Corporate Regulator

The Hong Kong Institute of Directors
Speaker Luncheon Meeting

12 May 2014

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Chairman
SFC’s corporate oversight

Corporate Finance (SFC)

Takeovers and mergers

Listing:
Dual filing regime, reinforced by regulation of IPO sponsors

Post-listing:
Corporate Regulation team monitors disclosure & conduct
Listing: Dual filing regime

- Effective when the SFO came into effect on 1 April 2003
- SFC also acts as a gatekeeper for listing applications:
  - Request further information relating to the listing application
  - Veto listings on grounds of public interests or misleading info
  - Take enforcement action against disclosure of false or misleading info
Directors’ obligations in listing

- Obligations in statute, in the common law and non-statutory provisions
- Preparation of a listing document: A collaborative process
- INEDs: The same rules apply!

A listing applicant and its directors should:

- Fully assist the sponsor in the performance of its duties
- Provide information to the sponsor for the IPO
- Enable the sponsor to access all relevant records
- Acknowledge that the sponsor is required to provide information to the regulators
Latest developments

- Listing applications filed under the dual filing regime:
  - Up 64% YoY in Apr-Sep 2013 from Apr-Sep 2012
  - 188 in 2013-14 vs 124 in 2012-13

- Draft listing document must be substantially complete

- Eight listing applications were returned on incomplete application proof

- Outcome: Can only re-submit new applications after an eight-week suspension

- “Name and shame”: From 1 April, the names of sponsors and listing applicants of rejected applications remain posted on HKEx’s website
SFC as a corporate regulator

- Market concerns over corporate misconduct
  - 44 companies suspended trading for over 3 months, 23 of which are under investigations
  - Listing-related complaints account for 20-30% of total complaints filed with the SFC
  - SFC has investigated 162 cases of corporate mis-governance

- Build the Corporate Regulation team starting in Dec 2013
- To maintain a level-playing field for companies, and to instil investor confidence
Inside information disclosures

- Statutory regime became effective on 1 January 2013
- To enhance disclosure standards and to cultivate a disclosure culture among listed companies, reducing opportunities for insider dealing
One year on...

Listed companies have started making more announcements:

- Inside information announcements: Up 52% from 2012
- Profit alerts and warnings: Up 16% from 2012
Issues noted

- Company A issued a profit alert on a 40% profit jump over a 9-mth period
- Company B counted on a questionable accounting adjustment and did not issue a profit warning
- Company C issued an announcement only after the due date for debt repayment was extended

Questionable yearly comparisons
Non-recurrent gains
Disclosing only after a problem is rectified
Generic descriptions with no numbers
Trading performance update or inside information disclosure?
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<th>Question</th>
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<td>1</td>
<td>Is the information likely to have a material impact on the share price?</td>
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<td>2</td>
<td>Do any of the exemptions under the legislation apply?</td>
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<td>3</td>
<td>Is the intended disclosure adequate for investors to make an informed decision?</td>
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<td>4</td>
<td>Is the disclosure accurate, clear and comprehensive, so that investors will fully understand the new circumstances of the company, as compared to market expectations?</td>
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<td>5</td>
<td>Are there any supporting numbers or at least a profit range to accompany a profit alert or warning?</td>
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A more proactive approach

- A more proactive and holistic approach
- Broader-based, action-oriented thematic reviews to identify cases for:
  - enforcement action under the SFO and other legislation
  - areas where changes in policy or culture would help improve conduct
What we ask of you

- Possess the experience, qualifications and competence to manage company business
- Fully assist the IPO sponsor in performing its duties
- Comply with the Listing Rules and other legal and regulatory requirements
- Ensure that inside information disclosures are accurate and meaningful
- Engage in a constructive dialogue with shareholders
- Promote and maintain good corporate conduct at all times
My vision

Sound regulation
Quality markets
Properly informed investors
Questions?