



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

Regulation of IPO sponsors

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Outcome

- **Raising standards**
- **Better quality market**
- **Incentive for sponsors to pick right deals**
- **Reduce risk to investors and IPO participants**
- **Reinforce sponsors' role**



Initial proposals

- **Bring forward due diligence**
- **Improve drafts submitted to regulators**
- **Set due diligence standards**
- **Limit number of sponsors**
- **Emphasise Management responsibility**
- **Clarity legal liability**

General response

- **No dispute there is a problem in sponsor standards**
- **Broad agreement to thrust of proposals**
- **Resistance amongst sponsors to clarified legal liability under prospectus laws; support from “buy side”**
- **Declining standards attributable to eroding sponsor authority to act as “gatekeeper” as a result of intense competition**
- **Detailed regulatory vetting process affects IPO processing**



Initiatives to enhance sponsors' role as gatekeeper

- **Minimum lock-in of 2 months**
- **Whistle-blowing obligation**
- **Listing applicants and all professional advisers should fully cooperate with the sponsor**
- **Sponsor fees to be specified – “no deal no fee arrangements” discouraged**

Expert reports

- **Investors expect sponsors to act positively to confirm information in expert reports**
- **Sponsor firms argue they are not experts and can only review information with the exercise of professional skepticism**
- **We expect to turn their mind to:**
 - Qualifications and independence
 - Scope of work
 - Bases and assumptions - accounting policies, valuation basis
 - Consistency with all information about the listing applicant

and then conclude from perspective of a non-expert there is no reason not to believe expert's report

- **Sponsors not expected to re-do work of expert**



Management Discussion & Analysis (MD&A)

- **Sponsor should work closely with management of listing applicant on relevant, adequate and comprehensible MD&A**
- **Avoid excessive or irrelevant disclosure that overwhelm investors or obstruct them from identifying and understanding material and critical information**
- **We expect them to consider:**
 - any matters that have materially affected the listing applicant's historical financial performance;
 - any material factors or events that are likely to affect the applicant's future financial performance; and
 - any exceptional items or unusual accounting treatments that require further enquiry or disclosure in the MD&A

Communication with regulators

- **Sponsor should notify regulators of material non-compliance issues of listing applicant**
- **Obligation continues even if the sponsor resigns**
- **Sponsor should inform regulators of reasons when it ceases to act**



Publication of draft of prospectus

- **Better quality drafts**
- **Help shorten the vetting process**
- **SFC and SEHK are committed to streamline the vetting process**
- **Transitional provisions**

Prospectus liability

- **Mixed response with support from “buy side” and opposition from sponsors and law firms**
- **Not credible to clarify that sponsors do not have legal liability**
- **Bring Hong Kong in line with other major markets**
- **Recommend change of Companies Ordinance to clarify civil and criminal liability apply to the sponsor firm**
- **For criminal liability, the provisions should be amended so that the prosecution will have to prove that**
 - a) a defendant knowingly or recklessly made the untrue statement; and**
 - b) the untrue statement was materially adverse for investors**
- **For civil liability as with directors the defence is reasonable belief that prospectus is true**

Timetable

- **Apply to any listing application on or after 1 October 2013**
- **SEHK announced listing rule amendments this week.**
- **Allow all players sufficient time to prepare themselves to comply with the new requirements**
- **Sponsors should enhance work processes to comply with the new requirements as soon as practicable**