

# SFC fines UBS \$375 million and suspends its licence for one year for sponsor failures

14 Mar 2019

The Securities and Futures Commission (SFC) has reprimanded and fined UBS AG and UBS Securities Hong Kong Limited (UBS Securities Hong Kong) (collectively, UBS) a sum of \$375 million for failing to discharge their obligations as one of the joint sponsors of three listing applications, namely, China Forestry Holdings Company Limited (China Forestry), Tianhe Chemicals Group Limited (Tianhe), and another listing application (the Other Listing Application) (Notes 1, 2 and 3).

The SFC also partially suspended UBS Securities Hong Kong's licence to advise on corporate finance for one year, to the extent that UBS Securities Hong Kong shall not act as a sponsor for listing application on the Stock Exchange of Hong Kong Limited (SEHK) of any securities.

The SFC has also suspended the licence of Mr Cen Tian for two years from 14 March 2019 to 13 March 2021 for failing to discharge his supervisory duties as a sponsor principal in charge of supervision of the execution of China Forestry's listing application (Note 4).

The SFC has today also taken action against other joint sponsors involved in the listing applications of China Forestry and Tianhe.

## Sponsor failings in China Forestry's listing application

The SFC's investigations revealed that UBS had failed to make reasonable due diligence enquiries in relation to a number of core aspects of China Forestry's business (Note 5).

### (i) Failure to verify the existence of China Forestry's forestry assets

According to China Forestry's 2009 prospectus, the company and its subsidiaries (China Forestry Group), a plantation forest operator whose main businesses were the management and sustainable development of forests and the harvesting and sale of logs, owned approximately 171,780 hectares of forests in Yunnan and Sichuan Provinces of Mainland China.

UBS became a joint sponsor of China Forestry's listing application in or around May/June 2009. However, UBS did not conduct any site inspection of China Forestry Group's forests after it became a sponsor. Although UBS claimed that it had carried out physical inspections at a number of China Forestry Group's forests in Sichuan and Yunnan in 2008 in its then capacity as one of the joint bookrunners, it was unable to provide any inspection records or identify the precise locations of the inspections.

UBS claimed that other professional parties, including lawyers and forestry experts, were involved in some of the site inspections. However, none of them had been instructed to verify the existence of China Forestry Group's forests as disclosed in the prospectus.

Further, despite the fact that China Forestry Group acquired 150,000 hectares of forests in Yunnan in 2008 which accounted for over 90% of its forestry assets, there is no evidence to suggest that UBS visited China Forestry Group's forests in Yunnan or commissioned any assessment of the impact of the earthquake of magnitude 6.0 on the Richter scale that hit Yunnan on 9 July 2009 on them.

### (ii) Failure to verify China Forestry Group's forestry rights

According to the prospectus, China Forestry Group's legal rights over its forests were evidenced by the relevant forestry right certificates. While UBS claimed to have inspected the original certificates, it did not identify a number of apparent anomalies (such as, a mismatch between the name of a forest as disclosed in the prospectus and as stated in the corresponding certificates) that should have called for further inquiries.

UBS also claimed that its Mainland Chinese lawyers had verified and checked the certificates. However, this was not reflected in the relevant legal opinions. In fact, the legal opinions contained express assumptions as to the genuineness and accuracy of documents China Forestry provided to the lawyers.

*(iii) Failure to verify China Forestry's compliance with relevant laws and regulations*

UBS relied on written confirmations purportedly issued by the relevant forestry bureaus that China Forestry had provided for it to confirm that the business and logging activities of China Forestry were in compliance with the relevant Mainland Chinese forestry laws. There is, however, no evidence that UBS had verified whether the written confirmations were issued by the relevant forestry bureaus and that the information recorded therein was accurate.

*(iv) Inadequate due diligence on insurance coverage for China Forestry Group's forestry assets*

Having sufficient insurance coverage for China Forestry Group's forestry assets, which were pivotal to its business operation, was of fundamental importance. UBS relied on insurance documents provided by China Forestry as evidence of such insurance coverage without independently verifying the authenticity of the insurance documents.

Although UBS claimed that its deal team members and Mainland Chinese lawyers had reviewed the insurance documents, it did not identify a number of issues (such as, inconsistencies between the locations of certain forests as stated in the insurance documents and as disclosed in the prospectus) that should have called for further inquiries.

*(v) Inadequate due diligence on China Forestry's customers*

Over 70% of China Forestry's customers by revenue for the last 18 months during its track record period were located in Yunnan (Note 6). UBS had planned to conduct face-to-face interviews with some of China Forestry's customers in Yunnan, but subsequently decided to postpone the face-to-face interviews because of the earthquake in Yunnan. UBS only conducted telephone interviews with these customers in the end.

The SFC found that UBS called the customers on telephone numbers provided by China Forestry without conducting any background searches on the customers to verify their telephone numbers and/or the identities of the individuals interviewed. The SFC also found that the records of the interviews were seriously inadequate.

The SFC also found that UBS's failures in China Forestry's listing application were attributable to the neglect on the part of Cen, in his capacity as a sponsor principal, of his supervisory duties (Note 7).

### **Sponsor failings in Tianhe's listing application**

The SFC's investigations revealed that UBS, one of the joint sponsors in Tianhe's listing application, had failed to follow the specific guidelines on due diligence interviews in paragraph 17.6 of the Code of Conduct (Notes 8, 9 and 10).

*(i) Involvement of Tianhe in due diligence interviews*

UBS had interviewed ten customers of Tianhe: six of which were interviewed either by telephone or at face-to-face interviews at Tianhe's offices in Jinzhou of Mainland China, and the rest of them were interviewed at the customers' own premises.

UBS did not have direct contact with the customers when they set up the interviews or confirmed the mode and place of the interviews. On the contrary, Tianhe took the lead in informing UBS which customers were unable to attend face-to-face interviews, and which customers refused to conduct interviews at their business premises. There is no evidence that UBS had taken any steps to check with the customers as to why they were not amenable to be interviewed at their offices.

*(ii) Failure to address red flags raised in an interview*

UBS had initially requested to interview the largest customer of Tianhe, Customer X, at its office, but they eventually accepted Tianhe's explanation that since an anti-corruption campaign in Mainland China was underway, Customer X, a large state-owned enterprise, would normally turn down any third party request to visit its premises.

UBS then agreed to interview Customer X at Tianhe's office. At the end of the interview, the representative of Customer X refused to produce his identity and business cards and stormed out of the meeting room. He told UBS that he would not have agreed to be interviewed under Customer X's internal procedure, and he only attended the interview to help the family of Tianhe's chief executive officer (CEO).

Nonetheless, UBS did not conduct any follow up inquiries to ascertain that the person it interviewed

was the representative of Customer X and that he had the appropriate authority and knowledge for the interview.

(iii) *Unclear interview questions*

Tianhe conducted business with its customers through its subsidiary, Jinzhou DPF-TH Chemicals Co. Limited (Jinzhou DPF-TH), based upon the sales documents provided to UBS.

During the customer interviews, UBS asked the interviewees questions in relation to the business between their companies and the "*Tianhe Group*", instead of Jinzhou DPF-TH. Although the interviewees were also asked a question "*which entity of the Tianhe Group and which business department do you mainly contact with*", only three out of ten customers interviewed confirmed that they had contact with Jinzhou DPF-TH. However, UBS did not follow up with the remaining customers as to which entity of the "*Tianhe Group*" they had business with.

One of the purported top ten customers of Tianhe interviewed by UBS informed the SFC that when its representative answered questions about the dealings between the customer and the "*Tianhe Group*" during the interview, its representative was referring to the dealings with Liaoning Tianhe Fine Chemicals, a private company wholly owned by the family of the CEO of Tianhe but no longer a part of Tianhe's group to be listed at the material times.

As both the listed and unlisted chemical businesses of the family of the CEO of Tianhe were named "*Tianhe*", the SFC considers that it was insufficient for UBS to merely refer to the "*Tianhe Group*" during customer interviews and/or not to request the interviewees to identify the exact Tianhe entity with which their organisations had dealings.

In deciding on the sanctions, the SFC took into account that:

- UBS's sponsor failings concerned three listing applications, including China Forestry and Tianhe;
- the deficiencies identified in relation to UBS are extensive:
  - UBS had failed to properly examine and verify the fundamental aspects of China Forestry's business - namely, its forestry assets, logging activities, insurance coverage and customers; and
  - UBS allowed Tianhe to control the due diligence process and failed to take appropriate steps to address the red flags raised in the customer interviews. In addition, the breaches and deficiencies identified above related to the due diligence conducted on Tianhe's top customers, including its largest customer, during its track record period;
- sponsors have considerable control over the listing process. When sponsors perform substandard due diligence work and companies unsuitable for listing are nevertheless listed and eventually fail, their failure may cause enormous loss to public investors and jeopardise their confidence in Hong Kong's financial markets. As such, deterrent penalties for sponsor failures are warranted;
- UBS and Cen cooperated with the SFC in accepting the disciplinary actions and the SFC's findings and regulatory concerns; and
- UBS agreed to engage an independent reviewer to review its policies, procedures and practices in relation to the conduct of its sponsor business.

Mr Ashley Alder, the SFC's Chief Executive Officer, said: "The outcome of these enforcement actions for sponsor failures – particularly failings when conducting IPO due diligence – signify the crucial importance that the SFC places on the high standards of sponsors' conduct to protect the investing public and maintain the integrity and reputation of Hong Kong's financial markets. The sanctions send a strong and clear message to the market that we will not hesitate to hold errant sponsors accountable for their misconduct."

End

Notes:

1. UBS AG is licensed under the Securities and Futures Ordinance (SFO) to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance), Type 7 (providing automated trading services) and Type 9 (asset management) regulated activities.
2. UBS Securities Hong Kong is licensed to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contract), Type 6 (advising on corporate finance) and Type 7 (providing automated trading services) regulated activities under the SFO. With effect from 7 June 2012, a part of the Type 6 regulated activity carried on by UBS AG, namely, acting as sponsor in respect of an application for the listing of securities, was assumed by UBS Securities Hong Kong.
3. As the SFC's disciplinary proceedings against other parties involved in the Other Listing Application are ongoing, the SFC will not disclose the detailed findings which led to its disciplinary action against UBS in relation to the Other Listing Application until the conclusion of its disciplinary proceedings against these

other parties.

4. Cen was approved to act as a sponsor principal and an executive officer of UBS AG during the period from 11 October 2007 to 29 May 2013 and from 4 October 2007 to 27 May 2015 respectively. Cen has also been licensed to carry on Type 6 (advising on corporate finance) regulated activity under the SFO as a representative of UBS Securities Hong Kong since 7 June 2012.
5. China Forestry was listed on the Main Board of the SEHK on 3 December 2009. UBS and Standard Chartered Securities (Hong Kong) Limited were its Joint Global Coordinators, Joint Sponsors, Joint Bookrunners and Joint Lead Managers. Trading in the shares of China Forestry was suspended since 26 January 2011. Subsequently, China Forestry was wound up and the listing of its shares was cancelled on 24 February 2017.
6. According to the prospectus, for the year ended 31 December 2008 and the 6 months ended 30 June 2009, approximately 70.5% and 81.4% respectively of China Forestry's customers by revenue were located in Yunnan.
7. According to paragraph 1.3.3 of the Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying for continuing to act as Sponsors and Compliance Advisers:

*"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..."*

8. Tianhe was listed on the Main Board of SEHK on 20 June 2014, and was engaged in the manufacture and sale of chemical products. At Tianhe's request, trading in the shares of the company was suspended on 26 March 2015. On 24 May 2017, the SFC issued a notice under section 8(1) of the Securities and Futures (Stock Market Listing) Rules directing the SEHK to suspend all dealings in the shares of Tianhe effective from 9 am on 25 May 2017. Trading in Tianhe's shares remains suspended as of today.
9. Code of Conduct for Persons Licensed by or Registered with the SFC.
10. Paragraph 17.6 (f) of the Code of Conduct provides that, in conducting interviews, the sponsor should, among other things:
  - carry out the interview directly with the person or entity selected for interview with minimal involvement of the listing applicant;
  - confirm the bona fides of the interviewee (including establishing the identity of the interviewee and other relevant information) to satisfy itself that the interviewee has the appropriate authority and knowledge for the interview; and
  - identify any irregularities noted during the interview (e.g. interview not taking place at the registered or business address of the person or entity selected for interview, reluctance on the part of the interviewee to cooperate) and ensure any irregularities are adequately explained and resolved.

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

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## STATEMENT OF DISCIPLINARY ACTION

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### The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has reprimanded and fined UBS AG<sup>1</sup> and UBS Securities Hong Kong Limited<sup>2</sup> (**UBS Securities Hong Kong**) (collectively, **UBS**) a sum of HK\$375 million pursuant to sections 194 and 196 of the Securities and Futures Ordinance (**SFO**).
2. The SFC has also partially suspended UBS Securities Hong Kong's licence to advise on corporate finance for one year, to the extent that UBS Securities Hong Kong shall not act as a sponsor for listing application on the Stock Exchange of Hong Kong (**SEHK**) of any securities pursuant to section 194 of the SFO.
3. The disciplinary action is taken according to an agreement pursuant to section 201 of the SFO dated 13 March 2019 in relation to UBS's failures in discharging its duties as one of the joint sponsors in relation to three listing applications, namely, the listing applications of China Forestry Holdings Company Limited (**China Forestry**) in 2009 and Tianhe Chemicals Group Limited (**Tianhe**) in 2014, and another listing application (the **Other Listing Application**).
4. The SFC has also suspended the licence of Mr Cen Tian (**Cen**) for 2 years from 14 March 2019 to 13 March 2021 for failing to discharge his supervisory duties as a sponsor principal in charge of supervision of the execution of China Forestry's Listing Application. Cen was a former executive officer (**EO**) of UBS AG and is a licensed representative of UBS Securities Hong Kong<sup>3</sup>.
5. As the SFC's disciplinary proceedings against other parties involved in the Other Listing Application are ongoing, the SFC will not disclose the detailed findings which led to its disciplinary action against UBS in relation to the Other Listing Application until the conclusion of its disciplinary proceedings against these other parties.

### Regulatory requirements

6. A sponsor is required to conduct reasonable due diligence inquiries so as to put itself into a position to ensure that the disclosure in the listing document and all information provided to the SEHK during the listing application process are true in all material respects and do not omit any material information.

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<sup>1</sup> UBS AG is licensed under the SFO to carry on Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising on corporate finance), Type 7 (providing automated trading services) and Type 9 (asset management) regulated activities.

<sup>2</sup> UBS Securities Hong Kong is licensed to carry on Type 1 (dealing in securities), Type 2 (dealing in futures contracts), Type 6 (advising on corporate finance) and Type 7 (providing automated trading services) regulated activities under the SFO. With effect from 7 June 2012, a part of the Type 6 regulated activity carried on by UBS AG, namely, acting as sponsor in respect of an application for the listing of securities, was assumed by UBS Securities Hong Kong.

<sup>3</sup> Cen was approved to act as a sponsor principal and an EO of UBS AG during the period from 11 October 2007 to 29 May 2013 and from 4 October 2007 to 27 May 2015 respectively. Cen has also been licensed to carry on Type 6 (advising on corporate finance) regulated activity under the SFO as a representative of UBS Securities Hong Kong since 7 June 2012.

7. Specifically, a sponsor is required by:
- (a) General Principle 2 (diligence) of the Code of Conduct for Persons Licensed by or Registered with the SFC (**Code of Conduct**)<sup>4</sup> and paragraph 5.1 (due skill and care) of the Corporate Finance Adviser Code of Conduct (**CFA Code of Conduct**) to act with due skill, care and diligence and observe proper standards of market conduct, in the best interests of the integrity of the market.
  - (b) Paragraph 5.8 (standard of documents) of the CFA Code of Conduct to use all reasonable efforts to assist its client in ensuring any document for public dissemination is prepared to the required standard and no relevant information has been omitted.
  - (c) Paragraph 2.3 of the CFA Code of Conduct, paragraph IV.6 of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the SFC and paragraph 1.5.2 of the Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers (**Sponsor Guidelines**), to maintain proper books and records and effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with.
  - (d) General Principle 7 (Compliance) and paragraph 12.1 (Compliance: in general) of the Code of Conduct and paragraph 1.5.1(3) of the Sponsor Guidelines to comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of the integrity of the market.
8. After paragraph 17 of the Code of Conduct came into effect in October 2013<sup>5</sup>, among other things, a sponsor is required by:
- (a) Paragraph 17.6(f) (Interview practices) of the Code of Conduct to adopt effective and adequate measures to ensure that the records of interviews are reasonably accurate, complete and reliable in all material respects, including to (i) carry out the interview directly with the person or entity selected for interview with minimal involvement of the listing applicant; (ii) confirm the bona fides of the interviewee to satisfy itself that the interviewee has the appropriate authority and knowledge for the interview; and (iii) identify and ensure any irregularities noted during the interview are adequately explained and resolved.
  - (b) Paragraph 17.6(c) (Appropriate verification) of the Code of Conduct to undertake additional due diligence to ascertain the truth and completeness of the information provided by the listing applicant, after it becomes aware of circumstances that may cast doubt on such information or otherwise indicate a potential problem or risk.

## Summary of facts

### China Forestry's listing application

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<sup>4</sup> References to codes and guidelines in this Statement of Disciplinary Action are references to the codes and guidelines that were current at the time of the relevant listing.

<sup>5</sup> Paragraph 17 of the Code of Conduct only applies to UBS in so far as it relates to the listing application of Tianhe.

## *Background*

9. China Forestry first submitted its listing application on 18 April 2008. It submitted a further listing application on 11 November 2008 due to the lapse of more than six months from its first listing application. At that time, UBS acted as one of the joint bookrunners. The listing application was then suspended due to market conditions.
10. On 4 September 2009, China Forestry reactivated the listing application process by submitting its third listing application. By that time, UBS was one of China Forestry's joint global coordinators, joint sponsors, joint bookrunners and joint lead managers<sup>6</sup>.
11. China Forestry was listed on the Main Board of SEHK on 3 December 2009.
12. Trading in the shares of China Forestry was suspended since 26 January 2011. Subsequently, the company was wound up and the listing of its shares was cancelled on 24 February 2017.

## *Failure to verify the existence of China Forestry's forestry assets*

13. According to the prospectus, China Forestry and its subsidiaries (**China Forestry Group**), a plantation forest operator whose main businesses were the management and sustainable development of forests and the harvesting and sale of logs, owned forests covering a gross area of approximately 171,780 hectares in Yunnan and Sichuan Provinces of Mainland China. Around 90% (or 159,333 hectares) of such forests were situated in Yunnan.
14. UBS became a joint sponsor of China Forestry's listing application in or around May/June 2009. However, UBS did not conduct any site inspection of China Forestry Group's forests after it became a sponsor. Although UBS claimed that it had physically inspected a number of China Forestry Group's forests in Sichuan and Yunnan in 2008 in its then capacity as one of the joint bookrunners, it was unable to provide any inspection records or identify the precise locations of the inspections.
15. UBS claimed that other professional parties, including lawyers and forestry experts, were involved in some of the site inspections. However, none of them had been instructed to verify the existence of China Forestry Group's forestry assets as disclosed in the prospectus.
16. Further, despite the fact that China Forestry Group acquired 150,000 hectares of forests in Yunnan in 2008 which accounted for over 90% of its forestry assets, there is no evidence to suggest that UBS visited China Forestry Group's forests in Yunnan or commissioned any assessment of the impact of the earthquake of magnitude 6.0 on the Richter scale that hit Yunnan on 9 July 2009 (**Yunnan Earthquake**) on China Forestry Group's forestry assets.

## *Failure to verify China Forestry Group's forestry rights*

17. According to the prospectus, China Forestry Group has the necessary legal rights over its forests and the relevant forestry right certificates to evidence its ownership of the trees, and rights to use the forest land. While UBS claimed to have inspected the original certificates, it did not identify a number of apparent anomalies (for example, a mismatch between the name of a forest as disclosed

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<sup>6</sup> Standard Chartered Securities (Hong Kong) Limited was the other joint global coordinator, joint sponsor, joint bookrunner and joint lead manager of China Forestry at the time.

in the prospectus and as stated in the corresponding certificates) that should have called for further inquiries.

18. UBS also claimed that its Mainland Chinese lawyers had verified and checked the certificates, but it was not aware of what steps had been taken by the Mainland Chinese lawyers to check the certificates. Further, the relevant legal opinions did not state that the certificates had been verified and checked. In fact, the legal opinions contained express assumptions as to the genuineness and accuracy of documents China Forestry provided to the lawyers.
19. The SFC has instructed a Mainland Chinese law firm to verify the certificates allegedly held by China Forestry Group in support of its forestry rights in Yunnan and Sichuan as disclosed in the prospectus:
  - (a) The forestry bureaus in Yunnan confirmed that all the 18 certificates purportedly held by China Forestry in relation to 18 parcels of forests in Yunnan had no corresponding records with the relevant forestry bureaus.
  - (b) The forestry bureaus in Sichuan confirmed that 22 of the 28 certificates purportedly held by China Forestry in relation to 21 parcels of forests in Sichuan had no corresponding records with the relevant forestry bureaus.
  - (c) For the remaining 6 certificates purportedly held by China Forestry in relation to 6 parcels of forests in Sichuan, the relevant forestry bureaus were unable to confirm their authenticity due to an ongoing criminal investigation relating to China Forestry.
20. The 18 certificates mentioned in paragraph 19(a) above account for over 90% of China Forestry's forestry assets as disclosed in the prospectus.

*Failure to verify China Forestry's compliance with relevant Forestry laws and regulations*

21. The prospectus describes the means by which China Forestry undertook its logging activities in compliance with relevant forestry laws and regulations.
22. UBS relied on written confirmations purportedly issued by the relevant forestry bureaus that China Forestry provided<sup>7</sup> for it to confirm that the business and logging activities of China Forestry were in compliance with the relevant Mainland Chinese forestry laws. There is, however, no evidence that UBS had verified whether the written confirmations were issued by the relevant forestry bureaus and that the information recorded therein was accurate.
23. UBS claimed that it relied on its Mainland Chinese lawyers' due diligence on the written confirmations, but there is no evidence that it had requested the Mainland Chinese lawyers to check or verify the authenticity of the written confirmations. The assumption on which the relevant legal opinion was based (see paragraph 18 above) suggests that the Mainland Chinese lawyers did not in fact verify the authenticity of the written confirmations.

*Inadequate due diligence on the insurance coverage for China Forestry Group's forestry assets*

24. Having sufficient insurance coverage for China Forestry Group's forestry assets, which were pivotal to its business operation, was of fundamental importance. UBS relied on insurance documents provided by China Forestry as evidence of

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<sup>7</sup> UBS did not know how China Forestry had obtained the written confirmations.

such insurance coverage without independently verifying the authenticity of the insurance documents.

25. Although UBS claimed that its deal team members and Mainland Chinese lawyers had reviewed the insurance documents, it did not identify a number of issues (for example, inconsistencies between the locations of certain forests as stated in the insurance documents and as disclosed in the prospectus) that should have called for further inquiries.
26. The SFC has made inquiries with the insurer which has allegedly insured all the forests of China Forestry Group. The insurer confirmed with the SFC that none of the insurance contracts that China Forestry provided to UBS was issued by it.

*Inadequate due diligence on China Forestry's customers*

27. According to the prospectus, for the year ended 31 December 2008 and the 6 months ended 30 June 2009, approximately 70.5% and 81.4% respectively of China Forestry's customers by revenue were located in Yunnan.
28. UBS had planned to conduct face-to-face interviews with some of China Forestry's customers in Yunnan, but subsequently decided to postpone the face-to-face interviews because of the Yunnan Earthquake. UBS only conducted telephone interviews with these customers in the end.
29. Conducting interviews with customers via telephone means that the sponsor is not able to verify the existence of the customers and the identity of their representatives at their place of business. With respect to China Forestry's customers in Yunnan in particular, conducting telephone interviews with them meant that UBS was not able to assess the impact of the Yunnan Earthquake on them at their place of business post-earthquake. As such, it is reasonable to expect that UBS would have taken steps to mitigate the limitations of conducting interviews with customers via telephone.
30. The SFC found that certain practices that UBS adopted in conducting due diligence enquiries with China Forestry Group's customers were inadequate:

(a) No independent searches

There is no evidence that UBS conducted any company, address or background searches on any of China Forestry Group's customers to confirm their identity. While UBS claimed that it had performed internet searches on China Forestry Group's customers, the relevant search records were not retained. There is no evidence that UBS attempted to confirm the existence of China Forestry Group's major customers through other means.

(b) No verification of identity and contact detail of interviewees

Information such as the name and telephone number of the customer, the key contact person and his position were obtained from China Forestry. UBS arranged the telephone interviews by calling either the fixed line or mobile phone number of the customers provided by China Forestry. There is no evidence that UBS took any steps to verify the customer's telephone number and/or the identity of the individual to be interviewed.

31. The SFC also found that important information about the interviews were not recorded in the telephone interview records provided by UBS. For example, the interview records did not record the full name of any of the interviewees (the interviewees were only identified by surname), the identity of the interviewer(s) and other persons attending the interview, and the telephone number of any of the customers interviewed.
32. The interviewees were not asked to confirm whether the Yunnan Earthquake had affected their factories, production or sales, etc. Instead, the interviewees were asked to confirm whether their orders with China Forestry Group would be affected by the Sichuan earthquake<sup>8</sup>.

### **Tianhe's listing application**

#### *Background*

33. Tianhe was an investment holding company which indirectly wholly owned its key operational arm in Mainland China known as Jinzhou DPF-TH Chemicals Co. Limited (**Jinzhou DPF-TH**).
34. According to Tianhe's prospectus dated 9 June 2014 (**Tianhe Prospectus**), Jinzhou DPF-TH manufactured and sold chemical products, i.e. lubricant additives and specialty fluorochemicals.
35. On 10 March 2014, Tianhe submitted its listing application to the SEHK, whereby:
  - (a) UBS Securities Hong Kong and two other sponsors were the joint sponsors, and they or their associated companies were the joint global coordinators, joint bookrunners and joint lead managers; and
  - (b) its track record period was the three years ended 31 December 2011, 2012 and 2013 (**Track Record Period**).
36. On 20 June 2014, Tianhe was listed on the Main Board of the SEHK.
37. At Tianhe's request, trading in the shares of the company was suspended on 26 March 2015. This was because Tianhe required additional time to provide further information to fully address its auditors' concerns, which caused delay in the publication of its 2014 Annual Results.
38. On 24 May 2017, the SFC issued a notice under section 8(1) of the Securities and Futures (Stock Market Listing) Rules directing the SEHK to suspend all dealings in the shares of Tianhe effective from 9 am on 25 May 2017.
39. Trading in Tianhe's shares remains suspended as of today.

#### *Involvement of Tianhe in the due diligence interviews*

40. The SFC's investigations revealed that for the purpose of their due diligence interviews, UBS, the other joint sponsors and their legal counsel initially requested to:
  - (a) conduct face-to-face due diligence interviews at the customers' business premises; and

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<sup>8</sup> This was an earthquake that hit Sichuan, China on 12 May 2008.

- (b) verify the interviewees' identity and authority, during the interviews, by:
  - (i) obtaining an authorization letter from their companies;
  - (ii) reviewing their business licences;
  - (iii) obtaining their business cards; and
  - (iv) reviewing their personal identity documents.
- 41. It is apparent that UBS was fully cognizant of its due diligence duties (for example, to effectively verify the identities of the interviewees from major customers). However, UBS agreed to change the due diligence plan, apparently due to the resistance of Tianhe.
- 42. Out of the ten customers of Tianhe interviewed by UBS, six of which were interviewed either by telephone or at face-to-face interviews at Tianhe's offices in Jinzhou of Mainland China, and the rest of them were interviewed at the customers' own premises.
- 43. Further, the SFC noted that the customer due diligence interviews were arranged by Tianhe:
  - (a) Tianhe contacted the relevant customers directly.
  - (b) The name and contact details of the representatives of the customers were provided to UBS by Tianhe.
  - (c) Tianhe informed UBS which customers were unable to attend face-to-face due diligence interviews at Tianhe's premises and which customers refused to conduct interviews at their respective business premises.
- 44. The SFC is concerned that:
  - (a) UBS did not have any direct contact with Tianhe's customers for the purpose of setting up due diligence interviews or confirming the mode and place of the interviews.
  - (b) There is no evidence that UBS took any steps to verify directly with the relevant customers as to the reason(s) why they could not attend face-to-face interviews or refused to conduct onsite interviews.
- 45. The SFC also found that, upon the request of Tianhe, UBS agreed not to request the interviewees' companies to provide an authorization letter and not to review their business licences as planned. UBS agreed that they would only check the identity/staff card of the interviewees and ask the interviewees to provide business cards.

*Failure to address red flags raised in an interview*

- 46. While UBS had requested to conduct face-to-face due diligence interview with the largest customer of Tianhe, Customer X, at its business premises, UBS eventually agreed to interview Customer X at Tianhe's office after Tianhe informed them that since an anti-corruption campaign in Mainland China was

underway, Customer X, a large state-owned enterprise, would normally turn down any third party request to visit its premises.

47. At the end of the interview, the representative of Customer X refused to produce his identity and business cards and stormed out of the meeting room. He told UBS and other parties he would not have agreed to be interviewed under Customer X's internal procedure, and he only attended the interview to help the family of Tianhe's chief executive officer (**CEO**).
48. Nonetheless, UBS did not conduct any follow-up inquiries to ascertain that the person it interviewed was an authorised representative of Customer X and that he had the appropriate authority and knowledge for the interview.

#### *Unclear interview questions*

49. According to the sales documents provided by Tianhe to UBS, Tianhe conducted business with its customers through Jinzhou DPF-TH.
50. During the customer interviews, the interviewees were asked questions in relation to the business between their companies and the "*Tianhe Group*", instead of Jinzhou DPF-TH. There is no evidence that UBS or other parties have explained to the interviewees which entities did the "*Tianhe Group*" refer to during the customer interviews.
51. Out of the ten customers interviewed, only three of them confirmed that they had contact with Jinzhou DPF-TH. However, UBS did not follow up with the remaining customers as to which entity of the "*Tianhe Group*" they had business with.
52. One of the purported top ten customers of Tianhe interviewed by UBS informed the SFC that when its representative answered questions about the dealings between the customer and the "*Tianhe Group*" during the interview, its representative was referring to the dealings with Liaoning Tianhe Fine Chemicals (**Liaoning Tianhe**), a private company wholly owned by the family of the CEO of Tianhe but no longer a part of Tianhe's group to be listed at the material times.
53. The separation of Tianhe and Liaoning Tianhe was an important feature of Tianhe and disclosed in different parts of the Tianhe Prospectus. As both the listed and unlisted chemical businesses of the family of the CEO of Tianhe were named "Tianhe", the SFC considers that it was insufficient for UBS to merely refer to the "*Tianhe Group*" during customer interviews and/or not to request the interviewees to identify the exact Tianhe entity with which their organisations had dealings.

#### **Breaches and reasons for action**

54. In light of the matters set out above, the SFC considers that UBS had failed to discharge its duties as one of the joint sponsors in relation to China Forestry's listing application, in that it had:
  - (a) failed to conduct adequate and reasonable due diligence inquiries to ensure that the information and representations provided in the prospectus were true, accurate and not misleading, in that it had:

- (i) failed to verify the existence of the forests in respect of which China Forestry represented in the prospectus that it possessed forestry rights;
  - (ii) failed to verify that the forestry rights as disclosed in the prospectus were appropriately held by China Forestry;
  - (iii) failed to verify the written confirmations purportedly issued by relevant local forestry bureaus, which China Forestry provided to it to confirm that the business and logging activities of China Forestry were in compliance with the relevant Mainland Chinese forestry laws;
  - (iv) failed to properly review the insurance documents provided by China Forestry as evidence that it had insurance coverage for all of its forests disclosed in the prospectus; and
  - (v) failed to take reasonable steps to verify the identity and existence of China Forestry's customers and their relationship with China Forestry;
- (b) failed to keep a proper audit trail/written record of the work done in relation to the due diligence for China Forestry's listing application;
  - (c) breached the sponsor's undertaking to the SEHK and/or filed untrue statements in the sponsor's declaration to the SEHK; and
  - (d) failed to comply with all regulatory requirements applicable to the conduct of a sponsor, including the Rules Governing the Listing of Securities on the SEHK (**Listing Rules**) and Practice Note 21 to the Listing Rules (Due Diligence by Sponsors in respect of Initial Listing Applications) (**PN21**).
55. The SFC also considers that UBS's failures in China Forestry's listing application were attributable to the neglect on the part of Cen, in his capacity as a sponsor principal, of his supervisory duties<sup>9</sup>.
56. The SFC considers that UBS Securities Hong Kong has failed to discharge its duties as a sponsor in relation to the listing application of Tianhe, in that it has failed to:
- (a) conduct adequate and reasonable due diligence inquiries in relation to Tianhe's listing application and use all reasonable efforts to ensure that the information and representations provided in the Tianhe Prospectus were true, accurate and not misleading;
  - (b) perform adequate and reasonable due diligence inquiries in relation to Tianhe's customers, in that it has:

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<sup>9</sup> According to paragraph 1.3.3 of the Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying for continuing to act as Sponsors and Compliance Advisers:

*"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..."*

- (i) failed to carry out customer interviews directly with the person or entity selected for interview with minimal involvement of Tianhe;
  - (ii) failed to confirm the bona fides of all interviewees to satisfy themselves that the interviewees had the appropriate authority and knowledge for the interviews;
  - (iii) failed to identify and ensure that all irregularities noted during the interviews were adequately explained and resolved; and
- (c) comply with all regulatory requirements applicable to the conduct of a sponsor, including the Listing Rules and PN21.

## **Conclusion**

57. Having considered all the circumstances, the SFC is of the view that UBS has breached the regulatory requirements as set out in paragraphs 7 and 8 respectively in relation to the listing applications of China Forestry and Tianhe.
58. In deciding the appropriate sanction, the SFC has taken into account all relevant considerations, including:
- (a) UBS's sponsor failings concerned three listing applications, including China Forestry and Tianhe.
  - (b) The deficiencies perpetrated by UBS are extensive:
    - (i) UBS had failed to properly examine and verify the fundamental aspects of China Forestry's business, i.e. its forestry assets, logging activities, insurance coverage and customers.
    - (ii) UBS allowed Tianhe to control the due diligence process and failed to take appropriate steps to address the red flags raised in the customer interviews. Further, the breaches and deficiencies identified above related to the due diligence conducted on Tianhe's top customers, including its largest customer, during the Track Record Period.
  - (c) Sponsors have considerable control over an IPO. When sponsors perform substandard due diligence work and companies not suitable for listing are nevertheless listed and eventually fail, their failure may cause enormous loss to public investors and jeopardise their confidence in Hong Kong financial markets. As such, deterrent penalties for sponsor failures are warranted.
  - (d) UBS and Cen cooperated with the SFC in accepting the disciplinary actions and the SFC's findings and regulatory concerns.
  - (e) UBS agreed to engage an independent reviewer to review its policies, procedures and practices in relation to the conduct of its sponsor business.