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**DRAFT PROPOSED AMENDMENTS
TO THE LISTING RULES
RELATING TO THE REGULATION OF SPONSORS
AND INDEPENDENT FINANCIAL ADVISERS**

May 2004



Hong Kong Exchanges and Clearing Limited

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Set out below are the draft proposed amendments to the Exchange Listing Rules, which were referred to in the press release published by the Stock Exchange of Hong Kong Limited (the Exchange) on 4 May 2004. The indicative timetable for finalisation and implementation of the draft rule amendments is as set out in that press release.

(Please note: references to amendments that we anticipate will be considered in 2005 are simply to help you understand how the Exchange anticipates the regime will work. Of course, the detail may change.)

1. MAIN BOARD LISTING RULE AMENDMENTS

(a) Sponsors

(i) Suggested amendments to commence on 1 October 2004

- Insert Chapter 3A (attached as Appendix A) into the Main Board Listing Rules.
- Introduce a new practice note, Due diligence by sponsors in respect of initial listing applications (attached as Appendix B).
- Replace the definition of “sponsor” in rule 1.01 with the following:

“the same meaning as in rule 3A.01”.
- Remove the following words from rule 2.09:

“by an Exchange Participant, issuing house, merchant bank or other similar person acceptable to the Exchange”.
- In rule 2.09 replace the words “Chapter 3” with “Chapter 3A”.
- Replace the first paragraph of rule 2A.09 with the following:

“In addition to its powers to suspend or cancel a listing, if the Listing Committee finds there has been a breach of the Exchange Listing Rules, including any Practice Note or any declaration made or undertaking given pursuant to the Exchange Listing Rules, by any of the parties named in rule 2A.10, the Listing Committee may:-”.
- Amend rule 2A.10(f) to include the following words after “applicant”:

“ including a sponsor in its capacity as an Initial Sponsor or Continuing Sponsor”.
- Replace the full stop at the end of rule 2A.10(h) with a semi-colon and insert a new paragraph as follows to be rule 2A.10(i):

“any independent financial adviser of a listed issuer.”.

- Remove rules 3.01 to 3.04.
- Insert a note below rules 8.21A and 8.21B as follows:

“Note: Refer to Chapter 3A for other sponsor obligations.”

- Amend rule 13.02 to refer to the new Chapter names.
- Replace paragraphs 1 to 3 of rule 19A.05 with the following:

“(1) Rules 3A.25 to 3A.27 are modified so as to:

- (a) require that the PRC issuer not terminate the role of an Initial Sponsor or a Continuing Sponsor until the PRC issuer has appointed a replacement sponsor;*
- (b) require that both during and after the Fixed Period the PRC issuer and the Continuing Sponsor immediately notify the Exchange of termination of the Continuing Sponsor, in each case stating the reason why such appointment was terminated; and*
- (c) require that the PRC issuer and the new sponsor immediately notify the Exchange of the new sponsor’s appointment.”*

- In rule 19A.05(4), which will become rule 19A.05(2), replace “rules 19A.05(1)” with “Chapter 3A”.
- Amend rule 19A.06 as marked:

“19A.06 ~~The requirements of rule 3.04 are replaced in their entirety by the following provisions:—In addition to the responsibilities of the sponsor set out in Chapter 3A of the Exchange Listing Rules:~~

(1) ~~Particular importance is attached to the sponsor’s role. In sponsoring a PRC issuer for listing, the sponsor has a particular responsibility to satisfy himself, on all available information, that the PRC issuer is suitable to be listed and that its directors and supervisors appreciate the nature of their responsibilities and can be expected to honour their obligations under their directors’ or supervisors’ undertakings, the Exchange Listing Rules and under applicable PRC law and regulations. In particular, the sponsor must be satisfied~~

~~that the directors of the PRC issuer understand what is required of them under the Exchange Listing Rules and applicable laws and regulations.~~

- (21) ~~If the securities of the PRC issuer also are or are to be listed on one or more stock exchanges, the sponsor must make a written submission to the Exchange stating whether in the sponsor's opinion the PRC issuer's directors appreciate the differences as well as the similarities between H shares and the shares listed on such other stock exchanges and between the rights and obligations of holders of such shares, and the basis for such opinion. The sponsor must also explain how the PRC issuer's directors propose to coordinate and comply in a timely manner with their obligations under the requirements of the Exchange and such other stock exchanges;~~
- (32) ~~In its role after listing, the sponsor must inform the PRC issuer on a timely basis of any amendment or supplement to the Exchange Listing Rules and any new or amended law, regulation or code in Hong Kong applicable to such issuer. Without limiting the generality of Chapter 3A~~rule 19A.05(1)~~, the sponsor must provide advice to such issuer on the continuing requirements under the Exchange Listing Rules and applicable laws and regulations; and~~
- (43) ~~Where the authorised representatives of the PRC issuer are expected to be frequently outside Hong Kong, the sponsor must act as the PRC issuer's principal channel of communication with the Exchange in Hong Kong. The sponsor must also provide the Exchange with the names, home and office telephone numbers and where available, facsimile numbers, of at least one of its officers and an alternate who will act as the sponsor's contact with the Exchange and the PRC issuer."~~

- In rule 19A.22(1), replace the existing reference to "rule 19A.06(2)" with "rule 19A.06(1)".
- Replace the existing reference to "rule 3.01" in rule 21.03 with a reference to Chapter 3A.
- In Appendix 5 Form E of the Main Board rules remove from paragraph (3) the following:

~~" , and I confirm that I have complied with all of the requirements laid down in the Model Code for Sponsors as contained in Appendix 9 to the Listing Rules".~~

- Remove Appendix 9, the Model Code for Sponsors.
- (ii) **Suggested amendments to commence in 2005 (once SFC licensing regime is in place)**
 - We anticipate rules 3A.01(1) and 3A.01(7) will be amended to replace Exchange discretion regarding the eligibility of sponsors with a reference to the revised eligibility criteria.
- (b) **Independent Financial Advisers**
 - (i) **Suggested amendments to commence on 1 October 2004**
 - Insert rules 13.80 to 13.86 (attached as Appendix C) into Chapter 13 under a subheading: “Independent financial advisers”.
 - No further incidental amendments would be required.
 - (ii) **Suggested amendments to commence in 2005**
 - We do not anticipate any amendments being required in 2005.

2. GEM LISTING RULE AMENDMENTS

- (a) **Sponsors**
 - (i) **Suggested amendments to commence on 1 October 2004**
 - Insert into the GEM Listing Rules, as Chapter 6A, rules in the substantially the same terms as those proposed as Chapter 3A of the Main Board Listing Rules. Differences will include that the definitions of Initial Sponsor and Continuing Sponsor in the GEM rules (i.e. at rule 6A.01) will refer to the entity being on the GEM list of sponsors rather than being “*acceptable to the Exchange*”, and where possible for the declarations and undertaking referred to in Chapter 6A we will adopt the timing in the current GEM rules (e.g. the declaration in Appendix 5A is required to be lodged at least 25 clear business days prior to the provisional hearing date of the application by the GEM Listing Committee).
 - Introduce a new practice note, Due diligence by sponsors in respect of initial listing applications, in the same terms as that proposed for the Main Board Listing Rules.
 - Remove rules 2.16, 6.01 to 6.03, 6.25 to 6.27, 6.34 to 6.48, 6.51 to 6.64, 11.09 and 17.81 to 17.87, as well as the note 5 to rule 11.12.
 - Amend rule 6.04 by replacing “*rule 6.01*” with “*rules 6A.02 and 6A.03*” and replacing “*rule 6.02*” with “*rule 6A.05*”.

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- Replace rule 12.24(1) with the following:
“in the case of a new applicant, the declarations and undertakings required by Chapter 6A, as appropriate”.
- Amend rule 13.08 by deleting *“(as referred to in rule 6.35)”* from Note 1.
- Amend rules 18.45, 18.63 and 18.75 by replacing *“as notified to the issuer pursuant to rule 6.36”* with *“of the nature referred to at rule 6A.09”*.
- Amend rule 20.59 by deleting *“(as referred to in rule 6.36)”* from Note 12.
- Amend rules 27.04, 28.10, 30.08, 30.22 by replacing references to *“rule 6.01 or 6.02”* with *“rules 6A.02, 6A.03 and 6A.05”*.
- Replace rule 28.14(1) with the following:
“in the case of a new applicant or listed issuer required by rules 6A.02, 6A.03 or 6A.05 to have a Sponsor retained, the signed declarations and undertakings required by Chapter 6A, as appropriate”.
- Replace rule 30.28 (1) with the following:
“in the case of a new applicant or listed issuer required by rules 6A.02, 6A.03 or 6A.05 to have a Sponsor retained, the signed declarations and undertakings required by Chapter 6A, as appropriate”.
- Amend paragraph 54 of Appendix 1A, paragraph 43 of Appendix 1B and paragraph 54 of Appendix 1C by replacing *“(as referred to in rule 6.36)”* with *“(of the nature referred to at rule 6A.09)”*.
- Amend Appendix 5A by replacing the terms of the undertaking referred to at paragraph 21 with the terms at rule 6A.06 (i.e. the equivalent of rule 3A.06), amending the declaration at paragraph 22 to be a declaration of the issuer only, and inserting a further declaration for the sponsor to be in the terms of the declaration at rule 6A.17 (i.e. the equivalent of rule 3A.17).
- Remove Note 1 of Appendix 5B and Note 2 of Appendix 5C.
- Replace the terms of Appendix 7G with the terms of the declaration referred to at rule 6A.17.
- Replace Appendix 7H with the declaration referred to at rule 6A.10.

- Amend Appendix 7I by replacing “Chapter 6” in Note 5 with “Chapters 6 and 6A”.
- Remove Appendix 7J.

(ii) Suggested amendments to commence in 2005

- We anticipate that what remains of Chapter 6 will need to be removed or amended and rules including, for example, rules 2.09, 2.15, 2.29, 3.07, 3.37(2) and 4.07(2) will need to be removed.

(b) Independent Financial Advisers

(i) Suggested amendments to commence on 1 October 2004

- Insert rules in the same terms as those proposed as rules 13.80 to 13.86 of the Main Board Listing Rules into the GEM Listing Rules as rules 17.90 to 17.96 under a subheading: “Independent financial advisers”.

(ii) Suggested amendments to commence in 2005

- We do not anticipate any amendments being required in 2005.

APPENDIX A

DRAFT SPONSOR RULES

We propose the following be inserted as new Chapter 3A of the Exchange Listing Rules.

Chapter 3A

SPONSORS

Definitions

3A.01 For the purposes of this Chapter:

- (1) “Continuing Sponsor” means any corporation or authorized financial institution acceptable to the Exchange that is licensed by or registered with the Commission under the applicable laws to be eligible to advise on corporate finance matters and who is appointed pursuant to rule 3A.03 for the Fixed Period or such longer or further period as is determined pursuant to rule 3A.05;
- (2) “expert” means every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him, who has with his consent been named as having prepared or certified any report or valuation that is used in connection with the listing document, with respect to the statement in such listing document, report, or valuation, which purports to have been prepared or certified by him;
- (3) “Fixed Period” means the period for which a listed issuer must retain a Continuing Sponsor pursuant to rules 3A.03 and 3A.05;
- (4) “Initial Sponsor” means any corporation or authorized financial institution acceptable to the Exchange that is licensed by or registered with the Commission under the applicable laws to be eligible to advise on corporate finance matters and who is appointed pursuant to rule 3A.02;
- (5) “listed issuer” for the purposes of this Chapter, has the same meaning as in rule 1.01 save that it does not include the case of debt securities, that is, it means any company or other legal person some of whose equity securities are already listed;
- (6) “new applicant” for the purposes of this Chapter, has the same meaning as in rule 1.01 save that it does not include applicants seeking listing of debt securities;

Note: Listings will include deemed new listings of equity securities, pursuant to rule 14.54.

- (7) “Practice Note” means the document [Due Diligence by sponsors in respect of listing applications] at Appendix [];

- (8) “sponsor” means Continuing Sponsors and Initial Sponsors; and
- (9) “sponsor group” means a sponsor and any associate or connected person of that sponsor.

Appointment of a sponsor

3A.02 A new applicant must appoint an Initial Sponsor to assist the new applicant with its initial application for listing.

3A.03 Subject to rule 3A.04 and without limiting rule 3A.05, a listed issuer must retain the services of a Continuing Sponsor after the date of initial listing of the listed issuer’s equity securities and until publication of the listed issuer’s financial results for the first full financial year after the date of initial listing of the listed issuer’s equity securities. For the purpose of this rule, a listed issuer may appoint a Continuing Sponsor that was not its Initial Sponsor.

3A.04 A listed issuer will not be required to retain a Continuing Sponsor under rule 3A.03 if the listed issuer has:

- (1) at least 2 directors each of whom:
 - (a) either:
 - (i) is, or has at some time during the previous 3 years, been licensed by the Commission to engage in Type 6 regulated activity as an individual; or
 - (ii) meets the test of competence for responsible officers of an organization licensed by the Commission to engage in a Type 6 regulated activity set out in the Commission’s Guidelines on Competence from time to time; and
 - (b) has not been:
 - (i) found by a court or other competent authority to have been fraudulent, dishonest or malfeasant;
 - (ii) convicted of a criminal offence which impugns honesty or integrity or the subject of unresolved criminal charges which impugns honesty or integrity;

Note: The Exchange expects that offences or charges such as minor road traffic offences will not impugn honesty or integrity.
 - (iii) censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
 - (iv) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration

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or other authorization is required by law;

- (v) disqualified by a court of competent jurisdiction from being a director;
- (vi) found culpable of market misconduct by the Market Misconduct Tribunal or any of its predecessors, or judged to have failed to abide by any legislation, codes, rules and guidelines promulgated or administered by the Exchange, the Commission, other regulators or any relevant exchanges overseas;
- (vii) a director, substantial shareholder, or involved in the management, of a corporation or business that:
 - (I) was wound up (otherwise than by a solvent members' voluntary dissolution) or was otherwise insolvent or had a receiver or administrator appointed, however described; or
 - (II) has been found to have committed the acts described in (i), (ii), (iii), (iv) or (vi) above; and

Note: An individual who demonstrates they meet these requirements for the purposes of this rule may still not be entitled to be licensed by the Commission.

- (2) a full-time compliance officer who:
 - (a) either:
 - (i) is, or has at some time during the previous 3 years, been licensed by the Commission to engage in Type 6 regulated activity as an individual; or
 - (ii) meets the test of competence for responsible officers of an organization licensed by the Commission to engage in a Type 6 regulated activity set out in the Commission's Guidelines on Competence from time to time;
 - (b) reports directly to (or is a member of) the board of directors; and
 - (c) has not been:
 - (i) found by a court or other competent authority to have been fraudulent, dishonest or malfeasant;
 - (ii) convicted of a criminal offence which impugns honesty or integrity or the subject of unresolved criminal charges which impugn honesty or integrity;

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Note: The Exchange expects that offences or charges such as minor road traffic offences will not impugn honesty or integrity.

- (iii) censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
- (iv) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law;
- (v) disqualified by a court of competent jurisdiction from being a director;
- (vi) found culpable of market misconduct by the Market Misconduct Tribunal or any of its predecessors, or judged to have failed to abide by any legislation, codes, rules and guidelines promulgated or administered by the Exchange, the Commission, other regulators or any relevant exchanges overseas;
- (vii) a director, substantial shareholder, or involved in the management, of a corporation or business that:
 - (I) was wound up (otherwise than by a solvent members' voluntary dissolution) or was otherwise insolvent or had a receiver or administrator appointed, however described; or
 - (II) has been found to have committed the acts described in (i), (ii), (iii), (iv) or (vi) above.

- Notes:*
1. *We do not consider a person to be a full-time compliance officer if they also maintain other substantial role in the company, for example, if they are also the chief financial officer.*
 2. *Meeting the requirements in this rule for the purposes of this rule does not entitle an individual to be licensed by the Commission.*

3A.05 At any time, the Exchange may direct a listed issuer to appoint a Continuing Sponsor for a period specified by the Exchange subject to such terms and conditions as the Exchange thinks fit. For the purpose of this rule, a listed issuer may appoint a different sponsor from its Initial Sponsor or any Continuing Sponsor appointed pursuant to rule 3A.03.

Note: It is likely that the Exchange will consider directing appointment of a Continuing Sponsor when a listed issuer has been held to have breached the Exchange Listing Rules, particularly when the breaches are persistent or serious or give rise to concerns about the adequacy of compliance arrangements or the directors' understanding of the Exchange Listing Rules

and their obligations to comply with the Exchange Listing Rules. The Exchange may direct appointment immediately following the period referred to in rule 3A.03 or at any time thereafter.

3A.06 At the time of first notification to the Exchange of the intended initial listing application, or, if the sponsor is appointed after such notification, then upon whichever is the earlier of the sponsor agreeing its terms of engagement with the new applicant or listed issuer, and the sponsor commencing work for the new applicant or listed issuer, the sponsor must give to the Exchange an undertaking, in the terms set out in Appendix [] to:

- (1) comply with the Listing Rules;
- (2) comply with the Practice Note;
- (3) use reasonable endeavours to ensure that all information provided to the Exchange during the listing application process is true in all material respects and does not omit material information required to be stated in the listing document or necessary to make the information provided, in light of the circumstances in which it was provided, not misleading, and to the extent that the sponsor subsequently becomes aware of information that casts doubt on the truth, accuracy or completeness of information provided to the Exchange, it will promptly inform the Exchange of such information; and
- (4) assist the Exchange in the performance of any of its functions, including any investigation and any proceedings.

Note: For declarations required to be given by sponsors, refer to rules 3A.10 and 3A.17.

3A.07 A new applicant or listed issuer and its directors, substantial shareholders and associates must insofar as is it reasonable, assist every sponsor appointed by the new applicant or listed issuer to perform its role, including but not limited to, by:

- (1) affording every sponsor appointed by the new applicant or listed issuer, a right of access at all times to all persons, premises and documents the sponsor thinks necessary for the performance of the duties of the sponsor as set out in this Chapter. In particular, terms of engagement with experts retained to perform services related to the listing application should contain clauses entitling the new applicant's or listed issuer's sponsors access to any such expert, the expert's reports (both written and oral), the terms of engagement, information provided to the expert, information provided by the expert to the Exchange or Commission and all other correspondence exchanged between the new applicant or listed issuer or its agents and the expert or the expert and the Exchange or Commission;
- (2) keeping every sponsor retained by the new applicant or listed issuer informed of any material change to the terms of engagement of any expert retained to perform services related to the listing application and the occurrence of any dispute with any such expert; and

- (3) providing to or procuring for a sponsor appointed by the new applicant or listed issuer all necessary consents to the provision of information to the sponsor by relevant parties and as requested by the sponsor.

Impartiality of sponsors

3A.08 A sponsor must perform its duties with impartiality and avoid relationships or connections with a new applicant or listed issuer that would compromise the sponsor's objectivity. Both the sponsor and the new applicant or listed issuer must make all reasonable enquiries and take appropriate action to ensure this is the case.

- Notes:*
1. *Refer to rule 3A.13 below regarding the appointment of more than one Initial Sponsor by a new applicant.*
 2. *In the event of an inconsistency between this rule and the Corporate Finance Adviser Code of Conduct or the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Exchange Listing Rules prevail. Refer also to rule 3A.23.*

Independence of sponsors

3A.09 At least one Initial Sponsor of a new applicant must be independent from the new applicant and a Continuing Adviser of a listed issuer must be independent from the listed issuer. The Exchange will consider that a sponsor is not independent if any of the following circumstances exist:

- (1) the sponsor group collectively holds or will hold, directly or indirectly, more than 5% of the issued share capital of the new applicant or listed issuer or an associate or connected person of the new applicant or listed issuer;
- (2) the fair value of the sponsor group's direct or indirect current or prospective shareholding in the new applicant or listed issuer exceeds or will exceed 15% of the consolidated net tangible assets of the sponsor and its subsidiaries at the most recent practice date;
- (3) any member of the sponsor group is an associate of the new applicant or listed issuer, save and except where that relationship arises because of holdings of an investment entity's discretionary clients;
- (4) 15% or more of the proceeds raised from the initial public offering of the new applicant are to be applied directly or indirectly to settle debts due to the sponsor group;
- (5) 30% of the business operations of the new applicant, listed issuer or controlling shareholder of the new applicant or listed issuer is funded by banking facilities provided by a member of the sponsor group;
- (6) the fair value of the direct or indirect shareholding of a director of the sponsor group or an associate of a director of the sponsor group in the new applicant or listed issuer exceeds HKD 5 million;

- (7) the fair value of the direct or indirect shareholding of an employee or director of the sponsor who is directly engaged in providing the subject sponsorship services to the new applicant or listed issuer, or an associate of such an employee or director, exceeds HKD 1 million;
- (8) a director of the sponsor group or an associate of a director of the sponsor group or an employee of the sponsor who is directly engaged in providing the subject sponsorship services to the new applicant or listed issuer or an associate of such an employee has a current business relationship with the new applicant or listed issuer, which would be reasonably considered to affect the sponsor's objectivity in performing its duties as set out in this Chapter, or might reasonably give rise to a perception that the sponsor's objectivity would be so affected; and new applicant listed issuer new applicant listed issuer
- (9) the sponsor or a member of the sponsor group is the auditor or reporting accountant of the listed issuer or new applicant.

- Notes:*
- 1. *In addition to being a breach of the Exchange Listing Rules, if it comes to the Exchange's attention that a sponsor is not independent as required by rule 3A.08, the Exchange will not accept documents produced by that sponsor in support of an application for listing or a request for approval or vetting of any document required under the Exchange Listing Rules.*
 - 2. *Sub-paragraphs (1) to (9) will not apply where the circumstance occurs because of an interest in a facility such as a managed account or managed fund held by the sponsor group or a relevant member of the sponsor group or associate of such member in relation to which that person or entity does not have discretion to select individual stocks to be acquired, held or disposed of.*
 - 3. *In the event of an inconsistency between this rule and the Corporate Finance Adviser Code of Conduct or the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Exchange Listing Rules prevail. Refer also to rule 3A.23.*

3A.10 At least one of the persons named as a responsible officer or executive officer of the sponsor must, on behalf of the sponsor, make a declaration in the terms set out in Appendix [], at the time of first notification to the Exchange of the intended listing application, or, if the sponsor is appointed after such notification, then immediately upon the earlier of the sponsor agreeing terms of engagement with the new applicant or listed issuer, and commencing work on the assignment. The declaration concerns the sponsor's independence from the new applicant or listed issuer, its directors and controlling shareholder(s).

- Notes:*
- 1. *A sponsor is required to give the declaration even if it is independent.*
 - 2. *For other undertakings and declarations required to be given by sponsors, refer to rules 3A.06 and 3A.17.*

- 3A.11 The sponsor and the new applicant or listed issuer must notify the Exchange as soon as possible upon any change in the circumstances set out in the declaration required by rules 3A.10.
- 3A.12 Without limiting rule 3A.11, at least one of the persons named as a responsible officer or executive officer for the purpose of the sponsor's licence must, on behalf of the sponsor, at the time of approval of the listing document, confirm there has been no material change to the circumstances declared pursuant to rule 3A.10.

Additional sponsors

- 3A.13 Where a new applicant has more than one Initial Sponsor:
- (1) the Exchange must be advised as to which of the Initial Sponsors is designated as the Initial Sponsor who would be the primary channel of communication with the Exchange concerning matters involving the listing application;
 - (2) the listing document must disclose whether each Initial Sponsor satisfies the independence test at rule 3A.09 and, if not, then how the lack of independence arises; and
 - (3) each of the Initial Sponsors assume an equal degree of responsibility and accountability for the accuracy and completeness of information contained in all submissions (including the listing documents) provided to the Exchange, in writing or otherwise, in respect of the new applicant's initial listing application and shall (save insofar as the Exchange Listing Rules designate the primary sponsor as having primary responsibility) be jointly and severally responsible for the discharge of the Initial Sponsors' duties as set forth in this Chapter.

- Notes:*
1. *The Exchange would normally expect, but does not require, the Initial Sponsor acting as the primary channel of information to be independent from the new applicant..*
 2. *In the case of a new applicant appointing more than one Initial Sponsor, each Initial Sponsor is subject to the rules in this Chapter.*

Initial Sponsors

- 3A.14 An Initial Sponsor is required to assist a new applicant with its initial application for listing. An Initial Sponsor must:
- (1) be closely involved in the preparation of the new applicant's listing documents;
 - (2) conduct reasonable due diligence inquiries to put itself in a position to be able to make the declaration referred to at rule 3A.17 and to otherwise support that declaration;
 - (3) ensure the requirements in rules 9.03 to 9.08 are strictly complied with;
 - (4) address all matters raised by the Exchange in connection with the listing application and ensure that all such matters are resolved to the satisfaction of

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the Exchange including providing to the Exchange, in a timely manner, such information as the Exchange may reasonably require for the purpose of verifying whether the Exchange Listing Rules are being or have been complied with by the sponsor, the new applicant or the new applicant's directors;

- (5) accompany the new applicant to any meetings with the Exchange that the new applicant is asked to attend, unless otherwise requested by the Exchange; and attend any other meetings and participate in any other discussions with the Exchange as requested by the Exchange;
- (6) confirm to the Exchange that all material information known to the Initial Sponsor, following the conduct of reasonable due diligence inquiries and analysis, which in the Initial Sponsor's opinion should be taken into account by the Exchange in considering the listing application, have been disclosed in the listing documents or otherwise in writing to the Exchange; and
- (7) use reasonable endeavours to ensure that all information provided to the Exchange during the listing application process is true in all material respects and does not omit material information required to be stated in the listing document or necessary to make the information provided not misleading.

3A.15 In determining the reasonable due diligence inquiries an Initial Sponsor must undertake for the purposes of rule 3A.14(2), an Initial Sponsor must have regard to the Practice Note.

3A.16 To enable the Initial Sponsor to be in a position to properly fulfill its responsibilities, where a discussion takes place between the new applicant and the Exchange, without the sponsor being involved, the new applicant must inform the sponsor in writing of the matters discussed as soon as possible after the discussion takes place.

3A.17 Prior to the issue of the listing document, at least one of the persons named as a responsible officer or executive officer of each Initial Sponsor must, on behalf of the Initial Sponsor, submit to the Exchange a declaration to the effect that:

- (1) all of the documents required by the Exchange Listing Rules to be submitted to the Exchange in connection with the new applicant's listing application have been submitted;
- (2) having made reasonable due diligence inquiries, the Initial Sponsor has reasonable grounds to believe and does believe that:
 - (a) the answers provided by each director or proposed director of the new applicant in the director's declaration(s) in the form at Appendix [5B] would not cause a reasonable person with the experience and skills of a competent sponsor to inquire further about the truth of, or potentially misleading nature of, or possible omission of a material particular;
 - (b) the new applicant is in compliance with all of the qualifications for listing set out in the Exchange Listing Rules;

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- (c) the information in the non-expert sections of the listing documents:
 - (i) contains all information required by relevant legislation, codes, rules and guidelines;
 - (ii) is true in all material respects; and
 - (iii) does not omit material information necessary in order to make such information not misleading;
- (d) where an expert (other than the Initial Sponsor) does not conduct its own verification of the factual information on which the expert states, or the Initial Sponsor otherwise believes, the expert is relying for the purposes of his or her expert opinion referred to in the listing documents (including any supporting or supplementary information given to the Exchange in relation to the listing application), such factual information is true in all material respects and does not omit a material fact necessary in order to make such factual information, in light of the circumstances in which it is provided, not misleading;
- (e) sections of the listing documents purporting to be made on the authority of an expert are founded on assumptions that are fair, reasonable and complete (in so far as a non-expert in the position of the Initial Sponsor can reasonably be expected to reach a view);
- (f) the expert (other than the Initial Sponsor) is independent from the new applicant and its directors and controlling shareholder(s);

Note: The Exchange will consider an expert to be independent for the purposes of this rule if it meets criteria equivalent to that set out in rule 3A.09 (where the standard of independence is not set by a relevant professional body).

- (g) the expert (other than the Initial Sponsor) is appropriately qualified, experienced and sufficiently resourced to give the relevant opinion and has devoted sufficient resources to the preparation of its opinion (in so far as a non-expert in the position of the Initial Sponsor can reasonably be expected to reach a view);
- (h) the expert's scope of work is appropriate to the opinion given and the opinion required to be given in the circumstances (where the scope of work is not set by a relevant professional body and to the extent a non-expert in the position of the Initial Sponsor can reasonably be expected to reach a view);
- (i) the new applicant has established adequate procedures, systems and controls to enable it and its directors to comply with the Exchange Listing Rules, in particular rules 13.09, 13.10, 13.46 and 13.49 and Chapters 14 and 14A [or rules 17.10, 17.11, 18.03 and 18.49 and Chapters 19 and 20 of the GEM Listing Rules], including accounting and management systems that enable the new applicant's directors to

make a proper judgment as to the financial position and prospects of the new applicant and its subsidiaries, both before and after listing, and to release timely information, financial and otherwise, to the market as required by the Exchange Listing Rules; and

- (j) the directors of the new applicant collectively have the experience, qualifications and competence to manage the new applicant's business and comply with the Exchange Listing Rules, and individually have the experience, qualifications and competence to perform their individual roles including that the directors appear to understand the nature and content of their obligations and those of the new applicant as an issuer under the Exchange Listing Rules and other legal or regulatory requirements relevant to their role;
- (3) as regards any part of the listing document purporting to be made on the authority of an expert (other than the Initial Sponsor) or purporting to be a copy of or extract from a report or valuation of an expert (other than the Initial Sponsor), the Initial Sponsor has no reasonable grounds to believe and does not believe that the statements therein are untrue or that there is an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the listing document does not fairly represent the statement of the expert or is not a fair copy of or extract from the report or valuation of the expert; and
- (4) as regards any part of the listing document purporting to be a statement made by an official person or purporting to be a copy of or extract from a public official document, the Initial Sponsor has no reasonable ground to believe and does not believe that the statements therein are untrue, or that there is an omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that such part of the listing document does not fairly represent the statement made by the official person or is not a fair copy of or extract from the public official document.

Continuing Sponsors

3A.18 During the Fixed Period, a listed issuer must seek advice from the Continuing Sponsor it has appointed pursuant to rule 3A.03, where applicable, on a timely basis in the following circumstances:

- (1) the publication of any regulatory announcement, circular or financial report;
- (2) where a notifiable transaction (connected or otherwise) is contemplated including share issues and share repurchases;
- (3) where the listed issuer proposes to use the proceeds of the initial public offering in a manner different from that detailed in the listing document or where the business activities, developments or results deviate from those detailed in the listing document; and

- (4) where the Exchange makes an inquiry of the listed issuer under rule 13.10.

3A.19 A Continuing Sponsor is required to assist a listed issuer when requested by the listed issuer by being actively involved in giving advice to the listed issuer in the circumstances set out in rule 3A.18 above including by using reasonable endeavours to discharge the following responsibilities with due care and skill:

- (1) ensure the listed issuer is properly guided and advised as to compliance with the Exchange Listing Rules;
- (2) have on-going communication, which should take the form of both formal and informal meetings, with the listed issuer;
- (3) accompany the listed issuer to any meetings with the Exchange that the listed issuer is asked to attend, unless otherwise requested by the Exchange;
- (4) no less frequently than at the time of reviewing the financial reporting of the listed issuer and upon the listed issuer notifying the Continuing Sponsor of a proposed change in the use of proceeds of the initial public offering, monitor, with the listed issuer, the operating performance and financial condition by reference to the listed issuer's business objectives and use of issue proceeds as stated in its listing document, and compliance with the terms and conditions of any waivers granted from the Exchange Listing Rules;
- (5) no less frequently than at the time of reviewing the financial reporting of the listed issuer and upon the listed issuer notifying the Continuing Sponsor of a proposed change in the use of proceeds of the initial public offering, monitor whether any profit forecast or estimate that appeared in the listing document, will be or has been met by the listed issuer and ensure the listed issuer notifies the Exchange and informs the public in a timely and appropriate manner if it fails to or anticipates failing to meet the profit forecast or estimate;
- (6) no less frequently than at the time of reviewing the financial reporting of the listed issuer and upon the listed issuer notifying the sponsor of a proposed change in the use of proceeds of the initial public offering, monitor compliance with the undertakings provided by the listed issuer and its directors at the time of listing, and, in the event of non-compliance, discuss the issue with the listed issuer's board of directors and make recommendations to the board regarding appropriate remedial steps;
- (7) deal with the Exchange in respect of all matters relating to the listed issuer including transactions proposed to be undertaken by the listed issuer;
- (8) assess whether all new appointees to the board of the listed issuer understand the nature of their responsibilities and fiduciary duties under the Exchange Listing Rules, the Takeovers Code, the Code on Share Repurchases and all other relevant ordinances, and their legal and other obligations toward both the creditors and the shareholders of the listed issuer, including the provision of personalized training as required; and

- (9) in relation to an application by the listed issuer for a waiver from any of the requirements in Chapter 14A, conduct reasonable due diligence to determine whether the transactions are on normal commercial terms or, if there are not sufficient comparable transactions to judge whether they are on normal commercial terms, then, if possible, determine whether they are on terms no less favourable to the listed issuer than the terms available to or from, as appropriate, independent third parties.

Termination of a sponsor's role

3A.20 (1) An Initial Sponsor or Continuing Sponsor may resign if it is unable to discharge its role and responsibilities including where the new applicant or listed issuer does not cooperate with the sponsor or where there is a material dispute (which cannot be resolved within 30 days notwithstanding all reasonable endeavours by both the sponsor and the new applicant or listed issuer) over fees payable by the new applicant or listed issuer to the sponsor.

- (2) A new applicant or a listed issuer may terminate a sponsor's role if it considers that the sponsor's work is of an unacceptable standard or if there is a material dispute (which cannot be resolved within 30 days notwithstanding all reasonable endeavours by both the sponsor and the new applicant or listed issuer) over fees payable by the new applicant or listed issuer to the sponsor.

3A.21 In the case of resignation or termination of the Initial Sponsor during the processing of the initial listing application:

- (1) the new applicant must immediately notify the Exchange of the resignation or termination of the Initial Sponsor; and
- (2) if and when a replacement sponsor is appointed, the replacement sponsor must immediately notify the Exchange of its appointment and re-submit, on behalf of the new applicant, a listing application together with a new initial listing fee in accordance with Chapter 9 and the declarations and undertakings required by this Chapter.

Note: See also rule 9.03. Amongst other things, it provides that any initial listing fee already paid will, in such circumstances, be forfeited.

3A.22 For the avoidance of doubt, the obligations of an Initial Sponsor set forth in this Chapter are several. A replacement Initial Sponsor shall not be regarded as having satisfied any of the obligations of an Initial Sponsor by virtue of work performed by a predecessor Initial Sponsor.

3A.23 In the case of resignation or termination of the Continuing Sponsor, a replacement Continuing Sponsor must be appointed by the listed issuer within 3 months of the effective date of resignation or termination (as the case may be).

Application of other rules

3A.24 All sponsors, including Initial Sponsors and Continuing Sponsors, must, save insofar as the Exchange Listing Rules impose a higher level of obligation (in which case the Exchange Listing Rules will prevail), comply with the Commission's Corporate Finance Adviser Code of Conduct, the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Takeovers Code, the Share Repurchases Code and all other relevant codes and guidelines applicable to them as persons licensed by or registered with the Commission, as applicable.

- Notes:*
- 1. The Exchange notes that paragraph 4.4 of the Corporate Finance Adviser Code of Conduct requires that all requirements applicable to sponsors as set out in the Exchange Listing Rules be satisfied.*
 - 2. The Exchange also reminds sponsors of their other statutory obligations including but not limited to those under the Securities and Futures Ordinance.*

APPENDIX B

DRAFT PRACTICE NOTE

Practice Note: Due diligence by sponsors in respect of initial listing applications

1. This Practice Note should be read together with Chapter 3A of the Exchange Listing Rules. Chapter 3A, amongst other things requires that sponsors appointed by a new applicant for the purposes of a listing application (referred to in the Exchange Listing Rules as Initial Sponsors) conduct reasonable due diligence inquiries to enable the sponsor to make a declaration in respect of the matters set out at rule 3A.17.
2. In conducting due diligence, it is the Exchange's view that it is not acceptable for a sponsor to merely accept at face value the accuracy and completeness of statements and representations made, or other information given, by the new applicant. Rather, if, in the course of making due diligence inquiries or otherwise performing its role and responsibilities as set out in the Exchange Listing Rules, the sponsor has reason to doubt the accuracy and completeness of statements and representations made, or other information given, by the new applicant, then the sponsor must make more detailed and extensive inquiries until the sponsor can reasonably satisfy itself in relation to the issue. For example, the sponsor should use information from experts such as an expert report, opinion or statement, to test other information obtained during due diligence and determine whether there are any inconsistencies that need to be followed up.
3. This Practice Note sets out the Exchange's expectations of due diligence steps sponsors will typically perform. It is not in any way intended to exhaustively set forth all steps required to be performed to satisfy the obligation to perform appropriate due diligence. Sponsors should not expect that doing no more than completing the steps set out in this Practice Note will satisfy their general due diligence obligations. Each new applicant is unique and so will be the due diligence steps necessary for the purpose of its listing application. The scope and extent of appropriate due diligence by a sponsor may be different from, or may be considerably more extensive than, the steps described. The sponsor must exercise its judgment, appropriate to the context and circumstances, as to what investigations or steps are necessary in the case of a particular new applicant.
4. The Exchange expects sponsors to document their due diligence planning and significant deviations from their plans. That includes demonstrating that they have turned their minds to the question of what investigations or steps are necessary in the relevant context and circumstances. The Exchange also expects sponsors to document the conclusions they reach in respect of the new applicant's suitability for listing.

Interpretation of this Practice Note

5. All references in this Practice Note to the new applicant's listing documents include supporting or supplementary documents, for example correspondence, given to the Exchange in relation to the new applicant's initial listing application.
6. All references in this Practice Note to the new applicant include the new applicant's group of companies.

7. For the purposes of interpretation of this Practice Note, any part of a listing document made by or on the authority of an expert or purporting to be a copy of, or an extract from, a report, opinion or statement of an expert, shall be called the “expert sections”. Other parts of the listing document are the “non-expert sections”. All references in this Practice Note to the expert are references to the individual or entity to whom the listing document attributes the relevant report, opinion or statement. The Exchange notes that retaining an expert to advise or assist the new applicant or sponsor in respect of any non-expert section of the listing document does not make such section an expert section.
8. The Exchange also reminds sponsors of their other obligations including but not limited to those under the Exchange Listing Rules more generally, the SFC Corporate Finance Adviser Code of Conduct, the Takeovers Code, the Code on Share Repurchases, the Securities and Futures Ordinance and all other relevant ordinances, codes, rules and guidelines applicable to sponsors. Nothing in this Practice Note detracts from or varies those obligations.

Due diligence

9. The due diligence steps the Exchange expects sponsors will typically perform in relation to the Directors’ Declarations and the collective and individual experience, qualifications, competence and integrity of the directors to manage the new applicant’s business and fulfill the directors’ undertakings to use their best endeavours to procure the new applicant’s compliance with the Listing Rules include:
 - (a) confirmation of each director’s educational and professional qualifications and work history and an analysis of those qualifications compared to those of directors of other issuers operating in the same industry;
 - (b) searches of relevant regulatory and professional bodies in the jurisdictions in which the directors have worked about the directors and the companies for which they have been directors or officers or substantial shareholders (“related companies”), for example, for public sanctions imposed;
 - (c) searches for civil legal actions and judgments to which any of the directors or their related companies have been a party, save and except for those solely relating to personal domestic matters, for example, family law or estate proceedings;
 - (d) a review of the directors’ past performance as directors of the new applicant including, as relevant, participation in board meetings and decision making relating to the management of the new applicant and its business;
 - (e) assessment of the financial literacy of the directors individually and collectively;
 - (f) assessment of the corporate governance experience and competence of the directors individually and collectively;
 - (g) a review of the financial and regulatory track record of other listed issuers of which any of the new applicant’s directors was a director, by reference to annual reports, other company disclosures, media articles and information about those companies on the website of the relevant stock exchange, for the period

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commencing one year before the director was appointed a director of the listed issuer and ending one year after the director ceased to be a director of the listed issuer; and

- (h) criminal record searches for each director for each jurisdiction in which he or she has resided for a cumulative period of more than 1 year in the previous 20 years and in which such searches can reasonably be conducted.
10. The due diligence steps the Exchange expects sponsors will typically perform in relation to the new applicant's compliance with the qualifications for listing, including the public float requirements include:
- (a) using effective information barriers (that is, Chinese walls) where necessary or appropriate, a review of the lists of placees and underwriters (including sub-underwriters), in particular those introduced by the new applicant or its directors or substantial shareholders, or associates of any of the new applicant, its directors or substantial shareholders, to identify whether any of the placees or underwriters (including sub-underwriters) may be connected persons of the new applicant;
 - (b) ensure the proposed underwriters and placement agents to the listing applicant are appropriate, considering their credentials in light of their role and responsibilities;
 - (c) searches of the company registry in the new applicant's place of incorporation to confirm that the new applicant is duly incorporated in that place and that the new applicant conforms with its memorandum and articles of association; and
 - (d) a review of the material financial statements of the new applicant and other companies covered by the listing application, if any, (e.g. the new applicant's subsidiaries) including the internal financial records, tax certificates and supporting documents to the tax certificates for the trading record period and assess the accuracy and completeness of the information submitted by the new applicant to satisfy the trading record requirement. Such review would include interviewing the new applicant's accounting staff and internal and external auditors and reporting accountants and, where relevant, obtaining comfort from the new applicant's external auditor or reporting accountants based upon agreed procedures.
11. The reasonable due diligence steps the Exchange expects sponsors will perform as the basis for forming a belief on reasonable grounds that the information in the non-expert sections of the listing documents (including supporting or supplementary documents relied on by the Exchange in assessing the new applicant's listing application) is true and complete in all material respects and does not omit a material fact necessary in order to make the listing documents and all particulars and information therein not misleading include:
- (a) where a new applicant has prepared its listing document, assess the financial information published in that document including:
 - (i) obtaining written confirmation from the new applicant that the financial information published in that document (other than that already reported

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upon by a reporting accountant) has been properly extracted from the relevant underlying accounting records;

- (ii) being satisfied that the confirmation referred to at paragraph (i) has been given after due and careful inquiry by the new applicant; and
 - (iii) being satisfied that a reasonable person with the experience and skills of a competent sponsor would not have cause to inquire further about the truth or omission of a material particular regarding the confirmation referred to at paragraph (i);
- (b) assess the new applicant's business operations, performance and finances for the purpose of the listing documents, business plan and any profit forecast, including an assessment of the reasonableness of budgets, projections and assumptions made when compared with past performance, including historical sales, revenue and investment returns, payment terms with suppliers, costs of financing, long-term liabilities and working capital requirements, and an assessment of whether there has been any change since the publication of the last audited financial statements that would require disclosure to ensure the listing document is complete and not misleading. This would include interviewing the new applicant's senior management, major suppliers and customers, creditors and bankers;
 - (c) a critical analysis as to whether it is reasonable to conclude that the new applicant's management will use the proceeds of the issue as disclosed in the listing documents, taking into account the outcome of the sponsor's assessment of, in particular, the new applicant's existing cash and liquid reserves, projected liabilities, working capital requirements and expenditure controls;
 - (d) undertake a physical inspection of material assets, whether owned or leased, including property, plant, equipment, inventory and biological assets referred to in the listing documents or otherwise used, or to be used, in connection with the new applicant's business as stated in the listing documents;

Notes: 1. *Without limiting the generality of the requirements of this Practice Note, it is not intended that this be an audit. By physical inspection the Exchange simply means visiting the site of the asset in order to inspect, in person, that the asset exists, and confirming its extent, quality and quantity and that there is appropriate documentation in place to confirm the asset is appropriately held by the new applicant, for example, a certificate of title, or right of land use.*

2. *Where confirmation of an asset, including as to its extent, quality and quantity, genuinely cannot be achieved without the use of an expert, the sponsor should ensure that an appropriately qualified independent expert is instructed to conduct the inspection and attend the inspection with the expert. In such cases the sponsor should also ensure the expert is required to provide a report in respect of the inspection.*

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- (e) undertake an analysis of the new applicant's production methods;
- (f) undertake an analysis of the new applicant's management of its business including actual or proposed marketing plans, including distribution channels, pricing policies, after-sales service, maintenance and warranties;
- (g) review the business aspects of all contracts material to the new applicant's business;

Note: By business aspects the Exchange simply means not legal aspects.

- (h) review the circumstances of all current legal proceedings and other material disputes to which the new applicant is a party and all proceedings or material disputes the new applicant knows to be contemplated and which will involve the new applicant or one of its subsidiaries;
- (i) undertake an analysis of the business aspects of economic, political or legal conditions that the sponsor reasonably considers may materially affect the new applicant's business;
- (j) research the industry and target markets in which the new applicant's business has principally operated and will principally operate, including geographical area, market segment and competition within that area and/or segment (including existing and potential principal competitors and their relative size, aggregate market share, profitability and cashflow requirements);
- (k) if applicable, confirm the existence and business aspects of proprietary interests, intellectual property rights, licensing arrangements and other intangible rights of the new applicant;
- (l) research and assess the technical feasibility of each new product or technology developed, being developed or proposed to be developed pursuant to the new applicant's business plan that the sponsor reasonably considers may materially affect the new applicant's business; and
- (m) assess the stage of development of the new applicant's business and the commercial viability of its product/s, service(s) or technology, including an assessment of the risk of it becoming obsolete as well as market controls or regulation and seasonal variation, in order to determine the reasonableness of the new applicant's business plan and forecast assumptions, if any.

12. The due diligence steps the Exchange expects sponsors will typically perform in relation to the expert sections of the listing documents (including supporting or supplementary documents relied on by the Exchange in assessing the new applicant's listing application) include:

- (a) interview the expert, review the terms of engagement (having particular regard to the scope of work, whether the scope of work is appropriate to the opinion required to be given and any limitations on the scope of work which might adversely impact on the degree of assurance given by the expert's report, opinion

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or statement) and review publicly available information about the expert to determine:

- (i) the expert's qualifications and experience; and
 - (ii) whether the expert is competent to undertake the required work;
- (b) review the expert sections of the draft listing documents (including supporting or supplementary documents given to the Exchange in relation to the application) to ensure that the following are disclosed appropriately:
- (i) the factual information on which the expert relies;
 - (ii) the assumptions on which the expert opinion is based; and
 - (iii) the scope of work performed by the expert in arriving at his/her opinion;
- (c) by reference to the sponsor's knowledge of the new applicant's business, assess whether the factual information disclosed by the expert as the information relied on in forming the expert's opinion is consistent with other information known to the sponsor about the new applicant and is all the information a reasonable non-expert would expect the expert to rely on in forming his/her opinion;
- (d) where the expert does not conduct its own verification of the factual information on which the expert states, or the sponsor otherwise believes, the expert is relying for the purposes of the expert opinion referred to in the listing documents, assess whether the information is true in all material respects and does not omit a material fact necessary in order to make the statements in the listing documents, in light of the circumstances under which the statements are made, not misleading;
- (e) by reference to the sponsor's knowledge of the new applicant's business, assess whether the assumptions disclosed by the expert as those on which the expert's opinion is based, are fair and reasonable and, to the extent a reasonable non-expert could form such a view, are complete;
- (f) in the event of the expert's opinion being qualified, assess whether the qualification is clearly stated such that a reasonable investor could appreciate the implications of the qualification;
- (g) interview the expert and assess, to the extent a reasonable non-expert could, whether the scope of work undertaken by the expert and resources applied by the expert to the engagement are reasonably sufficient to enable the expert to arrive at the opinion reached and required to be reached; and
- (h) where the standard of independence is not set by a relevant professional body, confirm that the expert is independent from the new applicant and its directors and substantial shareholder(s). This would include confirming that the expert does not have a direct or indirect material interest in the securities or assets of the new applicant, its connected persons, or any associate of the new applicant.

13. The due diligence steps the Exchange expects sponsors will typically perform in relation to the new applicant's accounting and management systems and the director's understanding of their and the new applicant's Listing Rule obligations include:
- (a) a review of the new applicant's compliance manuals, policies and procedures including corporate governance policies and guidelines relating to the new applicant's arrangements to ensure compliance with the Exchange Listing Rules, in particular the financial reporting, disclosure of price sensitive information and notifiable and connected transaction requirements;
 - (b) an interview of all directors and senior managers with key responsibilities for ensuring compliance with the Exchange Listing Rules, including the chief financial officer, company secretary and any compliance officers, to assess their individual and collective experience and competence to ensure the new applicant complies with the Exchange Listing Rules, including by assessing their understanding of the relevant obligations under the Exchange Listing Rules and the new applicant's policies and procedures in respect of those obligations; and
 - (c) to the extent that the sponsor finds that the new applicant (including by its directors and/or key senior managers) is inadequate in relation to the issues referred to at paragraphs (a) and (b) above, then the sponsor should discuss the issue with the new applicant's board of directors and make recommendations to the board regarding appropriate remedial steps to be taken prior to listing. Such steps might include training tailored to the needs of individual directors and senior managers.

APPENDIX C

DRAFT IFA RULES

We propose the following rules be inserted in Chapter 13 under a subheading: “Independent financial advisers”:

13.80 For the purposes of an independent financial adviser, appointed under rule 13.39(6)(b) or rule 19.05(6)(a)(iii), giving advice as required by the Exchange Listing Rules, an independent financial adviser must take all reasonable steps to satisfy itself:

- (1) in respect of the matters set out at paragraphs (1) to (5) of rule 14A.22; and
- (2) that there are no reasonable grounds to believe that any information, expert advice or opinion relied on by the IFA in forming the opinion, is not true, is potentially misleading or omits a material fact.

Note: For the purposes of this rule we expect reasonable steps should include but not be limited to the following:

- (a) *obtaining all information and documents of the issuer relevant to an assessment of the fairness and reasonableness of the terms of the transaction, for example, if the transaction involves the purchase or sale of products or services, obtain information and documents showing the prices at which the issuer buys and sells such products and services to third parties;*
- (b) *thoroughly researching the relevant market and other conditions and trends relevant to the pricing of the transaction;*
- (c) *reviewing the reasonableness of any assumptions or projections relevant to the transaction;*
- (d) *in relation to any third party expert providing an opinion or valuation relevant to the transaction:*
 - (i) *investigating the background, expertise and independence of the third party expert;*
 - (ii) *assessing the appropriateness of the scope of work;*
 - (iii) *reviewing the reasonableness of any bases, methods and assumptions used in the report and the rationale for those bases, methods and assumptions;*
 - (iv) *reviewing the reasonableness of projections or qualifications in the expert’s report; and*
 - (v) *reviewing the factual information on which the expert states, or the independent financial adviser otherwise believes, the*

expert is relying for the purposes of his or her expert opinion, to ensure it is true and complete in all material respects and does not omit a material fact necessary in order to make the statements in the expert's report not misleading; and

- (e) *reviewing and assessing any alternative offers and the reason given, if any, by the management for rejecting these offers and ensuring that adequate and balanced disclosure of this information and analysis is provided in the opinion letter.*

13.81 The issuer must:

- (1) afford any independent financial adviser it appoints pursuant to rule 13.39(6)(b) or rule 19.05(6)(a)(iii) access to all persons, premises and documents the independent financial adviser reasonably requires access to for the purposes of the independent financial adviser's responsibilities set out in the Exchange Listing Rules. In particular, terms of engagement with experts retained to perform services related to the transaction should contain clauses entitling the independent financial adviser access to any such expert, the expert's reports (both written and oral), the terms of engagement, information provided either by the issuer or its agents to the expert, all other correspondence exchanged between the issuer or its agents and the expert, and all other information relied on by the expert; and

Note: Such responsibilities will be as set out in rules 13.39, 17.03, 19.05 and this Chapter, as well as Practice Notes 4 (paragraph 4(e)) and 15 (paragraph 3(e)(5)).

- (2) keep every independent financial adviser it appoints informed of any material change to the terms of engagement of any expert retained to perform services related to the transaction and the occurrence of any dispute with any such expert.

13.82 Independent financial advisers must be appropriately licensed by the Commission and must discharge their responsibilities with due care and skill.

13.83 An independent financial adviser must perform its duties with impartiality and avoid relationships or connections with an issuer that would compromise the independent financial adviser's objectivity. Both the independent financial adviser and the issuer must make all reasonable enquiries and take appropriate action to ensure this is the case.

Note: In the event of an inconsistency between this rule and the Corporate Finance Adviser Code of Conduct or the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Exchange Listing Rules prevail. Refer also to rule 13.86.

13.84 An independent financial adviser must not act for any issuer from which it is not independent. The Exchange will consider that an independent financial adviser is not independent if any of the following circumstances exist:

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- (1) the independent financial adviser and any associate or connected person of that independent financial adviser (referred to in this rule as the “IFA group”) have, directly or indirectly, a material interest in the issuer or an associate or connected person of the issuer;
- (2) any member of the IFA group is an associate of the issuer, save and except where that relationship arises because of holdings of an investment entity’s discretionary clients;
- (3) a member of the IFA group provides banking facilities to the issuer or an associate or connected party of the issuer;
- (4) a member of the IFA group is a creditor or debtor of:
 - (a) the issuer;
 - (b) an associate of the issuer; or
 - (c) a connected party of the issuer;
- (5) a director or employee of the independent financial adviser, or an associate of such a director or employee, has a material interest in, or a current or contemplated business relationship with, the issuer;
- (6) the independent financial adviser has served as a financial adviser to the issuer or any associate or connected person of the issuer, including whilst employed by a different firm, within 2 years prior to commencement of the independent financial adviser as independent financial adviser to the issuer; and
- (7) the independent financial adviser or a member of the IFA group is the issuer’s auditor or reporting accountant.

Notes: 1. In addition to it being a breach of the Exchange Listing Rules, if it comes to the Exchange’s attention that an independent financial adviser is not independent, the Exchange will not accept documents produced by that independent financial adviser for any purpose required under the Exchange Listing Rules.

2. In the event of an inconsistency between this rule and the Corporate Finance Adviser Code of Conduct or the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Exchange Listing Rules prevail. Refer also to rule 13.86.

13.85 Prior to commencement as independent financial adviser to an issuer, the independent financial adviser must submit to the Exchange:

- (1) a declaration in the prescribed form set out in Appendix [] to the effect that the independent financial adviser is independent, and include a statement addressing each of the circumstances set out in rule 13.84; and

- (2) an undertaking, in the terms set out in Appendix [] to:
 - (a) comply with the Listing Rules; and
 - (b) assist the Exchange in the performance of any of its functions, including any investigation and any proceedings.

13.86 All independent financial advisers must, save insofar as the Exchange Listing Rules impose a higher level of obligation (in which case the Exchange Listing Rules will prevail), comply with the Commission's Corporate Finance Adviser Code of Conduct, the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission and all other relevant codes and guidelines applicable to them as persons licensed by the Commission, as applicable.

Note: The Exchange also reminds independent financial advisers of their other statutory obligations including but not limited to those under the Securities and Futures Ordinance.