



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Fit and Proper Guidelines

適當人選的指引

**Hong Kong
September 2006**

香港
2006年9月

Table of Contents

	Page
1. Introduction	1
2. Who needs to comply with the “fit and proper” guidelines	2
3. Determination of “fit and proper”	3
4. Financial status or solvency	5
5. Educational or other qualifications or experience	6
6. Ability to carry on the regulated activity competently, honestly and fairly	7
7. Reputation, character, reliability and financial integrity	9
8. Continuing requirements	11
Appendix I: Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers	13

1. Introduction

- 1.1 In most financial markets throughout the world, intermediaries providing securities, futures and foreign exchange services are required to be authorized by a regulatory authority. This requirement arises from the need for market participants generally, and investors in particular, to have confidence that the people and organizations with whom they deal are competent, honest, financially sound, and will treat them fairly.
- 1.2 Persons applying for licences and registrations under the Securities and Futures Ordinance, Cap. 571 (“SFO”) must satisfy and continue to satisfy after the grant of such licences and registrations the Securities and Futures Commission (“SFC”) that they are fit and proper persons to be so licensed or registered.
- 1.3 In simple terms, a fit and proper person means one who is financially sound, competent, honest, reputable and reliable.
- 1.4 The Fit and Proper Guidelines are made under section 399 of the SFO to replace the Fit and Proper Criteria issued in December 2000. They outline a number of matters that the SFC will normally consider in determining whether a person is fit and proper. The matters set out in these Guidelines are not exhaustive. These Guidelines do not have the force of law and should not be interpreted in a way that would override the provisions of any applicable laws, codes or other regulatory requirements.
- 1.5 These Guidelines should be read in conjunction with the Guidelines on Competence and the Guidelines on Continuous Professional Training, which set out the initial and continuous competence requirements expected of a person.

2. Who needs to comply with the “fit and proper” guidelines

- 2.1 The Fit and Proper Guidelines apply to a number of persons including the following:
- (a) an individual who applies for licence or is licensed under Part V of the SFO;
 - (b) a licensed representative who applies for approval or is approved as a responsible officer under Part V of the SFO;
 - (c) a corporation which applies for licence or is licensed under Part V of the SFO;
 - (d) an authorized financial institution which applies for registration or is registered under Part V of the SFO;
 - (e) an individual whose name is to be or is entered in the register maintained by the Hong Kong Monetary Authority (“HKMA”) under section 20 of the Banking Ordinance (“relevant individual”); and
 - (f) an individual who applies to be or has been given consent to act as an executive officer of a registered institution under section 71C of the Banking Ordinance.

3. Determination of “fit and proper”

- 3.1 Section 129(1) of the SFO sets out a number of matters that the SFC or the HKMA (as the case may be) shall have regard to in assessing a person’s fitness and properness, which include his:
- (a) financial status or solvency;
 - (b) educational or other qualifications or experience having regard to the nature of the functions to be performed;
 - (c) ability to carry on the regulated activity competently, honestly and fairly; and
 - (d) reputation, character, reliability and financial integrity.
- 3.2 The above matters must be considered in respect of the person (if an individual), the corporation and any of its officers (if a corporation) or the institution, its directors, chief executive, managers and executive officers (if an authorized financial institution).
- 3.3 In addition, section 129(2) of the SFO empowers the SFC or the HKMA (as the case may be) to take into consideration any of the following matters in considering whether a person is fit and proper:
- (a) decisions made by such relevant authorities as stated in section 129(2)(a) or any other authority or regulatory organization, whether in Hong Kong or elsewhere, in respect of that person;
 - (b) in the case of a corporation, any information relating to:
 - (i) any other corporation within the group of companies; or
 - (ii) any substantial shareholder or officer of the corporation or of any of its group companies;
 - (c) in the case of a corporation licensed under section 116 or 117 of the SFO or registered under section 119 of the SFO or an application for such licence or registration:-
 - (i) any information relating to any other person who will be acting for or on its behalf in relation to the regulated activity; and

- (ii) whether the person has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements under any of the relevant provisions;
 - (d) in the case of a corporation licensed under section 116 or 117 of the SFO or an application for the licence, any information relating to any person who is or to be employed by, or associated with, the person for the purposes of the regulated activity; and
 - (e) the state of affairs of any other business which the person carries on or proposes to carry on.
- 3.4 The SFC is obliged to refuse an application to be licensed if the applicant fails to satisfy the SFC that he is a fit and proper person to be licensed. The onus is on the applicant to make out a case that he is fit and proper to be licensed for the regulated activity. In relation to an application to be registered under section 119 of the SFO by an authorized financial institution, the SFC is obliged to have regard to the advice given to it by the HKMA as to whether it has been satisfied that the applicant is a fit and proper person and the SFC may rely on such advice wholly or partly.
- 3.5 Paragraphs 4 to 7 below set out matters, whether taken place in Hong Kong or elsewhere, that are likely to give rise to concerns about the fitness and properness of a person. Where “recency” of a matter of concern is mentioned in the paragraphs, it is normally taken to mean within the last 5 years for all persons.
- 3.6 Notwithstanding that a person fails to comply with all individual elements set out in these Guidelines, the SFC may nonetheless be satisfied that the person is fit and proper. The SFC will look to the substance of the requirements and the materiality of any failure to meet them. Persons who are unsure whether they meet the substance of any criteria or believe that failure to meet any requirements may not be material to their own case are encouraged to discuss their concerns with the SFC’s Licensing staff before submitting an application.
- 3.7 Persons applying for licence or approval to engage in regulated activities may be asked to attend interviews with SFC’s Licensing staff as appropriate.

4. Financial status or solvency

4.1 The SFC is not likely to be satisfied that a person is a fit and proper person if that person:

4.1.1 *In the case of an Individual*

- (a) is an undischarged bankrupt, is currently subject to bankruptcy proceedings or is a bankrupt who has recently been discharged;

Note: In considering whether to license a bankrupt who has been discharged, the SFC would have regard to the circumstances of the discharge and the recency of the discharge.

- (b) is subject to receivership or other similar proceedings;
- (c) has failed to meet any judgment debt.

Note: The SFC would have regard to the circumstances of the failure to meet a judgment debt and the recency of the failure.

4.1.2 *In the case of a Corporation or an Authorized Financial Institution*

- (a) is subject to receivership, administration, liquidation or other similar proceedings;
- (b) has failed to meet any judgment debt;

Note: These are requirements aimed at identifying corporations or institutions of dubious financial status or solvency. As with the same requirements in respect of individuals, the SFC would have regard to the circumstances of the failure to meet a judgment debt and the recency of the act.

- (c) is unable to meet any financial or capital requirements applicable to it.

5. Educational or other qualifications or experience

5.1 In considering the educational or other qualifications or experience, the SFC will take into account the nature of the functions which the person will perform. A person is unlikely to meet the fit and proper requirement if that person:

5.1.1 *In the case of an Individual*

- (a) applying for licence as a representative or whose name is to be entered in the register maintained by the HKMA, is under 18 years of age;
- (b) has failed to demonstrate that he is competent to perform the regulated activities efficiently and effectively.

Note:

(i) *The general expectations are set out in the Guidelines on Competence.*

(ii) *Competence is assessed with reference to the person's academic and industry qualifications together with relevant experience. Persons should be equipped with the skills, knowledge and professionalism necessary to perform their duties. The level of knowledge expected varies according to the level of responsibility and the type of regulated activity to be carried out. Persons are generally expected to be able to display an understanding of:*

- *the general structure of the regulatory framework that applies to their proposed activities;*
- *the particular legislative provisions, codes, guidelines and exchange rules that apply to the functions that they would perform;*
- *the fiduciary obligations owed to clients and the general obligations owed to their principals or employers; and*
- *the financial products they deal in or advise upon and the market in which the service is provided.*

6. Ability to carry on the regulated activity competently, honestly and fairly

6.1 A person has to demonstrate the ability to carry on the regulated activity competently, honestly and fairly; and in compliance with all relevant laws, codes and guidelines promulgated by the SFC and other regulators (where applicable). The SFC is not likely to be satisfied that a person is a fit and proper person if that person:

6.1.1 *In the case of an Individual*

- (a) has ever been a patient as defined in section 2 of the Mental Health Ordinance to the extent that in the opinion of the SFC, after having taken into account such relevant factors including that of the person's past training, experience and qualifications, that person would be unable to carry out the inherent requirements of the regulated activity;
- (b) has evidenced incompetence, negligence or mismanagement, which may be indicated by the person having been disciplined by a professional, trade or regulatory body; or dismissed or requested to resign from any position or office for negligence, incompetence or mismanagement.

Note: Competence and efficiency are key elements to being fit and proper. However, the weight given to events of the types listed above in considering whether a person is fit and proper will depend on a number of factors, such as the time since the event, the seriousness of the event, and the responsibility to be undertaken. As well, the source and quality of evidence will be taken into account.

6.1.2 *In the case of a Corporation or an Authorized Financial Institution*

- (a) has non-executive directors, key personnel (such as manager, officer, director, chief executive), substantial shareholders or other controllers who fail to meet the Fit and Proper Guidelines other than that on competence to perform regulated activities (unless such requirements are otherwise applicable);

Note: The SFC believes that all persons involved in the management or control of licensed corporations and registered institutions must be honest and fair.

- (b) has failed to demonstrate that it is competent to perform the regulated activities efficiently and effectively.

Note: The general expectations are set out in the Guidelines on Competence. The competence of a person is generally assessed with reference to its organizational structure and personnel. References should be made to Appendix A of the Guidelines on Competence. The SFC is unlikely to be satisfied that the person is competent if:

- (i) its organizational structure and personnel are unable to comply with the relevant legislative or regulatory requirements; or*
- (ii) it lacks the infrastructure and internal control systems to manage risk effectively, avoid conflict of interest and provide proper audit trail.*

7. Reputation, character, reliability and financial integrity

7.1 The SFC is not likely to be satisfied that a person is fit and proper if that person:

7.1.1 *In the case of an Individual*

- (a) was found to be of poor reputation, character or reliability, lacking in financial integrity, or dishonest. The weight given to events of the types listed below will depend on a number of factors, such as the time since the event, the seriousness of the event, and the level of responsibilities to be undertaken. Instances which, if remained unexplained, might result in the person being regarded as having failed to meet this test are where the person has been:
- (i) found by a court or other competent authority for fraud, dishonesty or misfeasance;
 - (ii) convicted of a criminal offence or is the subject of unresolved criminal charges which are of direct relevance to fitness and properness;
 - (iii) censured, disciplined or disqualified by any professional or regulatory body in relation to any trade, business or profession;
 - (iv) refused or restricted from the right to carry on any trade, business or profession for which a specific licence, registration or other authorization is required by law;
 - (v) disqualified by a court of competent jurisdiction from being a director;
 - (vi) found culpable of market misconduct by the Market Misconduct Tribunal, or failed to abide by any codes and guidelines promulgated by the SFC, other regulators or any relevant exchanges in Hong Kong or overseas (if applicable);

- (vii) a director, substantial shareholder, or involved in the management, of a corporation or business that:
 - (A) was wound up (otherwise than by a solvent members' voluntary dissolution) or was otherwise insolvent or had a receiver or administrator appointed, however described;
 - (B) was found guilty of fraud;
 - (C) has not met all obligations to clients, compensation funds established for the protection of investors, or inter-member guarantee funds;
 - (D) has been found to have committed the acts described in (i), (ii), (iii), (iv) or (vi) above.

Note: The extent of the person's involvement in the relevant events, and the person's behaviour at that time, will have a substantial impact on the weight that the SFC attaches to the events in considering the person's fitness and properness.

- (b) has been a party to a scheme of arrangement or entered into any form of compromise with a creditor involving a considerable amount.

Note: Where the amount involved is in excess of HK\$100,000 or equivalent, the SFC would have regard to the recency of, and the circumstances leading to, the event.

7.1.2 In the case of a Corporation or an Authorized Financial Institution

- (a) was found to be of poor reputation or reliability, or lacking in financial integrity. Similar considerations will be given to the events described in 7.1.1(a) (i), (ii), (iii), (iv), (vi) and (vii) and 7.1.1(b) above;
- (b) has been served with a winding up petition.

8. Continuing requirements

- 8.1 A person licensed or registered under the SFO, or a relevant individual or an executive officer of a registered institution must continue to be fit and proper.
- 8.2 The SFO empowers the SFC to take disciplinary actions, pursuant to section 194 or section 196 of the SFO, against a regulated person¹ of a licensed person or registered institution respectively if:
- (a) the person is, or was at any time, guilty of misconduct; or
 - (b) the SFC is of the opinion that the person is not a fit and proper person to be or to remain the same type of regulated person.
- 8.3 A range of sanctions is available to the SFC under the SFO. These include:
- revocation or suspension of the licence or registration of all or part of the regulated activities (only applicable to licensed persons and registered institutions);
 - revocation or suspension of approval granted as a responsible officer (only applicable to individuals);
 - public or private reprimand;
 - prohibition from applying for a licence or registration;

¹ Regulated person is defined: -

in section 194(7) in respect of licensed persons as any one of the following:-

- a licensed person;
- a responsible officer of a licensed corporation; or
- a person involved in the management of the business of a licensed corporation.

in section 196(7) in respect of registered institutions as any one of the following:-

- a registered institution;
- an executive officer of a registered institution;
- a person involved in the management of the business constituting any regulated activity for which a registered institution is or was registered; or
- an individual whose name is or was entered in the register maintained by the HKMA under section 20 of the Banking Ordinance as that of a person engaged by a registered institution in respect of a regulated activity.

- prohibition from applying for approval as a responsible officer of a licensed corporation or to be given consent to act or continue to act as an executive officer of a registered institution (only applicable to individuals);
- prohibition from having his name entered in the register maintained by the HKMA under section 20 of the Banking Ordinance (only applicable to individuals); and
- ordering the payment of a pecuniary penalty.

Appendix I: Additional Fit and Proper Guidelines for Corporations and Authorized Financial Institutions applying or continuing to act as Sponsors and Compliance Advisers (“Sponsor Guidelines”)

Explanatory Notes

The Sponsor Guidelines apply to all corporations and authorized financial institutions applying or continuing to act as sponsors¹ and compliance advisers²; as well as licensed individuals accredited to such corporations and relevant individuals engaged by authorized financial institutions (where applicable) for the performance of such activities.

The Sponsor Guidelines are an elaboration of the Fit and Proper Guidelines, the Guidelines on Competence, and the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (“Code of Conduct”). Where relevant, provisions within these codes and guidelines are also applicable to sponsors and compliance advisers. The Sponsor Guidelines provide additional fit and proper considerations for corporations and authorized financial institutions applying or are already licensed or registered to act sponsors and compliance advisers and do not replace the provisions set out in other sections of the Fit and Proper Guidelines.

Sponsors and compliance advisers are also reminded that in addition to the Sponsor Guidelines and the above-mentioned codes and guidelines, they must also comply with all other relevant codes, guidelines and regulations prescribed by the SFC, such as the Corporate Finance Adviser Code of Conduct. These other codes and guidelines are not diminished in any way by the more specific requirements set out in the Sponsor Guidelines.

¹ “Sponsor” means a licensed corporation or registered institution licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a Sponsor appointed to act as a sponsor in respect of an application for the listing of any securities on a recognized stock market under the Listing Rules of the Stock Exchange of Hong Kong Limited (“SEHK”). A recognized stock market means a stock market operated by a company recognized as an exchange company under section 19(2) of the SFO.

² “Compliance adviser” means a licensed corporation or registered institution licensed or registered under the SFO for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as Sponsor appointed to act as compliance adviser under the Listing Rules of the SEHK.

I. SPONSORS

1. Competence

The SFO requires that all licensed or registered persons must be fit and proper. In assessing whether a person is fit and proper as a licensed or registered person or to be licensed or registered with the SFC, the person's competence is one of the factors that should be taken into account. Specific competence requirements on sponsors and certain staff employed by them are set out below.

1.1 Sufficient expertise and resources

1.1.1 *General Principle 3 of the Code of Conduct provides that a licensed or registered person should have and employ effectively the resources and procedures that are needed for the proper performance of its business activities. Paragraph 4.1 of the Code of Conduct further provides that a licensed or registered person should ensure that any person it employs or appoints to conduct business is fit and proper and otherwise qualified to act in the capacity so employed or appointed (including having relevant professional training or experience).*

1.1.2 In the context of acting as a sponsor, a corporate finance firm should have sufficient expertise and resources to carry out its work. A sponsor should not undertake sponsor work and other corporate finance advisory work beyond its capacity and expertise. The Management³ should ensure that the firm has the relevant expertise and adequate resources to perform its role as a sponsor properly.

1.1.3 Whenever a firm takes up an appointment as a sponsor pursuant to the requirements under the Listing Rules⁴, the Management should appoint a team comprising corporate finance staff ("Transaction Team"). Members of the Transaction Team should be competent in general, and in particular in the context of the work to be carried out by the team; and the team should have the manpower and resources to carry out the sponsor work to the standards expected of it under the relevant rules, regulations, codes and guidelines. A Transaction Team should have sufficient Hong Kong regulatory experience,

³ "Management" includes the firm's Board of Directors, Managing Director, Chief Executive Officer, Responsible Officers, Executive Officers or other senior management personnel.

⁴ "Listing Rules" means the Listing Rules for the Main Board and Growth Enterprise Market ("GEM") Board of SEHK.

including knowledge of the relevant rules, regulations, codes and guidelines so that it can properly discharge its duty as a sponsor.

1.1.4 Members in one transaction team of a sponsor may work in other transaction teams of the same sponsor provided that:

- (1) the Management and the Principals⁵ (refer to paragraphs 1.3 and 1.4 of the Sponsor Guidelines) of the respective transaction teams are satisfied on reasonable grounds that the sponsor can properly discharge its responsibilities in all the sponsor work that it undertakes;
- (2) if a Principal is assigned to supervise more than one transaction team, the Management is satisfied that each team is properly and adequately supervised by at least one Principal who has the necessary capacity, capability and competence to supervise; and
- (3) the sponsor complies with General Principle 6 and paragraph 10.1 of the Code of Conduct in respect of conflicts of interest.

1.1.5 The Management has the overall responsibility to ensure that there are sufficient staff to carry out the work throughout the period when the firm acts as a sponsor.

1.1.6 The level of human resources and expertise should be commensurate with the volume, size, complexity and nature of the sponsor work that is undertaken by a sponsor.

1.2 Management's responsibility

1.2.1 *General Principle 9 of the Code of Conduct provides that the senior management of a licensed or registered person should bear primary responsibility for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by the firm.*

1.2.2 *Part 1 of the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission ("Internal Control Guidelines") provides that the Management should ensure that there is an effective management and organisational structure which ensures that the operations of the business are conducted in a sound, efficient and effective manner. The Management should assume full*

⁵ "Principal" means a responsible officer or an executive officer appointed by the firm to be in charge of the supervision of the transaction team.

responsibility for the firm's operations including the development, implementation and on-going effectiveness of the firm's internal controls and the adherence thereto by its directors and employees. Reporting lines should be clearly identified, with supervisory and reporting responsibilities assigned to the appropriate staff members.

- 1.2.3 *Paragraph 4.2 of the Code of Conduct further provides that a licensed or registered person should ensure that it has adequate resources to supervise diligently and does supervise diligently persons employed or appointed by it to conduct business on its behalf.*
- 1.2.4 In applying the above principles to a sponsor, the Management of a sponsor is ultimately responsible for the supervision of the sponsor work undertaken by the firm, as well as compliance with all relevant rules, regulations, codes and guidelines. While the Management may delegate the operational functions to the staff of a sponsor, the Management remains responsible for the discharge of these functions and such responsibilities cannot be delegated.
- 1.2.5 The Management should appoint a Transaction Team to carry out each sponsor engagement, taking into account the considerations for the appointment and composition of the team set out in paragraphs 1.1.3 and 1.1.6. The Transaction Team should include at least one Principal who acts as the supervisor of the team.

Note:

The Management should have regard to the staff's expertise, corporate finance experience, capacity and other factors that may affect the standard of sponsor work in deciding the composition of the team.

- 1.2.6 *Part IV.6 of the Internal Control Guidelines provides that the Management should establish and maintain effective record retention policies which ensure that all relevant legal and regulatory requirements are complied with, and which enable the firm, its auditors and other interested parties, such as the SEHK and the SFC, to carry out routine and ad hoc comprehensive reviews or investigation to assess such compliance.*

1.3 Principals

- 1.3.1 It is the responsibility of the Management to ensure that Principals appointed by the firm meet the criteria required in the Sponsor Guidelines. The Management should ensure that there are sufficient Principals engaged in a

full time capacity to discharge its role in supervising the Transactions Team(s), taking into account the factors set out in paragraph 1.1.6. A sponsor should have at least two Principals at all times.

- 1.3.2 In making the appointment, the Management is required to provide a written endorsement to the SFC, on behalf of the licensed corporation or registered institution, that individuals proposed to be appointed to be Principals have met the respective requirements set out in paragraphs 1.3 and 1.4.
- 1.3.3 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. The Principal is also expected to be fully conversant with the key issues in each sponsorship appointment and be able to respond and react promptly to requests of the regulators (such as the SFC and/or the SEHK) on such issues and to properly advise the applicant.

Note:

The Principal should maintain an effective reporting line and communication between the Transaction Team(s) and other members in the Management regarding the sponsor work undertaken. Where circumstances require, a Transaction Team may appoint more than one Principal who, together, shall be jointly and severally responsible in discharging their roles as Principals.

- 1.3.4 A sponsor should notify the SFC in writing of any changes in its appointment of Principals within 7 business days after making such changes; and, in the case of appointment of a Principal, file an endorsement pursuant to 1.3.2 above. The endorsement should include information, as required by the SFC that demonstrates how the Principal has met the eligibility criteria.

1.4 Eligibility Criteria for Principals

1.4.1 In order to qualify as a Principal, an individual should:

- (1) be a responsible officer of the licensed corporation that his licence is accredited to or an executive officer of the registered institution that has appointed him;
- (2) have acquired a minimum of 5 years of relevant corporate finance experience in respect of companies listed on the Main Board and/or GEM Board of the SEHK preceding the appointment as a Principal; and

Note:

“Corporate finance experience” includes experience from providing advice on one or more of the following matters:

- (i) initial public offerings (“IPOs”);*
- (ii) notifiable or connected transactions as defined in the SEHK Listing Rules;*
- (iii) a rights issue or open offer by a listed company in accordance with the SEHK Listing Rules;*
- (iv) takeovers and share repurchases subject to the Codes on Takeovers and Mergers and Share Repurchases; and*
- (v) any other significant transactions or equity-fund raising exercises not listed in the above.*

And in demonstrating that a Principal has the relevant experience, the sponsor has to satisfy the SFC as to the following:

- (a) the appointee for the role of a Principal (the “Appointee”) has acquired a majority of the relevant 5 years’ corporate finance experience from transactions that have an element of equity-fund raising by the listed issuers from the public, and the Management has to be satisfied that such experience is sufficiently recent;*

- (b) *the Appointee may acquire some (but not all) of the corporate finance experience in markets other than Hong Kong provided that these markets have comparable or higher legal and regulatory standards for listing of companies and the public offers of securities, conduct regulation on sponsors or their functional equivalents and enforcement of rules and regulations governing these respective areas. The Appointee has to demonstrate to the satisfaction of the SFC how the relevant corporate finance experience has been met if the Appointee's experience is mainly acquired overseas, and the SFC may impose such conditions on the sponsor as it considers appropriate; and*
 - (c) *the sponsor should avoid attributing the experience of all the Appointees of the firm to the same transaction in meeting this requirement.*
- (3) in the five years immediately preceding his appointment, have played a substantial role in advising a listing applicant as a sponsor in at least two completed IPOs on the Main Board and/or GEM Board of the SEHK.

Note:

- (1) *The SFC may exercise its discretion, on a case-by-case basis, to grant a dispensation from strict compliance with the requirements on eligibility of Principals under paragraph 1.4.1 if the firm could demonstrate that there are valid and justifiable grounds for such dispensation, which will not prejudice the overall protection of investors' interest. In considering an application for such dispensation, the SFC may take into account, without limitation, the following:*
 - (a) *the nature and structure of the business of the group companies to which the sponsor belongs and internal resources and support that the group is able to provide in the carrying out of the sponsor work;*
 - (b) *the governance of the sponsor and/or its group companies by securities regulators in other leading and well-regulated markets;*

- (c) *the standards of internal controls and risk management of the firm and/or its group of companies; and*
- (d) *the compliance record of the sponsor in Hong Kong and other jurisdictions.*

The SFC may impose any conditions or require the provision of undertakings by a sponsor and/or its group of companies as it considers appropriate in granting a dispensation abovementioned.

- (2) *For the avoidance of doubt, the requirements set out at paragraphs 1.4.1(2) and (3) apply to Principals as initial eligibility criteria only, and are not continuing requirements. However, the Principals should at all times ensure that they remain competent in their role as Principals.*

1.5 Systems and Controls and Internal Assessment

1.5.1 A sponsor should have effective systems and controls in place to ensure:

- (1) adequate supervision and management of its employees who perform the services of a sponsor;
- (2) that employees do not act beyond their proper authority; and
- (3) its compliance with all laws, regulations, codes and guidelines, including the Listing Rules, which may be applicable to the work of a sponsor.

Note:

Employees carrying out any sponsor work should be adequately supervised and managed, and the Management should ensure that effective communication is maintained with staff at the operational level such that it is kept abreast of any key issues and risks areas relating to the firm's sponsor work.

1.5.2 A sponsor should keep a complete and up-to-date list of all the sponsor work that has been and is being undertaken. The list should include the names of the companies being advised, the composition of the teams designated for the sponsor work (including any variations thereto) and the title and role of each

team member from start to finish. Such information should be made available to the SFC upon request.

- 1.5.3 A sponsor should carry out an assessment annually in order to ensure that its systems and controls remain effective. Any material non-compliance issue should be reported to the SFC promptly.

Note:

The annual assessment under paragraph 1.5.3 may take the form of an internal and/or external audit. A sponsor should devise its own programme based on its assessment of risks related to its operations, the firm's business structures, its own internal systems and the track record of compliance including, but not limited to, any complaints received either from within or from third parties and any regulatory concerns raised by regulators (such as the SFC and/or the SEHK) in the period under review.

- 1.5.4 Records of the following appointments and assessments made by the Management should be properly kept to demonstrate its compliance with the Sponsor Guidelines:

- (1) the appointment of the transaction team for each sponsor engagement under paragraphs 1.1.3 and 1.2.5;
- (2) the appointment of a responsible officer or an executive officer as a Principal under paragraph 1.3.1, the cessation of such appointment, and the decision-making process of such appointment; and
- (3) the annual assessment of the sponsor's internal systems and controls under paragraph 1.5.3.

2. *Minimum capital requirements*

A sponsor should have and maintain at all times sufficient resources and meet the capital requirement prescribed pursuant to the SFO and any related subsidiary legislation or codes and guidelines. Sponsors should maintain a minimum paid-up capital of HK\$10 million at all times.

3. Continuing professional education (“CPT”)

- 3.1 *Part III of the Internal Control Guidelines provides, inter alia, that training policies shall be established with adequate consideration given to training needs to ensure compliance with the firm’s operational and internal control policies and procedures, and all applicable legal and regulatory requirements to which the firm and its employees are subject. Adequate training should be provided both initially and on an on-going basis.*
- 3.2 All responsible officers, executive officers, licensed representatives, and relevant individuals who engage in the sponsor work of a firm are required to attend training on topics that are relevant to their sponsor work, e.g. skills that are relevant to their role as sponsors and knowledge of the relevant regulatory rules and their changes. Training on these topics should constitute at least 50% of the 5 CPT hours (or any other amount of CPT hours as required by the SFC from time to time) that the responsible officers, executive officers, licensed representatives, and relevant individuals are required to undertake annually as holders of a corporate finance adviser licence/registration (Regulated Activity Type 6).

II. COMPLIANCE ADVISERS

1. A firm must be eligible under its licence or certificate of registration to act as a sponsor (not subject to a licensing/registration condition that prohibits it from carrying out sponsor work) in order to carry out work as a compliance adviser. As corporations licensed or registered for Regulated Activity Type 6, in addition to the requirements and obligations set out in the Sponsor Guidelines, compliance advisers are required at all times to observe the relevant codes of conduct and regulations by the SFC applicable to holders of licence/registration for Type 6 Regulated Activity. These include, without limitation, the Internal Control Guidelines, the Code of Conduct, the Corporate Finance Adviser Code of Conduct, the Fit and Proper Guidelines, and the Guidelines on Continuous Professional Training.
2. In addition, all compliance advisers must be eligible to act as sponsors at all times in order to be initially eligible and continue to be eligible to act as compliance advisers. In the event that a licensed corporation or registered institution ceases to be eligible to act as a sponsor, it shall cease to be eligible to act as a compliance adviser.
3. In case of a breach by a compliance adviser of any of the relevant codes of conduct or regulations that calls to question its fitness and propriety to be a

licensed corporation or registered institution for Regulated Activity Type 6, it may cease to be eligible to be a compliance adviser, a sponsor, and/or a licensed corporation or registered institution for Regulated Activity Type 6.