Exchange and the SFC (as the case may be) promptly, including answering any questions addressed to the sponsor in a cooperative and truthful manner.
- (c) Where a sponsor becomes aware of any material information relating to a listing applicant or listing application which concerns non-compliance with the Listing Rules or other ~~applicable~~ legal or regulatory requirements relevant to the listing (except as otherwise disclosed pursuant to paragraph 17.4(d)), it should report the matter to the Stock Exchange in a timely manner. Such duty continues after the sponsor ceases to be the sponsor of the listing applicant, if the material information came to the knowledge of the sponsor whilst it was acting as the sponsor.
- (d) Where a sponsor ceases to act for a listing applicant ~~during before completion of the listing application process~~, the sponsor should inform the Stock Exchange in a timely manner of the reasons for ceasing to act.

17.817.10 Proper records

- (a) A sponsor should maintain adequate records so as to demonstrate to the SFC its compliance with ~~all applicable legal and regulatory requirements~~ the Code and in particular compliance with this paragraph. ~~In particular a~~ sponsor should document, ~~in respect of each listing transaction:~~ its systems and controls governing sponsor work and the annual assessment required under paragraph 17.12.
- (b) A sponsor should keep a record of all sponsor work. On request by the SFC a sponsor should be able to provide an up-to-date list of sponsor work undertaken setting out the names of client companies, the composition of Transaction Teams (including any variations) and the names, titles and roles of staff assigned to each listing.
- (c) In respect of each listing assignment, a sponsor should keep records, including relevant supporting documents and correspondence, within its control relating to:
 - (i) the Transaction Team under paragraph 17.11(c) and any subsequent variations within the Transaction Team;
 - (ii) due diligence
 - (A) a due diligence plan identifying the required time and skill sets of persons needed to implement the plan;



- (B) changes to the due diligence plan and reasons therefor;
- (C) the nature, timing and extent of due diligence procedures; and
- (D) the results of due diligence performed together with its assessment of these results;

~~(ii)~~(iii) for due diligence procedures conducted by third parties, information relating to the matters in paragraph 17.6(~~hg~~);

~~(iii)~~(iv) the bases for the opinions, assurances and conclusions required under paragraphs 17.3, 17.4, 17.5 and ~~17.5Z~~, including internal discussions and any ~~action~~actions taken prior to these opinions and assurances being given or conclusions being reached;

~~(iv)~~(v) all significant matters arising in the course of the listing ~~application~~-process, including internal discussions and actions taken, regardless of whether or not the relevant matters are disclosed in the final listing document; and

~~(v)~~(vi) the involvement of Management in ~~supervising key issues considering critical matters~~ as referred to in paragraph 17.9(~~e~~); and 11(d).

(vi) ~~supporting documents and correspondences concerning the matters set out in (i) to (v) above.~~

~~(b)~~(d) A complete set of a sponsor's records in connection with a listing ~~transaction~~assignment should be retained in Hong Kong for at least seven years after completion or termination of the relevant transaction.

17.917.11 Resources, systems and procedurescontrols

A sponsor should maintain sufficient resources and effective systems and procedurescontrols to ensure that the sponsor is able to meet and does meet all its obligations ~~under and responsibilities under the Code and in particular this paragraph~~ and the Listing Rules. In ~~particular~~respect of each listing assignment:

(a) before accepting any appointment as a sponsor of an assignment, taking account of other commitments, the sponsor should ensure that it has sufficient staff with appropriate levels of knowledge, skills and experience to devote to the assignment throughout the period of the assignment;

~~(b)~~ taking account of the volume, size, complexity and nature of a sponsor work required~~should ensure that it is appointed to be undertaken~~act for a listing applicant sufficiently in respect of each advance of the expected date of a listing application. Taking account of the nature, scale and complexity of the assignment and any other factors that may affect the standard of work, the sponsor should ensure that it has adequate time to undertake the work necessary to meet its obligations and responsibilities under the Code and the Listing Rules. The appointment should clearly:

(i) specify the listing applicant's responsibilities to facilitate the sponsor to perform its duties and to meet its obligations under the Code and the



Listing Rules. In particular provisions should be set out to the effect that the listing applicant should:

- (A) fully assist the sponsor to perform due diligence;
 - (B) procure all relevant parties engaged by the listing applicant in connection with the listing application (including financial advisers, experts and other third parties) to cooperate fully with the sponsor to facilitate the sponsor's performance of its duties;
 - (C) acknowledge that the sponsor is required, and should be given every assistance, to meet its obligations and responsibilities under the Code and the Listing Rules to provide information to the regulators including without limitation, notifying the regulators of reasons when the sponsor ceases to act under paragraph 17.9(d); and
 - (D) enable the sponsor to gain access to all relevant records in connection with the listing application.
- (ii) specify the terms of the sponsor's fees, including the basis on which the fees are determined, the payment structure and timing and any other factors that would affect the fees. No provisions should be made for any "no deal; no fee" arrangements (or arrangements to that effect).

All terms of an appointment should be agreed as early as possible and in sufficient time for the sponsor to meet its obligations and responsibilities under the Code and the Listing Rules. It is for a sponsor to determine whether its appointment is made in sufficient time to meet its client's expected timetable. If insufficient time is made available to complete the work required a sponsor should not accept appointment as a sponsor. A sponsor should not submit a listing application less than 2 months after all the terms of its appointment as a sponsor are agreed. When a sponsor is appointed, it should advise the Stock Exchange as soon as practicable.

- (b)(c) taking account of the nature, scale and complexity of the assignment and any other factors that may affect the standard of work, the sponsor should appoint a Transaction Team which:
- (i) comprises staff with appropriate levels of knowledge, skills and experience; and
 - (ii) includes at least one Principal who acts as the supervisor of the Transaction Team

to carry out the assignment throughout the period of the assignment.

Note 1: A Transaction Team should have sufficient knowledge and experience of Hong Kong regulatory requirements.

Note 2: Members in one Transaction Team may work in other Transaction Teams of the sponsor provided that:



- (A) Management and the Principals of the respective Transaction Teams are satisfied that the sponsor can properly discharge its responsibilities in all the sponsor work that it undertakes;
- (B) If a Principal is assigned to supervise more than one Transaction Team, Management is satisfied that each team is properly and adequately supervised by at least one Principal who has the necessary capacity, capability and competence to supervise; and
- (C) The sponsor complies with General Principle 6 and paragraph 10.1 of the Code in respect of conflicts of interest.
- ~~(c) an appropriate due diligence plan should be formulated, updated as necessary and implemented in respect of each assignment and any outstanding steps or steps which deviate from the original plan should be identified and followed up;~~
- (d) there must be clear and effective reporting lines and channels so that key issues are escalated to decisions on critical matters are not made by the Transaction Team but by Management or a committee designated by Management for deliberation; Management this purpose. Members of such designated committee should be independent of the Transaction Team and should assume full responsibility for the sponsor's operations and supervise key issues, including but not limited to have appropriate seniority and expertise necessary to consider the following matters as a minimum:
- (i) accepting acceptance of a mandate to act as a sponsor;_
- (ii) monitoring the implementation appointment of the Transaction Team and any significant variation to such appointment; and
- (iii) resolution of suspicious circumstances, difficult or sensitive issues, conflicting information and material non-compliance by a listing applicant.
- ~~(e) Management is ultimately responsible for the supervision of the sponsor work and for compliance with all relevant legal and regulatory requirements, it may delegate operational functions to its staff but cannot abrogate its responsibilities. Accordingly, Management must put in place appropriate systems, controls and procedures to govern sponsor work, which include:~~
- ~~(ii)(i) formulation of an appropriate due diligence plan, amended or updated as necessary;~~
- ~~(iii)(ii) ensuring that allocation of sufficient persons with appropriate levels of knowledge, skills and experience are devoted to each assignment over the period of the assignment;~~
- (iii) reviewing implementation of the due diligence plan, with any outstanding steps or steps which deviate from the original plan identified, explained and followed up;
- (iv) adequate supervision and management of the staff who carry out the work; and that the staff do not act beyond their proper authority;



- ~~(iv)~~(v) reviews of the standard and extent of due diligence work, and the performance of the Principals and the Transaction Team; and
- ~~(v) — resolving suspicious circumstances, difficult or sensitive issues, conflicting information and material non-compliance.~~
- (vi) escalation of critical matters including but not limited to those set out in paragraph 17.11(d) to Management or its designated committee for decision.
- ~~(e) — Management is ultimately responsible for the supervision of the sponsor work undertaken by the firm, as well as compliance with all applicable legal and regulatory requirements. While Management may delegate the operational functions to the staff of a sponsor, Management remains responsible for the discharge of these functions and its responsibilities cannot be delegated.~~
- (f) Upon completion of a listing transaction, a sponsor should submit to the SFC, within 2 weeks after the first day of dealings, its team structure chart in respect of that listing transaction countersigned by a Principal who supervised the transaction. The chart should show the reporting line of each of the licensed or registered staff within the team together with their respective names, business titles and responsibilities, including in advising the listing applicant on compliance with the Code and the Listing Rules and the performance of due diligence. The SFC may seek further details from firms and individuals to substantiate their submissions.

17.12 Annual assessment of systems and controls

A sponsor should carry out an assessment annually in order to ensure that its systems and controls remain effective. Any material non-compliance issue should be reported to the SFC promptly.

Note: The annual assessment may take the form of an internal and/or external audit. A sponsor should devise its own programme based on its assessment of risks related to its operations, the firm's business structures, its own internal systems and the track record of compliance including, but not limited to, any complaints received either from within or from third parties and any regulatory concerns raised by the regulators in the period under review.

17.1017.13 Overall management of a public offer

(a) Overall management

Where a listing application involves a public offer, a sponsor should act as the overall manager of the public offer. In doing so, the sponsor should:

- (i) assess the likely interest in, or the reception of, the offer by the public; and
- (ii) put in place sufficient arrangements and resources to ensure that the public offer and all matters ancillary thereto are conducted in a fair, timely and orderly manner.



(b) Sufficient arrangements and resources

In discharging its obligations under paragraph 17.13(a) above, the sponsor should have regard to at least the following matters:

- (i) whether there are sufficient arrangements to ensure that listing documents (in both electronic and printed form) and application forms (in printed form) are made readily available to the public during the public offer period;
- (ii) without derogating from the sponsor's obligation to act as the overall manager of the public offer, whether specific responsibilities in relation to the public offer should be delegated to other parties; and if so, whether these parties are competent and have sufficient capacity and resources to handle the relevant responsibilities;
- (iii) whether sufficient measures have been put in place to ensure that:
 - (A) the distribution of prospectuses and application forms to the public;_
 - ~~(A)~~(B) the collection of completed application forms from the public; and
 - ~~(B)~~(C) the despatch of unsuccessful applications, refund cheques and share certificates after the public offer period closes, can be made in a timely and orderly fashion;
- (iv) the need to avoid events of disorder or failure which may arise during the public offer period and before the trading of securities commences or otherwise in connection with the public offer, and ensure that appropriate contingency plans have been drawn up to deal with any such events; and
- (v) where balloting is required to determine the successful applications under a public offer, whether appropriate arrangements have been put in place to ensure that balloting would be conducted fairly and independently of the listing applicant and parties associated with it.

17.14 Information provided to analysts in new listings

A sponsor should take reasonable steps to ensure that all material information, including forward-looking information (whether quantitative or qualitative) concerning a listing applicant or listing application disclosed or provided to analysts is contained in the relevant listing document.

17.15 Glossary

For the purpose of this paragraph,

- (a) "Application Proof" means an advanced proof of the listing document submitted with the listing application under the Listing Rules



- (b) “CFA Code” means Corporate Finance Adviser Code of Conduct
- ~~(b)~~(c) “expert” includes every accountant, engineer, or appraiser, or and any other person whose profession gives authority to a statement made by him
- ~~(e)~~(d) “expert section report” means-, in relation to a listing document, any part of the listing document purporting to be made on the authority of an expert or purporting to be a copy of or extract from a report, opinion, statement or valuation of an expert where the expert gives consent for the inclusion in the listing document of the copy or extract and the listing document includes a statement that he has given and has not withdrawn such consent
- ~~(d)~~(e) “listing applicant” means an applicant seeking applying for a listing of its securities on the Stock Exchange
- ~~(e)~~(f) “listing application” means an application for submitted by a listing applicant in connection with the listing of any its securities issued or to be issued by an applicant and all documents in support of or in connection with the application, including any replacement of, and amendment and supplement to, the application
- ~~(f)~~(g) “listing document” means a prospectus, a circular and any equivalent document (including a scheme of arrangement and introduction document) issued or proposed to be issued in connection with a listing application for listing
- ~~(g)~~(h) “Listing Rules” means the Rules Governing the Listing of Securities on the Stock Exchange (“Main Board Listing Rules”); references to the Main Board Listing Rules in this paragraph should be taken also to refer to the equivalent GEM Listing Rules
- ~~(h)~~(i) “Management” includes a sponsor firm’s sponsor’s Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers and other senior management personnel
- ~~(i)~~(j) “non-expert sections” means, in relation to a listing document, any part of the listing document that is not part of any expert section report
- ~~(j)~~(k) “PN21” means Practice Note 21 of the Listing Rules
- ~~(k)~~(l) “Principal” means a Responsible Officer or an Executive Officer individual that is meets the criteria stipulated under the Sponsor Guidelines appointed by a sponsor firm to be act as a Principal; in charge respect of the supervision of a listing assignment, a Principal means an individual appointed by a sponsor to supervise the Transaction Team for a listing assignment
- ~~(l)~~(m) “public offer” means, in relation to a listing application, an offer for subscription or an offer for sale of securities to the public
- (n) “Regulators” means the SFC and/or the Stock Exchange as appropriate
- ~~(m)~~(o) “REIT” means Real Estate Investment Trust
- (p) “SFC” means Securities and Futures Commission



(g) “Sponsor Guidelines” means Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying for or continuing to act as Sponsors and Compliance Advisers

~~(n)~~(r) “Stock Exchange” means The Stock Exchange of Hong Kong Limited

~~(e)~~(s) “Transaction Team” means the staff appointed by a sponsor firm to carry out a listing assignment



Corporate Finance Adviser Code of Conduct

Marked up to reflect changes that will be effective
on 1 October 2013



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Definitions

Advising on corporate finance	See paragraph 1.2 of the Code
Authorized financial institution	A bank, a restricted licence bank or a deposit-taking company
Code	Corporate Finance Adviser Code of Conduct
<u>Code of Conduct</u>	<u>Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission</u>
Corporate Finance Advisers	Persons or entities who carry on the business of <i>advising on corporate finance</i> in Hong Kong and are licensed or registered under the Securities and Futures Ordinance (Cap. 571) as a licensed representative, licensed corporation or registered institution. For a registered institution, this also includes its Relevant Individuals
Designated Compliance Officer	The person within a Corporate Finance Adviser who supervises and oversees the compliance function of the Corporate Finance Adviser, who may carry out other functions or responsibilities
IFA	Independent financial adviser
<u>Listing applicant</u>	<u>An applicant applying for a listing of its securities on the Stock Exchange</u>
Listed company	A company or corporation the shares of which are listed on the Stock Exchange
Listing Rules	The Rules Governing the Listing of Securities on the Stock Exchange and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange
Regulators	The SFC and/or the Stock Exchange as appropriate
Relevant Individuals	Individuals who advise on corporate finance for or on behalf of or by an arrangement with a registered institution and whose names are entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap.155)
Relevant Persons	Employees or directors of a Corporate Finance Adviser who are likely to have access to confidential information in relation to a matter where the Corporate Finance Adviser is advising on corporate finance



Senior Management	Managing director, the board of directors or the chief executive officer of a corporation or other senior operating management personnel in a position of authority over a corporation's business decisions
SFC	Securities and Futures Commission
Share Repurchase Code	The Hong Kong Code on Share Repurchases
Stock Exchange	The Stock Exchange of Hong Kong Limited
Takeovers Code	The Hong Kong Code on Takeovers and Mergers
Takeovers Executive	The Executive Director of the Corporate Finance Division of the SFC or any delegate of the Executive Director



Corporate Finance Adviser Code of Conduct

1. Introduction

1.1 Purpose of this Code

This Code sets out requirements and guidelines in respect of the conduct of Corporate Finance Advisers.

1.2 Corporate finance advice

“*Advising on corporate finance*” means giving advice:

- (a) concerning compliance with or in respect of regulations including the Listing Rules, the Takeovers Code and the Share Repurchase Code respectively;
- (b) concerning:
 - (i) any offer to dispose of securities to the public;
 - (ii) any offer to acquire securities from the public; or
 - (iii) acceptance of any offer referred to in sub-paragraph (i) or (ii), but only in so far as the advice is given generally to holders of securities or a class of securities; or
- (c) to a listed corporation or public company or a subsidiary of the corporation or company, or to its officers or shareholders, concerning corporate restructuring involving securities (including the issue, cancellation or variation of any rights attaching to any securities),

but does not include advice given by:

- (i) a person who is licensed to deal in securities who gives such advice wholly incidental to the carrying on of that securities dealing business;
- (ii) an authorized financial institution which is registered to deal in securities and gives such advice wholly incidental to the carrying on of that securities dealing business;
- (iii) an individual -
 - (A) whose name is entered in the register maintained by the Monetary Authority under section 20 of the Banking Ordinance (Cap. 155) as engaged in the business of dealing in securities by an authorized financial institution registered for that business; and
 - (B) who gives such advice wholly incidental to the carrying on of that securities dealing business.
- (iv) a corporation solely to any of its wholly owned subsidiaries, its holding company which holds all its issued shares, or other wholly owned subsidiaries of that holding company;



- (v) a solicitor who gives such advice wholly incidental to his practice as such in a Hong Kong firm or foreign firm within the meaning of the Legal Practitioners Ordinance (Cap. 159);
- (vi) a counsel who gives such advice wholly incidental to his practice as such;
- (vii) a professional accountant who gives such advice wholly incidental to his practice as such in a practice unit within the meaning of the Professional Accountants Ordinance (Cap. 50);
- (viii) a trust company registered under Part VIII of the Trustee Ordinance (Cap. 29) which gives such advice wholly incidental to the discharge of its duty as such; or
- (ix) a person through –
 - (A) a newspaper, magazine, book or other publication which is made generally available to the public; or
 - (B) television broadcast or radio broadcast for reception by the public or a section of the public, whether on subscription or otherwise.

1.3 Status of this Code

This Code aims to supplement, and should be applied in conjunction with, relevant laws, legislation, codes, regulations or guidelines applicable to Corporate Finance Advisers. It does not replace any existing codes, rules and regulations. Corporate Finance Advisers should not interpret this Code as if it were a statute but rather, have regard to the spirit, as well as the letter, of the Code. Further reference should however be made to relevant codes, regulations, guidelines and legislation. In the case of any inconsistency, the provision requiring a higher standard of conduct will apply. This Code does not have the force of law and should not be interpreted in a way that it would override the provisions of any law.

1.4 Enforcement

The SFC will use this Code as a benchmark, along with other SFC's codes and guidelines, against which a Corporate Finance Adviser's fitness and properness will be measured. Breaches by a Corporate Finance Adviser of any of the requirements of this Code will, in the absence of extenuating circumstances, reflect adversely on its fitness and properness, and may result in disciplinary or other actions by the SFC.

1.5 General

Corporate Finance Advisers engaging in corporate finance advisory work under the Listing Rules, the Takeovers Code or the Share Repurchase Code are required to observe the specific requirements under the respective codes and rules as regards their conduct. Corporate Finance Advisers who are found in breach of the Listing Rules, the Takeovers Code or the Share Repurchase Code will be subject to the respective disciplinary measures contained in those codes and rules. In general, any breaches of the above codes and rules will prima facie cast doubts on the fitness and properness of the Corporate Finance Adviser concerned.



A Corporate Finance Adviser acting as a sponsor to a listing applicant is also subject to paragraph 17 of the Code of Conduct. In case of any conflicts between this Code and paragraph 17 of the Code of Conduct, insofar as sponsors are concerned, the provisions of paragraph 17 of the Code of Conduct shall prevail.



2. Conduct of business

A Corporate Finance Adviser should ensure that it is fit and proper to conduct its business.

This paragraph 2 applies to all Corporate Finance Advisers other than individuals. It shall be the responsibility of the Senior Management of a Corporate Finance Adviser to ensure compliance with this paragraph 2.

2.1 Licensing

A Corporate Finance Adviser should ensure that its business is properly established and conducted, and that the Corporate Finance Adviser and its directors and representatives are fit and proper, and are properly licensed and registered in accordance with all applicable statutory and regulatory requirements.

2.2 Management of the business

A Corporate Finance Adviser should:

- (a) organise and control its internal affairs in a prudent and responsible manner;
- (b) maintain satisfactory financial and operational controls;
- (c) maintain satisfactory risk management procedures commensurate with its business; and
- (d) ensure that it has adequate competence, professional expertise and, human and technical resources for the proper performance of its duties as a Corporate Finance Adviser.

2.3 Books and records

A Corporate Finance Adviser should maintain proper books and records, and be able to provide a proper trail of work done upon request by the SFC.

2.4 Staff supervision

A Corporate Finance Adviser should ensure that:

- (a) all of its staff members who engage in advising on corporate finance are suitable and appropriately qualified;
- (b) its less experienced staff are properly supervised; and
- (c) there are clear reporting lines with supervisory and reporting responsibilities assigned to the more experienced staff members.

2.5 Compliance

A Corporate Finance Adviser should:

- (a) maintain an effective compliance function, which should be headed up by a Designated Compliance Officer to monitor compliance with its own internal



policies and procedures, and all applicable legal and regulatory requirements, including this Code;

- (b) ensure that its compliance function possesses the technical competence, adequate resources and experience necessary for the performance of its functions; and
- (c) ensure that its compliance function is independent of other business functions and reports directly to Senior Management. Compliance monitoring activities may be delegated to an appropriately qualified professional, although the responsibilities and obligations may not be delegated.

Note:

For small firms where human resources are limited, Senior Management should assume the role of the Designated Compliance Officer.

2.6 A Corporate Finance Adviser is encouraged to establish clear and comprehensive written compliance procedures (which should be readily available to all staff involved in the business of advising on corporate finance), covering its corporate finance business and addressing all applicable regulatory requirements. Such procedures should give Senior Management reasonable assurance that the corporation complies with all applicable requirements at all times.

2.7 Training

A Corporate Finance Adviser should offer continuous professional training to its staff.

3. Competence

A Corporate Finance Adviser should act with competence.

3.1 Integrity

A Corporate Finance Adviser should be honest, and of good repute and character, and it should maintain a high standard of integrity and fair dealing.

3.2 Demonstration of competence

Regulators may require a Corporate Finance Adviser and its staff members to demonstrate their resources, competence and suitability, e.g. by submitting a list of their qualifications and previous experience in handling relevant corporate finance work for the Regulators' consideration.

3.3 Professional advice

Where appropriate, a Corporate Finance Adviser should seek proper professional advice in respect of its compliance with the applicable laws and regulations.



4. Conflicts of interest

A Corporate Finance Adviser should avoid engaging in work that is likely to involve conflicts of interest.

4.1 Conflicts of interest

A Corporate Finance Adviser should:

- (a) take all reasonable steps to avoid situations that are likely to involve a conflict of interest;
- (b) not unfairly place its interests above those of its clients; and
- (c) withdraw from, or decline to accept, a mandate where a material conflict of interest arises with its client that cannot be resolved through its client giving its informed consent.

4.2 Acting as IFA

Issues of conflicts of interest relating to the independence of a financial adviser should be dealt with in accordance with the Listing Rules, the Takeovers Code or the Share Repurchase Code as appropriate.

4.3 Chinese walls

Where a Corporate Finance Adviser is part of a professional firm or group of companies undertaking other activities, e.g. auditing, banking, research, stockbroking and fund management, the Corporate Finance Adviser should ensure that there is an effective system of functional barriers (*Chinese walls*) to prevent the flow of information that may be confidential or price sensitive between the corporate finance activities and the other business activities. This system should include physical separation between, and different staff employed for, the various business activities.

4.4 Sponsors

A Corporate Finance Adviser acting as a sponsor to a listing applicant should satisfy all the requirements applicable to sponsors as set out in the Listing Rules. It should ensure that, when giving a view as to whether an issuer is suitable for listing, it is capable of giving “impartial advice” before accepting the sponsorship role and that such view is given independently.

4.5 Contingency fees

A Corporate Finance Adviser should disclose, upon request by the Regulators particularly if there is a conflict of interest concern, any fees or other benefits-in-kind that are offered contingent upon the success of a transaction.



4.6 Receipt or provision of benefits

A Corporate Finance Adviser should:

- (a) not offer nor accept any inducements in connection with the business of, or a transaction involving, its client without first disclosing the particulars of the inducements to the client. If the client is a corporation, such disclosure should be made to the board of directors of the corporation; and
- (b) ensure that it develops and maintains written policies and procedures on the disclosure of the value of gifts given to, or provided by, its staff members above a certain monetary limit, and the circumstances in which they were offered or received.

5. Standard of work

A Corporate Finance Adviser should aim to deliver a high standard of work at all times.

5.1 Due skill and care

A Corporate Finance Adviser must act with due skill, care and diligence and observe proper standards of market conduct.

5.2 Engagement letter

A Corporate Finance Adviser is encouraged to record the terms of its engagement in writing between the Corporate Finance Adviser and its client and to ensure that the service performed for the client is in accordance with the provisions of the engagement letter.

5.3 ~~Role of sponsor in a public offer~~

~~Where a Corporate Finance Adviser acts as a sponsor in relation to an initial public offering which involves the offer for subscription or an offer for sale to the public (the "public offer"), it should be responsible for:~~

- ~~(a) the overall management of the public offer;~~
- ~~(b) assessing the likely interest in, or the reception of, the offer by the public; and~~
- ~~(c) putting in place sufficient arrangements and resources to ensure that the public offer and all matters ancillary thereto are conducted in a fair, timely and orderly manner.~~

5.4 ~~In discharging its obligations under paragraph 5.3 above, the Corporate Finance Adviser should have regard to at least the following matters:~~

- ~~(a) whether there are sufficient prospectuses and application forms for the securities offered for distribution to the public during the public offer period;~~
- ~~(b) without derogating from the Corporate Finance Adviser's obligation to act as the overall manager of the public offer as sponsor, whether specific responsibilities in relation to the public offer should be delegated to other professionals or advisers;~~



and if so, whether such professionals or advisers are competent and have sufficient capacity and resources to handle the relevant responsibilities;

- ~~(c) — whether sufficient measures have been put in place to ensure that:
 - ~~(i) — the distribution of prospectuses and application forms to the public;~~
 - ~~(ii) — the collection of completed application forms from the public; and~~
 - ~~(iii) — the despatch of unsuccessful applications, refund cheques and share certificates after the public offer period closes, can be made in a timely and orderly fashion;~~~~
- ~~(d) — the need to avoid events of disorder or failure which may arise during the public offer period and before the trading of securities commences or otherwise in connection with the public offer, and ensure that appropriate contingency plans have been drawn up to deal with any such events; and~~
- ~~(e) — where balloting is required to determine the successful applications under a public offer, whether appropriate arrangements have been put in place to ensure that balloting would be conducted fairly and independently of the issuer and parties associated with it.~~

5.55.3 Reliance on work by experts or other professionals

Where reliance on the work of independent experts or other professionals is planned, a Corporate Finance Adviser (including an independent financial adviser) should, inter alia:

- (a) undertake reasonableness checks to assess the relevant experience and expertise of the firm of experts or other professionals and to satisfy itself that reliance could fairly be placed on their work; and
- (b) review and discuss with its clients and the experts or other professionals the qualifications, bases and assumptions adopted by the experts or the other professionals in the course of their work and satisfy itself that the qualifications, bases and assumptions have been made with due care and objectivity, and on a reasonable basis.

Note:

The requirements in paragraph 5.5(b) shall not be applicable in respect of work performed by:

- (i) a property valuer in respect of a valuation of real property if it is a member of a relevant regulatory or professional body;*
- (ii) legal advisers in respect of legal advice rendered by them; and*
- (iii) accountants in respect of the audit of results and accountants' reports derived therefrom.*



5.4 Financial adviser to a listing applicant

A Corporate Finance Adviser acting as a financial adviser to a listing applicant should co-operate fully with the sponsor appointed by the listing applicant in connection with its application for listing and should not engage in any conduct that would unreasonably or adversely affect the sponsor in discharging its duties.

5.65.5 Reliance on information from the client

Where information and representations are provided by a client for incorporation in a public document or submission to the Regulators, the Corporate Finance Adviser should advise its client to take all reasonable steps to ensure, and obtain confirmation from the client, that the information and representations provided are true, accurate, complete and not misleading, and that no material information or facts have been omitted or withheld.

5.75.6 Avoid undue delay

A Corporate Finance Adviser should have regard to the time management of a transaction and should avoid undue delay, e.g. in the preparation of the appropriate document or the filing of the application fee. It should ensure that its responsibilities are performed on a timely basis in accordance with the relevant rules and regulations.

5.85.7 Standard of documents

Where a Corporate Finance Adviser is involved in the preparation of any document for public dissemination, it should use all reasonable efforts to assist its client in ensuring that the document is prepared to the required standard and no relevant information has been omitted or withheld.

5.95.8 Use of plain language

A Corporate Finance Adviser is encouraged to use plain language in the preparation of documents. Reference should be made to the *Guides on the preparation of announcements and documents* issued by the Regulators.

5.10 Information to analysts in new listings

~~Where a Corporate Finance Adviser acts as a sponsor in relation to a listing of equity securities by a company on the Stock Exchange, the sponsor should take reasonable steps to ensure that all material information, including forward-looking information (whether quantitative or qualitative) disclosed or provided to analysts is contained in the relevant prospectus or where the proposed listing does not involve a prospectus, the relevant listing document, offering circular or similar document.~~

Note:

~~The requirement in Paragraph 5.10 relating to sponsors' obligation will apply to information provided to analysts regarding listing applicants that submit their listing applications to the Stock Exchange of Hong Kong Limited on or after 31 October 2011.~~



6. Duties to the client

A Corporate Finance Adviser should ensure that it acts in the best interests of its client at all times.

6.1 Know your client

Unless the circumstances do not require, a Corporate Finance Adviser should understand the business of its client. In particular, a Corporate Finance Adviser should:

- (a) obtain at the outset, information regarding its client's background, the nature of its business, and if the client is a company, the identity of its controlling shareholder(s), and its shareholding structure; and
- (b) understand the financial circumstances and investment or corporate objectives in relation to the transaction under consideration.

6.2 Confidentiality

A Corporate Finance Adviser should:

- (a) safeguard the confidentiality of information provided to it by its client; and
- (b) take reasonable steps to ensure that all other persons who receive the confidential information from the Corporate Finance Adviser avoid an accidental leak of information.

6.3 Client's behaviour

A Corporate Finance Adviser should use all reasonable efforts to ensure that its client understands the relevant regulatory requirements and their implications at all stages of a transaction. Where a Corporate Finance Adviser becomes aware that its client is not complying with the regulatory requirements, it should advise its client to bring the matter to the attention of the Regulators at the earliest opportunity. If this is declined by the client without valid reasons, it should consider the need to cease to act. When asked by the Regulators about a possible breach of a relevant regulation (whether committed by itself or by its client), a Corporate Finance Adviser should respond to the Regulators in a co-operative and truthful manner (to the best of its knowledge).

6.4 Conduct towards a client

When acting for a client, a Corporate Finance Adviser should:

- (a) ensure that all representations made and information provided by it to its client are true, accurate, complete and not misleading;
- (b) take all reasonable steps to give its client, in a comprehensive and timely manner, any information required (including advice on the Listing Rules, the Takeovers Code or the Share Repurchase Code) to enable its client to make a balanced and informed decision;
- (c) be ready to provide a full and fair account of its fulfilment of responsibilities towards its client; and



- (d) ensure that it makes adequate disclosure of all relevant and material information in its dealings with its client.

7. Communication with Regulators

A Corporate Finance Adviser must deal with the Regulators in an open and co-operative manner.

7.1 Dealing with the Regulators

A Corporate Finance Adviser should ensure that its day-to-day communication with the Regulators is only conducted by staff who are competent and conversant with the regulatory requirements.

7.2 Co-operation with the Regulators

A Corporate Finance Adviser should advise its client to co-operate fully with the Regulators, and to provide all relevant information and explanations upon request.

7.3 Consultation

A Corporate Finance Adviser is encouraged to consult the Regulators at an early stage of a transaction or an issue to seek guidance on the transaction or issue under consideration.

8. Personal account dealings

A Corporate Finance Adviser should ensure that all personal account dealings are properly conducted.

The following guidelines are intended to address the basic principle that a Corporate Finance Adviser should avoid conflicts of interest when dealing in securities on its own account while discharging its duties as adviser to its client.

8.1 Personal account dealings

- (a) A Corporate Finance Adviser should have a policy which has been communicated to Relevant Persons in writing on whether they are permitted to deal for their own accounts in securities or futures contracts.
- (b) In the event that Relevant Persons are permitted to deal for their own accounts in securities or futures contracts:
 - (i) the written policy should specify the conditions on which Relevant Persons may deal for their own accounts;
 - (ii) Relevant Persons should be required to identify all related accounts and report them to the Designated Compliance Officer;
 - (iii) Relevant Persons should generally be required to deal through the Corporate Finance Adviser (if it is also a registered person) or its affiliates;



- (iv) if Relevant Persons are permitted to deal through another dealer, the Corporate Finance Adviser and the Relevant Persons should arrange for duplicate trade confirmations and statements of account to be provided to the Designated Compliance Officer;
- (v) any transactions for such Relevant Persons' accounts and related accounts should be separately recorded and clearly identified in the accounting records of the Corporate Finance Adviser (if it is also a registered person) or its affiliates; and
- (vi) the transactions of Relevant Persons' accounts and related accounts should be reported to and actively monitored by the Designated Compliance Officer who should not have any beneficial or other interest in the transactions and who should maintain procedures to detect irregularities and ensure that the handling of these transactions or orders by the Corporate Finance Adviser or its affiliates is not prejudicial to the interests of the Corporate Finance Adviser's clients.

Notes:

1. *For the purposes of this paragraph 8.1, the term "related accounts" includes accounts of the Relevant Persons' minor children and accounts in which the Relevant Persons hold beneficial interests.*
2. *A globally uniform policy on personal account trading which is consistent with the provisions of paragraph 8.1 above would normally be acceptable.*

8.2 Prohibition of dealings

For the purpose of proper monitoring of personal account dealings and proprietary trading, a Corporate Finance Adviser should maintain a watchlist and restricted list system.

8.3 Proper monitoring

A Corporate Finance Adviser should ensure that all personal account dealings in securities and derivatives by Relevant Persons are properly monitored by the Designated Compliance Officer.



Appendix I: Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers (“Sponsor Guidelines”)

Explanatory Notes

The Sponsor Guidelines apply to all corporations and authorized financial institutions applying or continuing to act as sponsors¹ and compliance advisers²; as well as licensed individuals accredited to such corporations and relevant individuals engaged by authorized financial institutions (where applicable) for the performance of such activities.

The Sponsor Guidelines are an elaboration of the Fit and Proper Guidelines and the Guidelines on Competence. Where relevant, provisions within these guidelines are also applicable to sponsors and compliance advisers. The Sponsor Guidelines provide additional competence requirements for corporations and authorized financial institutions applying or are already licensed or registered to act as sponsors and compliance advisers and do not replace the provisions set out in other sections of the Guidelines on Competence.

Sponsors and compliance advisers are also reminded that in addition to the Sponsor Guidelines, they must also comply with all other relevant codes, guidelines and regulations prescribed by the SFC, such as the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”) and the Corporate Finance Adviser Code of Conduct. These other codes and guidelines are not diminished in any way by the more specific competence requirements set out in the Sponsor Guidelines.

I. SPONSORS

1. Competence

The SFO requires that all licensed or registered persons must be fit and proper. In assessing whether a person is fit and proper as a licensed or registered person or to be licensed or registered with the SFC, the person’s competence is one of the factors that should be taken into account. Specific competence requirements on sponsors and certain staff employed by them are set out below.

1.1 [Repealed]

1.2 [Repealed]

¹ “Sponsor” means a licensed corporation or registered institution licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a Sponsor appointed to act as a sponsor in respect of an application for the listing of any securities on a recognized stock market under the Listing Rules of the Stock Exchange of Hong Kong Limited (“SEHK”). A recognized stock market means a stock market operated by a company recognized as an exchange company under section 19(2) of the SFO.

² “Compliance adviser” means a licensed corporation or registered institution licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as Sponsor appointed to act as compliance adviser under the Listing Rules of the SEHK.



1.3 Principals³

- 1.3.1 It is the responsibility of the Management to ensure that Principals appointed by the firm meet the criteria required in the Sponsor Guidelines. The Management should ensure that there are sufficient Principals engaged in a full time capacity to discharge its role in supervising the Transactions Team(s)⁴, taking into account the volume, size, complexity and nature of the sponsor work that is undertaken by a sponsor. A sponsor should have at least two Principals that have satisfied the eligibility criteria under paragraph 1.4.1 and at least one of the Principals has satisfied the eligibility criteria under Option 1 of paragraph 1.4.1 at all times. Records of the appointment of a responsible officer or an executive officer as a Principal and assessments made by the Management, the cessation of such appointment, and the decision-making process of such appointment should be properly kept to demonstrate its compliance with the Sponsor Guidelines.
- 1.3.2 In making the appointment, the Management⁵ is required to provide a written endorsement to the SFC, on behalf of the licensed corporation or registered institution that individuals proposed to be appointed to be Principals have met the respective requirements set out in paragraphs 1.3 and 1.4.
- 1.3.3 As a general guidance, a Principal is expected to be in charge of the supervision of the Transaction Team(s). The Principal should be involved in the making of the key decisions relating to the work carried out by the Transaction Team and must be aware of the key risks in such work and responsible for the measures to address them. For example, in respect of conducting due diligence review on a listing applicant, the sponsor should ensure that the Principal is involved in determining the breadth and depth of the due diligence review, the amount of resources to be deployed for carrying out such work, making a critical assessment of the results of the due diligence and overall assessment of the adequacy of the due diligence review, and ensuring that steps have been taken to properly resolve all issues arising out of such review. The Principal is also expected to be fully conversant with the key issues in each sponsorship appointment and be able to respond and react promptly to requests of the regulators (such as the SFC and/or the SEHK) on such issues and to properly advise the applicant.

Note:

The Principal should maintain an effective reporting line and communication between the Transaction Team(s) and other members in the Management regarding the sponsor work undertaken. Where circumstances require, a Transaction Team may appoint more than one Principal who, together, shall be jointly and severally responsible in discharging their roles as Principals.

³ "Principal" means an individual that meets the criteria stipulated under the Sponsor Guidelines appointed by a sponsor to act as a Principal; in respect of a listing assignment, a Principal means an individual appointed by a sponsor to supervise the Transaction Team.

⁴ "Transaction Team" means the staff appointed by a sponsor to carry out a listing assignment.

⁵ "Management" includes a sponsor's Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers and other senior management personnel.



- 1.3.4 A sponsor should notify the SFC in writing of any changes in its appointment of Principals within 7 business days after making such changes; and, in the case of appointment of a Principal, file an endorsement pursuant to 1.3.2 above. The endorsement should include information, as required by the SFC that demonstrates how the Principal has met the eligibility criteria.

1.4 Eligibility Criteria for Principals

- 1.4.1 In order to qualify as a Principal, an individual who must be a responsible officer of the licensed corporation to which he is accredited or an executive officer of the registered institution that has appointed him, should demonstrate that he has fulfilled one of the following eligibility criteria:

(A) Option 1

- (1) has acquired a minimum of 5 years of corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the SEHK preceding the appointment as a Principal; and
- (2) in the five years immediately preceding his appointment, has played a substantial role in advising a listing applicant as a sponsor in at least two completed initial public offering (“IPO”) transactions on the Main Board and/or GEM Board of the SEHK.

(B) Option 2

- (1) is highly experienced in the area of due diligence as a result of leading IPO transactions in Australia, the United Kingdom, or the United States of America;
- (2) is highly experienced in the area of corporate finance in respect of companies listed in Australia, the United Kingdom, or the United States of America;
- (3) has completed a refresher course or special examination on ethics, sponsor work, and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the 6 months preceding the appointment by a sponsor as a Principal; and
- (4) is accredited to a sponsor that has at least one other individual who is approved as a Principal pursuant to Option 1 above.

(C) Option 3

- (1) has participated actively and substantially in due diligence work in at least 4 completed IPO transactions in Hong Kong within the 5 years preceding the appointment as a Principal;
- (2) has acquired a minimum of 5 years of corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the SEHK preceding the appointment as a Principal;



- (3) has passed a special examination on ethics, sponsor work, and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the 6 months preceding the appointment by a sponsor as a Principal; and
- (4) is accredited to a sponsor that has at least one other individual who is approved as a Principal pursuant to Option 1 above.

Note:

“Corporate finance experience” includes experience from providing advice on one or more of the following matters:

- (i) IPO transaction;*
- (ii) notifiable or connected transactions as defined in the SEHK Listing Rules⁶;*
- (iii) a rights issue or open offer by a listed company in accordance with the SEHK Listing Rules;*
- (iv) takeovers and share repurchases subject to the Codes on Takeovers and Mergers and Share Repurchases; and*
- (v) any other significant transactions or equity-fund raising exercises not listed in the above.*

And in demonstrating that a Principal has the relevant experience, the sponsor has to satisfy the SFC as to the following:

- (a) the appointee for the role of a Principal (the “Appointee”) has acquired a majority of the 5 years’ corporate finance experience from transactions that have an element of equity-fund raising by the listed issuers from the public, and the Management has to be satisfied that such experience is sufficiently recent;*
- (b) the Appointee may acquire some (but not all) of the corporate finance experience in markets other than Hong Kong provided that these markets have comparable legal and regulatory standards for listing of companies and the public offers of securities, conduct regulation on sponsors or their functional equivalents and enforcement of rules and regulations governing these respective areas. The Appointee has to demonstrate to the satisfaction of the SFC how the corporate finance experience has been met if the Appointee’s experience is mainly acquired overseas, and the SFC may impose such conditions on the sponsor as it considers appropriate; and*

⁶ “Listing Rules” means the Rules Governing the Listing of Securities on the Stock Exchange (“Main Board Listing Rules”); references to the Main Board Listing Rules in this paragraph should be taken also to refer to the equivalent GEM Listing Rules.



- (c) *the sponsor should avoid attributing the experience of all the Appointees of the firm to the same transaction in meeting the requirements.*

1.4.2 The SFC may seek further details from intermediaries and individuals to substantiate their submissions. The provision of false or misleading information in response to such a request is likely to constitute a criminal offence under the SFO and might also have resulting fitness and propriety implications.

Note:

- (1) *Apart from the factors set out in paragraph 1.3.3, the following matters will be taken into account in establishing whether an individual intending to be appointed as a Principal has been engaged in a substantial role in an IPO:*
 - (a) *whether the individual was responsible for leading and supervising due diligence and participated in due diligence meetings and discussions with the listing applicant and other professional parties appointed;*
 - (b) *whether the individual was responsible for making key decisions relating to due diligence work carried out by the Transaction Team and was fully aware of key risks involved;*
 - (c) *whether the individual was responsible for signing off for the sponsor that due diligence had been completed;*
 - (d) *whether the individual was responsible for certifying the referral of any issues arising from due diligence or issues raising reputational risks or material changes in circumstances to the appropriate committee or senior management of the sponsor;*
 - (e) *whether the individual was responsible for determining the scope, review, and sign off of major documentation submitted to the SEHK and the SFC e.g. the prospectus and formal notice of the IPO, Listing Application Form (Form A1), Sponsors' Declaration and Sponsor's Undertaking to the SEHK and any waiver applications;*
 - (f) *whether the individual had a supervisory leading role in advising the client on IPO requirements under the Listing Rules including:*
 - (i) *advising the listing applicant on corporate and financial structure and compliance with the Listing Rules;*
 - (ii) *formulating listing timetable and related plans;*
 - (iii) *supervision of the transaction, including due diligence and IPO execution.*



(2) *The SFC may exercise its discretion, on a case-by-case basis, to grant a dispensation from strict compliance with the requirements on eligibility of Principals under Option 1 of paragraph 1.4.1 if the firm can demonstrate that there are valid and justifiable grounds for such dispensation, which will not prejudice the overall protection of investors' interests. In considering an application for such dispensation, the SFC may take into account, without limitation, the following:*

- (a) *the nature and structure of the business of the group companies to which the sponsor belongs and internal resources and support that the group is able to provide in the carrying out of the sponsor work;*
- (b) *the governance of the sponsor and/or its group companies by securities regulators in other leading and well-regulated markets;*
- (c) *the standards of internal controls and risk management of the sponsor and/or its group of companies; and*
- (d) *the compliance record of the sponsor in Hong Kong and other jurisdictions.*

The SFC may impose such conditions, or require the provision of undertakings by a sponsor and/or its group of companies as it considers appropriate in granting a dispensation abovementioned.

(3) *For the avoidance of doubt, the requirements set out at paragraphs 1.4.1 apply to Principals as initial eligibility criteria only, and are not continuing requirements. However, Principals should at all times ensure that they remain competent in their role as Principals.*

1.4A Eligibility Criteria for Type 6 licensed representative or relevant individual engaged in sponsor work

1.4A.1 Subject to paragraphs 1.4A.2 to 1.4A.4, Type 6 licensed representatives or relevant individuals intending to engage in IPO sponsor work are required to have passed the relevant examination for Type 6 licensed representative or relevant individual engaging in sponsor work not more than 3 years prior to and not later than 6 months after the date of their first engagement in such work.

1.4A.2 Individuals who have engaged in sponsor work as a Type 6 licensed representative or relevant individual within the 3 years preceding the effective date of paragraph 1.4A in at least 1 completed IPO transaction are exempted from the requirement in paragraph 1.4A.1.

1.4A.3 Individuals who are approved as Principals are exempted from the requirement in paragraph 1.4A.1.



1.4A.4 Individuals who have passed the examination or are exempted from taking the examination will not be required to take the examination again unless the individuals cease to be licensed or registered for Type 6 regulated activity for more than 3 years.

1.4A.5 A sponsor should ensure its staff engaging in sponsor work have satisfied or be exempted from the examination requirement pursuant to paragraphs 1.4A.1 to 1.4A.4 and that it would be able to demonstrate to the SFC its compliance with this requirement upon request.

1.5 [Repealed]

2. *Minimum capital requirements*

A sponsor should have and maintain at all times sufficient resources and meet the capital requirement prescribed pursuant to the SFO and any related subsidiary legislation or codes and guidelines. Sponsors should maintain a minimum paid-up capital of HK\$10 million at all times.

3. *Continuing professional training (“CPT”)*

3.1 *Part III of the Internal Control Guidelines provides, inter alia, that training policies shall be established with adequate consideration given to training needs to ensure compliance with the firm’s operational and internal control policies and procedures, and all applicable legal and regulatory requirements to which the firm and its employees are subject. Adequate training should be provided both initially and on an on-going basis.*

3.2 All responsible officers, executive officers, licensed representatives, and relevant individuals who engage in the sponsor work of a firm are required to attend training on topics that are relevant to their sponsor work, e.g. skills that are relevant to their role as sponsors and knowledge of the relevant regulatory rules and their changes. Training on these topics should constitute at least 50% of the 5 CPT hours (or any other amount of CPT hours as required by the SFC from time to time) that the responsible officers, executive officers, licensed representatives, and relevant individuals are required to undertake annually as holders of a corporate finance adviser licence/registration (Type 6 Regulated Activity).



II. COMPLIANCE ADVISERS

1. A firm must be eligible under its licence or certificate of registration to act as a sponsor (not subject to a licensing/registration condition that prohibits it from carrying out sponsor work) in order to carry out work as a compliance adviser . As corporations licensed or registered for Type 6 Regulated Activity, in addition to the requirements and obligations set out in the Sponsor Guidelines, compliance advisers are required at all times to observe the relevant codes of conduct and regulations by the SFC applicable to holders of licence/registration for Type 6 Regulated Activity. These include, without limitation, the Internal Control Guidelines, the Code of Conduct, the Corporate Finance Adviser Code of Conduct, the Fit and Proper Guidelines, and the Guidelines on Continuous Professional Training.
2. In addition, all compliance advisers must be eligible to act as sponsors at all times in order to be initially eligible and continue to be eligible to act as compliance advisers. In the event that a licensed corporation or registered institution ceases to be eligible to act as a sponsor, it shall cease to be eligible to act as a compliance adviser.
3. In case of a breach by a compliance adviser of any of the relevant codes of conduct or regulations that calls to question its fitness and propriety to be a licensed corporation or registered institution for Type 6 Regulated Activity, it may cease to be eligible to be a compliance adviser, a sponsor, and/or a licensed corporation or registered institution for Type 6 Regulated Activity.



Appendix I: Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers (“Sponsor Guidelines”)

Explanatory Notes

The Sponsor Guidelines apply to all corporations and authorized financial institutions applying or continuing to act as sponsors¹ and compliance advisers²; as well as licensed individuals accredited to such corporations and relevant individuals engaged by authorized financial institutions (where applicable) for the performance of such activities.

The Sponsor Guidelines are an elaboration of the Fit and Proper Guidelines, ~~and the Guidelines on Competence, and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”).~~ Where relevant, provisions within these ~~codes and guidelines~~ are also applicable to sponsors and compliance advisers. —The Sponsor Guidelines provide additional competence requirements ~~fit and proper considerations~~ for corporations and authorized financial institutions applying or are already licensed or registered to act as sponsors and compliance advisers and do not replace the provisions set out in other sections of the ~~Fit and Proper Guidelines on Competence.~~

Sponsors and compliance advisers are also reminded that in addition to the Sponsor Guidelines ~~and the above-mentioned codes and guidelines~~, they must also comply with all other relevant codes, guidelines and regulations prescribed by the SFC, such as the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”) and the Corporate Finance Adviser Code of Conduct. These other codes and guidelines are not diminished in any way by the more specific competence requirements set out in the Sponsor Guidelines.

I. SPONSORS

1. Competence

The SFO requires that all licensed or registered persons must be fit and proper. In assessing whether a person is fit and proper as a licensed or registered person or to be licensed or registered with the SFC, the person’s competence is one of the factors that should be taken into account. Specific competence requirements on sponsors and certain staff employed by them are set out below.

¹ “Sponsor” means a licensed corporation or registered institution licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a Sponsor appointed to act as a sponsor in respect of an application for the listing of any securities on a recognized stock market under the Listing Rules of the Stock Exchange of Hong Kong Limited (“SEHK”). A recognized stock market means a stock market operated by a company recognized as an exchange company under section 19(2) of the SFO.

² “Compliance adviser” means a licensed corporation or registered institution licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as Sponsor appointed to act as compliance adviser under the Listing Rules of the SEHK.



1.1 Sufficient expertise and resources [Repealed]

~~1.1.1 General Principle 3 of the Code of Conduct provides that a licensed or registered person should have and employ effectively the resources and procedures that are needed for the proper performance of its business activities. Paragraph 4.1 of the Code of Conduct further provides that a licensed or registered person should ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).~~

~~1.1.2 In the context of acting as a sponsor, a corporate finance firm should have sufficient expertise and resources to carry out its work. A sponsor should not undertake sponsor work and other corporate finance advisory work beyond its capacity and expertise. The Management³ should ensure that the firm has the relevant expertise and adequate resources to perform its role as a sponsor properly.~~

~~1.1.3 Whenever a firm takes up an appointment as a sponsor pursuant to the requirements under the Listing Rules⁴, the Management should appoint a team comprising corporate finance staff ("Transaction Team"). Members of the Transaction Team should be competent in general, and in particular in the context of the work to be carried out by the team; and the team should have the manpower and resources to carry out the sponsor work to the standards expected of it under the relevant rules, regulations, codes and guidelines. A Transaction Team should have sufficient Hong Kong regulatory experience, including knowledge of the relevant rules, regulations, codes and guidelines so that it can properly discharge its duty as a sponsor.~~

~~1.1.4 Members in one transaction team of a sponsor may work in other transaction teams of the same sponsor provided that:~~

- ~~(1) the Management and the Principals⁵ (refer to paragraphs 1.3 and 1.4 of the Sponsor Guidelines) of the respective transaction teams are satisfied on reasonable grounds that the sponsor can properly discharge its responsibilities in all the sponsor work that it undertakes;~~
- ~~(2) if a Principal is assigned to supervise more than one transaction team, the Management is satisfied that each team is properly and adequately supervised by at least one Principal who has the necessary capacity, capability and competence to supervise; and~~
- ~~(3) the sponsor complies with General Principle 6 and paragraph 10.1 of the Code of Conduct in respect of conflicts of interest.~~

~~1.1.5 The Management has the overall responsibility to ensure that there are sufficient staff to carry out the work throughout the period when the firm acts as a sponsor.~~

³ "Management" includes the firm's Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers or other senior management personnel.

⁴ "Listing Rules" means the Listing Rules for the Main Board and Growth Enterprise Market ("GEM") Board of SEHK.

⁵ "Principal" means a responsible officer or an executive officer appointed by the firm to be in charge of the supervision of the transaction team.



~~1.1.6 The level of human resources and expertise should be commensurate with the volume, size, complexity and nature of the sponsor work that is undertaken by a sponsor.~~

1.2 Management's responsibility [Repealed]

~~1.2.1 General Principle 9 of the Code of Conduct provides that the senior management of a licensed or registered person should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm.~~

~~1.2.2 Part 1 of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission ("Internal Control Guidelines") provides that the Management should ensure that there is an effective management and organisational structure which ensures that the operations of the business are conducted in a sound, efficient and effective manner. The Management should assume full responsibility for the firm's operations including the development, implementation and on-going effectiveness of the firm's internal controls and the adherence thereto by its directors and employees. Reporting lines should be clearly identified, with supervisory and reporting responsibilities assigned to the appropriate staff members.~~

~~1.2.3 Paragraph 4.2 of the Code of Conduct further provides that a licensed or registered person should ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.~~

~~1.2.4 In applying the above principles to a sponsor, the Management of a sponsor is ultimately responsible for the supervision of the sponsor work undertaken by the firm, as well as compliance with all relevant rules, regulations, codes and guidelines. While the Management may delegate the operational functions to the staff of a sponsor, the Management remains responsible for the discharge of these functions and such responsibilities cannot be delegated.~~

~~1.2.5 The Management should appoint a Transaction Team to carry out each sponsor engagement, taking into account the considerations for the appointment and composition of the team set out in paragraphs 1.1.3 and 1.1.6. The Transaction Team should include at least one Principal who acts as the supervisor of the team.~~

~~Note:—~~

~~The Management should have regard to the staff's expertise, corporate finance experience, capacity and other factors that may affect the standard of sponsor work in deciding the composition of the team.~~

~~1.2.6 Part IV.6 of the Internal Control Guidelines provides that the Management should establish and maintain effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with, and which enable the firm, its auditors and other interested parties, such as the SEHK and the SFC, to carry out routine and ad hoc comprehensive reviews or investigation to assess such compliance.~~



1.3 Principals³

- 1.3.1 It is the responsibility of the Management to ensure that Principals appointed by the firm meet the criteria required in the Sponsor Guidelines. The Management should ensure that there are sufficient Principals engaged in a full time capacity to discharge its role in supervising the Transactions Team(s)⁴, taking into account the volume, size, complexity and nature of the sponsor work that is undertaken by a sponsor~~factors set out in paragraph 1.1.6~~. A sponsor should have at least two Principals that have satisfied the eligibility criteria under paragraph 1.4.1 and at least one of the Principals has satisfied the eligibility criteria under Option 1 of paragraph 1.4.1 at all times. Records of the appointment of a responsible officer or an executive officer as a Principal and assessments made by the Management, the cessation of such appointment, and the decision-making process of such appointment should be properly kept to demonstrate its compliance with the Sponsor Guidelines.
- 1.3.2 In making the appointment, the Management⁵ is required to provide a written endorsement to the SFC, on behalf of the licensed corporation or registered institution, that individuals proposed to be appointed to be Principals have met the respective requirements set out in paragraphs 1.3 and 1.4.
- 1.3.3 As a general guidance, a Principal is expected to be in charge of the supervision of the Transaction Team(s). The Principal should be involved in the making of the key decisions relating to the work carried out by the Transaction Team and must be aware of the key risks in such work and responsible for the measures to address them. For example, in respect of conducting due diligence review on a listing applicant, the sponsor should ensure that the Principal is involved in determining the breadth and depth of the due diligence review, the amount of resources to be deployed for carrying out such work, making a critical assessment of the results of the due diligence and overall assessment of the adequacy of the due diligence review, and ensuring that steps have been taken to properly resolve all issues arising out of such review. The Principal is also expected to be fully conversant with the key issues in each sponsorship appointment and be able to respond and react promptly to requests of the regulators (such as the SFC and/or the SEHK) on such issues and to properly advise the applicant.

Note:

The Principal should maintain an effective reporting line and communication between the Transaction Team(s) and other members in the Management regarding the sponsor work undertaken. Where circumstances require, a Transaction Team may appoint more than one Principal who, together, shall be jointly and severally responsible in discharging their roles as Principals.

³ "Principal" means an individual that meets the criteria stipulated under the Sponsor Guidelines appointed by a sponsor to act as a Principal; in respect of a listing assignment, a Principal means an individual appointed by a sponsor to supervise the Transaction Team.

⁴ "Transaction Team" means the staff appointed by a sponsor to carry out a listing assignment.

⁵ "Management" includes a sponsor's Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers and other senior management personnel.



- 1.3.4 A sponsor should notify the SFC in writing of any changes in its appointment of Principals within 7 business days after making such changes; and, in the case of appointment of a Principal, file an endorsement pursuant to 1.3.2 above. The endorsement should include information, as required by the SFC that demonstrates how the Principal has met the eligibility criteria.

1.4 Eligibility Criteria for Principals

- 1.4.1 In order to qualify as a Principal, an individual who must be a responsible officer of the licensed corporation to which he is accredited or an executive officer of the registered institution that has appointed him, should demonstrate that he has fulfilled one of the following eligibility criteria:

(A) Option 1

- ~~(1) be a responsible officer of the licensed corporation that his licence is accredited to or an executive officer of the registered institution that has appointed him;~~
- (1) hasve acquired a minimum of 5 years of ~~relevant~~ corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the SEHK preceding the appointment as a Principal; and

~~Note:—~~

~~“Corporate finance experience” includes experience from providing advice on one or more of the following matters:~~

- ~~(i) initial public offerings (“IPOs”);~~
- ~~(ii) notifiable or connected transactions as defined in the SEHK Listing Rules;~~
- ~~(iii) a rights issue or open offer by a listed company in accordance with the SEHK Listing Rules;~~
- ~~(iv) takeovers and share repurchases subject to the Codes on Takeovers and Mergers and Share Repurchases; and~~
- ~~(v) any other significant transactions or equity fund raising exercises not listed in the above.~~

~~And in demonstrating that a Principal has the relevant experience, the sponsor has to satisfy the SFC as to the following:~~

- ~~(a) the appointee for the role of a Principal (the “Appointee”) has acquired a majority of the relevant 5 years’ corporate finance experience from transactions that have an element of equity fund raising by the listed issuers from the public, and the Management has to be satisfied that such experience is sufficiently recent;~~



~~(b) the Appointee may acquire some (but not all) of the corporate finance experience in markets other than Hong Kong provided that these markets have comparable or higher legal and regulatory standards for listing of companies and the public offers of securities, conduct regulation on sponsors or their functional equivalents and enforcement of rules and regulations governing these respective areas. The Appointee has to demonstrate to the satisfaction of the SFC how the relevant corporate finance experience has been met if the Appointee's experience is mainly acquired overseas, and the SFC may impose such conditions on the sponsor as it considers appropriate; and~~

~~(c) the sponsor should avoid attributing the experience of all the Appointees of the firm to the same transaction in meeting this requirement.~~

- (2) in the five years immediately preceding his appointment, has~~ve~~ played a substantial role in advising a listing applicant as a sponsor in at least two completed initial public offering ("IPOs") transactions on the Main Board and/or GEM Board of the SEHK.

(B) Option 2

(1) is highly experienced in the area of due diligence as a result of leading IPO transactions in Australia, the United Kingdom, or the United States of America;

(2) is highly experienced in the area of corporate finance in respect of companies listed in Australia, the United Kingdom, or the United States of America;

(3) has completed a refresher course or special examination on ethics, sponsor work, and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the 6 months preceding the appointment by a sponsor as a Principal; and

(4) is accredited to a sponsor that has at least one other individual who is approved as a Principal pursuant to Option 1 above.

(C) Option 3

(1) has participated actively and substantially in due diligence work in at least 4 completed IPO transactions in Hong Kong within the 5 years preceding the appointment as a Principal;

(2) has acquired a minimum of 5 years of corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the SEHK preceding the appointment as a Principal;

(3) has passed a special examination on ethics, sponsor work, and the legal and regulatory requirements governing the conduct of IPO transactions in Hong Kong within the 6 months preceding the appointment by a sponsor as a Principal; and

(4) is accredited to a sponsor that has at least one other individual who is approved as a Principal pursuant to Option 1 above.



Note:

“Corporate finance experience” includes experience from providing advice on one or more of the following matters:

- (i) IPO transaction;
- (ii) notifiable or connected transactions as defined in the SEHK Listing Rules⁶;
- (iii) a rights issue or open offer by a listed company in accordance with the SEHK Listing Rules;
- (iv) takeovers and share repurchases subject to the Codes on Takeovers and Mergers and Share Repurchases; and
- (v) any other significant transactions or equity-fund raising exercises not listed in the above.

And in demonstrating that a Principal has the relevant experience, the sponsor has to satisfy the SFC as to the following:

- (a) the appointee for the role of a Principal (the “Appointee”) has acquired a majority of the 5 years’ corporate finance experience from transactions that have an element of equity-fund raising by the listed issuers from the public, and the Management has to be satisfied that such experience is sufficiently recent;
- (b) the Appointee may acquire some (but not all) of the corporate finance experience in markets other than Hong Kong provided that these markets have comparable legal and regulatory standards for listing of companies and the public offers of securities, conduct regulation on sponsors or their functional equivalents and enforcement of rules and regulations governing these respective areas. The Appointee has to demonstrate to the satisfaction of the SFC how the corporate finance experience has been met if the Appointee’s experience is mainly acquired overseas, and the SFC may impose such conditions on the sponsor as it considers appropriate; and
- (c) the sponsor should avoid attributing the experience of all the Appointees of the firm to the same transaction in meeting the requirements.

1.4.2 The SFC may seek further details from intermediaries and individuals to substantiate their submissions. The provision of false or misleading information in response to such a request is likely to constitute a criminal offence under the SFO and might also have resulting fitness and properness implications.

⁶ “Listing Rules” means the Rules Governing the Listing of Securities on the Stock Exchange (“Main Board Listing Rules”); references to the Main Board Listing Rules in this paragraph should be taken also to refer to the equivalent GEM Listing Rules.



Note:

- (1) Apart from the factors set out in paragraph 1.3.3, the following matters will be taken into account in establishing whether an individual intending to be appointed as a Principal has been engaged in a substantial role in an IPO:
- (a) whether the individual was responsible for leading and supervising due diligence and participated in due diligence meetings and discussions with the listing applicant and other professional parties appointed;
 - (b) whether the individual was responsible for making key decisions relating to due diligence work carried out by the Transaction Team and was fully aware of key risks involved;
 - (c) whether the individual was responsible for signing off for the sponsor that due diligence had been completed;
 - (d) whether the individual was responsible for certifying the referral of any issues arising from due diligence or issues raising reputational risks or material changes in circumstances to the appropriate committee or senior management of the sponsor;
 - (e) whether the individual was responsible for determining the scope, review, and sign off of major documentation submitted to the SEHK and the SFC e.g. the prospectus and formal notice of the IPO, Listing Application Form (Form A1), Sponsors' Declaration and Sponsor's Undertaking to the SEHK and any waiver applications;
 - (f) whether the individual had a supervisory leading role in advising the client on IPO requirements under the Listing Rules including:
 - (i) advising the listing applicant on corporate and financial structure and compliance with the Listing Rules;
 - (ii) formulating listing timetable and related plans;
 - (iii) supervision of the transaction, including due diligence and IPO execution.
- (+)(2) The SFC may exercise its discretion, on a case-by-case basis, to grant a dispensation from strict compliance with the requirements on eligibility of Principals under Option 1 of paragraph 1.4.1 if the firm ~~cannot~~ demonstrate that there are valid and justifiable grounds for such dispensation, which will not prejudice the overall protection of investors' interests. In considering an application for such dispensation, the SFC may take into account, without limitation, the following:



- (a) *the nature and structure of the business of the group companies to which the sponsor belongs and internal resources and support that the group is able to provide in the carrying out of the sponsor work;*
- (b) *the governance of the sponsor and/or its group companies by securities regulators in other leading and well-regulated markets;*
- (c) *the standards of internal controls and risk management of the sponsor ~~firm~~ and/or its group of companies; and*
- (d) *the compliance record of the sponsor in Hong Kong and other jurisdictions.*

The SFC may impose such ~~any~~ conditions, or require the provision of undertakings by a sponsor and/or its group of companies as it considers appropriate in granting a dispensation abovementioned.

~~(2)(3)~~ *For the avoidance of doubt, the requirements set out at paragraphs 1.4.1~~(2)~~ and ~~(3)~~ apply to Principals as initial eligibility criteria only, and are not continuing requirements. However, ~~the~~ Principals should at all times ensure that they remain competent in their role as Principals.*

1.4A Eligibility Criteria for Type 6 licensed representative or relevant individual engaged in sponsor work

1.4A.1 Subject to paragraphs 1.4A.2 to 1.4A.4, Type 6 licensed representatives or relevant individuals intending to engage in IPO sponsor work are required to have passed the relevant examination for Type 6 licensed representative or relevant individual engaging in sponsor work not more than 3 years prior to and not later than 6 months after the date of their first engagement in such work.

1.4A.2 Individuals who have engaged in sponsor work as a Type 6 licensed representative or relevant individual within the 3 years preceding the effective date of paragraph 1.4A in at least 1 completed IPO transaction are exempted from the requirement in paragraph 1.4A.1.

1.4A.3 Individuals who are approved as Principals are exempted from the requirement in paragraph 1.4A.1.

1.4A.4 Individuals who have passed the examination or are exempted from taking the examination will not be required to take the examination again unless the individuals cease to be licensed or registered for Type 6 regulated activity for more than 3 years.

1.4A.5 A sponsor should ensure its staff engaging in sponsor work have satisfied or be exempted from the examination requirement pursuant to paragraphs 1.4A.1 to 1.4A.4 and that it would be able to demonstrate to the SFC its compliance with this requirement upon request.



1.5 ~~Systems and Controls and Internal Assessment [Repealed]~~

~~1.5.1 A sponsor should have effective systems and controls in place to ensure:~~

- ~~(1) adequate supervision and management of its employees who perform the services of a sponsor;~~
- ~~(2) that employees do not act beyond their proper authority; and~~
- ~~(3) its compliance with all laws, regulations, codes and guidelines, including the Listing Rules, which may be applicable to the work of a sponsor.~~

~~Note:~~

~~Employees carrying out any sponsor work should be adequately supervised and managed, and the Management should ensure that effective communication is maintained with staff at the operational level such that it is kept abreast of any key issues and risks areas relating to the firm's sponsor work.~~

~~1.5.2 A sponsor should keep a complete and up-to-date list of all the sponsor work that has been and is being undertaken. The list should include the names of the companies being advised, the composition of the teams designated for the sponsor work (including any variations thereto) and the title and role of each team member from start to finish. Such information should be made available to the SFC upon request.~~

~~1.5.3 A sponsor should carry out an assessment annually in order to ensure that its systems and controls remain effective. Any material non-compliance issue should be reported to the SFC promptly.~~

~~Note:~~

~~The annual assessment under paragraph 1.5.3 may take the form of an internal and/or external audit. A sponsor should devise its own programme based on its assessment of risks related to its operations, the firm's business structures, its own internal systems and the track record of compliance including, but not limited to, any complaints received either from within or from third parties and any regulatory concerns raised by regulators (such as the SFC and/or the SEHK) in the period under review.~~

~~1.5.4 Records of the following appointments and assessments made by the Management should be properly kept to demonstrate its compliance with the Sponsor Guidelines:~~

- ~~(1) the appointment of the transaction team for each sponsor engagement under paragraphs 1.1.3 and 1.2.5;~~
- ~~(2) the appointment of a responsible officer or an executive officer as a Principal under paragraph 1.3.1, the cessation of such appointment, and the decision-making process of such appointment; and~~



(3) ~~the annual assessment of the sponsor's internal systems and controls under paragraph 1.5.3.~~

2. Minimum capital requirements

A sponsor should have and maintain at all times sufficient resources and meet the capital requirement prescribed pursuant to the SFO and any related subsidiary legislation or codes and guidelines. Sponsors should maintain a minimum paid-up capital of HK\$10 million at all times.

3. Continuing professional trainingeducation (“CPT”)

3.1 *Part III of the Internal Control Guidelines provides, inter alia, that training policies shall be established with adequate consideration given to training needs to ensure compliance with the firm's operational and internal control policies and procedures, and all applicable legal and regulatory requirements to which the firm and its employees are subject. Adequate training should be provided both initially and on an on-going basis.*

3.2 All responsible officers, executive officers, licensed representatives, and relevant individuals who engage in the sponsor work of a firm are required to attend training on topics that are relevant to their sponsor work, e.g. skills that are relevant to their role as sponsors and knowledge of the relevant regulatory rules and their changes. Training on these topics should constitute at least 50% of the 5 CPT hours (or any other amount of CPT hours as required by the SFC from time to time) that the responsible officers, executive officers, licensed representatives, and relevant individuals are required to undertake annually as holders of a corporate finance adviser licence/registration (Type 6 Regulated Activity~~Type 6~~).

II. COMPLIANCE ADVISERS

1. A firm must be eligible under its licence or certificate of registration to act as a sponsor (not subject to a licensing/registration condition that prohibits it from carrying out sponsor work) in order to carry out work as a compliance adviser. As corporations licensed or registered for Type 6 Regulated Activity~~Type 6~~, in addition to the requirements and obligations set out in the Sponsor Guidelines, compliance advisers are required at all times to observe the relevant codes of conduct and regulations by the SFC applicable to holders of licence/registration for Type 6 Regulated Activity. These include, without limitation, the Internal Control Guidelines, the Code of Conduct, the Corporate Finance Adviser Code of Conduct, the Fit and Proper Guidelines, and the Guidelines on Continuous Professional Training.

2. In addition, all compliance advisers must be eligible to act as sponsors at all times in order to be initially eligible and continue to be eligible to act as compliance advisers. In the event that a licensed corporation or registered institution ceases to be eligible to act as a sponsor, it shall cease to be eligible to act as a compliance adviser.



3. In case of a breach by a compliance adviser of any of the relevant codes of conduct or regulations that calls to question its fitness and properness to be a licensed corporation or registered institution for Type 6 Regulated Activity~~Type 6~~, it may cease to be eligible to be a compliance adviser, a sponsor, and/or a licensed corporation or registered institution for Type 6 Regulated Activity~~Type 6~~.



Appendix D – Derivation Table between Sponsor Guidelines and Code of Conduct

Sponsor Guidelines	Code of Conduct
1.1 Sufficient expertise and resources	
1.1.1 <i>General Principle 3 of the Code of Conduct provides that a licensed or registered person should have and employ effectively the resources and procedures that are needed for the proper performance of its business activities. Paragraph 4.1 of the Code of Conduct further provides that a licensed or registered person should ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).</i>	Nil
1.1.2 In the context of acting as a sponsor, a corporate finance firm should have sufficient expertise and resources to carry out its work. A sponsor should not undertake sponsor work and other corporate finance advisory work beyond its capacity and expertise. The Management should ensure that the firm has the relevant expertise and adequate resources to perform its role as a sponsor properly.	17.11(a) before accepting any appointment as a sponsor of an assignment, taking account of other commitments, the sponsor should ensure that it has sufficient staff with appropriate levels of knowledge, skills and experience to devote to the assignment throughout the period of the assignment;
1.1.3 Whenever a firm takes up an appointment as a sponsor pursuant to the requirements under the Listing Rules, the Management should appoint a team comprising corporate finance staff ("Transaction Team"). Members of the Transaction Team should be competent in general, and in particular in the context of the work to be carried out by the team; and the team should have the manpower and resources to carry out the sponsor work to the	17.11(c) taking account of the nature, scale and complexity of the assignment and any other factors that may affect the standard of work, the sponsor should appoint a Transaction Team which: <ul style="list-style-type: none"> (i) comprises staff with appropriate levels of knowledge, skills and experience; and (ii) includes at least one Principal who acts as the supervisor of the Transaction Team to carry out the assignment throughout the period of the assignment.



Sponsor Guidelines	Code of Conduct
<p>standards expected of it under the relevant rules, regulations, codes and guidelines. A Transaction Team should have sufficient Hong Kong regulatory experience, including knowledge of the relevant rules, regulations, codes and guidelines so that it can properly discharge its duty as a sponsor.</p>	<p><i>Note 1: A Transaction Team should have sufficient knowledge and experience of Hong Kong regulatory requirements.</i></p>
<p>1.1.4 Members in one transaction team of a sponsor may work in other transaction teams of the same sponsor provided that:</p> <p>(1) the Management and the Principals (refer to paragraphs 1.3 and 1.4 of the Sponsor Guidelines) of the respective transaction teams are satisfied on reasonable grounds that the sponsor can properly discharge its responsibilities in all the sponsor work that it undertakes;</p> <p>(2) if a Principal is assigned to supervise more than one transaction team, the Management is satisfied that each team is properly and adequately supervised by at least one Principal who has the necessary capacity, capability and competence to supervise; and</p> <p>(3) the sponsor complies with General Principle 6 and paragraph 10.1 of the Code of Conduct in respect of conflicts of interest.</p>	<p>17.11(c) <i>Note 2: Members in one Transaction Team may work in other Transaction Teams of the sponsor provided that:</i></p> <p>(A) <i>Management and the Principals of the respective Transaction Teams are satisfied that the sponsor can properly discharge its responsibilities in all the sponsor work that it undertakes;</i></p> <p>(B) <i>If a Principal is assigned to supervise more than one Transaction Team, Management is satisfied that each team is properly and adequately supervised by at least one Principal who has the necessary capacity, capability and competence to supervise; and</i></p> <p>(C) <i>The sponsor complies with General Principle 6 and paragraph 10.1 of the Code in respect of conflicts of interest.</i></p>
<p>1.1.5 The Management has the overall responsibility to ensure that there are sufficient staff to carry out the work throughout the period when the firm acts as a sponsor.</p>	<p>17.11(e) Accordingly, Management must put in place appropriate systems, controls and procedures to govern sponsor work, which include:</p> <p>(ii) allocation of sufficient persons with appropriate levels of knowledge, skills and experience to each assignment over the period of the</p>



Sponsor Guidelines	Code of Conduct
	assignment;
1.1.6 The level of human resources and expertise should be commensurate with the volume, size, complexity and nature of the sponsor work that is undertaken by a sponsor.	This provision has been captured in paragraph 17.11(c).
1.2 Management's responsibility	
1.2.1 <i>General Principle 9 of the Code of Conduct provides that the senior management of a licensed or registered person should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm.</i>	Nil
1.2.2 <i>Part 1 of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission ("Internal Control Guidelines") provides that the Management should ensure that there is an effective management and organisational structure which ensures that the operations of the business are conducted in a sound, efficient and effective manner. The Management should assume full responsibility for the firm's operations including the development, implementation and on-going effectiveness of the firm's internal controls and the adherence thereto by its directors and employees. Reporting lines should be clearly identified, with supervisory and reporting responsibilities assigned to the appropriate staff members.</i>	Nil
1.2.3 <i>Paragraph 4.2 of the Code of Conduct further provides that a licensed or registered person should ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct</i>	Nil



Sponsor Guidelines	Code of Conduct
<p><i>business on its behalf.</i></p>	
<p>1.2.4 In applying the above principles to a sponsor, the Management of a sponsor is ultimately responsible for the supervision of the sponsor work undertaken by the firm, as well as compliance with all relevant rules, regulations, codes and guidelines. While the Management may delegate the operational functions to the staff of a sponsor, the Management remains responsible for the discharge of these functions and such responsibilities cannot be delegated.</p>	<p>17.11(e) Management is ultimately responsible for the supervision of the sponsor work and for compliance with all relevant legal and regulatory requirements, it may delegate operational functions to its staff but cannot abrogate its responsibilities.</p>
<p>1.2.5 The Management should appoint a Transaction Team to carry out each sponsor engagement, taking into account the considerations for the appointment and composition of the team set out in paragraphs 1.1.3 and 1.1.6. The Transaction Team should include at least one Principal who acts as the supervisor of the team.</p> <p><i>Note: The Management should have regard to the staff's expertise, corporate finance experience, capacity and other factors that may affect the standard of sponsor work in deciding the composition of the team.</i></p>	<p>This provision has been captured in paragraph 17.11(c).</p>
<p>1.2.6 <i>Part IV.6 of the Internal Control Guidelines provides that the Management should establish and maintain effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with, and which enable the firm, its auditors and other interested parties, such as the SEHK and the SFC, to carry out routine and ad hoc comprehensive reviews or investigation to assess such compliance.</i></p>	<p>Nil</p>



Sponsor Guidelines	Code of Conduct
1.5 Systems and Controls and Internal Assessment	
<p>1.5.1 A sponsor should have effective systems and controls in place to ensure:</p> <ul style="list-style-type: none"> (1) adequate supervision and management of its employees who perform the services of a sponsor; (2) that employees do not act beyond their proper authority; and <p><i>Note:</i></p> <p><i>Employees carrying out any sponsor work should be adequately supervised and managed, and the Management should ensure that effective communication is maintained with staff at the operational level such that it is kept abreast of any key issues and risks areas relating to the firm's sponsor work.</i></p>	<p>17.11(e) Accordingly, Management must put in place appropriate systems, controls and procedures to govern sponsor work, which include:</p> <ul style="list-style-type: none"> (iv) adequate supervision and management of the staff who carry out the work; and that the staff do not act beyond their proper authority;
<p>1.5.1 A sponsor should have effective systems and controls in place to ensure:</p> <ul style="list-style-type: none"> (3) its compliance with all laws, regulations, codes and guidelines, including the Listing Rules, which may be applicable to the work of a sponsor. 	<p>17.11 A sponsor should maintain sufficient resources and effective systems and controls to ensure that the sponsor is able to meet and does meet all its obligations and responsibilities under the Code and in particular this paragraph and the Listing Rules.</p>
<p>1.5.2 A sponsor should keep a complete and up-to-date list of all the sponsor work that has been and is being undertaken. The list should include the names of the companies being advised, the composition of the teams designated for the sponsor work (including any variations thereto) and the title and role of each team member from start to finish. Such information should be made available to the SFC upon request.</p>	<p>17.10(b) A sponsor should keep a record of all sponsor work. On request by the SFC a sponsor should be able to provide an up-to-date list of sponsor work undertaken setting out the names of client companies, the composition of Transaction Teams (including any variations) and the names, titles and roles of staff assigned to each listing.</p>
<p>1.5.3 A sponsor should carry out an assessment annually in order to ensure that its systems and</p>	<p>17.12 A sponsor should carry out an assessment annually in order to ensure that its systems and controls remain effective. Any material</p>



Sponsor Guidelines	Code of Conduct
<p>controls remain effective. Any material non-compliance issue should be reported to the SFC promptly.</p> <p><i>Note:</i></p> <p><i>The annual assessment under paragraph 1.5.3 may take the form of an internal and/or external audit. A sponsor should devise its own programme based on its assessment of risks related to its operations, the firm's business structures, its own internal systems and the track record of compliance including, but not limited to, any complaints received either from within or from third parties and any regulatory concerns raised by regulators (such as the SFC and/or the SEHK) in the period under review.</i></p>	<p>non-compliance issue should be reported to the SFC promptly.</p> <p><i>Note: The annual assessment may take the form of an internal and/or external audit. A sponsor should devise its own programme based on its assessment of risks related to its operations, the firm's business structures, its own internal systems and the track record of compliance including, but not limited to, any complaints received either from within or from third parties and any regulatory concerns raised by the regulators in the period under review.</i></p>
<p>1.5.4 Records of the following appointments and assessments made by the Management should be properly kept to demonstrate its compliance with the Sponsor Guidelines:</p> <p>(1) the appointment of the transaction team for each sponsor engagement under paragraphs 1.1.3 and 1.2.5;</p>	<p>17.10(c) In respect of each listing assignment, a sponsor should keep records, including relevant supporting documents and correspondences, within its control relating to:</p> <p>(i) the Transaction Team under paragraph 17.11(c) and any subsequent variations within the Transaction Team;</p>
<p>1.5.4 (2) the appointment of a responsible officer or an executive officer as a Principal under Paragraph 1.3.1, the cessation of such appointment, and the decision-making process of such appointment; and</p>	<p>Nil</p>
<p>1.5.4 (3) the annual assessment of the sponsor's internal systems and controls under paragraph 1.5.3.</p>	<p>17.10(a) A sponsor should document its systems and controls governing sponsor work and the annual assessment required under paragraph 17.12.</p>



Profile of respondents

The SFC received 71 responses to the Consultation Paper. Below is a profile of the respondents.

<u>Category</u>	<u>No. of respondent(s) in the category</u>
Accountants and consultancy firms	8
Corporate governance associations and investors' group	10
Individuals	15
Industry and professional bodies	14
Investment companies and funds (<i>Note 1</i>)	5
Lawyers	6
Lawyers (<i>Note 2</i>)	5
Legislative Council member	1
Listed companies	1
Regulatory body	1
Sponsor firms	5
Total	<hr/> 71

Notes:

1. 1 pension fund submitted comments on behalf of 5 pension funds.
2. 5 law firms submitted comments on behalf of sponsor firms.



List of respondents to the Consultation Paper

Respondents with no objection to publication of name and content of submission (in alphabetical order).

1. Andrew F. Tuch
2. APG
3. Asian Corporate Governance Association
4. Association of Chartered Certified Accountants
5. Baker & McKenzie
6. British Chamber of Commerce
7. California State Teachers' Retirement System
8. Cbus
9. Charltons, on behalf of:
 - Altus Capital Limited
 - Anglo Chinese Corporate Finance, Limited
 - Asian Capital (Corporate Finance) Limited
 - Emperor Capital Limited
 - Haitong International Capital Limited
 - Investec Capital Asia Limited
 - Kingsway Capital Limited
 - Optima Capital Limited
 - Quam Capital Limited
 - Somerley Limited
 - WAG Worldsec Corporate Finance Limited
 - Yuanta Securities (Hong Kong) Company Limited
10. China Merchants Securities (HK) Co., Ltd.
11. Chubb Group of Insurance Companies
12. Clifford Chance / Davis Polk & Wardwell, on behalf of
 - Barclays Capital Asia Limited
 - BNP Paribas Capital (Asia Pacific) Limited
 - BOC International Holdings Limited
 - CCB International (Holdings) Limited
 - China International Capital Corporation Hong Kong Securities Limited
 - CIMB Securities Limited
 - CITIC Securities International Company Limited
 - Citigroup Global Markets Asia Limited
 - Credit Suisse (Hong Kong) Limited



- Daiwa Capital Markets Hong Kong Limited
 - Deutsche Securities Asia Limited
 - Goldman Sachs (Asia) L.L.C.
 - The Hongkong and Shanghai Banking Corporation Limited
 - Jefferies Hong Kong Limited
 - J.P. Morgan Securities (Far East) Limited
 - Macquarie Capital Securities Limited
 - Merrill Lynch Far East Limited
 - Morgan Stanley Asia Limited
 - Nomura International (Hong Kong) Limited
 - Religare Capital Markets (Hong Kong) Limited
 - Rothschild (Hong Kong) Limited
 - Standard Chartered Securities (Hong Kong) Limited
 - UBS Securities Hong Kong Limited
13. CLP Holdings Limited
 14. CompliancePlus Consulting Limited
 15. CPA Australia Ltd
 16. Dr. Francis Liu
 17. East Capital
 18. Ernst & Young
 19. F&C Management Limited
 20. FIL Investment Management (Singapore) Limited
 21. Fulbright Capital Limited
 22. Guardian Regulatory Consulting Limited
 23. Henderson Global Investors
 24. Herbert Smith
 25. Hermes Equity Ownership Services Limited, on behalf of
 - British Coal Staff Superannuation Scheme
 - Mineworkers Pension Scheme
 - The BBC Pension Trust
 - La Caisse de Dépôt et Placement du Québec
 - Canada's Public Sector Pension Investment Board
 26. Hong Kong Institute of Certified Public Accountants
 27. Hong Kong Investment Funds Association
 28. Hong Kong Securities Association
 29. Hong Kong Venture Capital and Private Equity Association
 30. International Corporate Governance Network



31. Investment Banking Compliance Group
32. Kinetic Partners (Hong Kong) Limited
33. KPMG
34. Lee Shek Hang
35. Lee Ta Chung
36. Linklaters, on behalf of
 - ABC International Holdings Limited
 - BOC International Holdings Limited
 - BOCOM International Holdings Company Limited
 - CCB International (Holdings) Limited
37. Louisa Mak
38. Norton Rose
39. Piper Jaffray Asia Ltd.
40. PricewaterhouseCoopers
41. Public Shareholders Group
42. Regina Ip
43. Rico Mak
44. SBI E2-Capital (HK) Limited
45. Shearman & Sterling
46. ShineWing Risk Services Limited
47. State Board of Administration of Florida
48. Stephenson Harwood, on behalf of
 - Ample Capital Limited
 - Celestial Capital Limited
 - First Shanghai Capital Limited
 - Guangdong Securities Limited
 - Kingsway Capital Limited
 - New Spring Capital Limited
 - OSK Capital Hong Kong Limited
 - Partners Capital International Limited
 - South West Capital Limited
 - VC Capital Limited
49. Suen Chi Wai
50. The American Chamber of Commerce in Hong Kong
51. The Association of Hong Kong Professionals
52. The Hong Kong Corporate Counsel Association Limited
53. The Hong Kong Institute of Chartered Secretaries



54. The Hong Kong Society of Financial Analysts
55. The Law Society of Hong Kong
56. Troutman Sanders, on behalf of the following participating members of Chinese Securities Association of Hong Kong Company Limited
 - ABC International Holding Limited
 - BOC International Holdings Limited
 - BOCOM International Holdings Company Limited
 - CCB International (Holdings) Limited
 - China Everbright Securities International Limited
 - China Merchants Securities (HK) Co., Ltd.
 - China International Holdings Limited
 - CITIC Securities International Company Limited
 - Essence International Financial Holdings Limited
 - GF Holdings (HK) Corp., Ltd.
 - Guangdong Securities Limited
 - Guosen Securities (HK) Financial Holdings Company, Limited
 - Guotai Junan International Holdings Limited
 - Haitong International Securities Group Limited
 - ICBC International Holdings Limited
 - Shenyin Wanguo (H.K.) Limited
57. Universities Superannuation Scheme Limited
58. 李德泰
59. 李錦霞
60. 李淑霞
61. 麥麗貞

Respondents who requested to withhold identity / submission.

10 submissions



Glossary

Application Proof	an advanced proof of the listing document submitted with the listing application under the Listing Rules
CFA Code	Corporate Finance Adviser Code of Conduct
CO	Companies Ordinance
Code of Conduct	Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission
Consultation Paper	Consultation Paper on the regulation of sponsors dated May 2012
expert	includes accountant, engineer, appraiser and any other person whose profession gives authority to a statement made by him
expert sections/reports	in relation to a listing document, any part of the listing document purporting to be made on the authority of an expert or purporting to be a copy of or extract from a report, opinion, statement or valuation of an expert where the expert gives consent for the inclusion in the listing document of the copy or extract and the listing document includes a statement that he has given and has not withdrawn such consent
HKEx	Hong Kong Exchange and Clearing Limited
INED	independent non-executive director
IPO	initial public offering
listing applicant	an applicant applying for a listing of its securities on the Stock Exchange
listing application	an application submitted by a listing applicant in connection with the listing of its securities and all documents in support of or in connection with the application, including any replacement of, and amendment and supplement to, the application
listing document	a prospectus, a circular and any equivalent document (including a scheme of arrangement and introduction document) issued in connection with a listing application
Listing Rules	the Rules Governing the Listing of Securities on the Stock Exchange (“Main Board Listing Rules”); references to the Main Board Listing Rules should be taken also to refer to the equivalent GEM Listing Rules
Management	includes a sponsor’s Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers and other senior management



Appendix F

	personnel
MD&A	a section of the listing document setting out the management discussion and analysis of financial performance and condition of a listing applicant
minimum appointment period	the minimum period that a sponsor should be formally appointed by a listing applicant before a listing application is made
non-expert sections	in relation to a listing document, any part of the listing document that is not part of any expert section
PN21	Practice Note 21 of the Listing Rules
Provisions	Paragraph 17 of the Code of Conduct
regulators	the SFC and/or the Stock Exchange as appropriate
REIT	Real Estate Investment Trust
SFC	Securities and Futures Commission
SFO	Securities and Futures Ordinance
Sponsors Guidelines	Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying for or continuing to act as Sponsors and Compliance Advisers
Stock Exchange	The Stock Exchange of Hong Kong Limited
UK	United Kingdom
US	United States of America
WPIP	Web Proof Information Pack