

HKEx News Release

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THE STOCK EXCHANGE OF HONG KONG LIMITED (A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Amendments to the Listing Rules relating to the regulation of sponsors and compliance advisers

The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx) has published amendments to the Main Board Listing Rules and the Growth Enterprise Market (GEM) Listing Rules (together, the Rules) regarding the regulation of sponsors and compliance advisers.

The Rule amendments implement the policy set out in the Consultation Conclusions on the Regulation of Sponsors and Independent Financial Advisers published jointly by the Exchange and the Securities and Futures Commission (SFC) in October 2004 (the 2004 Joint Conclusions), to the extent the 2004 Joint Conclusions related to sponsors and compliance advisers. Namely, in future, the SFC, as statutory regulator, will be responsible for assessment of eligibility, on-going supervision, discipline and enforcement of the conduct of corporate finance advisers who discharge the work of sponsors and compliance advisers whilst the Exchange, as market operator, will continue to be responsible for implementation and administration of the Rule requirements including the practice notes on due diligence. In this way, the Exchange and the SFC will minimise the extent of regulatory overlap.

The Rules will be amended, amongst other things:

- to provide that the Exchange will permit a firm to work as a sponsor or compliance adviser provided the firm is appropriately licensed or registered by the SFC. That is, the Exchange will no longer impose additional initial or continuing eligibility criteria; and
- to remove the Exchange's ability to sanction sponsors and compliance advisers. The SFC alone will be responsible for the discipline and sanctioning of sponsors and compliance advisers including in respect of breaches of the conduct standards evidenced by breaches of the Rules. The Exchange will continue to co-operate with the SFC in this regard as appropriate including, for example, referring suspected breaches for the SFC's consideration and possible investigation.

The amended Rules will commence on 1 January 2007 to coincide with the SFC's revised licensing regime becoming fully effective. A summary of the Rule amendments and the transitional arrangements for their implementation is set out below.

Commencing 1 January 2007, the Exchange will also amend its practice in relation to the eligibility of independent financial advisers (IFAs). Currently the Rules provide that IFAs must be appropriately licensed by the SFC and must be acceptable to the Exchange. The Exchange's practice is that firms will be acceptable if they have completed two significant corporate finance transactions. In light of the revisions to the SFC's licensing regime, from 1 January 2007, firms will be acceptable as IFAs if:

- the firm is appropriately licensed or registered to undertake sponsor work (i.e. it is licensed or registered under the Securities and Futures Ordinance for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a sponsor); or
- the firm meets the current the Exchange practice as to what is acceptable i.e. it has completed two significant corporate finance transactions.

"These Rule amendments complete a necessarily extensive undertaking to review and improve the regulation of sponsors and compliance advisers, providing a more even playing field and better protection for the Hong Kong market. They also minimise the regulatory overlap between the role of SFC and the Exchange, which should reduce compliance costs and facilitate business", HKEx's Head of Listing, Richard Williams, said.

Background

In conjunction with a consultation paper published in May 2003 (the 2003 Consultation Paper), HKEx and the SFC consulted jointly on the regulation of sponsors and IFAs.

The 2004 Joint Conclusions addressed: appointment of sponsors and compliance advisers; the role and responsibilities of issuers in assisting sponsors and compliance advisers; undertakings and declarations required to be given by sponsor and IFA firms; independence requirements for sponsors, compliance advisers and IFAs; and the roles and responsibilities of sponsors, compliance advisers and IFAs including the due diligence the Exchange expects they should typically perform.

In respect of eligibility of sponsors, compliance advisers and IFAs, the 2004 Joint Conclusions stated:

"Proposals to shift to the SFC as statutory regulator the responsibility for assessment of eligibility of sponsors and compliance advisers, and to remove the Exchange's ability to sanction sponsors and compliance advisers, including in respect of breaches of the conduct standards evidenced by breaches of the Rules. The Exchange will continue to co-operate with the SFC in this regard as appropriate including, for example, referring suspected breaches for the SFC's consideration and possible investigation."

“Respondents clearly endorsed the SFC, as statutory regulator, being responsible for assessment of eligibility, on-going supervision, discipline and enforcement of the conduct of corporate finance advisers who discharge the work of sponsors and IFAs, whilst the Exchange, as market operator, should continue to be responsible for implementation and administration of the Listing Rule requirements, including the practice notes on due diligence. We accept those views and have finalised the conclusions in this report on that basis.”

The 2004 Joint Conclusions also stated that the SFC would consult in relation to the detail of the proposed licensing/registration changes (the Phase 2 Consultation) and that once the SFC had revised its licensing regime, in order to avoid regulatory duplication, the Exchange intended to remove the existing eligibility criteria from the Rules. Until then, the Rules (relating to eligibility) would remain largely unchanged.

Rule amendments implementing the majority of the 2004 Joint Conclusions became effective on 1 January 2005. Rule amendments regarding the eligibility of sponsors, compliance advisers and IFAs have been on hold awaiting conclusion of the Phase 2 Consultation.

The SFC published its Phase 2 Consultation paper in June 2005 and its Phase 2 Consultation conclusions in April 2006. The Phase 2 Consultation conclusions set out specific eligibility criteria for sponsors and compliance advisers. They also referred to the Exchange and the SFC working together to amend the Rules as anticipated in the 2004 Joint Conclusions in relation to sponsors and compliance advisers.

The SFC’s new regime is subject to a transitional period. It will become fully effective on 1 January 2007. Consequently, it is now appropriate to amend the Rules as anticipated in the 2004 Joint Conclusions.

Commencement of the amended Rules on 1 January 2007 will be subject to a transitional provision set out in new Main Board Rule 3A.31 and GEM Rule 6A.38. Most significantly, it will enable the Exchange to sanction sponsors and compliance advisers in cases that are pending as at 31 December 2006.

Timetable

Publication of the Rule amendments on the HKEx website	24 October 2006
Distribution of the Rule amendments	mid-November 2006
Commencement of the amended Rules	1 January 2007