AMENDMENTS TO THE LISTING RULES RELATING TO THE REGULATION OF SPONSORS AND INDEPENDENT FINANCIAL ADVISERS EFFECTIVE JANUARY 1, 2005

A. SPONSORS

Sponsors' obligations will be set out in new Chapters 3A and 6A of the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Ltd (the "**MB Rules**") and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Ltd (the "**GEM Rules**"), respectively.

Capitalised terms used but not defined herein shall bearing the meaning ascribed to them in the MB Rules and the GEM Rules (as the context requires).

1. Appointment of Sponsor (MB Rule 3A.02/GEM Rule 6A. 02)

New applicants (including a deemed new applicant (ie. a listed issuer proposing a reverse takeover)) must appoint a sponsor to assist with their initial application for listing.

2. Eligibility to act as Sponsor (MB Rule 3A.02/GEM Rule 6A.02)

Main Board

"Sponsor" is defined as "any corporation or authorized financial institution licensed or registered under applicable laws to advise on corporate finance matters" (Rule 1.01).

A sponsor must be acceptable to the Exchange (Rule 3A.02).

GEM

Sponsors must be a corporation or authorized financial institution admitted to the GEM list of sponsors.

Note. The GEM sponsor list will eventually be removed when the SFC implements new licensing and regulation requirements for sponsors and IFAs.

3. Sponsor's Undertaking to the Exchange (MB Rule 3A.03 and Appendix 17/GEM Rule 6A.03 and paragraph 21 of Appendix 5a)

No later than the date on which any documents in connection with the listing application are submitted to the Exchange (or, if the sponsor is appointed after that date, on the earlier of the sponsor agreeing its terms of engagement and commencing work) the sponsor must give an undertaking to the Exchange to:

i. comply with the Listing Rules applicable to sponsors;

ii. use reasonable endeavours to ensure that all information provided to the Exchange during the listing application process is true in all material respects and does not omit any material information and, if the sponsor subsequently becomes aware of information that casts doubt on the truth, accuracy or completeness of information provided to the Exchange, to promptly inform the Exchange of such information; and

iii. cooperate in any investigation conducted by the Listing Division, including answering questions, producing documents and attending any meeting or hearing on request.

4. Sponsor's Impartiality (MB Rule 3A.06/GEM Rule 6A.06)

A sponsor must perform its duties with impartiality.

5. Sponsor's Independence (MB Rule 3A.07/GEM Rule 6A.07)

At least **one** sponsor must be independent from a new applicant.

MB Rule 3A.07 and GEM Rule 6A.07 set out 10 circumstances in which a sponsor will not be considered to be independent. These are:

i. the sponsor group* and any director or associate of a director of the sponsor collectively holds, directly or

indirectly, more than 5% of the issued share capital of the new applicant, except where the holding results from an underwriting obligation**;

ii. the fair value of the sponsor group's direct or indirect shareholding in the new applicant exceeds 15% of the net equity shown in the latest consolidated financial statements of the sponsor's ultimate holding company or, if none, the sponsor**;

iii. any member of the sponsor group or any director or associate of a director of the sponsor is an associate or connected person of the new applicant**;

iv. 15% or more of the IPO proceeds will be applied directly or indirectly to settle debts due to the sponsor group (excluding debts in respect of fees for sponsorship services);

v. the aggregate of amounts due to the sponsor group from the new applicant and its subsidiaries and all guarantees given by the sponsor group on behalf of the new applicant and its subsidiaries exceeds 30% of the total assets of the new applicant;

vi. the aggregate of:

a. amounts due to the sponsor group from the new applicant, its subsidiaries, its controlling shareholder and any associates of such controlling shareholder; and

b. all guarantees given by the sponsor group on behalf of the new applicant, its subsidiaries, its controlling shareholder and any associates of such controlling shareholder,

exceeds 10% of the total assets shown in the latest consolidated financial statements of the sponsor's ultimate holding company, or, if none, the sponsor;

vii. the fair value of the shareholding (direct or indirect) of a director of the sponsor or any holding company of the sponsor or an associate of such a director in the new applicant exceeds HK$ 5 million;

viii. an employee or director of the sponsor who is directly engaged in providing the sponsorship services to the new applicant, or an associate of such an employee or director, holds or will hold shares in the new applicant or has or will have a beneficial interest in shares in the new applicant;

ix. any of the following has a current business relationship with the new applicant or a director, subsidiary, holding company or substantial shareholder of the new applicant, which would reasonably be considered to affect the sponsor's independence in performing its duties under Main Board Chapter 3A or GEM Chapter 6A, or might reasonably give rise to a perception that the sponsor's independence would be so affected, except where the relationship arises from the sponsor's engagement to provide sponsorship services:

a. any member of the sponsor group;

b. an employee of the sponsor directly engaged in providing sponsorship services to the new applicant or an associate of such an employee; or

c. a director of any sponsor group member or an associate of such a director;

x. the sponsor or a sponsor group member is the new applicant's auditor or reporting accountant.

* "Sponsor group" is defined to include a sponsor, any holding company of the sponsor, any subsidiary of any holding company of the sponsor, any controlling shareholder of the sponsor or of any holding company of the sponsor which is not itself a holding company of the sponsor, and any associate of any such controlling shareholder.

** Paragraphs i. to iii. will not apply where the circumstance arises because of an interest held by an investment entity on behalf of its discretionary clients or by a fund manager on a non-discretionary basis such as a managed account or fund or because of an interest held in a market-making or custodial capacity.

Interests which are exempt under Section 323 Securities and Futures Ordinance (the "SFO") from disclosure under Part XV SFO (eg. interests of bare trustees, certain security interests and interests of licensed intermediaries acquiring shares as agent for their clients) are excluded in calculating a sponsor group's percentage interest.

If a sponsor which is required to be independent (eg. where there is a sole sponsor) is not independent, it is a breach of the Listing Rules and the Exchange will not accept documents submitted by such sponsor in support of the listing application.

6. Declaration of Sponsor's Independence (MB Rule 3A.10/GEM Rule 6A.08)

i. Every sponsor appointed by a new applicant must make a declaration of independence to the Exchange by reference to the independence tests. The form of declaration is set out at Appendix 18 of the Main Board Rules and Form K of Appendix 7 of the GEM Rules. The timing for submission of the declaration is the same as for the Sponsor's Undertaking (see section 3 above).

ii. Where a sponsor or new applicant becomes aware of any change in the circumstances set out in the declaration of independence, it must notify the Exchange as soon as possible (MB Rule 3A.09/GEM Rule 6A.09).

7. Additional Sponsors (MB Rule 3A.10/GEM Rule 6A.10)

A new applicant may appoint more than 1 sponsor. If it does:

i. the Exchange must be advised as to which of the sponsors will be the primary channel of communication with the Exchange for matters concerning the listing application. It is expected (but not required) that this sponsor be independent of the new applicant;

ii. the listing document must disclose whether each sponsor satisfies the independence test at MB Rule 3A.07/GEM Rule 6A.07 and, if not, disclose how the lack of independence arises; and

iii. each sponsor is responsible for ensuring that the obligations and responsibilities of sponsors under Main Board Chapter 3A and GEM Chapter 6A are fully discharged.

8. Sponsor's Obligations (MB Rule 3A.11/GEM Rule 6A.11)

In assisting with a new listing application, the sponsor must:

i. be closely involved in preparing the listing documents;

ii. conduct reasonable due diligence inquiries having regard to the new due diligence practice note (MB Practice Note 21/GEM Practice Note 2) (the "Practice Note") to be able to give the Sponsor's Declaration required by MB Rule 3A.13/GEM Rule 6A.13;

iii. ensure compliance with MB Rules 9.03 and 9.05 - 9.08/GEM Rules 12.07,12.09, 12.10 and 12.12-12.15;

iv. use reasonable endeavours to address all matters raised by the Exchange;

v. accompany the new applicant to meetings with the Exchange; and

vi. comply with the terms of the Sponsor's Undertaking given under MB Rule 3A.03 and GEM Rule 6A.03 (see section 3 above).

9. Sponsor's Declaration (MB Rule 3A.13/GEM Rule 6A.13)

As soon as practicable after the hearing of the listing application but on or before the date of issue of the listing document, each sponsor must submit a declaration to the Exchange that:

i. all documents required to be submitted to the Exchange by the Listing Rules have been submitted;

ii. having made reasonable due diligence inquiries, the sponsor has reasonable grounds to believe and does believe that:

a. the answers provided by each director or proposed director of the new applicant in the directors' declarations in the form of Appendix 5B are true and do not omit any material information;

b. the new applicant complies with all conditions for listing under Chapter 8 of the Main Board Listing Rules or Chapter 11 of the GEM Listing Rules unless compliance has been waived by the Exchange;

c. the listing document contains sufficient particulars and information to enable a reasonable person to form a valid and justifiable opinion of the shares and the financial condition and profitability of the new applicant at the time of issue of the listing document;

d. the information in the non-expert sections of the listing document:

i. contains all information required by relevant legislation and rules;

ii. is true in all material respects, or, to the extent it consists of opinions or forward looking statements on the part of the new applicant's directors or any other person, such opinions or forward looking statements have been made after due and careful consideration and on bases and assumptions that are fair and reasonable; and

iii. does not omit material information;

e. the new applicant has established adequate procedures, systems and controls (including accounting and management systems) to enable it and its directors to comply with the Exchange Listing Rules and other relevant legal and regulatory requirements (in particular MB Rules 13.09, 13.10, 13.46, 13.48 and 13.49, Chapters 14 and 14A and Appendix 16 (or GEM equivalents)), that are sufficient to enable the new applicant's directors to make a proper assessment as to the financial position and prospects of the new applicant and its subsidiaries, before and after listing, and to release timely information, financial and otherwise, to the market as required under the Listing Rules;

f. the new applicant's directors collectively have the experience, qualifications and competence to manage the new applicant's business and comply with the Listing Rules, and individually have the experience, qualifications and competence to perform their individual roles, including an understanding of the nature of their obligations and those of the issuer under the Listing Rules and other legal/regulatory requirements relevant to their role; and

g. in relation to each expert section in the listing document, having made reasonable due diligence inquiries, the sponsor has reasonable grounds to believe and does believe (to the standard reasonably expected of a sponsor which is not itself expert in the matters dealt with in the relevant expert section) that:

i. where the expert does not conduct its own verification of any material factual information on which the expert is relying for the purposes of any part of the expert section, such factual information is true in all material respects and does not omit any material information. Factual information includes factual information on which the expert states (or the sponsor believes) the expert is relying and supporting or supplementary information given by the expert or new applicant to the Exchange relating to the expert section;

ii. all bases and assumptions on which the expert section are founded are fair, reasonable and complete;

iii. the expert is appropriately qualified, experienced and sufficiently resourced to give the opinion;

iv. the expert's scope of work is appropriate to the opinion given and the opinion required to be given in the circumstances (where the scope of work is not set by a relevant professional body);

v. the expert is independent from the new applicant, its directors and controlling shareholder(s) (in accordance with the criteria set out in MB Rule 3A.07/GEM Rule 6A.07 if the standard of independence is not set by the relevant professional body); and

vi. the listing document fairly represents the views of the expert and contains a fair copy of or extract from the expert's report.

10. Termination of Sponsors (MB Rule 3A.17/GEM Rule 6A.17)

On the resignation or termination of a sponsor during the processing of an initial listing application:

i. the new applicant must immediately notify the Exchange of the resignation or termination; and

ii. if the departing sponsor was the sole independent sponsor, the replacement sponsor must immediately notify the Exchange of its appointment and re-submit a listing application with a revised timetable and a further initial listing fee together with the sponsor's declarations and undertakings required by MB Chapter 3A/GEM Chapter 6A.

A replacement sponsor will not be treated as having satisfied any of the obligations performed by his predecessor.

11. Sponsors' Due Diligence Obligations on Initial Listing under Main Board Practice Note 21/GEM Practice Note 2

The Practice Note applies only to sponsor firms and not individuals employed by them. It sets out the Exchange's expectations of due diligence sponsors will typically need to perform to be able to give the declarations required by MB Rules 3A.14 -16 and GEM Rules 6A.14 -16.

The Exchange's introduction stresses that:

i. a sponsor should make such inquiries as may be necessary until the sponsor can reasonably satisfy itself in relation to the disclosure in the listing document. A sponsor should examine with professional scepticism the accuracy and completeness of statements and representations made, or other information given, to it by the new applicant or its directors. An attitude of professional scepticism means making a critical assessment and being alert to information, including information from experts, that contradicts or brings into question the reliability of such statements, representations and information;

ii. the Practice Note cannot be seen as setting out the actual due diligence steps which will be appropriate in any particular case. It contains only the requirements the Exchange typically expects to be performed. The scope and extent of due diligence will always be a matter of judgment in the particular circumstances and may therefore need to be considerably more extensive than the steps set out in the Practice Note;

iii. sponsors should document their due diligence planning and significant deviations from their plans. That includes demonstrating that they have considered what inquiries are necessary in the relevant circumstances. Sponsors are also expected to document their conclusions as to the applicant's compliance with the conditions for listing under MB Chapter 8 and GEM Chapter 11; and

iv. in circumstances where it is appropriate for the sponsor to engage third party professionals to assist it in carrying out due diligence (eg. in reviewing legal proceedings to which the new applicant is a party), the Exchange expects the sponsor to satisfy itself that it is reasonable to rely on information or advice provided by the third party professional. That would include, for example:

    a. being satisfied as to the competence of the professional, the scope of work to be undertaken by the professional and the methodology proposed to be used by the professional; and

    b. being satisfied that the third party professional's report or opinion is consistent with the other information known to the sponsor about the new applicant, its business and business plans.

Note references in the Practice Note to the 'applicant' include the applicant's group.

The Practice Note's requirements as to expected due diligence investigations relate to the following 5 areas:

- the new applicant's directors
- compliance with the qualifications for listing;
- the non-expert sections;
- the expert sections; and
- the new applicant's accounting and management systems and directors' understanding of the Listing Rules' obligations.

1. <u>The New Applicant's Directors (including executive and non-executive directors) (paragraph 11)</u>

The typical due diligence inquiries in relation to the collective and individual experience, competence and integrity of directors include:

i. reviewing written records that demonstrate each director's past performance as a director of the new applicant including participation in board meetings and decision making relating to the management of the new applicant and its business;

ii. assessing individually and collectively the financial literacy, corporate governance experience and competence generally of the directors to determine whether the board as a whole has a depth and breadth of financial literacy and understanding of corporate governance, having regard to any code on corporate governance practices published by the Exchange; and

iii. reviewing the financial and regulatory track record of each publicly listed company (including companies listed on other stock exchanges) of which any of the new applicant's directors is or was an executive or non-executive director (eg. by reference to company disclosures, media articles and information about those companies on the relevant stock exchange website).

2. <u>Compliance with Listing Qualifications (paragraph 12)</u>

Typical due diligence inquiries include:

i. searching the company registry in the new applicant's place of incorporation to confirm that the new applicant is duly established in that place and is in compliance with its memorandum and articles of association (or equivalent documents);

ii. reviewing material financial information, including:

   a. financial statements of the new applicant;

   b. financial statements of the new applicant's subsidiaries and other companies material to the group's financial statements; and

   c. the internal financial records, tax certificates and supporting documents for the trading record period.

Such review would normally include interviewing the new applicant's accounting staff and internal and external auditors and reporting accountants and, where relevant, obtaining comfort from the new applicant's external auditors or reporting accountants based upon agreed procedures; and

iii. assessing the accuracy and completeness of the information submitted by the new applicant to demonstrate that it meets the trading record requirement.

3. <u>Non-expert Sections (paragraph 13)</u>

Typical due diligence inquiries in respect of a new applicant and the preparation of its listing document include:

i. assessing the financial information to be published in the listing document including:

   a. obtaining written confirmation from the new applicant and its directors that the financial information (other than that already reported on by a reporting accountant) has been properly extracted from the relevant accounting records; and

   b. being satisfied that the above confirmation has been given by the applicant and its directors after due and careful inquiry;

ii. an assessment of the new applicant's performance and finances, business plan and any profit forecast or estimate, including an assessment of the reasonableness of budgets, projections and assumptions made when compared with past performance, including historical sales, revenue and investment returns, payment terms with suppliers, costs of financing, long-term liabilities and working capital requirements. This would normally involve interviewing the new applicant's senior management and would often involve interviewing major suppliers and customers, creditors and bankers;

iii. assessing whether there has been any change since the date of the last audited balance sheet included in the listing document that would require disclosure to ensure the listing document is complete and not misleading;

iv. assessing whether it is reasonable to conclude that the proceeds of issue will be used as proposed by the new applicant, taking into account the sponsor's assessment of, in particular, the new applicant's existing cash and liquid reserves, projected liabilities, working capital requirements and expenditure controls;

v. a physical inspection of material assets, whether owned or leased, including property, plant, equipment, inventory and biological assets (eg. livestock or crops) used or to be used in connection with the new applicant's business.

   A "physical inspection" requires the sponsor to visit the site to view the asset and to assess its extent, quality and quantity and the purpose for which it is to be used. Where in the reasonable opinion of the sponsor, assessment of an asset, including as to its extent, quality, quantity and use, genuinely cannot be achieved without the use of an expert (eg. where in undertaking the inspection, the sponsor becomes suspicious that the asset does not exist to the extent represented or is not used for the purpose claimed) the sponsor must ensure that the new applicant appoints an appropriately qualified independent expert to conduct all or part of the inspection. The sponsor should ensure that the expert is required to provide a written report of the inspection.

vi. reach an understanding of the new applicant's production methods;

vii. reach an understanding of the manner in which the new applicant manages its business, including as relevant actual or proposed marketing plans, including distribution channels, pricing policies, after-sales service, maintenance and warranties;

viii. review the business aspects (ie. non-legal aspects) of all contracts material to the new applicant's business;

ix. review all current and recently resolved (eg. within previous 12 months) legal proceedings and other material disputes in which the new applicant is involved and which the new applicant knows to be contemplated and may involve the new applicant or one of its subsidiaries;

x. analyse the business aspects of economic, political or legal conditions that may materially affect the new applicant's business;

xi. consider the industry and target markets in which the new applicant's business has principally operated and is intended to principally operate, including geographical area, market segment and competition within that area or segment (including existing and potential principal competitors and their relative size, aggregate market share and profitability;

xii. assessing whether there is appropriate documentation in place to confirm that the material assets, whether owned or leased, including property, plant, equipment, inventory and biological assets used/to be used, in connection with the new applicant's business, are appropriately held by the new applicant (eg. reviewing relevant certificates of title and rights of land use);

xiii. assessing the existence, validity and business aspects of proprietary interests, intellectual property rights, licensing arrangements and other intangible rights of the new applicant;

xiv. reach an understanding of the technical feasibility of each new product, service or technology, developed, being developed or proposed to be developed pursuant to the new applicant's business plan that may materially affect the new applicant's business; and

xv. assess the stage of development of the new applicant's business and assess the new applicant's business plan and any forecasts or estimates, including reaching an understanding of the commercial viability of its products, services or technology, including an assessment of the risk of obsolescence and also market controls, regulation and seasonal variation.

4. <u>Expert Sections (paragraph 14)</u>

Typical due diligence inquiries in relation to the expert sections include:

i. interviewing the expert, reviewing its terms of engagement (with particular regard to the scope of work, whether the scope of work is appropriate to the opinion required and any limitations on the scope of work which might adversely impact on the degree of assurance given by the expert's report, opinion or statement) and reviewing publicly available information about the expert to assess its qualifications, experience and resources and its competence to undertake the work;

ii. a review of the expert sections of the draft listing document to form an opinion as to whether the following are disclosed and commented on appropriately: the factual information relied on by the expert; the assumptions on which its opinion is based; and the scope of work performed;

iii. where the expert does not conduct its own verification of any material factual information on which the expert states (or the sponsor believes) the expert is relying for the purposes of its opinion, verify such information to be able to give the declaration under MB Rule 3A.16(1)/GEM 6A.16(1) that such information is true in all material respects and does not omit any material information;

iv. where the sponsor is aware that the new applicant has made formal or informal representations to an expert in respect of an expert section or a report made in connection with the listing application, assessing whether the representations are consistent with the sponsor's knowledge of the new applicant's business and its business plans;

v. by reference to the sponsor's knowledge of the new applicant, its business and business plans, assessing whether the assumptions disclosed by the expert as those on which its opinion is based, are fair, reasonable and complete;

vi. where the expert's opinion is qualified, assess whether the qualification is adequately disclosed in the listing document; and

vii. where the standard of independence is not set by the relevant professional body, obtain written confirmation from the expert that it is independent from the new applicant, its directors and controlling shareholder(s), and being satisfied that there is no cause to inquire further about the truth of such confirmation. This would include confirming that the expert does not have a direct or indirect material interest in the securities or assets of the new applicant, its connected persons or associates beyond that allowed by MB Rule 3A.07/GEM Rule 6A.07.

5. <u>The New Applicant's Accounting and Management Systems and Directors' Understanding of Listing Rule Obligations (paragraph 15)</u>

The expected steps include:

i. assessing the new applicant's accounting and management systems that are relevant to:

a. the obligations of the new applicant and its directors to comply with the Listing Rules and other legal/regulatory requirements, in particular the financial reporting, disclosure of price sensitive information and notifiable and connected transaction requirements; and

b. the directors' ability to make a proper assessment of the financial position and prospects of the new applicant and its subsidiaries, before and after listing.

Such assessment should cover the new applicant's compliance manuals, policies and procedures including corporate governance policies and any letters given by the reporting accountants to the new applicant commenting on the new applicant's accounting and management systems or other internal controls; and

ii. an interview of all directors and senior managers with key responsibilities for compliance (including the chief financial officer, company secretary, qualified accountant and any compliance officers) to assess:

a. their individual and collective experience, qualifications and competence; and

b. whether they appear to understand relevant obligations under the Listing Rules and other relevant legal and regulatory requirements and the new applicant's policies and procedures in respect of those obligations.

If the sponsor finds that the new applicant's procedures or its directors and/or key senior managers are inadequate in any material respect in relation to the issues referred to in paragraphs i. and ii. above, the sponsor should typically discuss the inadequacies with the new applicant's board of directors and make recommendations to the board regarding appropriate remedial steps (eg. tailored training for individual directors and senior managers). The sponsor should ensure such steps are taken prior to listing.

12. Obligations of a New Applicant and its Directors to assist the Sponsor (MB Rule 3A.05/GEM Rule 6A.05)

A new applicant and its directors must assist the sponsor to perform its role and must ensure that its substantial shareholders and associates assist the sponsor. Such assistance should include:

i. giving the sponsor all information reasonably available or known to the new applicant's directors relevant to the sponsor's duties;

ii. affording the sponsor full access at all times to all persons, premises and documents relevant to the sponsor's duties. The terms of engagement of experts retained in relation to the listing application should contain provisions entitling every sponsor access to: any such expert; the expert's reports, draft reports and terms of engagement; information provided to or relied on by the expert; information provided by the expert to the Exchange or the SFC; and all correspondence between the new applicant or its agents and the expert or between the expert and the Exchange or the SFC;

iii. keeping the sponsor informed of any material change to any information given to the sponsor under i. above or to any information accessed by the sponsor under ii. above; and

iv. providing to or procuring for the sponsor all necessary consents to the provision to the sponsor of the information referred to in paragraphs i. to iii. above.

B. COMPLIANCE ADVISERS

1. Appointment on Initial Listing (MB Rule 3A.19/GEM Rule 6A.19)

A listed issuer must appoint a Compliance Adviser for the period commencing on the date of its initial listing and ending:

i. for all Main Board issuers: on publication of financial results for the first full financial year after listing; and

ii. for GEM issuers: on publication of financial results for the second full financial year after listing.

2. Appointment at any other time (MB Rule 3A.20/GEM Rule 6A.20)

The Exchange can require a listed issuer to appoint a Compliance Adviser at any other time for a period specified by the Exchange. The circumstances in which the Compliance Adviser must be consulted and the responsibilities of the Compliance Adviser will be specified by the Exchange. The issuer need not appoint the same Compliance Adviser as was appointed on initial listing. The Exchange will normally require the appointment of a Compliance Adviser when a listed issuer has breached the Listing Rules, particularly if the breaches are persistent or serious or give rise to concerns about the adequacy of compliance arrangements or the directors' understanding of their obligations under the Listing Rules.

3. Impartiality of Compliance Advisers (MB Rule 3A.25/GEM 6A.25)

A compliance adviser must perform its duties with impartiality. Compliance advisers need not however be independent.

4. Compliance Adviser's Undertaking to the Exchange (MB Rule 3A.21/GEM Rule 6A.21)

A Compliance Adviser must give an undertaking to the Exchange to comply with the Listing Rules applicable to Compliance Advisers and to cooperate in any investigation conducted by the Listing Division. That undertaking must be given no later than the earlier of (i) the Compliance Adviser agreeing its terms of engagement and (ii) it commencing work for the listed issuer. The required form of undertaking is set out at Appendix 20 of the Main Board Rules and Form M of Appendix 7 of the GEM Rules.

5. Circumstances in which a Listed Issuer must consult its Compliance Adviser following Listing (MB Rule 3A.23/GEM Rule 6A.23)

A listed issuer must consult with and, if necessary, seek advice from its Compliance Adviser on a timely basis in 4 situations:

i. before publication of any regulatory announcement, circular or financial report;

ii. where a transaction, which might be a notifiable or connected transaction, is contemplated (including share purchases and repurchases);

iii. where the listed issuer proposes to use the IPO proceeds differently from the manner detailed in the listing document or where its business activities, developments or results deviate from any forecast, estimate, or other information in the listing document; and

iv. where the Exchange makes an inquiry of the listed issuer regarding unusual movements in the price or trading volume of its securities under MB Rule 13.10/GEM Rule 17.11.

6. Compliance Adviser's Obligations (MB Rule 3A.24/GEM Rule 6A.24)

When consulted by a listed issuer in any of the circumstances under section 4 above, the compliance adviser must discharge the following duties with due skill and care:

i. ensure the listed issuer is properly guided and advised as to compliance with the Listing Rules and other applicable laws, rules, codes and guidelines;

ii. accompany the issuer to meetings with the Exchange;

iii. no less frequently than at the time of reviewing the financial reporting of the issuer and upon the issuer notifying the Compliance Adviser of a proposed change in the use of proceeds of the IPO, discuss with the listed issuer:

a. its operating performance and financial condition by reference to the issuer's business objectives and use of issue proceeds as stated in its listing document;

b. compliance with the terms and conditions of any waivers granted from the Listing Rules;

c. whether any profit forecast or estimate in the listing document will be or has been met and advise the issuer to notify the Exchange and inform the public in a timely and appropriate manner; and

d. compliance with the undertakings provided by the issuer and its directors at the time of listing and, in the event of non-compliance, discuss the issue with the issuer's board and make recommendations to the board regarding appropriate remedial steps;

iv. if required by the Exchange, deal with the Exchange in respect of any or all matters listed in MB Rule 3A.23/GEM Rule 6A.23 (see section 5 above);

v. in relation to an issuer's application for a waiver from any MB Chapter 14A/GEM Chapter 20 requirements, advise the listed issuer of its obligations and, in particular, the requirement to appoint an independent financial adviser; and

vi. assess the understanding of all new appointees to the listed issuer's board of the nature of their responsibilities and fiduciary duties as a director of the listed issuer, and, if the compliance adviser forms an opinion that a new appointee's understanding is inadequate, discuss the inadequacy with the board and recommend to the board appropriate remedial steps such as training.

7. Termination of a Compliance Adviser (MB Rule 3A.26/GEM Rule 6A.26)

A listed issuer can only terminate a compliance adviser's appointment if the compliance adviser's work is of an unacceptable standard or there is a material dispute over fees which cannot be resolved within 30 days.

On the resignation or termination of a compliance adviser, a replacement must be appointed by the listed issuer within 3 months of the effective date of the resignation or termination (MB Rule 3A.27/GEM Rule 6A.27).

8. Listing Rules to prevail over other SFC Codes (MB Rule 3A.28/GEM Rule 6A.28)

Insofar as the Listing Rules impose a higher standard of conduct on sponsors or compliance advisers than that required under the SFC's Corporate Finance Adviser Code of Conduct, the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission, the Takeover Code, the Share Repurchases Code and all other applicable codes and guidelines, the Listing Rules will prevail.

C. INDEPENDENT FINANCIAL ADVISERS ("IFAs")

New Rules have been added to MB Chapter 13 and GEM Chapter 17 (Continuing Obligations) relating to IFAs.

1. Eligibility to act as an IFA (MB Rule 13.82/GEM Rule 17.94)

An IFA must be licensed by the SFC and must discharge its duties with due skill and care.

2. Impartiality of IFAs (MB Rule 13.83/GEM Rule 17.95)

IFAs must perform their duties impartially.

3. IFA's Independence (MB Rule 13.84/GEM Rule 17.96)

An IFA must be independent from any issuer for whom it acts. MB Rule 13.84 and GEM Rule 17.96 specify 6 circumstances in which the Exchange will not regard an IFA as being independent:

i. the IFA Group* and any director or associate of a director of the IFA holds (directly or indirectly) in aggregate more than 5% of the issued share capital of the issuer, another party to the transaction, or an associate or connected person of the issuer or another party to the transaction**;

ii. any member of the IFA Group or any director of associate of a director of the IFA is an associate or connected person of the issuer or another party to the transaction**;

iii. any of the following exceeds 10% of the total assets shown in the latest consolidated financial statements of the IFA's ultimate holding company or, if none, the IFA:

   a. the aggregate of:

      1. amounts due to the IFA Group from the issuer, its subsidiaries, any controlling shareholder of the issuer and any associates of such controlling shareholder; and

      2. all guarantees given by the IFA Group on behalf of the issuer, its subsidiaries, any controlling shareholder of the issuer and any associates of such controlling shareholder;

   b. the aggregate of:

      1. amounts due from the IFA Group to the issuer, its subsidiaries and any controlling shareholder of the issuer; and

      2. all guarantees given on behalf of the IFA Group by the issuer, its subsidiaries and any controlling shareholder of the issuer;

   c. the aggregate of:

      1. amounts due from the IFA Group to any of the following (referred to in this Rule as the "Other Parties"): another party to the transaction; any holding company of another party to the transaction; any subsidiary of such holding company; any controlling shareholder of another party to the transaction or its holding company (which is not itself a holding company of such other party); and any associate of any such controlling shareholder; and

      2. all guarantees given by any of the Other Parties on behalf of the IFA Group; and

   d. the aggregate of:

      1. amounts due to the IFA Group from the Other Parties; and

      2. all guarantees given by the IFA Group on behalf of any Other Parties;

iv. any of the following has a current business relationship with the issuer or another party to the transaction, or a director, subsidiary, holding company or substantial shareholder of the issuer or another party to the transaction, which would be reasonably considered to affect the IFA's independence in performing its duties, or might reasonably give rise to a perception that the IFA's independence would be so affected, except where the relationship arises from the IFA's appointment to give the subject advice: any member of the IFA Group; an employee of the IFA directly engaged in providing the subject advice or his associate; a director of any IFA Group member or his associate**;

v. within 2 years prior to the making of the declaration required by MB Rule 13.85(1)/GEM Rule 17.97(1):

a. a member of the IFA Group has served as a financial adviser to the issuer or its subsidiaries, another party to the transaction or its subsidiaries or a connected person of the issuer or another party to the transaction; or

b. an employee or director of the IFA who is directly engaged in providing the subject advice was employed by or was a director of another firm that served as a financial adviser to any of the entities referred to in paragraph a. above and, in that capacity, was directly engaged in the provision of financial advice to the issuer or another party to the transaction;

vi. the IFA or a member of the IFA Group is the issuer's auditor or reporting accountant.

* "IFA Group" is defined to include the IFA, any holding company of the IFA, any subsidiary of such holding company, any controlling shareholder of the IFA or any holding company of the IFA (which is not itself a holding company of the IFA) and any associate of any such controlling shareholder.

** In calculating the percentage figure of shares that it holds or will hold for the purposes of paragraphs i., ii. and iv., an entity is not required to include an interest held by an investment entity on behalf of its discretionary clients or by a fund manager on a non-discretionary basis such as a managed account or fund, an interest held in a market-making or custodial capacity, an interest which is exempt from disclosure under Section 323 SFO or an interest held by a member of the entity's group that is an investment manager whose interest would not be aggregated with its holding company by virtue of Section 316(5) SFO.

4. IFA's Declaration and Undertaking (MB Rule 13.85/GEM Rule 17.97)

No later than the earlier of the IFA agreeing its terms of engagement with the issuer and it commencing work as IFA, the IFA must submit to the Exchange:

i. a declaration of independence (in the form of MB Appendix 21/GEM Appendix 13) addressing each of the MB Rule 13.84/GEM Rule 17.96 independence tests; and

ii. an undertaking (in the form set out in MB Appendix 22/GEM Appendix 14) to comply with the Listing Rules and to co-operate in any investigation conducted by the Listing Division.

Where an IFA or issuer becomes aware of a change in the circumstances set out in the IFA's declaration of independence during the period of its appointment, the IFA or issuer must notify the Exchange as soon as possible.

5. IFA's Obligations (MB Rule 13.80/GEM Rule 17.92)

An IFA appointed under MB Rule 13.39(6)(b) or 19.05(6)(a)(iii)/GEM Rule 17.47(6)(b) or 24.05(6)(a) must take all reasonable steps to satisfy itself that:

i. it has a reasonable basis for making the statements required by paragraphs (1) to (5) of MB Rule 14A.22/GEM Rule 20.22;

ii. there is no reason to believe any of the following information is not true or omits a material fact:

a. any information relied upon by the IFA in forming its opinion; or

b. any information relied upon by any third party expert on whose opinion or advice the IFA relies in forming its opinion.

IFA's Due Diligence

Note 1 to MB Rule 13.80/GEM Rule 17.92 sets out a non-exhaustive list of what the Exchange typically expects "reasonable steps" to include. They include:

a. obtaining all information and documents of the issuer relevant to an assessment of the fairness and reasonableness of the transaction's terms (eg., if it involves the purchase or sale of products or services, information and documents showing the prices at which the issuer buys and sells such products/services to independent 3rd parties);

b. researching the relevant market and other conditions and trends relevant to the pricing of the transaction;

c. reviewing the fairness, reasonableness and completeness of any assumptions or projections relevant to the transaction;

d. in relation to any third party expert providing an opinion or valuation:

   i. interviewing the expert including as to its expertise and any current or prior relationships with the issuer, other parties to the transaction and connected persons of the issuer or another party to the transaction;

   ii. reviewing the terms of engagement (with particular regard to the scope of work, whether the scope of work is appropriate to the opinion required to be given and any limitations on the scope of work which might adversely impact on the degree of assurance given by the expert; and

   iii. where the IFA is aware the issuer or another party to the transaction has made formal or informal representations to the expert, assessing whether the representations are in accordance with the IFA's knowledge; and

e. reviewing and assessing any alternative offers and any reasons given by management for rejecting those offers.

IFA's Letter of Advice

Note 2 to MB Rule 13.80/GEM Rule 17.92 requires any letter given by an IFA under MB Rule 14A.22/GEM Rule 20.22 to take account of the following:

i. the source for any fact which is material to an argument should be clearly stated, including sufficient detail to enable the significance of the fact to be assessed: however, if the fact was included in a document recently sent to shareholders, a cross reference may be made instead;

ii. a quotation (eg. from a newspaper or a stockbroker circular) should not be included out of context and details of the origin should be included. Quotations should not be used unless the IFA has corroborated or substantiated them;

iii. pictorial representations, charts, graphs and diagrams should be presented without distortion and, when relevant, should be to scale; and

iv. comparables referred to in a document must be a fair and representative sample and the bases for compiling such comparables must be clearly stated in the document.

6. Listing Rules to prevail over other SFC Codes (MB Rule 13.87/GEM Rule 17.99)

The provisions of the Listing Rules will prevail over all relevant SFC Codes to the extent they impose a higher standard of conduct on IFAs than the SFC Codes.

7. Issuers' Obligations to assist IFAs (MB Rule 13.81/GEM Rule 17.93)

An issuer must:

i. give an IFA full access at all times to all persons, premises and documents relevant to the IFA's duties. The terms of engagement of experts retained in relation to the transaction should contain provisions entitling the IFA access to: any such expert; the expert's reports, draft reports and terms of engagement; information provided to or relied on by the expert; information provided by the expert to the Exchange or the SFC; and all correspondence between the issuer or its agents and the expert or between the expert, the issuer and the Exchange or the SFC;

ii. keep the IFA informed of any material change to any information given to or accessed by the IFA under paragraph i. above; and

iii. provide to or procure for the IFA all necessary consents to the provision to the IFA of the information referred to in paragraphs i. and ii. above.

8. Compliance Advisers and IFAs subject to Disciplinary Procedures

Compliance advisers and IFAs will be subject to sanctions for breach of the Listing Rules.

This note is intended as a summary only of the amendments to the Listing Rules relating to sponsors, compliance advisers and independent financial advisers. The full text of the rule amendments is available on the Exchange's website at http://www.hkex.com.hk/rule/mbrule/mb_ruleupdate.htm (Main Board rules) (English version) and http://www.hkex.com.hk/rule/gemrule/gemrule_update.htm (GEM rules) (English version).