

Enforcement Actions

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27 June 2006

Deloitte & Touche Corporate Finance Limited Voluntarily Refrains from Acting as Sponsors for GEM and Main Board Listings and Chia Kee Loong, Lawrence Voluntarily Refrains from Acting as Supervisor to Sponsorship Mandates

Deloitte & Touche Corporate Finance Limited has agreed, without admission of liability, to voluntarily refrain from acting as sponsor for Growth Enterprise Market (GEM) and Main Board listings for a period of 9 months. Mr Chia Kee Loong, Lawrence has agreed, without admission of liability, not to act as supervisor to any sponsorship mandate for a period of 6 months (Notes 1 & 2). This is the outcome of a joint settlement between the SFC, the Stock Exchange of Hong Kong Limited (SEHK) and Deloitte (Note 3).

The settlement stems from the SFC's investigation into the listing of the shares of Codebank Limited on the GEM in December 2001 (Note 4). The irregularities revealed by the SFC's investigation include: (i) the payment arrangement stipulated by the underwriting agreement was altered between Codebank and an underwriter without informing the SEHK (Note 5); (ii) over \$10 million of the listing proceeds remained outstanding after Codebank was listed on the GEM (Note 6); (iii) the outstanding listing proceeds were not reported to the SEHK until May 2002; and (iv) Codebank's declaration made to the SEHK before its listing in December 2001 to the effect that all listing proceeds were received was inaccurate.

Deloitte was the sponsor (but not the lead underwriter) to the Codebank listing. The payment arrangement change was known to one of Deloitte's staff responsible for supervising the Codebank listing in December 2001 when it was proposed. That staff member was aware of the outstanding listing proceeds when Codebank's annual report for the year ended 2001 was prepared in March 2002, but failed to report the matter to Chia or Deloitte's senior management. The relevant staff member is not working for Deloitte and now beyond the SFC's jurisdiction. However, the former staff member would have to answer SFC's concerns if that former staff member applies for a licence.

Deloitte investigated the matter in May 2002 and reported the facts then known to it about the shortfall of the listing proceeds to the SEHK.

The SFC alleged that Deloitte failed to properly discharge its responsibilities as a sponsor and proposed to take disciplinary action against it. The SFC alleged that Deloitte failed to:

- conduct reasonable due diligence on Codebank's business prospects;
- ensure adequate support for many of Codebank's representations made in its prospectus;
- report the payment arrangement change to the SEHK;
- make due and careful enquiry on Codebank's declaration before submitting it to the SEHK; and
- report the outstanding listing proceeds and Codebank's inaccurate declaration to the SEHK in March 2002.

Chia was the principal supervisor for the Codebank Listing. The SFC alleged that he failed to adequately supervise his subordinates to ensure that Deloitte properly discharged its duties as a sponsor.

In considering the settlement with Deloitte, the SFC has taken into account Deloitte's co-operation with the SFC in its investigation and the settlement of the disciplinary proceedings and Deloitte has no previous disciplinary record.

The SFC considers that it is in the interest of the investing public and in the public interest to settle the disciplinary proceedings against Deloitte and Chia without making any disciplinary findings against them.

Mr Eugène Goyne, SFC's Senior Director of Enforcement, said: "The SFC takes a serious view of sponsor failures. We consider them serious because great importance attaches to the role of sponsors in an initial public offering of listed shares. Sponsors are expected to perform a gate-keeping role because prospective investors look upon the sponsors to vouch for the soundness of the securities and the accuracy of the prospectus. Sponsors ought to make reasonable inquiries with professional skepticism and critically assess the reliability of the information and representations provided by the issuer or other experts. Sponsor failures could result in the failure of a listed company which may seriously jeopardise investors' confidence in the financial markets.

The SFC will continue to take tough action against sponsors who fail to meet the

required standards and seek to exclude them from the industry for lengthy periods.

The SFC and HKEx work closely on all sponsor cases and will continue to do so. We thank the HKEx for their co-operation in this case.

Clearer guidance for sponsors on what due diligence entails came into force on 1 January 2005. Sponsors must comply with these standards or can expect enforcement action. In particular, sponsors must conduct reasonable investigations themselves. They cannot delegate their responsibilities to other parties, in particular lawyers, unless they are areas of recognized expertise the delegates are competent in and the sponsor is not. Sponsors must look beyond legal agreements and representations from the listing applicant's management to secure reasonably reliable evidence of the underlying business situation.”

Ends

Notes:

1. Deloitte is licensed under the Securities and Futures Ordinance to carry on business in Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance), and Type 9 (asset management) regulated activities. Chia is a responsible officer accredited to Deloitte.
2. Deloitte undertakes to terminate its existing mandates for acting as sponsor and compliance adviser. Deloitte is permitted to continue acting as sponsor and compliance adviser until their termination. Chia may continue to act as principal supervisor for the same purpose.
3. Please also see SEHK's announcement of 27 June 2006.
4. Please see SEHK's announcement dated 27 January 2005 for details.
5. Please see SFC's press release dated 15 November 2004 for details.
6. Please see Codebank's announcements on 14 and 29 May 2002, available on the SEHK website.

Page last updated: 27 June 2006

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