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July 19, 2012

By Hand and by Fax (2810 5385)
By Email (sponsors@sfc.hk)

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

Dear Sirs,

Re: Consultation Paper on the regulation of sponsors

We refer to the Consultation Paper on the regulation of sponsors issued by The Securities and Futures Commission in May 2012 and enclose herewith our response to some of the consultation questions for your kind consideration.

Please do not hesitate to contact

Yours faithfully

Shearman & Sterling
Encl.

HKDOCS01-#177611

Shearman & Sterling's response to Questions nos. 18, 26, 27, 28 and 32 of the Consultation Paper on the regulation of sponsors

We welcome the Commission's efforts in enhancing the regulatory regime for sponsors. Since the last round of public consultation in 2005, IPOs in Hong Kong have grown significantly both in terms of volume and complexity. We agree that the quality of sponsors' work is of great importance and share the Commission's concerns that there were instances in which the standards of sponsor work have fallen short of reasonable expectations. In particular, we support the proposal to consolidate all new and existing sponsor obligations in the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (the "Code of Conduct") and agree that it is important for the Code of Conduct to provide clear requirements and guidelines on the expected quality of sponsor work.

While we welcome the Commission's initiatives, we have concerns over some of the consultation proposals, namely:

(a) the publication of the Application Proof on the HKEx's website;

(b) only one sponsor on each engagement;

(c) where more than one sponsor is allowed, all sponsors should meet the Listing Rules independence requirements; and

(d) sponsors should be jointly and severally responsible for complying with the requirements under the Code of Conduct in relation to the listing application.

We also set out below some comments on the proposed clarification regarding the extension of prospectus liability under the Companies Ordinance to sponsors.

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?

There are undesirable unintended consequences to follow from the early disclosure of the Application Proof, including:

- ***Premature disclosure of financial and sensitive information***

  The intervening period from the filing of A1 application to the expected listing date can be significant. For most cases, it can take up the bulk of the six-month validity period set out in rule 9.03 of the Listing Rules. The local and global market conditions may add further delay to the process. Any premature disclosure of financial and other sensitive information such as average selling price, key supplier/customer information will likely raise grave concerns with potential applicants, especially at a time when there is little certainty of the outcome of their applications.

- ***Differences between the Application Proof and the final listing document might cause confusion***

Such differences are inevitable no matter how advanced and ready the Application Proof would be. It will not be helpful for investors or analysts to pick up those differences or any additional information contained in the Application Proof. The publication of the Application Proof leads to unwarranted questions and adds to unnecessary litigation risk especially if securities class actions are made possible in Hong Kong.

- ***Regulatory implications for overseas listed issuers***

  For listing applicants which are already listed on an overseas stock exchange, posting the Application Proof on the HKEx's website is likely to trigger a corresponding disclosure requirement under the rules of the overseas stock exchange. This can be unduly onerous to the applicants. Any further disclosure requirements to highlight subsequent changes to the Application Proof will make the exercise even more onerous.

  Publication of the Application Proof might severely limit the windows of filing opportunities for a company already listed on an overseas stock exchange. Guidance Letter (GL6-09) issued by the HKEx requires the Application Proof (depending on the timing of the listing application) to include figures in audited or advanced draft form covering a stub period after the date of the company's latest audited accounts. In order to do without releasing the stub period figures on the overseas stock exchange, a potential overseas listed applicant will be left with limited windows of opportunities to file its listing application to coincide with the release of its interim/quarterly results on the overseas stock exchange.

  We would urge the Commission to consider the regulatory implications for overseas listed issuers before introducing the new requirement. It has been a priority of the HKEx to attract listings of overseas companies and we have seen an increasing number of overseas listed issuers seeking a dual primary/secondary listing in Hong Kong, including:

Date of listing in Hong Kong	Primary listing in Hong Kong	Secondary listing in Hong Kong	Overseas stock exchange(s)
Dec 21, 2011	Techcomp (Holdings) Ltd. (01298)		Singapore Exchange
Dec 7, 2011	Melco Crown Entertainment Ltd. (06883)		NASDAQ
Dec 1, 2011		Coach, Inc. (06388)	New York Stock Exchange
Oct 18, 2011		CapitaMalls Asia Ltd. (06813)	Singapore Stock Exchange
Jul 12, 2011	China Print Power Group Ltd. (06828)		Singapore Exchange
Jul 8, 2011	Elec & Eltek International Co. Ltd. (01151)		Singapore Exchange
Jun 29, 2011		Kazakhmys PLC (00847)	London Stock Exchange
Jun 24, 2011	Courage Marine Group Ltd. (01145)		Singapore Exchange
May 25, 2011		Glencore International plc (00805)	London Stock Exchange

Date of listing in Hong Kong	Primary listing in Hong Kong	Secondary listing in Hong Kong	Overseas stock exchange(s)
Apr 14, 2011		SBI Holdings, Inc. (06488)	Tokyo Stock Exchange & Osaka Securities Exchange
Dec 23, 2010	Hengxin Technology Ltd. (01085)		Singapore Exchange
Dec 21, 2010	China Animal Healthcare Ltd. (00940)		Singapore Exchange
Dec 8, 2010		Vale S.A. (06210 / 06230)	BM&FBOVESPA and New York Stock Exchange
Dec 6, 2010	Novo Group Ltd. (01048)		Singapore Exchange
Dec 1, 2010	China Gold International Resources Corp. Ltd. (02099)		Toronto Stock Exchange
Oct 22, 2010	China New Town Development Co. Ltd. (01278)		Singapore Exchange
Oct 6, 2010		Midas Holdings Ltd. (01021)	Singapore Exchange
Sep 30, 2010	Sound Global Ltd. (00967)		Singapore Exchange
May 25, 2010	Prudential plc (02378)		New York Stock Exchange and London Stock Exchange
Mar 1, 2010	Z-Obee Holdings Ltd. (00948)		Singapore Exchange
Jan 29,2010		SouthGobi Resources Ltd. (01878)	Toronto Stock Exchange

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?

Hong Kong has become a listing hub for international companies operating in different industry sectors and we believe there are cases where an issuer could benefit from the expertise of more than one sponsor (e.g. experience in the relevant industry and knowledge on country specific matters etc). We do not think it is appropriate to impose any limit and each applicant should be allowed to decide on the number of sponsors to be appointed taking into account the facts and circumstances of its own case.

We do not agree that multiple sponsors would necessarily increase the risk of fragmentation of work and gaps. Although the "lead" sponsor may act as the overall coordinator, due diligence is usually conducted as a joint exercise with representatives from each sponsor participating with the same vigor and intensity. As long as the identity of the "lead" sponsor and the responsibilities of the respective sponsors involved have been agreed by the parties and are set out clearly at the outset, the sponsors should be able to retain adequate control over the listing application process at all times and the risk of the dispersal of effective responsibility should not be significant. On the other hand, the benefits in having "an extra pair of eyes" in the form of an additional sponsor are significant as the chances of spotting issues which a sole sponsor may

have missed are considerably increased. This should eventually have a positive effect on disclosure quality.

Last but not least, we note that a number of disciplinary actions against sponsors taken by the Commission in recent years involved listings with only one sponsor, e.g. the listings of Hontex International Holdings Limited, Tungda Innovative Lighting Holdings Limited, Codebank Limited and Euro Asia Agriculture (Holdings) Company Limited.

Q27. If more than one sponsor is allowed, do you agree that they should all be required to meet the Listing Rules independence requirements? If not, why not?

We believe the long term development of the Hong Kong capital market will benefit from broader market access by participants with multiple offerings. Those sponsors who are members of a global financial institution should not be categorically disqualified from sponsor opportunities as a result of certain prior or preexisting relationships that are caught by rule 3A.07 of the Listing Rules, some of them are somewhat overreaching. The rule sets out a long list of factors to be taken into account in determining the independence of a sponsor. In particular, under rule 3A.07(9) a sponsor will not be considered independent if any member of the sponsor group has a current business relationship with the applicant or any of its related parties which might reasonably give rise to a perception that the sponsor's independence would be so affected. There is no "materiality" threshold in rule 3A.07(9) and the use of the word "perception" further widens the application of the rule.

A sponsor which is a member of a global financial institution could be easily caught by the "independence" test if any member of the sponsor group provides pre-IPO loans or other banking facilities to the listing applicant or its related parties. If only independent entities are allowed to act as sponsors, the new requirement for all sponsors to be independent may effectively rule out a number of big investment banks from acting as sponsors. While it is the intention of the Commission to better safeguard the interest of public investors with the proposed rule changes, a number of investment banks may choose to act as underwriters only so that they may continue their banking relationship with the listing applicant and avoid the increased responsibilities attached to sponsors. This may have a detrimental effect on potential issuers and the market as a whole as the larger investment banks would not be contributing with their significant experience in the capacity of sponsors. We would accordingly urge the Commission to consider the practical impact of the changes before introducing the new requirement.

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?

It is stated in paragraph 109 of the Consultation Paper that if the Commission's proposal to have only one sponsor is not adopted, the Commission would clarify in the Code of Conduct that where a listing applicant appoints more than one sponsor:

(a) the appointment does not relieve any of the sponsors of any of their responsibilities under the Code of Conduct; and

(b) all sponsors are jointly and severally responsible for complying with the requirements under the Code of Conduct in relation to the listing application.

We agree that similar to rule 3A.10(3) of the Listing Rules, each of the sponsors should comply with all expectations of a sponsor under the Code of Conduct. However, we do not support the proposal to impose on sponsors "joint and several" responsibility as set out in (b) above. Each sponsor should be able to discharge its duties in full so long as it has complied with all the responsibilities of a sponsor under the Code of Conduct. While it is entirely reasonable to expect that sponsors should co-ordinate closely with one another on the due diligence exercise, it would be unduly onerous to make one sponsor liable for the unsatisfactory standard of work of the other sponsor(s). As noted in paragraph 109 of the Consultation paper, it would be difficult in practice for each sponsor to actively monitor the work of the other sponsor(s) to ensure that there is no breach of obligation by any of them.

Q32. Do you agree that it should be made clear that sponsors are liable for untrue statements (including material omissions) in a prospectus? If not, why not?

The proposed clarification would expose sponsors to legal actions brought by investors and criminal prosecution. Given the potential impact, we would submit that:

- any extension of prospectus liability to sponsors should be made by amending the relevant statutory provisions following the usual legislative process; and

- the scope of the exercise should not be limited to amending section 40 (civil liability for misstatements in prospectus) and section 40A (criminal liability for misstatements in prospectus) of the Companies Ordinance to make it clear that the provisions apply to sponsors. We would suggest that the issue of prospectus liability for sponsors should be subject to a more comprehensive review covering questions such as:

  - should sponsors be subject to civil liability under section 40 but not criminal liability under section 40A?

  - if criminal liability under section 40A is to apply, should sponsors be liable only if they "knowingly" or "recklessly" include the untrue statement?

  - would additional defenses be introduced?

Before embarking on the above legislative process we would invite the Commission to re-consider whether any proposed clarification is required. Under the Securities and Futures Ordinance, a sponsor could have liability under:

- sections 107 and 108: criminal liability for making fraudulent or reckless misrepresentation and civil liability for making fraudulent, reckless or negligent misrepresentation for the purpose of inducing another person to acquire securities (e.g. opinions and confirmations made by the sponsor in the prospectus);

- sections 277 and 298: civil and criminal liability where a person discloses, circulates or disseminates, or authorizes or is concerned in the disclosure, circulation or dissemination of false or misleading information inducing transactions; and

- section 384: criminal offence for provision of false or misleading information to the Commission or the HKEx.

Moreover, the Commission seems to have sufficient powers to reprimand sponsors without relying on statutory provisions. The recent Hontex case is a case in point where Mega Capital was subject to a significant fine and revocation of its license. The fact that a sponsor may risk losing its license should be a sufficient deterrent to ensure adequate due diligence is carried out.

Any attempt to shore up the Hong Kong reputation on its regulatory regime should be weighed carefully against the issues described above, many of which we believe will have a bearing on our competitiveness as an international finance centre.

Should you have any questions or comments on the above, please feel free to pass them on to

Shearman & Sterling
July 19, 2012