



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

**Consultation Conclusions to the Consultation
Paper on the Regulation of Sponsors and
Compliance Advisers**

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Table of Contents

	Page
Part A – Executive Summary	3
Part B – Overview of the New Regulatory Regime for Sponsors and Compliance Advisers.....	7
Part C – Summary of Responses to the Consultation Paper.....	21
Annex I – Guidelines for Sponsors and Compliance Advisers.....	35
Annex II – List of Respondents to the Consultation Paper.....	44

Consultation Conclusions on the Consultation Paper on the Regulation of Sponsors and Compliance Advisers (“Consultation Conclusions”)

PART A – EXECUTIVE SUMMARY

1. In June 2005, the Securities and Futures Commission (“the Commission”) released a Consultation Paper on the Regulation of Sponsors and Compliance Advisers (“Consultation Paper”) for a two-month consultation period. The Consultation Paper proposed to establish an integrated regulatory regime and introduce a set of specific admission and on-going compliance criteria for sponsors and compliance advisers¹.
2. The Consultation Paper received a total of 14 responses. Further discussions were held with a number of the respondents after the consultation period to better understand their views and market observations.
3. The new regulatory regime, published as the Guidelines for Sponsors and Compliance Advisers (“Sponsor Guidelines”; attached as Annex I of the Consultation Conclusions), will be inserted as part of the Fit and Proper Guidelines (“F&P Guidelines”). The Sponsor Guidelines will become effective on 1 January 2007 (“Effective Date”).
4. The new regulatory regime aims to assess the overall suitability of corporate finance advisory firms to act as sponsors. Only corporate finance advisory firms that meet the specific eligibility criteria as set out in the Sponsor Guidelines will be accepted to act as sponsors. It will be the onus of the firm and its management to ensure that the firm satisfies all necessary requirements of the Sponsor Guidelines.
5. In general, respondents were supportive of the Commission’s initiatives to raise the overall standards of sponsors and compliance advisers. The majority of the respondents sought clarifications on the various proposals set out in the Consultation Paper.
6. Some respondents, however, expressed their concerns on the following issues:
 - the proposal on mandatory professional indemnity insurance coverage for all sponsors;
 - the proposal to require corporate finance advisory firms holding licenses for Type 6 Regulated Activity (“RA 6”) under the Securities and Futures Ordinance (“SFO”) to be eligible sponsors in order to act as compliance advisers; and

¹ Compliance advisers refer to a licensed corporation or registered institution licensed or registered for type 6 regulated activity appointed to act as compliance adviser under the Listing Rules of the Stock Exchange of Hong Kong Limited.

- the possible duplication in sponsor/compliance adviser regulation between The Stock Exchange of Hong Kong (“SEHK”) and the Commission.
7. The Commission has decided not to pursue the mandatory professional indemnity insurance at this stage. However, in respect of the proposal to require corporate finance advisory firms to be qualified as sponsors in order to act as compliance advisers, the Commission has decided to adopt this proposal for the purposes of the new regime. This proposal is consistent with the policy agreed by the Commission and the SEHK after extensive consultation in 2003 and 2004. The policy was set out in the Consultation Conclusions on the Regulation of Sponsors and Independent Financial Advisers (“Joint Consultation Conclusions”) published jointly by the Commission and the SEHK in October 2004, which has been effective (and implemented by the SEHK) since 1 January 2005.
 8. Also as set out in the Joint Consultation Conclusions, both the SEHK and the Commission are mindful that overlapping regulatory responsibility is only acceptable where there is a clear regulatory reason for or benefit from such an approach. In the Joint Consultation Conclusions the SEHK and the Commission agreed that, to minimize the extent of any overlap, once the Commission has revised its licensing regime to introduce specific eligibility criteria for intermediaries who offer sponsor or compliance adviser services, the SEHK would consider removing the existing Listing Rules regarding eligibility of sponsors and compliance advisers. The SEHK and the Commission will work together to achieve this objective².
 9. In order to act as a sponsor under the new arrangements, a firm must meet the following eligibility requirements in addition to the existing general requirements applicable to corporate finance advisory firms licensed under RA 6.
 - (a) *Experience and expertise in sponsor work:* A sponsor shall have sufficient expertise and resources to handle sponsor work;
 - (b) *Management supervision and responsibility:* The management of a sponsor is ultimately responsible for the work carried out by the sponsor and the supervision of the sponsor work;
 - (c) *Transaction teams and appointment of Principals:* A sponsor shall appoint at least two Principals and each transaction team that is formed to undertake sponsor work should be supervised by at least one Principal. A Principal must meet the requirements set out in the Sponsor Guidelines, and as the individual supervising the transaction team, the Principal is responsible for the sponsor work carried out by his transaction team;
 - (d) *Internal systems and controls:* A sponsor shall have effective systems and controls to ensure its compliance with all relevant, applicable laws and regulations; and

² Refer to Paragraph 22 of the Joint Consultation Conclusions.

- (e) *Financial resources:* A sponsor shall have a minimum paid-up capital of HK\$10 million. This requirement for minimum paid-up capital of HK\$10 million will be prescribed in the Financial Resources Rules (“FRR”). Prior to the relevant amendments to the FRR becoming effective, sponsors will be required to satisfy the Commission that they have already met, or are in a position to meet (to the Commission's satisfaction) the minimum paid-up capital requirement.
10. In addition to the above eligibility requirements, a sponsor must also comply with the on-going requirements set out in the Sponsor Guidelines, such as:
 - (a) Maintaining effective systems and controls to ensure compliance with all relevant regulations, codes and guidelines;
 - (b) Keeping of proper and updated records;
 - (c) Carrying out annual assessments of their internal systems and controls so as to ensure that they remain effective; and
 - (d) For staff engaging in the sponsor work of a sponsor, half of the required continuous professional training (“CPT”) hours under the current licensing regime should be relevant to sponsor work and related regulatory and compliance knowledge.
 11. Corporate finance advisory firms wishing to carry out work as compliance advisers must at all times be qualified as sponsors.
 12. To ensure a smooth transition, the Commission has devised specific transitional arrangements for corporate finance advisory firms which currently hold RA 6 licenses. Only firms that are in full compliance with the new requirements under the Sponsor Guidelines, and remain fit and proper as licensees will be able to transit and act or continue to act as sponsors under the new regime. Existing sponsor firms should consider carefully whether or not they can in fact meet all the requisite requirements by Effective Date, and should not assume that they will automatically meet with the requirements in the Sponsor Guidelines.
 13. Any corporate finance advisory firms that do not wish to act as sponsors, or do not qualify to act as sponsors in accordance with the Sponsor Guidelines will be imposed with a licensing condition restricting them from carrying out work as sponsors.
 14. Part B of the Consultation Conclusions sets out, among others, the details of the transitional arrangements for existing corporate finance advisory firms. Details of the key submissions from the respondents of the Consultation Paper and the Commission’s corresponding responses to them are set out in Part C of the Consultation Conclusions.
 15. The Commission will issue reminders to all corporate finance advisory firms regarding the implementation of the new arrangements before the Effective Date.

16. The Sponsor Guidelines, which set out the eligibility standards for sponsors and compliance advisers, will provide a useful adjunct to the broad range of regulatory powers available to the Commission under the SFO to ensure proper sponsor and compliance adviser work to be undertaken by corporate finance advisory firms. The Commission will also carry out inspections on both regular and ad-hoc basis on sponsors and compliance advisers to ensure their compliance with the Sponsor Guidelines and all other applicable regulations at all times.
17. The Commission will not hesitate to take action against sponsors and compliance advisers that fail to meet the regulatory obligations, including those as set out in the Sponsor Guidelines. Such action may include, but not limited to, imposing licensing conditions or issuing restriction notices restricting the firm from carrying out sponsor and/or compliance adviser work.

PART B – OVERVIEW OF THE NEW REGULATORY REGIME FOR SPONSORS AND COMPLIANCE ADVISERS

INTRODUCTION

18. Hong Kong continues to be one of the top fund raising markets in the world, and the leading primary fund raising market for companies from mainland China. In 2005, there were, not including Real Estate Investment Trusts, 65 initial public offerings (“IPOs”), raising a total amount of HK\$165 billion. Of the 65 IPOs in 2005, 11 were listings by mainland companies by way of H-share listings, raising a total of HK\$138 billion, which represent 83% of the total amount of funds raised in Hong Kong IPOs in 2005³. The continuous growth of the Hong Kong market creates a broad spectrum of business opportunities to financial institutions in Hong Kong but at the same time it also poses significant challenges to sponsors that are engaged in sponsoring companies for listings in Hong Kong.
19. In recent years, the Hong Kong market has seen a change of demographics in the listings of mainland companies on the SEHK. Not only state-owned enterprises are listed on the SEHK, but also there is an increasing trend of private enterprises seeking to raise funds in the Hong Kong market. The legal and regulatory rules governing the business operations of mainland companies have also become more sophisticated and have been subject to changes in response to the rapidly developing economy of mainland China in recent years. All these add to the complexity of the due diligence work that a sponsor has to carry out on mainland companies, and also pose demands on sponsors to remain up-to-date in respect of the rapidly changing business environment, and the rules and practices of various administrative departments in mainland China that are relevant to mainland companies and/or listings in Hong Kong. Sponsors also face the additional challenges of how they can better advise and prepare such companies to comply with the regulatory requirements for listing in the Hong Kong market.
20. Furthermore, in the past few years, there has been a call for increased vigilance on the part of the management of sponsors over the quality of the sponsors’ work, as evidenced by our discussions with the market, the public’s reaction to corporate scandals, the Commission’s surveillance on sponsor work and the results of the recent investor survey on sponsors.
21. The Commission and the SEHK conducted a Joint Consultation on the Regulation of Sponsors and Independent Financial Advisers (“Joint Consultation”) in 2003, which received a total of 130 responses. The respondents of the Joint Consultation supported a clear and transparent regime, with the Commission, as the statutory regulator, being responsible for the assessment of eligibility and on-going supervision of the conduct of corporate finance advisory firms that discharge the work of sponsors, compliance advisers and independent financial advisers (“IFAs”), and the SEHK’s continued

³ Source: Hong Kong Exchanges and Clearing Limited (<http://www.hkex.com.hk>).

responsibility for the implementation and administration of the Listing Rule requirements⁴.

22. Based on the market response, the SEHK and the Commission devised a two-tier approach to enhance sponsor and compliance adviser standards. Under this approach, as outlined in the Joint Consultation Conclusions in 2004, the SEHK is responsible for the implementation and administration of the Listing Rule requirements, including practice notes on due diligence, while the Commission is responsible for the licensing and supervision of sponsors and compliance advisers. This includes setting out the specific eligibility criteria and on-going compliance requirements applicable to sponsors and compliance advisers.

Consultation Paper on the Regulation of Sponsors and Compliance Advisers

23. As part of the two-tier approach to raise sponsor standards, the Commission published the Consultation Paper in June 2005 for a two-month consultation period. As set out in the Consultation Paper, the Commission intends to establish a single integrated regulatory regime for sponsors. The key element of the new regime is the integration of a set of eligibility and on-going compliance criteria set out in the Sponsor Guidelines into the licensing regime under the SFO for sponsors.
24. The Commission received a total of 14 responses from existing corporate finance advisory firms, professional bodies, as well as individual retail investors. In general, the respondents supported the Commission's initiative to raise the overall sponsor and compliance adviser standards in the Hong Kong market.

Regulatory philosophy

25. The Commission believes that a regulatory reform for the promotion of better standards for sponsor work should take into account the nature of work in preparing a company for listing, the long-term impact such work might have on the Hong Kong securities market, and the unique features of the Hong Kong market, which include the following:
 - both local and international sponsors are present in the Hong Kong market. Local sponsors tend to sponsor local public offerings with a smaller offering size, while international sponsors tend to sponsor global public offerings with a relatively larger offering size;
 - IPO transaction teams in local sponsors are mainly made up of local staff whereas it is not uncommon to see the posting of overseas staff of international sponsors to the IPO transaction team to participate in Hong Kong IPOs;
 - there is an increasing trend of delegation of various areas of due diligence work by sponsors to outside agents or advisers such as lawyers or accountants. The areas delegated for due diligence purpose might not

⁴ Paragraph 9 of the Joint Consultation Conclusions

necessarily be areas that would require the provision of expert opinions on specific issues regarding legal or financial matters. In fact, we have seen examples where due diligence work delegated involved detailed knowledge and understanding of an IPO candidate, knowledge that advisers such as lawyers might not have in their domain; and

- Hong Kong is the principal overseas fund raising market for mainland companies, which operate in legal, regulatory and social environments that are significantly different from those in Hong Kong.
26. The Commission understands that some Joint Consultation respondents were concerned about the duplication of regulation between the SEHK and the Commission, and the lack of transparency as a result thereof. The Commission believes that sponsors should be subject to a robust regulatory regime, administered in a fair and transparent manner. The Commission is also determined to adopt a strong stance in taking enforcement actions against failings in sponsor conduct. Sponsor work demands a high degree of professionalism and knowledge of the businesses that the relevant listing applicants are carrying on, a high degree of discipline among sponsors and their staff in the conduct of due diligence, and close supervision by the management of the sponsors.
27. Besides the concerns over sponsor standards, the Commission also notes the investing public's call for the higher corporate governance standards amongst Hong Kong listed companies. In light of this, the Commission is of the view that it is important, as part of its efforts to raise the corporate governance standards of the Hong Kong market, to also impose eligibility criteria for compliance advisers.
28. Upon the integration of the specific eligibility criteria under the Sponsor Guidelines into the SFO regime, the Commission will be able to use the full range of powers under the SFO to enhance specifically the standards of sponsors and compliance advisers through (i) the gatekeeping function of only allowing corporate finance advisory firms who meet the specific admission criteria and ongoing requirements to conduct sponsor work through the imposition of licensing conditions; (ii) the on-going monitoring of sponsor and compliance adviser conduct by way of routine and ad-hoc inspections backed by the statutory powers of the SFO; (iii) back-end enforcement when sponsors and compliance advisers fail in their conduct; and (iv) continuous education of those involved in the work of sponsors and compliance advisers.

Cooperation with the SEHK to minimize regulatory duplication

29. In the Joint Consultation Conclusions, the SEHK stated that it would be its intention to remove the relevant Listing Rules regarding sponsor eligibility from the GEM Listing Rules⁵. To this end, the SEHK and the Commission will work together to streamline the relevant Listing Rule requirements with the Commission's new regulatory regime on sponsors by the Effective Date.

⁵ Paragraph 22(e) of the Joint Consultation Conclusions.

Appropriate announcements will be made separately on such amendments in due course.

NEW REGULATORY REGIME FOR SPONSORS AND COMPLIANCE ADVISERS UNDER THE SFO

Sponsors

30. The Consultation Paper proposed to introduce a set of specific eligibility and on-going criteria for corporate finance advisory firms that intend to act as sponsors. The new regulatory regime aims to assess the overall acceptability of sponsors from a firm's perspective. It is not the regulatory intention of the Commission to separately assess the eligibility of individuals working for a sponsor under the new criteria in addition to the current requirement that each representative, including the Principal, has to be licensed for RA 6.
31. Under the new regulatory regime, corporate finance advisory firms that cannot meet the eligibility criteria set out in the Sponsor Guidelines will be imposed with licensing conditions, restricting them from carrying out activities in the capacity of sponsors. Corporate finance advisory firms that meet the criteria can carry out sponsor work and will have to comply with the specific on-going compliance requirements in the Sponsor Guidelines, such as the requirements to have sufficient resources and to conduct annual assessment of their internal systems and controls, as well as the other requirements generally applicable to all corporate finance advisory firms holding RA 6 licenses. It should be noted that the Sponsor Guidelines are an elaboration of other existing codes and guidelines issued by the Commission, such as the F&P Guidelines, the Guidelines on Competence, the Code of Conduct for Persons Licensed by or Registered with the Commission ("Code of Conduct"), and as supplemented by the Corporate Finance Adviser Code of Conduct. The Commission would like to remind corporate finance advisory firms that act as sponsors that the relevant provisions in these codes and guidelines are also applicable to sponsors and are not diminished in any way by the more specific requirements set out in the Sponsor Guidelines.
32. It is the sponsor's responsibility to ensure, and demonstrate to the Commission, that not only does the corporate finance advisory firm meet the specific criteria to act as a sponsor, but also the firm's staff is sufficiently experienced and competent to conduct sponsor work on behalf of the firm. The Commission would like to reiterate that the sponsor's management is ultimately responsible for the work carried out by the sponsor, and supervision of the sponsor work. Such responsibility cannot be delegated.
33. Also, the sponsor's management should ensure that the appointed Principals, who are expected to be the individuals in charge of the overall supervision of the transaction teams, meet the relevant requirements as set in the Sponsor Guidelines.

34. Having carefully considered all comments received and upon further discussions with the market, we have concluded that except for certain drafting changes and the changes described in paragraph 35 below, the regulatory requirements stated in the Consultation Paper would be adopted in the Sponsor Guidelines.
35. The Commission has decided not to take up the following proposals as part of the Sponsor Guidelines:
 - i) the proposal to impose mandatory professional indemnity; and
 - ii) the proposal requiring sponsors to submit an annual return to the Commission

Eligibility criteria of sponsors

36. In order to be qualified as a sponsor and remain eligible as such, a firm is required to meet, at the minimum, the following specific criteria:
 - (a) Experience and expertise in sponsor work – a sponsor shall have sufficient expertise and resources to handle sponsor work, including the appointment of a competent transaction team with sufficient manpower and resources to carry out each IPO transaction. The transaction team shall have sufficient knowledge in the corporate finance practice and regulatory requirements in the Hong Kong market. However, it is understandable that there may be variances between individual members of the same team regarding their knowledge in local rules and practice. That said, such variances should not adversely affect the combined expertise and experience of the transaction team.
 - (b) Transaction teams and appointment of Principals – a sponsor shall appoint at least two Principals and each transaction team that is formed to undertake sponsor work has to be supervised by at least one Principal. A sponsor shall ensure that a person to be appointed as a Principal shall:
 - i) be at the same time a Responsible Officer (“RO”);
 - ii) be able to demonstrate that he has acquired a minimum of 5 years’ relevant and recent corporate finance experience on a continuous basis before his appointment as a Principal; and
 - iii) in the recent 5 years preceding his appointment as a Principal of the sponsor, have played a substantial role in at least two completed IPOs on the Main Board and/or the GEM Board.
 - (c) Proper supervision and management oversight – The management of a sponsor shall ensure that there are sufficient Principals engaged to supervise the sponsor’s transaction teams in the carrying out of sponsor work. The management is also ultimately responsible for the work carried out by the sponsor.
 - (d) Internal systems and controls – a sponsor shall have effective systems and controls to ensure that:

- i) there is adequate supervision and management of its employees who are appointed to participate in sponsor work;
 - ii) employees do not act beyond their proper authority; and
 - iii) it is in compliance with all relevant, applicable laws and regulations.
- (e) Financial resources – a sponsor shall have a minimum paid-up capital of HK\$10 million. This requirement for minimum paid-up capital of HK\$10 million will be prescribed in the FRR. Prior to the relevant amendments to the FRR becoming effective, sponsors will be required to satisfy the Commission that they have already met, or are in a position to meet (to the Commission's satisfaction) the minimum paid-up capital requirement.

On-going compliance requirements for sponsors

37. Under the new regulatory regime, a corporate finance advisory firm that is permitted to act as a sponsor must continue to comply with all the applicable codes and guidelines including, without limitation, the following requirements:
- (a) A sponsor shall have effective systems and controls to ensure compliance with all relevant regulations, codes and guidelines as prescribed by the relevant authorities. In this respect, the sponsor's management has the responsibility to ensure that the sponsor maintains effective systems and controls and to supervise the sponsor work undertaken by the sponsor;
 - (b) A sponsor shall keep proper and updated records on the appointment of a transaction team for each sponsor engagement, on the appointment of a RO as a Principal, and on the annual internal assessment of its internal systems and controls. A sponsor shall also notify the Commission regarding any changes to its appointed Principals;
 - (c) A sponsor shall carry out annual assessments of its internal systems and controls so as to ensure that they remain effective; and
 - (d) For staff engaging in the work of a sponsor, 50% of the required CPT hours should be relevant to sponsor work and related regulatory and compliance knowledge.
38. In view of the respondents' concerns on costs and other practical issues relating to the proposal on mandatory professional indemnity coverage for sponsors, the Commission has decided not to adopt this proposal. However, sponsors will be required to maintain a minimum paid-up capital of HK\$10 million at all times.

Compliance advisers

39. Under the Listing Rules, it is stated that compliance advisers must be acceptable to the SEHK⁶. In addition, it was indicated in the Joint Consultation Conclusions that whether or not an applicant was an eligible Main Board or

⁶ Chapter 3A.19 of the Main Board Listing Rules.

GEM sponsor firm⁷ would be taken into account in deciding whether the SEHK would accept the applicant as a compliance adviser. The Commission also notes that the SEHK has been implementing this policy since the introduction of the relevant Listing Rule amendments in 2005.

40. In light of this policy and to maintain the standards of compliance advisers, the Commission has decided to implement the proposal that corporate finance advisory firms should at all times be eligible to act as sponsors (i.e. firm is not imposed with a licensing condition stating that it cannot act as a sponsor) in order to act as compliance advisers. In the event that a licensed or registered person ceases to be eligible to act as sponsors (i.e. a licensing condition stating that it cannot as a sponsor is imposed), it shall cease to be eligible to act as a compliance adviser at the same time. Furthermore, in case of a breach by a compliance adviser of any of the relevant codes of conduct or regulations that calls to question its fitness and properness to be a corporate finance advisory firm licensed under RA 6, it may cease to be eligible to be a compliance adviser, a sponsor, and/or a licensed or registered person for carrying out corporate finance advisory work under regulated activity Type 6.

Independent Financial Advisers

41. As stated in the Consultation Paper, the new regulatory regime will not impose additional regulations on IFAs. The Commission does not believe that additional regulations would be beneficial given that the IFAs are already subject to specific requirements and obligations under the Listing Rules, as well as the relevant regulations they are required to comply with as licensed corporate finance advisory firms under the SFO regime.
42. Having said that, IFAs are reminded that as licensees under the SFO regime, they must remain fit and proper as a licensee, including compliance with the relevant codes and regulations administered by the Commission, as well as the requirements and obligations under the Listing Rules. The Commission will also utilize its powers under the SFO to monitor IFAs on an on-going basis.

TRANSITIONAL ARRANGEMENTS

43. It is intended that the new regulatory regime shall become effective on the Effective Date, unless stated otherwise. Both existing corporate finance advisory firms and new corporations that intend, or wish to continue, to act as sponsors and/or compliance advisers on or after the Effective Date must meet the new requirements by that date. In order to facilitate the transition and minimize disruptions to the existing corporate finance advisory firms, these firms should indicate their intentions as to whether they intend to act, or continue to act, as sponsors or compliance advisers under the new regime by 30 September 2006. The Commission will provide forms for existing corporate finance advisory firms to indicate their intentions in due course.

⁷ Paragraph 18 (c)(iv) of Joint Consultation Conclusions.

44. The Commission does not intend to specifically assess eligibility of individual licensed representatives engaged in sponsor work; however, they are subject to the overall requirements for licensed representatives under RA 6 and are required to remain fit and proper. As such, individuals will not be subject to the transition.

New RA 6 licence applicants intending to carry out sponsor work

45. Corporations that have not applied for their RA 6 licenses prior to the Effective Date but wish to carry out sponsor work on or after the Effective Date should submit applications for RA 6 licenses, with documentation demonstrating that they meet the specific eligibility criteria under the Sponsor Guidelines, including the minimum paid-up capital requirement of HK\$10 million, as well as the general requirements for RA 6 licenses. In considering the licence applications of these corporations, the Commission will take into account the eligibility of the corporations as sponsors based on the criteria set out in the Sponsor Guidelines, and also consider the corporations' fitness and properness as corporate finance advisory firms in general under the F&P Guidelines.

Transition for corporate finance advisory firms holding a RA 6 licence before the Effective Date

46. For corporate finance advisory firms holding RA 6 licenses before the Effective Date, the Commission will make the following arrangements for the transition into the new regulatory regime.

Corporate finance advisory firms that do not intend to act as sponsors

47. Corporate finance advisory firms holding RA 6 licences before the Effective Date but do not intend to act as sponsors on or after the Effective Date should indicate such intention before 30 September 2006.
48. Under the revised FRR, all corporate finance advisory firms holding a RA 6 licence will be required to have a minimum paid-up capital of HK\$10 million unless they have licensing conditions which restrict them from acting as sponsors. As such, it is imperative for the corporate finance advisory firms that do not intend to act as sponsors under the new regime indicate to the Commission of their intention not to act as sponsors at the earliest convenience, as any firm which is not subject to the licensing condition restricting them from conducting sponsor work will be required to comply with a higher minimum paid-up capital amount of HK\$10 million when the relevant amendments to the FRR come into effect.
49. Corporate finance advisory firms who have indicated that they will not act as sponsors under the new regime will be imposed with a licensing condition to the effect that these firms will not be allowed to act as sponsors or undertake sponsor work. These firms, in the absence of any other licensing conditions, will be able to carry out all other types of corporate finance related activities other than acting as sponsors or compliance advisers or other activities that were

not previously proposed in relation to their RA 6 licence applications and reviewed by the Commission.

50. For corporate finance advisory firms holding RA 6 licenses and wish to act as sponsor under the new regime, the Commission has made the following arrangements for the transition.

For corporate finance advisory firms that have a previous IPO track record and intend to act or continue to act as sponsors

51. Corporate finance advisory firms holding RA 6 licenses before the Effective Date that have completed, on a firm basis, at least one IPO transaction on either the Main Board or the GEM board in the past 5 years immediately preceding the Effective Date will be required to make written submissions to the Commission, which state a) the firm meets the new eligibility criteria to act as a sponsor and b) the names and titles of the Principals that have been appointed by the firm. It will be the responsibility of the corporate finance advisory firms to ensure that the appointed Principals are qualified as outlined in the Sponsor Guidelines. In addition, the corporate finance advisory firms should ensure that it is in a position to meet the minimum paid-up capital requirement of HK\$10 million on the Effective Date. The Commission will require the corporate finance advisory firm to provide evidence to its satisfaction that it is in a position to meet the minimum paid-up capital requirement.
52. To facilitate a smooth transition, these corporate finance advisory firms will have to submit their written submissions to the Commission by the Effective Date. Upon the receipt of the relevant notification that informs the Commission's decision not to impose a licensing condition restricting the firm from working as a sponsor or other similar restrictive licensing conditions by the Commission, these firms will be able to continue to rely on their existing RA 6 licences to operate as sponsors. No new licenses will be required. Corporate finance advisory firms that are unable to meet the necessary criteria will have licensing conditions imposed upon them, restricting them from carrying out sponsor work.
53. The mere fact that corporate finance advisory firms have previous IPO track records do not necessarily mean that they are also compliant with all requirements under the Sponsor Guidelines. They should consider carefully whether or not they have met all the requisite requirements as sponsors under the new regime before continuing their existing sponsor work or accept new mandates during the time between the Effective Date and the receipt of the Commission's relevant notification. It is conceivable that some of these sponsors might not satisfy the requirements of the new regulatory regime, and therefore may not be able to continue to act as sponsors under the new regulatory regime.
54. Besides meeting the requirements under the Sponsors Guidelines, the fitness and properness of the corporate finance advisory firms (including that of their Principals) to act as sponsors is an important factor to be considered by the Commission in deciding whether the firms shall be eligible to act and/continue

to act as sponsors. In considering the corporate finance advisory firm's fitness and properness to carry out sponsor work, the Commission may consider all information available to it in respect of the firm's sponsor work or its carrying out of corporate finance advisory work in general. Therefore, all corporate finance advisory firms that currently act as sponsors should take a prudent assessment in accepting new sponsor mandates between the Effective Date and the date of receiving the relevant notification from the Commission. The onus is on the firm and its management to ensure that the firm satisfies all necessary requirements, and the written submission is true and accurate and not misleading in any respect.

For corporate finance advisory firms that do not have a previous IPO track record but intend to act as sponsors

55. A corporate finance advisory firm holding a RA 6 licence before the Effective Date and, on a firm basis, has not completed any IPOs in the past 5 years immediately preceding the Effective Date will be required to submit a written submission to the Commission that it complies with the eligibility criteria to act as a sponsor under the Sponsor Guidelines, including the names of the Principals appointed; and to provide supporting evidence which demonstrates the firm's compliance with all of the eligibility requirements, including the minimum paid-up capital of HK\$10 million. Such supporting evidence may include, without limitation, the background of the respective Principals, showing their experience and expertise in the area of sponsors and/or IPOs, and the organizational structure and internal controls of the corporation. The corporate finance advisory firm will have to submit its written submission to the Commission by the Effective Date.
56. These corporate finance advisory firms will be considered on their acceptability as sponsors in accordance with the eligibility criteria as prescribed in the Sponsor Guidelines. Upon the receipt of the relevant notification that informs the Commission's decision not to impose a no-sponsor work condition or such other similar condition by the Commission, these firms can continue to rely on their existing RA 6 licenses to operate as sponsors. There will be no separate or new licenses to replace their existing RA 6 licenses. Corporate finance advisory firms that are unable to meet the necessary criteria will have licensing conditions imposed upon them, restricting them from carrying out sponsor work.
57. The above described corporate finance advisory firms should consider carefully whether they are fit and proper to undertake sponsor work or accept sponsor mandates during the time period between the Effective Date and receipt of the Commission's relevant notification.
58. Given these firms' background, it is conceivable that some of them may not be accepted by the Commission to act as sponsors under the new regime. In considering the corporate finance advisory firm's overall fitness and properness to carry out sponsor work, the Commission may consider all information available to it in respect of the corporate finance advisory work carried out by the firm. In view of this inherent uncertainty, undertaking sponsor mandates or conduct of sponsor work by them prior to the date of receiving the relevant

notification from the Commission may raise the issue of their ability to control business risk and in general, their overall fitness and properness as licensed corporate finance advisory firms holding RA 6 licenses.

For corporate finance advisory firms that intend to act as compliance advisers

59. Under the Sponsor Guidelines, a corporate finance advisory firm has to be eligible to act as a sponsor at all times to act as a compliance adviser. As such, existing corporate finance advisory firms that intend to act as compliance advisers under the new regulatory regime must ensure they are permitted under their licenses or certificates of registration to act as sponsors in order to act and/or continue to act as compliance advisers. Apart from the transitional arrangements for sponsors mentioned above, there shall be no separate transition arrangements for compliance advisers.
60. Where a licensing condition restricting a corporate finance advisory firm from conducting sponsor work is imposed on its licence or certificate of registration, that firm shall be deemed (without further explicit reference) not eligible to conduct compliance adviser work under the new regime.

Individuals licensed for RA 6

61. Under the Sponsor Guidelines, only corporate finance advisory firms will be assessed as to whether they meet the requisite admission criteria for carrying out sponsor work. As such, individuals currently licensed as licensed representatives under RA 6 need not do anything in transiting to the new regulatory regime.

Due process for transitional arrangements

62. The new regulatory regime for sponsors will be incorporated as part of the existing licensing regime under the SFO after its Effective Date. Licensing conditions will be imposed on those corporate finance advisory firms that do not meet the criteria to become sponsors. Under the SFO, a licensed person will be given the right to be heard in relation to the imposition of licensing conditions by the Commission. The SFO also provides in favour of an intermediary a right to make an application to the Securities and Futures Appeal Tribunal to review the Commission's decision to impose licensing conditions.
63. In order to minimize any disruption of business activities during the transition to the new regime, corporate finance advisory firms that intend to act as sponsors and/or compliance advisers under the new regime should make the necessary considerations and preparations as early as possible to ensure that they will become eligible to act as sponsors by the Effective Date. The Commission will give notification to remind all corporate finance advisory firms regarding the implementation of the new regime before its Effective Date. Furthermore, the Commission will also post the relevant FAQs about the transitional arrangements to facilitate the market's understanding of the transition onto its website in due course.

64. Between now and the Effective Date, corporate finance advisory firms acting as sponsors and/or compliance advisers will continue to be subject to the current regime, including the standards and requirements set out under the codes and guidelines issued by the Commission and the Listing Rules of the SEHK. Sponsors and compliance advisers are reminded that under the new regime, the codes and guidelines applicable in governing the conduct of corporate finance advisory firms and the licensed individuals employed by them shall continue to apply unless otherwise expressly excluded.

Compliance with other application codes, guidelines and regulations of the Commission

65. The Commission would also like to take this opportunity to remind all corporate finance advisory firms, whether acting as sponsors, that as corporate finance advisory firms holding RA 6 licenses, they should comply with all other codes, guidelines, and regulations which are applicable to corporate finance advisory firms at all times.
66. Also as set out in the Joint Consultation Conclusions, both the SEHK and the Commission are mindful that overlapping regulatory responsibility is only acceptable where there is a clear regulatory reason for or benefit from such an approach. In the Joint Consultation Conclusions the SEHK and the Commission agreed that, to minimize the extent of any overlap, once the Commission had revised its licensing regime to introduce specific eligibility criteria for intermediaries who offer sponsor or compliance adviser services, the SEHK would consider removing the existing Listing Rules regarding eligibility of sponsors and compliance advisers. The SEHK and the Commission will work together to achieve this objective.

SUPERVISION OF SPONSORS AND COMPLIANCE ADVISERS

67. At present, corporate finance advisory firms, including sponsors and compliance advisers, must be licensed for RA 6 under the SFO in order to advise on corporate finance matters. These corporate finance advisory firms must remain fit and proper to be licensed, and comply with all existing relevant codes and guidelines issued by the Commission under the SFO.
68. Under the new regime, all corporate finance advisory firms that wish to undertake or continue to undertake work in the capacity of sponsors must meet the eligibility criteria and comply with certain specific and on-going compliance requirements. Licensing conditions will be imposed on corporate finance advisory firms that do not qualify to act as sponsors. Regardless of whether the firm undertakes sponsor and/or compliance adviser work, all corporate finance advisory firms are reminded that they must continue to comply with all relevant regulations, codes and guidelines in order to remain fit and proper to be licensed by the Commission.
69. Furthermore, sponsors and compliance advisers will be subject to the on-going supervision of the Commission. As part of the Commission on-going

supervision, the Commission may inspect the operations of sponsors and compliance advisers both on a routine and an ad-hoc basis to ensure their compliance of the relevant regulations. If a sponsor or compliance adviser fails to remain fit and proper as a licensee at any time under the existing or new regime, the Commission may take appropriate action against it. Where necessary, the Commission may take measures such as imposing licensing conditions and/or issue restriction notices against the firm, effectively curtailing its operations whether in nature, scope, volume or by reference to any other parameters.

ENFORCEMENT

70. Given the importance of the sponsor/compliance adviser roles in providing advice and guidance to new listing applicant in relation to the listings, compliance with the requirements of Listing Rules, and its implications to the financial market, the Commission will take a serious stance against sponsors/compliance advisers who failed to meet the benchmarks. Under the SFO, the Commission is empowered to conduct enquiries and to investigate the activities of licensees, including sponsors in respect of possible breach of the relevant regulatory requirements.
71. The Commission will not hesitate to take necessary action against sponsors and compliance advisers who failed to meet the required standards. The Commission may impose a range of sanctions that are available including reprimands, fines, suspension and revocation of their licences.

CONCLUSION

72. The Sponsor Guidelines will bring the specific issue concerning sponsor eligibility into the fold of the existing licensing regime on corporate finance advisory firms. As such, upon implementation of the new regime, there will be a comprehensive set of requirements specifically for sponsors. The new regime will ensure that only corporate finance advisory firms that meet the minimum eligibility standards set out under the Sponsor Guidelines can act as sponsors. The new regime would also facilitate effective supervision of these corporate finance advisory firms by the Commission as well as enforcement actions by the Commission when they fail in their conduct as sponsors.
73. The new regime also requires compliance advisers to be at all times eligible under their licence or certificate of registration to act as sponsors. This requirement is in line with the policy stated in the Joint Consultation Conclusions and reflects the current practice. The codification of such practice in the Sponsor Guidelines provides certainty and transparency to the market with respect to the eligibility standards required for compliance advisers. It also enables the Commission to take more effective supervision and enforcement actions against compliance advisers that are found to have failed in their conduct.

74. The Commission would like to thank all such parties who have assisted or during the consultation process. A list of the respondents is provided in Annex II.

PART C – SUMMARY OF RESPONSES TO THE CONSULTATION PAPER

75. The Commission issued the Consultation Paper on 29 June 2005 for a two-month consultation period. The Commission continued to receive responses from industry practitioners up to mid-October 2005. In total, the Commission received 14 submissions from industry players, professional bodies, as well as individual investors. All submissions have been published on the Commission's website at <http://www.sfc.hk>.
76. After the close of the consultation period, the Commission held various discussion sessions with some market practitioners to clarify certain market practices of sponsors and compliance advisers as referred to in their submission.
77. In general, the majority of respondents supported the Commission's initiatives to enhance sponsor and compliance adviser standards and to implement a new regulatory regime to specifically address issues arising out of the regulation of sponsors and compliance advisers.
78. There is, however, one strong dissenting view shared by most respondents, that is, the proposed requirement for sponsors to take out mandatory professional indemnity insurance coverage. Almost all of the respondents with a financial services background opposed to this proposal on the grounds that: (1) it would be difficult for sponsors to decide the scope of professional indemnity to be taken out on sponsor activity as this can be part of the operation of a multi-service firm; and (2) such insurance could be commercially prohibitive for sponsors to obtain.
79. Besides the issue of mandatory professional indemnity insurance coverage, there were also respondents who opposed to the requirement that corporate finance advisory firms must be qualified to work as sponsors in order to act in the capacity of compliance advisers.
80. Other respondents sought specific clarification on how the new regime works. Some individuals/bodies and buy-side intermediaries also expressed strong views that the Commission should take even tougher stance in enforcing the standards of sponsors/compliance advisers so as to maintain the quality of the Hong Kong market.
81. In arriving at the Consultation Conclusions, the Commission has taken into account the responses received, as well as feedback gathered from various subsequent discussion sessions we had with some market practitioners. Annex I contains the Sponsors Guidelines, which will become part of the F&P Guidelines on the Effective Date.
82. The following is a summary of the key submissions received from the market and our responses to them.

Management responsibility – Paragraph 1.2 of Annex I to the Consultation Paper (“Consultation Annex”)

Public’s comments

83. Paragraph 1.2 of Consultation Annex elaborates on the basic principles in the Code of Conduct that the management has the ultimate responsibility for sponsor work carried out. Out of 14 respondents, only two have indicated views on this reiteration of the responsibility of the management of a sponsor. One buy-side respondent supported this elaboration of the standards regarding the overall responsibility of a sponsor, and submitted that such standards have already been implemented by the better sponsors.
84. One group of respondents took the view that the meaning of the term “management” should be limited in scope. They did not support this proposed requirement because it had not catered specifically for the business structure of some international firms that operated their investment banking business via their locally incorporated entity. These firms would normally appoint their senior management personnel to the local board, which in turn delegated responsibility of the day-to-day management to various heads of business units. Sometimes, the board would defer the judgement associated with particular business units, such as the requirements on resources, to the heads of the business units in the local entity. This group of respondents believed that it would not be fair to attribute responsibility to the senior management personnel that had already delegated this responsibility to the heads of the local business units.
85. Furthermore, they also proposed that in multi-service firms, it would seem appropriate to confine the scope of management responsibility for sponsor work to those senior management staff in the Hong Kong business unit participating in sponsor work directly. They believed that it would be unfair if senior management not involved in the operations of the relevant sponsor business were held responsible for failures of sponsors.

Commission’s response

86. The proposals of the Consultation Paper aim to provide a regulatory regime that promotes one single set of standards and admission criteria for sponsors so that whenever intermediaries are engaged in this type of activity, they are subject to the same level of regulatory and compliance standards.
87. The Commission is mindful of the matrix structure a firm might have in terms of business lines, legal and compliance functions and management oversight. Besides the model described by the respondent, the Commission also notes, through its soft consultation with the industry, that firms adopt a variety of management structures and reporting lines for its decision making process. For example, some international firms have established committees that provide general guidance to transaction teams on possibly controversial or compliance issues encountered during an IPO transaction. The composition of these committees and the procedures through which the issues are raised varies among

sponsors, depending on its operational model. Some sponsors may have a reporting line where issues and decisions may be escalated horizontally within the organization's global investment banking arm, while others may report vertically to the organization's board of directors. Regardless of the type of management structure adopted by the sponsor, its primary objective remains the same: to establish a due process for making key decisions and providing guidance to maintain sponsor's compliance with the relevant regulations.

88. "Management" is not a term that is susceptible to precise definition. Given the broad range of possible management structures amongst sponsors, it is practically not possible to take a prescriptive approach in defining the definition of "management". The actual extent of management responsibility varies in each situation, and should be construed in light of the facts and circumstances of the situation.
89. Based on the above consideration, the Commission decides that it is in the overall interest of the investing public that a principle-based approach should be taken. Therefore in Paragraph 1.2 of the Sponsor Guidelines, we maintain that it is not appropriate to define management responsibilities by reference to confined functionalities within a sponsor.

Requirement that sponsors must have a minimum of 2 Principals – Paragraph 1.3 of the Consultation Annex

Public's comments

90. The majority of the respondents were supportive of the proposal to have at least 2 Principals in each sponsor. Some respondents raised technical questions on issues arising out of different scenarios that sponsors might face in the appointment of Principals. For example, one respondent suggested that since the appointment of one Principal for each transaction team was the minimum requirement proposed in the Consultation Paper, it seemed fair to mandate only the appointment of one Principal for each sponsor. Some respondents wanted to know in the case of the departure of a Principal in the middle of a transaction, whether the Commission would allow a grace period when a sponsor is seeking suitable replacement.

Commission's response

91. The Commission's view is that a sponsor's management is responsible for deciding the number of Principals sufficient for sponsor work in its firm, taking into account the volume and complexity of the sponsor work that the sponsor is or will be engaged in. That said, it is expected that a sponsor should be of substance and committed in its sponsor business and therefore at any one time, it should have the capacity to undertake more than just one potential listing of new companies. It is therefore reasonable to require that there should be at least two Principals for each sponsor.
92. As mentioned by one respondent, sometimes, a Principal may leave the sponsor in the course of the preparation of a listing application. In those circumstances,

the sponsor, in order to maintain proper controls over the pending transaction, must have at least one other Principal to continue to supervise such transaction as an interim measure. At the same time, the sponsor should ensure its capacity and resources are adequate for properly carrying out sponsor work. If not, the management should consider scaling down its sponsor work to mitigate any possible operational risks arising out of the departure of the Principal.

93. Sponsors are required to notify the Commission, in writing, in respect of any addition or cessation of its Principals within 7 business days after such changes, and together with the notification, complete an information sheet on the eligibility of the Principal. The Commission will make available the necessary templates and information to market practitioners through its website in due course.
94. With respect to specific technical issues regarding relevant actions to be undertaken where a sponsor fails to meet the requisite requirement on maintaining the number of Principals due to personnel movement, the Commission will explain these technicalities by way of FAQs to be published on its website.

Specific eligibility criteria for Principals – Paragraph 1.4 of the Consultation Annex

Requirement that Principals must be ROs

Public's comments

95. The majority of the respondents supported the proposal that Principals must be ROs. A group of respondents took the view that the proposals could not fit in with the existing organisational structures of large international firms that carried out sponsor work. It was generally represented that large international firms registered only the senior management staff as ROs. These senior management staff would normally oversee the firm as a whole but would not normally engage in the day-to-day work or management of the particular transactions.
96. Furthermore, the group also represented that in these firms, most of the transaction management was performed by team leaders who reported to the senior management staff. While the respondents believed that these team leaders had the necessary experience and expertise in meeting the requirements in the new regime, due to business or other reasons, team leaders in such capacities were not usually nominated by the firms to be registered as ROs.

Commission's response

97. Having considered the comments from the respondents, as well as views expressed by market practitioners during subsequent discussions after the end of the consultation period, the Commission saw the need to clarify the expected role of the Principal in the Consultation Paper. The Principal should be a senior personnel of a sponsor who is expected to be in charge of the overall supervision

of transaction teams, be involved in the making of key decisions in relation to the work carried out by the transaction team, as well as being aware of the key risks associated with the transaction team's work and measures to address such risks. The Principal is also expected to be the primary point of communication between the sponsor's senior management and the relevant regulators. Given the Principal's role, it would be expected that a person who qualifies as a Principal should be sufficiently senior within the sponsor in order to discharge his function properly.

98. Under the statutory requirements of the SFO, ROs are appointed for the supervision of the business of the regulated activity for which the corporation is licensed. The Commission believes the proposal that the Principals should also be ROs would be consistent with the expectation that a Principal should be a person who is sufficiently senior within the sponsor. The proposal also serves as a concrete elaboration of the obligation of the sponsor in exerting a high level supervision on its IPO transactions.
99. It should be noted that under the new regime, the sponsor and its management will be responsible for ensuring that the Principal meets the eligibility criteria as set out in the Sponsor Guidelines. In exceptional circumstances, the Commission may consider exercising its discretion to dispense with the requirement to strictly comply with the eligibility criteria for Principals under the new regime on a case by case basis, provided that such dispensation is not prejudicial to the overall interests of the investing public.

Requirement that a Principal must have at least 5 years' general corporate finance experience

Public's comments

100. In the Consultation Paper, it was proposed that a Principal must have at least 5 years' general corporate finance experience in respect of companies listed on the Main Board and/or GEM Board immediately before the Principal is appointed. Respondents generally supported the proposal that Principals should have a minimum of 5 years of relevant corporate finance experience in respect of companies listed on the Main Board and/or GEM. One respondent commented that it was essential for the IPO transaction team of a sponsor to have sufficient local experience at the supervisory level (in particular, where the listing applicant was incorporated in or had the bulk of its assets and/or operation in mainland China) in order to provide proper advice to clients on compliance with relevant rules and regulations in Hong Kong, and that local experience only at the staff level was inappropriate as the Principal was the ultimate supervisor of the transaction team.
101. However, some respondents also raised the concern that the imposition of a bright-line test for the 5 years' experience might, in some circumstances, be too rigid and cause undue burden on intermediaries applying to be eligible as sponsors. They expressed the view that international experience was just as valuable and relevant in the strengthening of the Hong Kong regime. They believed that the proposed requirement of 5 years' corporate finance experience

gained from the local jurisdiction seemed to have placed a heavier emphasis on Hong Kong experience and suggested that the Commission should recognise corporate finance experience gained from other jurisdictions.

102. Besides, some respondents suggested that the scope of corporate finance experience that were considered to be relevant for the qualification of Principals should be expanded to cover other corporate finance activities such as reverse takeovers or listings by way of introduction. Further, they also requested clarification on whether the 5 years' experience had to be a combination of all the activities described in Paragraph 1.4.1(2) of the Consultation Annex or that this requirement could be satisfied with any one of the described activities.

Commission's response

103. The Commission sees the importance of attracting overseas corporate finance professionals to provide financial services to the Hong Kong market. As clarified above, the Principal contemplated under the new regime for sponsors actually refers to corporate finance advisory firms who act in a relatively senior position within a sponsor. In the soft consultation we had with various established international firms in Hong Kong, they shared a common observation that such senior staff is likely to have acquired substantial corporate finance experience in other leading markets and such experience is valuable input to the Hong Kong market as a whole.
104. On the other hand, local corporate finance experience is equally, if not more, important for sponsors. Sponsors should possess the necessary experience and practical knowledge in the local context so as to properly advise their clients in the course of the listing preparation including the conduct of proper due diligence and the overall management of public offer as required under Section 5.3 of the Corporate Finance Advisers' Code of Conduct.
105. On balance, having regard to the specific circumstances of the applicant firm and/or the candidates for the role of Principals, the Commission is prepared to consider it acceptable if an intended Principal of a sponsor has acquired only part of his general corporate finance experience from transactions of listed companies in the Hong Kong market. In particular, the Commission will consider, among others, the firm's business nature and model, supporting expertise and resources, compliance track record and systems, and the comparability of the overseas experience acquired by the Principals. In general, it is expected that overseas corporate finance experience should, at the minimum, be acquired in markets that have a comparable or even higher regulatory and enforcement standards on listing matters than Hong Kong. Corresponding changes have been made to Paragraph 1.4.1(2) of the Sponsor Guidelines.

Constituents for the 5 years' corporate finance experience

106. The Commission has taken up the suggestion that the list of “corporate finance experience” should be expanded to include connected transactions and mergers and acquisitions.
107. The Commission would also like to clarify that the 5 years' corporate finance experience as spelt out in Paragraph 1.4.1(2) of the Sponsor Guidelines can be made up of experience acquired in one or more of the activities listed in that Paragraph and need not be experience gained solely from IPOs. While the Commission may recognize other significant transactions or equity fund raising exercises in addition to those listed under Paragraph 1.4.1(2) of the Sponsor Guidelines, the general principle is that the majority of the relevant 5 years' corporate finance experience should be made up of experience in transactions that have an element of equity fund raising by the listed issuers from the public.
108. The Commission will further elaborate on practical or logistical questions on what a firm needs to provide in order to satisfy the requirements on Principals by way of a set of FAQs to be published on its website.

Principals shall have played a substantial role in advising a listing applicant as a sponsor in at least two completed IPOs on the Main Board and/or GEM

Public's comments

109. In the Consultation Paper, it was proposed that in addition to the requirement that he had acquired 5 years' general experience, the Principal should also have gained experience in a substantial role in two completed IPOs in the Hong Kong market.
110. Respondents were mostly in agreement with the requirement that Principals should have played a substantial role in advising a listing applicant as a sponsor in at least two completed IPOs on the Main Board and/or GEM.
111. Some respondents raised various practical questions on the application of this requirement, which are summarised as follows:
 - Would the completion of two overseas IPO be recognized in the assessment of a Principal's eligibility?
 - What does it mean by the term “substantial role”?
 - Is this requirement of having completed at least 2 IPOs in 5 years assessed on a rolling basis or is this a one-off requirement for Principals?

Commission's response

112. The functions carried out by sponsors are different from placing agents or underwriters. They play the role of an all-round corporate finance adviser that advises and prepares a corporation to list its shares for trading on the SEHK and

in most cases, these corporations are previously unknown to the investing public. Listing of shares of an enterprise in Hong Kong requires a great deal of skill, expertise and knowledge on the part of its sponsor whose job is to ensure, among others, that the applicable requirements for listing are met by the company. This calls for significant local expertise and knowledge on the part of the sponsor, particularly in view of the rapid development in recent years and the unique circumstances of mainland China, where most listing candidates have business operations.

113. As mentioned in paragraph 105, the Commission agreed that the general 5 years' corporate finance may, in specific circumstances, be satisfied by way of a combination of local and foreign experience. However, in the case of the requirement that a Principal has played a substantial role in at least two completed IPOs, the Commission takes the view that this specific experience has to be relevant to the Hong Kong market and hence there will not be revisions to the initial proposal for this requirement.
114. In considering what constitutes a "substantial role" in the context of assessing the eligibility of the Principals, the term should be interpreted in its ordinary meaning. Suffice to say that in normal circumstances, a Principal could not be said to have played a substantial role where he played less than a leading supervisory role in an IPO transaction.
115. The Commission would like to clarify that it is not an on-going compliance requirement for a Principal to demonstrate that he meets the two IPO experience on a rolling 5 years basis.
116. However, the Commission is of the view that sponsor work, particularly IPO transactions are a specialised type of corporate finance work. The requirements and practice for IPO work are subject to changes in the market, and in the legal and regulatory framework from time to time. In view of this, Principals who are responsible for supervising transaction teams should themselves have up-to-date experience on IPO work before he is appointed as a Principal. While it is not a mandatory requirement to test the "recency" of a Principal's specific IPO experience on a 5-year rolling basis, this may well serve as one of the indicative factors that the management of a sponsor should take into account when they appoint a person as a Principal who has moved in the capacity of a Principal from another firm. In any event, the Guidelines on Competence currently require a RO who has moved from one firm to another to demonstrate to the Commission that he remains competent as a RO, including having sufficient relevant industry experience over certain recent years.

Systems and controls and internal assessment – Paragraph 1.5 of the Consultation Annex

Public's comments

117. Most respondents were supportive of a tightening of internal systems and controls of sponsors. Some respondents sought clarification on how the proposed annual assessment of internal systems and controls by sponsors should

be carried out and others sought clarification of the wording under Paragraph 1.5.3.

118. One respondent commented that it was practically impossible for a sponsor to implement systems and controls that would “ensure” compliance of the relevant regulations in all aspects. In addition, the respondent also disagreed with the requirement for a sponsor to undertake an annual assessment of the sponsor’s systems and controls on the basis that business units engaged in sponsor work were not inherently “riskier” than other units which were not required to be reviewed annually. Accordingly, that respondent submitted there was no need to impose the requirement to perform annual assessment.
119. Another respondent sought the Commission’s guidance on what the “complete and up-to-date list of all sponsor work” should be in order to comply with the requirement stated under Paragraph 1.5.2 of the Annex of the Consultation Paper. In addition, one respondent would like to seek clarification on the Note under Paragraph 1.5.1 of the Annex of the Consultation Paper, which stated that “Management should ensure that it is kept abreast of any material development and key issues relating to its sponsor work”.

Commission’s response

120. The requirement that “any material non-compliance issue should be reported to the Commission promptly” in Paragraph 1.5.3 of the Sponsor Guidelines is consistent with the basic requirements in Paragraph 12.1 of the Commission’s Code of Conduct. The Commission believes that ROs and compliance officers of intermediaries are familiar with this requirement and its practical implications to their operations.
121. As to the specific requirement that sponsors are requested to carry out an annual assessment of the internal systems and controls proposed in section 1.5.3 of the Sponsor Guidelines, this may be achieved by sponsors carrying out external or internal assessment, or audit focusing on the effectiveness of the internal controls and supervision, and identifying any key operational risks associated with sponsor work in light of the transactions advised on by them as sponsors in the preceding 12 months. It is not the intent of the Commission that the annual assessment is used to re-examine the merits of each transaction. Rather, the main objective is to ensure that senior management of sponsors have an opportunity in the conduct of an annual assessment to review the effectiveness internal controls including reporting lines, due diligence process and other related aspects of sponsor work, and to consider whether any enhancement is warranted.
122. Given the differences in size and business model among sponsors, the systems and controls required by each sponsor to ensure compliance of its obligations under Paragraph 1.5.1 of the Sponsor Guidelines may vary among different sponsors. Similarly, the parameters of the requisite annual assessment by sponsors to ensure their respective compliance with the relevant requirements on effective systems and controls also vary among them. The Commission is of the view that each sponsor has obligation to devise its own specific systems and

controls in light of its business operations, and based on these, should decide the scope of its annual assessment.

123. Sponsors will be required to keep a complete and up-to-date list of all the sponsor work and, at the minimum, the list should include the names of the companies being advised, the nature of the transactions, the composition of the teams designated for the sponsor work (including any variations thereto), the title and roles of respective members in the teams from start to finish, timelines and the Principal(s) appointed. The keeping of an updated list of sponsor work facilitates the Commission's understanding of the overall picture of the sponsor work undertaken by a sponsor. This specific requirement does not replace or negate sponsors' general obligation of keeping proper books and records.
124. With respect to the requirement that management shall be kept abreast of material development and key issues relating to its firm's sponsor work, the Commission is of the view that it is part and parcel of the ultimate obligation of the management to be responsible for the firm's sponsor work. A sponsor's management should be aware of the latest development and progress of the firm's sponsor work in order to discharge its function as the firm's management. The management should also ensure that within the sponsor, there is an effective channel for communication of information between the staff at the working level and the senior management such that senior management is able to exercise proper overview and supervision.

Minimum capital requirements – Paragraph 2 (1) of the Consultation Paper Annex

Public's comments

125. On the whole, responses generally were receptive to the proposal of a minimum capital requirement for sponsors. One respondent further suggested that in addition to a fixed sum capital requirement, sponsors should also comply with a minimum liquid capital requirement, as the liquid capital requirement provides better protection. On the other hand, a respondent expressed the view that a paid-up capital of HK\$10 million is inadequate to fund compensation to investors, and therefore a minimum amount would not serve that purpose.

Commission's response

126. The Commission believes that a capital requirement is justified to demonstrate that a sponsor is a firm with substance and commitment. Having considered the comments received, the Commission will require corporate finance advisory firms acting as sponsors to have a minimum of HK\$10 million paid-up capital. Legislative amendments will be made to the FRR as soon as possible to incorporate such changes.

Professional indemnity insurance – Paragraph 2 (2) of the Consultation Paper Annex

Public's comments

127. The majority of the respondents did not agree with the Commission's proposal to require sponsors to acquire professional indemnity insurance. While one respondent suggested that it should be left to the sponsor to decide whether such coverage is necessary, the majority of the respondents considered that the requirement was impractical and onerous and costs associated with it would be commercially prohibitive.

Commission's response

128. The Commission notes the respondents' concerns and comments regarding the issue of professional insurance coverage. Accordingly, the Commission will not require, as part of the sponsor's eligibility criteria, sponsors to have professional indemnity insurance coverage at this time.

Continuous Professional Training – Paragraph 3 of the Consultation Annex

Public's comments

129. In general, most respondents were receptive to the proposals on CPT, which requires sponsors' staff engaged in sponsor work to undergo CPT on topics relevant to their sponsor work, and such training should account for at least 50% of such sponsors' staff CPT hours required by the Commission as holders of corporate finance adviser licences.

Commission's response

130. The Commission believes that it is important for licensed individuals engaged in sponsor work to maintain up to date knowledge regarding the relevant regulations and market trends in order to carry out their work effectively. In view of the favourable response on this proposal, it will be a requirement for licensed representatives of a sponsor to undertake sponsor-related training, which should account for at least 50% of their CPT hours as required by the Commission.

Annual return – Paragraph 4 of the Consultation Annex

Public's comments

131. One respondent sought clarification with regard to the format of the confirmation which a sponsor is required to provide to the Commission in fulfilling the annual return requirement under Paragraph 4 of the Consultation Annex.

Commission's response

132. In order to reduce the administrative burden for sponsors, the Commission has decided not to impose the requirement on sponsors to submit an annual return confirming that it has carried out its internal assessment of its systems and controls. Having said that, in accordance with the requirements under 1.5.4 of The Sponsor Guidelines, sponsors should keep records of, amongst others, the following in order to demonstrate its compliance with the Annex:

- Appointment of the transaction team for each sponsor engagement
- Appointment and cessation of appointment as Principals and the decision-making process of such appointments; and
- Annual assessment of the sponsor's internal systems and controls

133. As licensed corporate finance advisory firms, sponsors are also reminded that they should comply at all times with other record keeping related regulations prescribed by the Commission.

Compliance advisers – Section II of the Consultation Annex

Public's comments

134. While the respondents indicated that there is a need to raise the overall standards of compliance advisers, some respondents disagreed with the view that the role of a compliance adviser is an extension of corporate finance advisory work conducted by a sponsor during the listing application. These respondents regarded the role of a sponsor to be different from a compliance adviser in that the former assists in the listing of a listing applicant while the latter assists in the compliance of its post-listing obligations. As such, corporate finance advisory firms should not be required to be qualified to act as a sponsor in order to act as a compliance adviser.

Commission's response

135. The Commission notes the views expressed by some respondents that the role of a compliance adviser might not necessarily be an extension of the sponsor's role. On the other hand, the Joint Consultation Conclusions has already stated the basis on which the SEHK will accept compliance advisers, namely compliance advisers are required to be an eligible Main Board or GEM sponsor firm⁸. This policy has been adopted and practised by the SEHK since the implementation of the revised Listing Rules on 1 January 2005.

136. Taking into account the comments of market practitioners, the observations that the SEHK has been implementing the policy stated in the Joint Consultation Conclusions, and the overall objective of this Consultation exercise to raise the overall standards of sponsors and compliance advisers, the Commission will

⁸ Paragraph 18 (c)(iv) of the Joint Consultation Conclusions.

maintain, as proposed in its Consultation Paper, that corporate finance advisory firms must at all times be eligible sponsors (i.e. firm is not imposed with a licensing condition stating that it cannot act as a sponsor) in order to be able to act as compliance advisers for newly listed companies. The Commission is of the view that given the implementation of this policy by the SEHK and the ability of corporate finance advisory firms to comply with it, the corporate finance advisory firms' position will not be prejudiced by this proposal.

Annexure

Annex I – Guidelines for Sponsors and Compliance Advisers

Annex II – List of respondents to the Consultation Paper

Guidelines for Sponsors and Compliance Advisers (“Sponsor Guidelines”)

Throughout the Sponsor Guidelines, unless otherwise stated, where reference to “RO” is made, the term also covers an executive officer of a registered institution, and the term “representative” also covers the relevant individual (other than an executive officer of a registered institution¹) of a registered institution.

Explanatory Notes

The Sponsor Guidelines are an elaboration of the existing Fit and Proper Guidelines, the Guidelines on Competence, and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”). Where relevant, provisions within these codes and guidelines are also applicable to sponsors and compliance advisers.

Sponsors and compliance advisers are also reminded that in addition to the Sponsor Guidelines and the above-mentioned codes and guidelines, they must also comply with all other relevant codes, guidelines and regulations prescribed by the Commission, such as the Corporate Finance Adviser Code of Conduct. These other codes and guidelines are not diminished in any way by the more specific requirements set out in the Sponsor Guidelines.

I. SPONSORS

1. Competence

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

1.1 Sufficient expertise and resources

1.1.1 *The Code of Conduct provides that a licensed or registered person should have and employ effectively the resources and procedures that are needed for the proper performance of its business activities.² The Code of Conduct further provides that a licensed or registered person should ensure that any*

¹ The term “registered institution” used in the context of the Sponsor Guidelines means an authorized financial institution which is registered under section 119 of the Securities and Futures Ordinance.

² General Principle 3 of Code of Conduct.

*person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience)*³.

- 1.1.2 In the context of acting as a sponsor⁴, a corporate finance firm should have sufficient expertise and resources to carry out its work. A sponsor should not undertake sponsor work and other corporate finance advisory work beyond its capacity and expertise. The Management⁵ should ensure that the firm has the relevant expertise and adequate resources to perform its role as a sponsor properly.
- 1.1.3 Whenever a firm takes up an appointment as a sponsor pursuant to the requirements under the Listing Rules⁶, the Management should appoint a team comprising corporate finance staff (hereinafter “transaction team”). Members of the transaction team should be competent in general, and in particular in the context of the work to be carried out by the team; and the team should have the manpower and resources to carry out the sponsor work to the standards expected of it under the relevant rules, regulations, codes and guidelines. A transaction team should have sufficient Hong Kong regulatory experience, including knowledge of the relevant rules, regulations, codes and guidelines so that it can properly discharge its duty as a sponsor.
- 1.1.4 Members in one transaction team of a sponsor may work in other transaction teams of the same sponsor provided that
- (1) the Management and the Principals⁷ of the respective transaction teams are satisfied on reasonable grounds that the sponsor can properly discharge its responsibilities in all the sponsor work that it undertakes;
 - (2) if a Principal is assigned to supervise more than one transaction team, the Management is satisfied that each team is properly and adequately supervised by at least one Principal who has the necessary capacity, capability and competence to supervise; and
 - (3) the sponsor complies with General Principle 6 and paragraph 10.1 of the Code of Conduct in respect of conflicts of interest.
- 1.1.5 The Management has the overall responsibility to ensure that there are sufficient staff to carry out the work throughout the period when the firm acts as a sponsor.

³ Paragraph 4.1 of Code of Conduct.

⁴ The term “sponsor” means a licensed corporation or registered institution licensed or registered for Type 6 regulated activity appointed to act as a sponsor in respect of an application for the listing of any securities on a recognized stock market under the Listing Rules of the Stock Exchange of Hong Kong Limited. A recognized stock market means a stock market operated by a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance.

⁵ Management includes the firm’s Board of Directors, Managing Director, Chief Executive Officer, ROs or other senior management personnel.

⁶ “Listing Rules” means the Listing Rules for the Main Board and GEM Board.

⁷ Refer to 1.3 of the Sponsor Guidelines.

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

1.2 Management's responsibility

- 1.2.1 *The Code of Conduct provides that the senior management of a licensed or registered person should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm⁸.*

- 1.2.2 *The Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission ("Internal Control Guidelines") provide that the Management should ensure that there is an effective management and organisational structure which ensures that the operations of the business are conducted in a sound, efficient and effective manner. The Management should assume full responsibility for the firm's operations including the development, implementation and on-going effectiveness of the firm's internal controls and the adherence thereto by its directors and employees. Reporting lines should be clearly identified, with supervisory and reporting responsibilities assigned to the appropriate staff members⁹.*

- 1.2.3 *The Code of Conduct¹⁰ further provides that a licensed or registered person should ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.*

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

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

Note:

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

⁸ General Principle 9 of Code of Conduct.

⁹ Part I of Internal Control Guidelines.

¹⁰ Paragraph 4.2 of Code of Conduct.

- 1.2.6 *The Internal Control Guidelines¹¹ provide that the Management should establish and maintain effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with, and which enable the firm, its auditors and other interested parties, e.g. the SEHK and the Commission, to carry out routine and ad hoc comprehensive reviews or investigation to assess such compliance.*

1.3 Principals

- 1.3.1 It is the responsibility of the Management to ensure that Principals appointed by the firm meet the criteria required in the Sponsor Guidelines. The Management should ensure that there are sufficient Principals engaged in a full time capacity to discharge its role in supervising the transactions team(s), taking into account the factors set out in 1.1.6. A sponsor should have at least two Principals at all times.
- 1.3.2 In making the appointment, the Management is required to provide a written endorsement, on behalf of the licensed corporation, that individuals proposed to be appointed to be Principals have met the respective requirements set out in sections 1.3 and 1.4 of the Sponsor Guidelines.
- 1.3.3 As a general guidance, a Principal is expected to be in charge of the supervision of the transaction team(s). The Principal should be involved in the making of the key decisions relating to the work carried out by the transaction team and must be aware of the key risks in such work and responsible for the measures to address them. For example, in respect of conducting due diligence review on a listing applicant, the sponsor should ensure that the Principal is involved in determining the breadth and depth of the due diligence review, the amount of resources to be deployed for carrying out such work, making a critical assessment of the results of the due diligence and overall assessment of the adequacy of the due diligence review, and ensuring that steps have been taken to properly resolve all issues arising out of such review. The Principal is also expected to be fully conversant with the key issues in each sponsorship appointment and be able to respond and react promptly to requests of the Regulators¹² on such issues and to properly advise the applicant.

Note:

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

- 1.3.4 A sponsor should notify the Commission in writing of any changes in its appointment of Principals within 7 business days after making such changes; and, in the case of appointment of a Principal, file an endorsement pursuant to

¹¹ Part IV.6.

¹² “Regulators” means the Commission and/or the SEHK.

1.3.2 above. The endorsement should include information, as required by the Commission, that demonstrates how the Principal has met the eligibility criteria.

1.4 Eligibility Criteria for Principals

1.4.1 In order to qualify as a Principal, an individual should

- (1) be a RO of the licensed corporation that his licence is accredited to;
- (2) have acquired a minimum of 5 years of relevant corporate finance experience in respect of companies listed on the Main Board and/or GEM Board preceding the appointment as a Principal; and

Note:

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

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

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

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

- (c) *the sponsor should avoid attributing the experience of all the Appointees of the firm to the same transaction in meeting this requirement.*
- (3) in the five years immediately preceding his appointment, have played a substantial role in supervising a listing applicant as a sponsor in at least two completed IPOs on the Main Board and/or GEM Board.

Note:

- (1) *The Commission may exercise its discretion, on a case-by-case basis, to grant a dispensation from strict compliance with the requirements on eligibility of Principals under Paragraph 1.4.1 if the firm could demonstrate that there are valid and justifiable grounds for such dispensation, which will not prejudice the overall protection of investors' interest. In considering an application for such dispensation, the Commission may take into account, without limitation, the following:*
 - (a) *The nature and structure of the business of the group companies to which the sponsor belongs and internal resources and support that the group is able to provide in the carrying out of the sponsor work;*
 - (b) *The governance of the sponsor and/or its group companies by securities regulators in other leading and well-regulated markets;*
 - (c) *The standards of internal controls and risk management of the firm and/or its group of companies;*
 - (d) *The compliance record of the sponsor in Hong Kong and other jurisdictions.*

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

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

1.5 Systems and Controls and Internal Assessment

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

- (1) adequate supervision and management of its employees who perform the services of a sponsor;
- (2) that employees do not act beyond their proper authority; and

- (3) its compliance with all laws, regulations, codes and guidelines, including the Listing Rules, which may be applicable to the work of a sponsor.

Note:

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

- 1.5.2 A sponsor should keep a complete and up-to-date list of all the sponsor work that has been and is being undertaken. The list should include, at the minimum, the names of the companies being advised, the nature of the transactions, the composition of the teams designated for the sponsor work (including any variations thereto) and the title and role of each team member from start to finish. Such information should be made available to the Commission upon request.
- 1.5.3 A sponsor should carry out an assessment annually in order to ensure that its systems and controls remain effective. Any material non-compliance issue should be reported to the Commission promptly.

Note:

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

- 1.5.4 Records of the following appointments and assessments made by the Management should be properly kept to demonstrate its compliance with the Sponsor Guidelines:
 - (1) The appointment of the transaction team for each sponsor engagement under 1.1.3 and 1.2.5;
 - (2) The appointment of a RO as a Principal under 1.3.1, the cessation of such appointment, and the decision-making process of such appointment; and
 - (3) The annual assessment of the sponsor's internal systems and controls under 1.5.3.

2. *Minimum capital requirements*

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

3. *Continuing professional education*

3.1 *The Internal Control Guidelines¹³ provides, inter alia, that training policies shall be established with adequate consideration given to training needs to ensure compliance with the firm's operational and internal control policies and procedures, and all applicable legal and regulatory requirements to which the firm and its employees are subject. Adequate training should be provided both initially and on an on-going basis.*

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

II. COMPLIANCE ADVISERS

1. A firm must be eligible under its licence or certificate of registration to act as a sponsor (i.e. not subject to a licensing condition that prohibits it from carrying out sponsor work) in order to carry out work as a compliance adviser¹⁴. As corporations licensed under Regulated Activity Type 6, in addition to the requirements and obligations set out in the Guidelines, compliance advisers are required at all times to observe the relevant codes of conduct and regulations by the Commission applicable to holders of Regulated Activity Type 6 licences. These include, without limitation, the Internal Control Guidelines, the Code of Conduct, the Corporate Finance Adviser Code of Conduct, the Fit and Proper Guidelines, and the Guidelines on Continuous Professional Training.

2. In addition, all compliance advisers must be eligible to act as sponsors at all times in order to be initially eligible and continue to be eligible to act as compliance advisers. In the event that a licensed or registered person ceases to

¹³ Part III of Internal Control Guidelines

¹⁴ A licensed corporation or registered institution licensed or registered for type 6 regulated activity appointed to act as compliance advisor under the Listing Rules of the Stock Exchange of Hong Kong Limited.

be eligible to act as a sponsor, it shall cease to be eligible to act as a compliance adviser.

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

List of respondents to the Consultation Paper

Category A - Commentator has no objection to publication of name and content of submission (in alphabetical order).

- Anglo Chinese Corporate Finance Limited
- Mr Cheung Chi Keung
- Ernst & Young Corporate Finance Limited
- First Shanghai Capital Limited
- G.K. Goh Securities (H.K.) Limited
- Hong Kong General Chamber of Commerce
- Hong Kong Institute of Certified Public Accountants
- The Hong Kong Society of Financial Analysts Limited
- Hong Kong Stockbrokers Association
- Law Society of Hong Kong
- Linklaters and Freshfields Bruckhaus (Representing ABN AMRO Bank N.V., Bear Stearns Asia Limited, BOCI Asia Limited, Citigroup Global Markets Asia Limited, Credit Suisse First Boston (Hong Kong) Limited, Deutsche Bank AG Hong Kong Branch, Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities (Asia Pacific) Limited, Merrill Lynch (Asia Pacific) Limited, Morgan Stanley Dean Witter Asia Limited, Nomura International (Hong Kong) Limited and UBS AG)
- Somerley Limited

Category B - Commentator requested submission to be published on a "no-name" basis.

- Two submissions