

[Home](#) ▶ [News & announcements](#) ▶ [News](#) ▶ [All news](#)

## SFC fines Quam Capital Limited \$800,000 over sponsor failures

1 Aug 2016

The Securities and Futures Commission (SFC) has fined Quam Capital Limited (Quam) \$800,000 for failing to discharge its duties as a sponsor in relation to the listing of Gayety Holdings Limited (Gayety) (now known as Food Idea Holdings Limited) on the Growth Enterprise Market (GEM) of The Stock Exchange of Hong Kong Limited (SEHK) in July 2011 (Notes 1 & 2).

The SFC found that Quam breached the SFC's Code of Conduct and the Corporate Finance Adviser Code of Conduct for its failure to act with due skill, care and diligence when preparing Gayety's prospectus (Notes 3 & 4).

Specifically, the prospectus stated that none of the directors of Gayety had any interest in four of its five largest suppliers during the track record period. However, one of these suppliers was owned by two directors of Gayety who were also its chairman and chief executive officer, respectively.

The prospectus also wrongly represented that none of the key suppliers had ceased supply to Gayety and its group companies when in fact the arrangement with one supplier had discontinued by the end of the track record period.

In preparing the listing application, Gayety had disclosed to Quam the information relating to the ownership of the supplier and the status of the business relationship between Gayety and the supplier. Accordingly, the inaccuracy was not the result of any information withheld by Gayety.

There is insufficient evidence to establish these matters constitute materially false or misleading statements, in which case, the action taken would have been different with the sponsor facing both criminal and civil responsibility. Nonetheless, these matters are inconsistent with the standards required of sponsors in Hong Kong.

End

Notes:

1. Quam is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 6 (advising on corporate finance) regulated activity.
2. Gayety was listed on the GEM of the SEHK on 8 July 2011 with Quam as its sole sponsor. The prospectus was issued on 30 June 2011.
3. Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission.
4. Corporate Finance Adviser Code of Conduct (April 2003).

[A copy of the Statement of Disciplinary Action is available on the SFC website](#)

Page last updated : 1 Aug 2016

## STATEMENT OF DISCIPLINARY ACTION

---

### The Disciplinary Action

1. The Securities and Futures Commission (SFC) has fined Quam Capital Limited<sup>1</sup> (**Quam**) \$800,000 pursuant to section 194 of the Securities and Futures Ordinance.
2. The SFC found that, while acting as a sponsor to the listing application of Gayety Holdings Limited (**Gayety**) (now known as Food Idea Holdings Limited), Quam has failed to act with due skill, care and diligence in preparing the prospectus of Gayety.
3. The SFC is of the view that Quam is guilty of misconduct. Quam's conduct has not met the standards required of it under General Principle 2 (Diligence) of the Code of Conduct<sup>2</sup>, and paragraphs 5.1 (Due Skill and Care) and 5.8 (Standard of Documents) of the CFA Code of Conduct<sup>3</sup>.

### Summary of Facts

4. On 8 July 2011, Gayety was listed on the Growth Enterprise Market (**GEM**) of The Stock Exchange of Hong Kong Limited (**SEHK**) by way of placing. Quam was the sole sponsor to the listing application.<sup>4</sup> The prospectus of Gayety was published on 30 June 2011.
5. Wong Kwan Mo (**Wong KM**) and Lau Lan Ying (**Lau LY**) were the controlling shareholders of Gayety. Wong KM was the chairman and an executive director, and Lau LY was the chief executive officer and an executive director of Gayety.
6. The track record period for the listing application of Gayety comprised the years ended 31 December 2009 and 2010 (the "**Track Record Period**"). U-Meaty (Frozen Food) Limited (**U-Meaty**) was the largest supplier of Gayety and its group companies (collectively referred to as the "**Group**") in 2010 and it ceased to be a supplier of the Group in December 2010. Wong KM and Lau LY were the executive directors of U-Meaty and each of them held 50 percent of the issued share capital of U-Meaty.
7. The "Business" section of Gayety's prospectus stated that:

*"Save as the purchases from Wong Yuen Hing (which is owned as to 50% by Mr. Wong KM and 50% by Ms. Lau LY), none of the Directors, their respective associates or any Shareholder which to the knowledge of the Directors owns more than five per cent of the issued share capital of the Company had any interest in any of the Group's five largest suppliers for the Track Record Period."*

**("Ownership Statement")**

---

<sup>1</sup> Quam is licensed under the Securities and Futures Ordinance to carry on Type 6 (advising on corporate finance) regulated activity.

<sup>2</sup> Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission

<sup>3</sup> Corporate Finance Adviser Code of Conduct (April 2003)

<sup>4</sup> All members of the sponsor team who were involved in the listing application of Gayety are no longer accredited to Quam.

8. The “Risk Factors” section of Gayety’s prospectus stated that:  
*“During the Track Record Period, none of the Group’s key suppliers ceased or indicated that it would cease supply to the Group ...”*
9. The “Business” section of Gayety’s prospectus stated that:  
*“During the Track Record Period, none of the Group’s key suppliers ceased or indicated that it would cease their supply to the Group...”*
10. The two statements set out at paragraphs 8 and 9 are referred to collectively as **“Key Suppliers Statements”**.
11. The Ownership Statement represented that none of the directors and substantial shareholders of the Group had any interest in the five largest suppliers of the Group except for Wong Yuen Hing Fresh Food Company Limited. This statement is inaccurate because U-Meaty was one of the top five suppliers of the Group during the Track Record Period and was jointly owned by Wong KM and Lau LY.
12. The Key Suppliers Statements represented that none of the key suppliers of the Group had ceased or indicated that it would cease their supply to the Group during the Track Record Period. These statements are inaccurate because U-Meaty was a key supplier during the Track Record Period and U-Meaty had ceased its supply to the Group since December 2010.
13. The prospectus proofs containing the Ownership Statement and Key Suppliers Statements were submitted to the SEHK. The final prospectus containing these statements was published and made available to the public on 30 June 2011.
14. **In preparing the listing application, Gayety had disclosed to Quam the information relating to the ownership of U-Meaty and the status of business relationship between the Group and U-Meaty.**

#### **Reasons for action**

15. As the sponsor to the listing application of Gayety, Quam is required to act with due skill, care and diligence, and use all reasonable efforts to ensure that the listing applicant has made true and accurate disclosure in the listing documents.
16. General Principle 2 of the Code of Conduct provides that a licensed person should act with due skill, care and diligence, in the best interests of its clients and the integrity of the market.
17. Paragraph 5.1 of the CFA Code of Conduct provides that a corporate finance adviser must act with due skill, care and diligence and observe proper standards of market conduct.
18. Paragraph 5.8 of the CFA Code of Conduct also provides that, where a corporate finance adviser is involved in the preparation of any document for public dissemination, it should use all reasonable efforts to assist its client in ensuring that any document is prepared to the required standard and no relevant information has been omitted or withheld.

19. The information on the ownership of U-Meaty and its discontinuation of supply to the Group is relevant information in Gayety's listing application.
20. As the sponsor of Gayety's listing application, Quam has failed to use all reasonable efforts to ensure that the listing documents were prepared to the required standard. **At the material time, Quam was informed of the ownership of U-Meaty and its cessation as a supplier of the Group. However, Quam failed to detect that the Ownership Statement and the Key Suppliers Statements contained inaccurate information and were inconsistent with the information in their possession.**
21. Quam failed to review the prospectus carefully and diligently. Had Quam exercised sufficient due skill, care and diligence in preparing the prospectus, it would have been able to detect the inaccurate information in the Ownership Statement and the Key Suppliers Statements, and to amend them to ensure that they were correct.

### **Conclusion**

22. A sponsor is responsible for assisting a listing applicant to make proper disclosure of all relevant information in the prospectus. The prospectus is the principal document which the SEHK would use to assess an issuer's suitability for listing and the primary source upon which public investors would base their investment decisions. Accordingly, it is imperative that a sponsor undertakes sufficient checking and verification to ensure that the prospectus is prepared to the required standard and no relevant information has been omitted or withheld.
23. In coming to the decision to take disciplinary action set out in paragraph 1 against Quam, the SFC has taken into account all relevant considerations, including:
  - (a) The market in general places reliance on the contents of the prospectus when forming a view on the company's business affairs and when making investment decisions. Quam's failures deprived readers of the prospectus, including the public and the regulators, of true, accurate and complete information regarding the Group's business.
  - (b) Quam has no previous disciplinary record with the SFC.

[主頁](#) ▶ [新聞稿及公布](#) ▶ [新聞稿](#) ▶ [所有新聞稿](#)

## 證監會就華富嘉洛企業融資有限公司在擔任保薦人時所犯缺失對其處以罰款80萬元

2016年8月1日

證券及期貨事務監察委員會（證監會）對華富嘉洛企業融資有限公司（華富嘉洛）處以罰款80萬元，因其未有履行作為喜尚控股有限公司（喜尚）（現稱新煮意控股有限公司）於2011年7月在香港聯合交易所有限公司（聯交所）創業板上市時的保薦人職責（註1及2）。

證監會發現，華富嘉洛未能在擬備喜尚的招股章程時以適當的技能、小心謹慎和勤勉盡責的態度，違反了證監會的《操守準則》及《企業融資顧問操守準則》（註3及4）。

具體而言，招股章程指出，喜尚的董事概無於往績紀錄期間在其五大供應商中的其中四家擁有任何權益。然而，其中一家供應商乃由喜尚的兩名董事所擁有，而他們亦分別為喜尚的主席及行政總裁。

招股章程亦錯誤地指出，於往績紀錄期間，各主要供應商並無終止向喜尚及其集團公司供貨，但實際上喜尚與其中一家供應商的供貨安排已於往績紀錄期間結束時終止。

在擬備上市申請的文件時，喜尚曾向華富嘉洛披露與該供應商的擁有權以及喜尚和該供應商之間的業務關係狀況有關的資料。因此，資料不準確並非由於喜尚隱瞞任何資料所致。

現時並無充分證據證明此等事宜構成重大虛假或具誤導性的聲明，否則所採取的行動便會有所不同，而保薦人將需要負上刑事及民事責任。儘管如此，此等事宜仍與香港規定保薦人應須達到的標準不符。

完

備註：

1. 華富嘉洛根據《證券及期貨條例》獲發牌進行第6類（就機構融資提供意見）受規管活動。
2. 喜尚（現稱為新煮意控股有限公司）於2011年7月8日在聯交所創業板上市，而華富嘉洛為其唯一保薦人。招股章程於2011年6月30日刊發。
3. 《證券及期貨事務監察委員會持牌人或註冊人操守準則》。
4. 《企業融資顧問操守準則》（2003年4月）。

[有關紀律處分行動聲明載於證監會網站](#)

最後更新日期：2016年8月1日

## 紀律處分行動聲明

---

### 紀律處分行動

1. 證券及期貨事務監察委員會（**證監會**）根據《證券及期貨條例》第 194 條對華富嘉洛企業融資有限公司<sup>1</sup>（**華富嘉洛**）罰款 800,000 元。
2. 證監會發現，華富嘉洛在擔任喜尚控股有限公司（**喜尚**）（現稱新煮意控股有限公司）上市申請的保薦人期間，未能在擬備喜尚的招股章程時以適當的技能、小心謹慎和勤勉盡責的態度行事。
3. 證監會認為華富嘉洛犯有失當行為。華富嘉洛的行為未能符合《操守準則》<sup>2</sup>第 2 項一般原則（勤勉盡責）以及《企業融資顧問操守準則》<sup>3</sup>第 5.1 段（適當技能及審慎行事）及 5.8 段（文件的水準）對其所規定的標準。

### 事實摘要

4. 2011 年 7 月 8 日，喜尚以配售方式在香港聯合交易所有限公司（**聯交所**）創業板上上市。華富嘉洛是上市申請的唯一保薦人。<sup>4</sup>喜尚的招股章程於 2011 年 6 月 30 日刊發。
5. 黃君武（**黃先生**）及劉蘭英（**劉女士**）是喜尚的控股股東。黃先生是喜尚的主席兼執行董事，而劉女士則為該公司的行政總裁兼執行董事。
6. 喜尚的上市申請的往績紀錄期間涵蓋截至 2009 年及 2010 年 12 月 31 日止的兩年（“**往績紀錄期間**”）。御凍品有限公司（**御凍品**）是喜尚及其集團公司（統稱“**該集團**”）於 2010 年的最大供應商，而該公司已於 2010 年 12 月終止作為該集團的供應商。黃先生及劉女士為御凍品的執行董事，各持有御凍品已發行股本的 50%。
7. 喜尚的招股章程內“業務”一節述明：

“除向黃元興（黃先生及劉女士各自擁有其 50%權益）進行採購外，本公司董事、彼等各自的聯繫人或據董事所知任何擁有本公司已發行股本 5%以上的股東概無於往績紀錄期間於本集團五大供應商中擁有任何權益。”（“**擁有權聲明**”）
8. 喜尚的招股章程內“風險因素”一節述明：

“於往績紀錄期間，本集團主要供應商並無終止或表示其將終止向本集團供貨……”
9. 喜尚的招股章程內“業務”一節述明：

“於往績紀錄期間，本集團主要供應商並無終止或表示其將會終止供貨予本集團……”

---

<sup>1</sup> 華富嘉洛根據《證券及期貨條例》獲發牌進行第 6 類（就機構融資提供意見）受規管活動。

<sup>2</sup> 《證券及期貨事務監察委員會持牌人或註冊人操守準則》

<sup>3</sup> 《企業融資顧問操守準則》（2003 年 4 月）

<sup>4</sup> 參與喜尚上市申請的保薦團隊的所有成員均已不再隸屬於華富嘉洛。

10. 載於第 8 及 9 段的兩項聲明在下文統稱為“**主要供應商聲明**”。
11. 擁有權聲明指出，除黃元興鮮肉食品有限公司外，該集團的董事及主要股東概無於該集團五大供應商中擁有任何權益。此項聲明並不準確，原因是御凍品於往績紀錄期間為該集團的五大供應商之一，並由黃先生及劉女士共同擁有。
12. 主要供應商聲明指出，於往績紀錄期間，該集團主要供應商並無終止或表示其將會終止供貨予該集團。此等聲明並不準確，原因是於往績紀錄期間，御凍品為主要供應商，而御凍品已自 2010 年 12 月起終止供貨予該集團。
13. 載有擁有權聲明及主要供應商聲明的招股章程申請版本已提交予聯交所。載有該等聲明的招股章程最終版本於 2011 年 6 月 30 日發表及提供予公眾。
14. 在擬備上市申請的文件時，喜尚曾向華富嘉洛披露與御凍品的擁有權以及該集團和御凍品之間的業務關係狀況有關的資料。

#### 採取行動的理由

15. 作為喜尚上市申請的保薦人，華富嘉洛須以適當的技能、小心審慎和勤勉盡責的態度行事，並須合理地盡一切努力確保上市申請人在上市文件內作出真實和準確的披露。
16. 《操守準則》第 2 項一般原則規定，持牌人應以適當的技能、小心審慎和勤勉盡責的態度行事，以維護客戶的最佳利益及確保市場廉潔穩健。
17. 《企業融資顧問操守準則》第 5.1 段規定，企業融資顧問必須具備適當技能，小心審慎和勤勉盡責地行事，以及遵守適當的市場操守準則。
18. 《企業融資顧問操守準則》第 5.8 段亦規定，如企業融資顧問有份參與草擬任何準備向公眾發放的文件，便必須合理地盡一切努力，協助其客戶確保有關文件已按照規定的準則擬備，並且沒有遺漏或隱瞞任何有關資料。
19. 有關御凍品的擁有權及其終止供貨予該集團的資料，均為喜尚上市申請的相關資料。
20. 作為喜尚上市申請的保薦人，華富嘉洛未能合理地盡一切努力確保上市文件已按照規定的標準擬備。在關鍵時間，華富嘉洛已獲悉御凍品的擁有權及其已終止作為該集團的供應商。然而，華富嘉洛未能察覺擁有權聲明及主要供應商聲明內載有不準確的資料，而且與其所持有的資料並不相符。
21. 華富嘉洛未能謹慎及勤勉盡責地審閱招股章程。如華富嘉洛能夠在擬備招股章程時以充分適當的技能、小心謹慎和勤勉盡責的態度行事，便可以察覺擁有權聲明及主要供應商聲明內的不準確資料並加以修改，以確保該等聲明正確無誤。

#### 結論

22. 保薦人須負責協助上市申請人於招股章程內妥善地披露所有相關資料。招股章程是聯交所評估發行人是否適合上市的主要文件，以及公眾投資者作出投資決定所依靠的主要資料來源。因此，保薦人必須進行足夠的檢查及核實工作，以確保招股章程已按照

規定的標準擬備，並且沒有遺漏或隱瞞任何有關資料。

23. 在決定對華富嘉洛採取第 1 段所述的紀律處分行動時，證監會已考慮到所有相關情況，包括：
- (a) 市場在衡量一間公司的業務及作出投資決定時，普遍會依靠招股章程的內容。華富嘉洛的缺失令招股章程的讀者（包括公眾及監管機構）無法就該集團的業務取得真實、準確及完整的資料。
  - (b) 華富嘉洛以往並無遭受證監會紀律處分的紀錄。