

JOINT EXCHANGE/SFC SPONSOR ENFORCEMENT ACTION

Suspension of Oriental Patron Asia Limited ("the Sponsor") and its Principal Supervisor, Mr Leung Chin Sing Rabo ("Mr Rabo Leung") for withholding relevant information from the Exchange

17 Dec 2004

The Exchange announces that with effect from 17 December 2004: (i) the Sponsor is removed from the Exchange's approved list of sponsors under the Growth Enterprise Market subject to certain exceptions and agreed not to act as a sponsor under the Main Board until 17 May 2005; and (ii) Mr Rabo Leung voluntarily withdrew from acting as a Principal Supervisor of the Sponsor until 17 September 2005 and agreed not to perform or carry out any activities in relation to any GEM or Main Board listing applicant or listed issuer for the same period. (Note 1) Both the Sponsor and Mr Rabo Leung agreed with the SFC not to act as a sponsor or compliance adviser or perform or carry out any activities for and on behalf of any sponsor or compliance adviser in relation to any Listing Applicant or issuer respectively during these respective periods subject to the same exceptions. (Note 2)

These actions in respect of the Sponsor and Mr Rabo Leung result from their withholding of material information from the Exchange in early 2003 when they acted as sponsor to a listing applicant to the Growth Enterprise Market. The Sponsor and Mr Rabo Leung were found to have failed to properly guide and advise the Listing Applicant with due care and skill so as to provide reassurance to investors.

Background

In July 2002, the Listing Applicant submitted its application to list on GEM ("Listing Application") through the Sponsor, with Mr Rabo Leung acting as the Sponsor's Principal Supervisor. The Listing Application was approved in principle by the Listing Committee in October 2002 and the approval-in-principle was re-confirmed in January 2003.

Facts

In mid January 2003, the Sponsor informed the Division that (i) the listing timetable was postponed ("Delay") because the Listing Applicant's auditors ("Initial Auditors") could not issue the accountants' report on time as a result of a change in their partner-in-charge, and (ii) as the Initial Auditors' new partner-in-charge could not commit on the time span for reviewing the Listing Applicant's accounts, the Initial Auditors agreed to resign as auditors and reporting accountants and the Listing Applicant would appoint another firm of auditors to be its new auditors and reporting accountants ("New Auditors").

In late February 2003, the Sponsor re-submitted the Listing Application together with a draft prospectus containing a revised accountants' report prepared by the New Auditors. The Sponsor advised in its cover letter that the content of the prospectus was substantially the same as that approved in January 2003, except that the accountants' report was prepared by the New Auditors instead of the Initial Auditors, and there was no material change in the new accountants' report apart from the extension of the financial report period.

In early March 2003, the Sponsor specifically confirmed that, save as disclosed in the prospectus, there were no other major issues which ought to be brought to the attention of the Listing Division in relation to the Listing Application. However, the Listing Applicant's draft prospectus did not mention the reasons for, or include any statement of the fact of, the change in reporting accountants.

In mid March 2003, the Sponsor repeated the reasons for the Delay and the Initial Auditors' resignation, and, at the Exchange's request, provided the Initial Auditors' professional clearance letter. From the clearance letter, the Exchange noticed that the Initial Auditors had resigned at the request of the Listing Applicant.

At the Exchange's specific request, the Sponsor on 20 March 2003 submitted the Initial Auditors'

resignation letter dated 27 January 2003. The Exchange then discovered that the Initial Auditors stated that their resignation was a result of unresolved differences between them and the Listing Applicant since early January 2003 over certain sales transactions that represented about 17.5% of the Listing Applicant's turnover ("Sales Transactions"). The Sales Transactions were included and approved in October 2002 in the accountants' report prepared by the Initial Auditors. The Exchange also discovered that prior to the re-submission of the Listing Application, the Initial Auditors had identified new concerns about the Sales Transactions in early January 2003 and up to their resignation, the Initial Auditors had been unable to determine the appropriate treatment of the Sales Transactions either in the accountants' report in the prospectus or in subsequent audited accounts, and therefore indicated that they needed to perform further procedures on the Sales Transactions before they could sign off the accountants' report. The New Auditors had, prior to their appointment on 12 February 2003, performed certain procedures to satisfy themselves that the accounting treatment of the Sales Transactions in the Listing Applicant's audited accounts would not render those audited accounts misleading, and on that basis submitted a draft accountants' report with the draft prospectus attached to the Listing Application dated 25 February 2003.

After the Exchange became aware of the issue regarding the Sales Transactions, vetting of the Listing Application included enquiries relating to this issue. The Listing Application was eventually rejected, in part because the Sponsor did not satisfactorily address the Division's concerns on the inconsistencies in the facts presented with respect to the Sales Transactions. The Listing Applicant has not reapplied for listing.

The Listing Committee's decision

As part of a settlement with the Exchange, the Sponsor and Mr Rabo Leung did not contest the Exchange's allegations concerning the breaches of the standards of conduct described in Rules 6.03 and 6.39 of the GEM Listing Rules, as well as the Sponsor's Undertaking to the Exchange in Appendix 5A of the GEM Listing Rules and agreed to the Listing Committee imposing the sanctions set out above on them.

SFC's decisions

In light of these alleged breaches, the SFC entered into a settlement agreement with the Sponsor and Mr Rabo Leung. Under the agreement, the SFC agreed not to take further disciplinary action against the Sponsor and Mr Rabo Leung given their respective undertakings not to perform or carry out sponsor and compliance adviser functions.

Comments

Mr Richard Williams, the Exchange's Head of Listing and Secretary to the Listing Committee, stressed that the Exchange places reliance on sponsors in initial listing applications and take comfort from the representations and due diligence of sponsors. "It is incumbent on sponsors to be completely frank and open in their dealings with the Exchange in relation to listing applications. Any failure to do so undermines the Exchange's confidence in the work of the sponsor and the relationship of trust which is fundamental to the smooth processing of listing applications," said Mr Williams.

Mr Alan Linning, SFC's Executive Director of Enforcement, said: "The Exchange, the Listing Committee and the investing public rely on sponsors to give appropriate advice and guidance to a new applicant in its preparation for a listing. Sponsors have an important role in making sure that only complete and accurate information is provided to the Exchange and the Listing Committee so as to facilitate their assessment of the suitability of the new applicant for listing. In discharging their duties, sponsors must act with due skill, care and diligence and in an open and candid manner with regulators. Mr Rabo Leung and the Sponsor's conduct falls short of the standard expected of them and warrants suspensions. Sponsors' failings remain one of the SFC's enforcement priorities and the SFC will take strong action against similar failings."

Ends

Notes to Editor:

1. The exceptions to the suspensions of the Sponsor were that the Sponsor may:
 - (a) perform and carry out the duties and responsibilities of a sponsor under the GEM Listing Rules for the following companies listed on GEM:
 - (i) Chinasoft International Limited (stock code: 8216);
 - (ii) Shenzhen EVOC Intelligent Technology Company Limited (stock code: 8285); and
 - (iii) Sanmenxia Tianyuan Aluminum Company Limited (stock code: 8253); and
 - (b) perform and carry out the duties and responsibilities of a Sponsor under the GEM Listing Rules and the Main Board Listing Rules in relation to the listing applications of two companies, for which the Listing Committee has already granted approval-in-principle.

2. The Sponsor is a corporation licensed to undertake Type 1 (dealing in securities), Type 4 (advising on securities), Type 6 (advising in corporate finance) and Type 9 (asset management) regulated activities.

Mr Rabo Leung is a representative accredited to the Sponsor and Oriental Patron Securities Limited licensed to undertake Type 1, Type 4, Type 6 and Type 9 regulated activities. He is also the responsible officer of these two licensed corporations.

Page last updated : 1 Aug 2012