Chapter 6A

SPONSORS, COMPLIANCE ADVISERS, OVERALL COORDINATORS AND OTHER CAPITAL MARKET INTERMEDIARIES

Definitions and interpretation

6A.01 In this Chapter:

(1) "Compliance Adviser" means any corporation or authorised financial institution licensed or registered under the Securities and Futures Ordinance for Type 6 regulated activity and permitted under its licence or certificate of registration to undertake work as a Sponsor and, as applicable, which is appointed under rule 6A.19 or rule 6A.20 to undertake work as a Compliance Adviser;

(2) "expert" includes every accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by him;

(3) "expert section" means, in relation to the listing document, any part of the listing document purporting to be made on the authority of an expert or purporting to be a copy of or extract from a report, opinion, statement or valuation of an expert where the expert gives consent for the inclusion in the listing document of the copy or extract and the listing document includes a statement that he has given and has not withdrawn such consent;

Note: Retaining an expert to advise or assist a new applicant or Sponsor on any non-expert section of the listing document does of itself not make such section an expert section.

(4) "Fixed Period" means the period for which a listed issuer must retain a Compliance Adviser under rule 6A.19;

(5) "initial application for listing", "initial listing" and "initial public offering" include deemed new listings of equity securities under rule 19.54;

(6) "listed issuer" for the purposes of this Chapter, has the same meaning as in rule 1.01 but excludes an issuer of debt securities only;

(7) "new applicant" for the purposes of this Chapter, has the same meaning as in rule 1.01, modified for the purpose of this Chapter 6A to:

(a) include issuers who undergo a deemed listing of equity securities under rule 19.54; and

(b) exclude applicants seeking listing of debt securities only;

(8) "non-expert sections" means, in relation to the listing document, any part of the listing document that is not part of any expert section;

(9) "Sponsor group" means:

(a) a Sponsor;

(b) its holding company;

(c) any subsidiary of its holding company;

(d) any controlling shareholder of:

(i) the Sponsor; or

(ii) its holding company; and

(e) any close associate of any controlling shareholder referred to in paragraph (d) above; and

(10) "ultimate holding company" means a holding company that itself does not have a holding company.

Appointment of a Sponsor

6A.02 A new applicant must appoint a Sponsor under a written engagement agreement to assist it with its initial application for listing.

6A.02A (1) A Sponsor, once appointed, must notify the Exchange in writing of its appointment as soon as practicable, regardless of whether a listing application has been submitted.

Note: As a means of notification, a Sponsor must provide a copy of its engagement letter to the Exchange as soon as it is formally appointed.

(2) If a Sponsor ceases to act for a new applicant at any time after its appointment (regardless of whether a listing application has been submitted), the Sponsor must inform the Exchange in writing, as soon as practicable, of its reasons for ceasing to act.

6A.02B (1) A listing application must not be submitted by or on behalf of a new applicant less than 2 months from the date of the Sponsor's formal appointment.

(2) Where more than one Sponsor is appointed in respect of a listing application, the listing application can only be submitted not less than 2 months from the date the last Sponsor is formally appointed.

Sponsor's undertaking and statement of independence to the Exchange

6A.03 Each Sponsor must give an undertaking and statement of independence to the Exchange as set out in Appendix 7K at the same time when an application on behalf of a new applicant is submitted to the Exchange.

(1) [Repealed 1 October 2013]

(2) [Repealed 1 October 2013]

6A.04 [Repealed 1 October 2013]

Obligations of a new applicant and its directors to assist the Sponsor

6A.05 A new applicant and its directors must assist the Sponsor to perform its role and must ensure that its substantial shareholders and associates also assist the Sponsor. To facilitate the Sponsor to meet its obligations and responsibilities under the GEM Listing Rules and the Code of Conduct, the written engagement agreement referred to in rule 6A.02 must contain at least the following obligations for the applicant and its directors:

(1) to fully assist the Sponsor to perform its due diligence work;

(2) to procure all relevant parties engaged by the new applicant in connection with its listing application (including financial advisers, experts and other third parties) to cooperate fully with the Sponsor to facilitate the Sponsor's performance of its duties;

(3) to give each Sponsor every assistance, to meet its obligations and responsibilities under the GEM Listing Rules and the Code of Conduct to provide information to the regulators including without limitation, notifying the regulators of reasons when the Sponsor ceases to act;

(4) to enable the Sponsor to gain access to all relevant records in connection with the listing application. In particular, terms of engagement with experts retained to perform services related to the listing application, whether or not retained in respect of an expert section, should contain clauses entitling every Sponsor appointed by the new applicant access to:

(a) any such expert;

(b) the expert's reports, draft reports (both written and oral), and terms of engagement;

(c) information provided to or relied on by the expert;

(d) information provided by the expert to the Exchange or Commission; and

(e) all correspondence exchanged (i) between the new applicant or its agents and the expert; and (ii) between the expert and the Exchange or Commission;

Note: The Exchange expects that access to documents for the purposes of this rule would include the right to take copies of the documents without charge.

(5) to keep the Sponsor informed of any material change to:

(a) any information previously given to the Sponsor under paragraph (3) above; and

(b) any information previously accessed by the Sponsor under paragraph (4) above;

(6) to provide to or procure for the Sponsor all necessary consents to the provision of the information referred to in paragraphs (1) to (5) above to the Sponsor; and

(7) to procure the entering into of such supplements to the engagement letters with experts referred to in rule 6A.05(4) as is necessary for such engagements of experts to comply with that rule.

Impartiality and independence of Sponsors

6A.06 A Sponsor must perform its duties with impartiality.

6A.07 At least one Sponsor of a new applicant must be independent of it. The Sponsor is required to demonstrate to the Exchange its independence or lack of independence and declare in accordance with the terms set out in Appendix 7K.

A Sponsor is not independent if any of the following circumstances exist at any time from the date of submission of an application for listing on Form 5A up to the date of listing:-

(1) the Sponsor group and any director or close associate of a director of the Sponsor collectively holds or will hold, directly or indirectly, more than 5% of the number of issued shares of the new applicant, except where that holding arises as a result of an underwriting obligation;

(2) the fair value of the direct or indirect current or prospective shareholding of the Sponsor group in the new applicant exceeds or will exceed 15% of the net equity shown in the latest consolidated financial statements of the Sponsor's ultimate holding company or, where there is no ultimate holding company, the Sponsor;

(3) any member of the Sponsor group or any director or close associate of a director of the Sponsor is a close associate or core connected person of the new applicant;

(3A) the Sponsor is a connected person of the new applicant;

(4) 15% or more of the proceeds raised from the initial public offering of the new applicant are to be applied directly or indirectly to settle debts due to the Sponsor group, except where those debts are on account of fees payable to the Sponsor group under its engagement for sponsorship services;

(5) the aggregate of:

(a) amounts due to the Sponsor group from the new applicant and its subsidiaries; and

(b) all guarantees given by the Sponsor group on behalf of the new applicant and its subsidiaries,

exceeds 30% of the total assets of the new applicant;

(6) the aggregate of:

(a) amounts due to the Sponsor group from:

(i) the new applicant;

(ii) its subsidiaries;

(iii) its controlling shareholder; and

(iv) any close associates of its controlling shareholder; and

(b) all guarantees given by the Sponsor group on behalf of:

(i) the new applicant;

(ii) its subsidiaries;

(iii) its controlling shareholder; and

(iv) any close associates of its controlling shareholder,

exceeds 10% of the total assets shown in the latest consolidated financial statements of the Sponsor's ultimate holding company or, where there is no ultimate holding company, the Sponsor;

(7) the fair value of the direct or indirect shareholding of:

(a) a director of the Sponsor;

(b) a director of its holding company;

(c) a close associate of a director of the Sponsor; or

(d) a close associate of a director of its holding company

in the new applicant exceeds HKD 5 million;

(8) an employee or director of the Sponsor who is directly engaged in providing the sponsorship services to the new applicant, or his close associate, holds or will hold shares in the new applicant or has or will have a beneficial interest in shares in it;

(9) any of the following has a current business relationship with the new applicant or a director, subsidiary, holding company or substantial shareholder of the new applicant, which would be reasonably considered to affect the Sponsor's independence in performing its duties as set out in this Chapter, or might reasonably give rise to a perception that the Sponsor's independence would be so affected, except where that relationship arises under the Sponsor's engagement to provide sponsorship services:

(a) any member of the Sponsor group;

(b) an employee of the Sponsor who is directly engaged in providing the sponsorship services to the new applicant;

(c) a close associate of an employee of the Sponsor who is directly engaged in providing the sponsorship services to the new applicant;

(d) a director of any member of the Sponsor group; or

(e) a close associate of a director of any member of the Sponsor group;

(10) the Sponsor or a member of the Sponsor group is the auditor or reporting accountant of the new applicant.

Notes: 1. In addition to being a breach of the GEM Listing Rules, if it comes to the Exchange's attention that a Sponsor is not independent but is required to be (for example, where the Sponsor is the sole Sponsor appointed), the Exchange will not accept documents produced by that Sponsor in support of the subject application for listing or a request for approval or vetting of any document required under the GEM Listing Rules in relation to the subject listing application.

2. Sub-paragraphs (1) to (3) will not apply where the circumstance occurs because of an interest:

(a) held by an investment entity on behalf of its discretionary clients;

(b) held by a fund manager on a non-discretionary basis such as a managed account or managed fund;

(c) held in a market-making capacity; or

(d) held in a custodial capacity.

3. *In calculating the percentage figure of shares that it holds, or will hold, for the purposes of this rule, a Sponsor group is not required to include an interest in shares that would be disregarded for the purposes of Divisions 2 to 4 of Part XV of the Securities and Futures Ordinance under section 323 of that Ordinance.*

4. *For the purposes of this rule, references to a "new applicant" include references to the new applicant once it is listed, that is, the newly listed issuer, as applicable.*

6A.08 [Repealed 1 October 2013]

6A.09 Where a Sponsor or the new applicant becomes aware of a change in the circumstances set out in the Sponsor's undertaking and statement of independence in Appendix 7K during the period the Sponsor is engaged by the new applicant, the Sponsor and the new applicant must notify the Exchange as soon as possible upon that change occurring.

Additional Sponsors

6A.10 Where a new applicant has more than one Sponsor:

(1) the Exchange must be advised as to which of the Sponsors is designated as the Sponsor who would be the primary channel of communication with the Exchange concerning matters involving the listing application;

(2) the listing document must disclose whether each Sponsor satisfies the independence test at rule 6A.07 and, if not, how the lack of independence arises; and

(3) each of the Sponsors has responsibility for ensuring that the obligations and responsibilities in this Chapter are fully discharged.

Note: The Exchange would normally expect the Sponsor acting as the primary channel of information to be independent from the new applicant.

Sponsor's role

6A.11 A Sponsor must:

(1) be closely involved in the preparation of the new applicant's listing documents;

(2) conduct reasonable due diligence inquiries to put itself in a position to be able to make the declaration in rule 6A.13 and Appendix 7G;

(3) ensure the requirements in rules 12.07, 12.09, 12.10 and 12.12 to 12.15 are complied with;

(4) use reasonable endeavours to address all matters raised by the Exchange in connection with the listing application including providing to the Exchange, in a timely manner, such information as the Exchange may reasonably require for the purpose of verifying whether the GEM Listing Rules are being or have been complied with by the Sponsor, the new applicant and the new applicant's directors;

(5) accompany the new applicant to any meetings with the Exchange unless otherwise requested by the Exchange, and attend any other meetings and participate in any other discussions with the Exchange as requested by the Exchange; and

(6) comply with the terms of the undertaking and statement of independence given to the Exchange by the Sponsor under rule 6A.03 and Appendix 7K.

6A.12 In determining the reasonable due diligence inquiries a Sponsor must make for the purposes of rule 6A.11(2), a Sponsor must have regard to the due diligence practice note at Practice Note 2 and the SFC Sponsor Provisions.

Sponsor's declaration

6A.13 As soon as practicable after the GEM Listing Committee's hearing of the new applicant's listing application but on or before the date of issue of the listing document, each Sponsor must submit to the Exchange the declaration set out in Appendix 7G.

6A.14 [Repealed 1 October 2013]

6A.15 [Repealed 1 October 2013]

6A.16 [Repealed 1 October 2013]

Termination of a Sponsor's role

6A.17 In the case of resignation by, or termination of, the Sponsor during the processing of the initial listing application:

(1) the new applicant must immediately notify the Exchange of the resignation or termination and the Sponsor must notify the Exchange of its resignation or termination together with reasons in accordance with rule 6A.02A(2); and

(2) if the departing Sponsor was the sole independent Sponsor, the replacement Sponsor must notify the Exchange of its appointment in accordance with rule 6A.02A(1) and re-submit, on behalf of the new applicant, a listing application not less than 2 months from the date of its formal appointment detailing a revised timetable together with a further initial listing fee in accordance with Chapter 12 and the declaration and undertaking required by this Chapter.

Note: Any initial listing fee already paid will, in such circumstances, be forfeited.

6A.18 For the avoidance of doubt, a replacement Sponsor shall not be regarded as having satisfied any of the obligations of a Sponsor by virtue of work performed by a predecessor Sponsor.

Appointment of a Compliance Adviser

6A.19 A listed issuer must appoint a Compliance Adviser for the period commencing on the date of initial listing of the listed issuer's equity securities and ending on the date on which the listed issuer complies with rule 18.03 in respect of its financial results for the second full financial year commencing after the date of its initial listing.

6A.20 At any time after the Fixed Period, the Exchange may direct a listed issuer to appoint a Compliance Adviser for such period and to undertake such role as may be specified by the Exchange. In the event of such an appointment the Exchange will specify the circumstances in which the listed issuer must consult the Compliance Adviser and the responsibilities the Compliance Adviser must discharge. The Compliance Adviser must discharge those responsibilities with due care and skill. For the purpose of this rule, a listed issuer may appoint a different Compliance Adviser to that it appointed under rule 6A.19.

Note: The Exchange will normally consider directing the appointment of a Compliance Adviser when a listed issuer has been held to have breached the GEM Listing Rules, particularly when the breaches are persistent or serious or give rise to concerns about the adequacy of compliance arrangements or the directors' understanding of, and their obligations to comply with the GEM Listing Rules. It is also open to the Exchange to direct the appointment in other appropriate circumstances. It is the responsibility of the listed issuer to pay the reasonable fees of the Compliance Adviser.

Compliance Adviser's undertaking to the Exchange

6A.21 Each Compliance Adviser must give an undertaking to the Exchange in the terms set out in rule 6A.22 below and in the form in Form M of Appendix 7. Compliance Advisers must give the undertaking no later than the earlier of:

(1) immediately the Compliance Adviser agrees its terms of engagement with the listed issuer; and

(2) the Compliance Adviser commencing work for the listed issuer.

6A.22 Each Compliance Adviser must undertake to:

(1) comply with the GEM Listing Rules applicable to Compliance Advisers; and

(2) cooperate in any investigation conducted by the Listing Division and/or the GEM Listing Committee of the Exchange, including answering promptly and openly any questions addressed to the Compliance Adviser, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which the Compliance Adviser is requested to appear.

6A.23 During the Fixed Period, a listed issuer must consult with and, if necessary, seek advice from its Compliance Adviser on a timely basis in the following circumstances:

(1) before the publication of any regulatory announcement, circular or financial report;

(2) where a transaction, which might be a notifiable or connected transaction, is contemplated including share issues and share repurchases;

(3) where the listed issuer proposes to use the proceeds of the initial public offering in a manner different from that detailed in the listing document or where the business activities, developments or results of the listed issuer deviate from any forecast, estimate, or other information in the listing document; and

(4) where the Exchange makes an inquiry of the listed issuer under rule 17.11.

6A.24 When a Compliance Adviser is consulted by a listed issuer in the circumstances set out in rule 6A.23 above it must discharge the following responsibilities with due care and skill:

(1) ensure the listed issuer is properly guided and advised as to compliance with the GEM Listing Rules and all other applicable laws, rules, codes and guidelines;

(2) accompany the listed issuer to any meetings with the Exchange, unless otherwise requested by the Exchange;

(3) no less frequently than at the time of reviewing the financial reporting of the listed issuer under rule 6A.23(1) above and upon the listed issuer notifying the Compliance Adviser of a proposed change in the use of proceeds of the initial public offering under rule 6A.23(3) above, discuss with the listed issuer:

(a) the listed issuer's operating performance and financial condition by reference to the listed issuer's business objectives and use of issue proceeds as stated in its listing document;

(b) compliance with the terms and conditions of any waivers granted from the GEM Listing Rules;

(c) whether any profit forecast or estimate in the listing document will be or has been met by the listed issuer and advise the listed issuer to notify the Exchange and inform the public in a timely and appropriate manner; and

(d) compliance with any undertakings provided by the listed issuer and its directors at the time of listing, and, in the event of non-compliance, discuss the issue with the listed issuer's board of directors and make recommendations to the board regarding appropriate remedial steps;

(4) if required by the Exchange, deal with the Exchange in respect of any or all matters listed in rule 6A.23;

(5) in relation to an application by the listed issuer for a waiver from any of the requirements in Chapter 20, advise the listed issuer on its obligations and in particular the requirement to appoint an independent financial adviser; and

(6) assess the understanding of all new appointees to the board of the listed issuer regarding the nature of their responsibilities and fiduciary duties as a director of a listed issuer, and, to the extent the Compliance Adviser forms an opinion that the new appointees' understanding is inadequate, discuss the inadequacies with the board and make recommendations to the board regarding appropriate remedial steps such as training.

Impartiality of Compliance Advisers

6A.25 A Compliance Adviser must perform its duties with impartiality.

Termination of a Compliance Adviser's role

6A.26 A listed issuer may terminate a Compliance Adviser's role only if the Compliance Adviser's work is of an unacceptable standard or if there is a material dispute (which cannot be resolved within 30 days) over fees payable by the listed issuer to the Compliance Adviser.

6A.27 In the case of resignation by, or termination of, a Compliance Adviser, a replacement Compliance Adviser must be appointed by the listed issuer within three months of the effective date of resignation or termination (as the case may be).

Application of other rules and regulations

6A.28 To the extent that any matters under the GEM Listing Rules, the Commission's Corporate Finance Adviser Code of Conduct, the Code of Conduct, the Takeovers Code, the Share Buy-backs Code and all other relevant codes and guidelines overlap, in respect of Sponsors, Compliance Advisers, overall coordinators or other capital market intermediaries (as the case may be), the more onerous standard of conduct shall prevail.

Notes: 1. The Exchange notes that paragraph 4.4 of the Corporate Finance Adviser Code of Conduct requires that all requirements applicable to Sponsors as set out in the GEM Listing Rules be satisfied.

2. The Exchange reminds Sponsors, overall coordinators, other capital market intermediaries and Compliance Advisers of their other statutory obligations including but not limited to those under the Securities and Futures Ordinance.

Miscellaneous

6A.29 If a Compliance Adviser resigns or its engagement is terminated, a listed issuer must, as soon as practicable, publish an announcement, in accordance with Chapter 16, and make arrangements to replace the Compliance Adviser under rule 6A.27. Immediately after a replacement Compliance Adviser has been appointed, the listed issuer must inform the Exchange and publish a further announcement.

Note: Refer to rules 6A.26 and 6A.27 regarding circumstances in which the termination or resignation of a Compliance Adviser is permitted.

6A.30 If the licence or registration of a Sponsor, a Compliance Adviser or an overall coordinator is revoked, suspended, varied or restricted such that it is no longer permitted to undertake its respective regulated work, it must immediately inform each of the issuers which it acts for.

6A.31 In relation to any application for listing by a listed issuer involving the proposed issue of a listing document of the type referred to in rule 6A.36 within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20, the Compliance Adviser (or any Sponsor that is appointed under rule 6A.37 to advise the issuer) must complete and submit to the Exchange, at the time of submitting the application for listing (passing a copy to the new applicant or listed issuer) a declaration in the prescribed form set out in Appendix 7H, giving details of all interests it, its directors and employees and its close associates have in relation to the issuer and that listing or transaction.

Notes: 1 For these purposes, the Compliance Adviser (or other adviser appointed under rule 6A.37) must provide details of all information which ought reasonably to be disclosed concerning the interests which it, its directors and employees and its close associates have in relation to the new applicant or listed issuer and the successful outcome of the listing or transaction in question, having taken all reasonable steps to ascertain such interests of its directors and employees and its close associates.

2 Without limiting the general nature of Note 1, the Compliance Adviser (or other adviser appointed under rule 6A.37) would be expected to disclose full and accurate details of:–

(a) the interests which it or its close associates have or may, as a result of the listing or transaction, have in the securities of the issuer or any other company in the issuer's group (including options or rights to subscribe for such securities);

(b) the interests which any director or employee involved in providing advice to the issuer has or may, as a result of the listing or transaction, have in the securities of the issuer or any company in the issuer's group (including options or rights to subscribe such securities but, for the avoidance of doubt, excluding interests in securities that may be subscribed by any such director or employee under an offer by way of public subscription made by the issuer); and

(c) any material benefit expected to accrue to the Compliance Adviser (or other adviser appointed under rule 6A.37) or its close associates as a result of the successful outcome of the listing or transaction, including, by way of example, the repayment of material outstanding indebtedness and payment of any underwriting commissions or success fees.

6A.32 The listing document in respect of any new applicant must comply with rule 6A.10(2), as applicable. All other listing documents and circulars relating to transactions on which the Compliance Adviser (or another adviser appointed under 6A.37) subsequently provides advice to the issuer (excluding any Explanatory Statement issued under rule 13.08) must disclose full and accurate details of the interests as advised by the Compliance Adviser and, if applicable, the interests as advised under rule 6A.31 by the Compliance Adviser appointed under rule 6A.37. In addition, each listed issuer's annual report and accounts, half-year report and quarterly reports must include full and accurate details of such interests, as updated and notified by the Compliance Adviser to the issuer at the time of preparing such reports.

Notes: 1 Each of the documents referred to in this rule is required to set out the interests of the Compliance Adviser (and its directors, employees and close associates) under a specific heading and both the heading and information must be given suitable prominence within the document.

2 The Compliance Adviser must take responsibility for the accuracy of the information relating to the interests of the Compliance Adviser (and its directors, employees and close associates), as set out in each of the documents referred to in this rule.

6A.33 In circumstances of any doubt as to the prospective impact of an actual or potential conflict of interest or as to the interests that are required to be disclosed, the Compliance Adviser or other adviser must consult with the Exchange at the earliest practicable opportunity.

6A.34 In relation to an application for listing by a listed issuer involving the proposed issue of a listing document of the type referred to in rule 6A.36 within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20, the Compliance Adviser:–

(1) shall be responsible for dealing with the Exchange on all matters raised by the Exchange;

(2) must be closely involved in the preparation of the listing document and must ensure that it has been verified to a standard that enables the Compliance Adviser to submit to the Exchange the declaration referred to in rule 6A.35;

(3) must assist the issuer in preparing and submitting the application form for listing, together with such other completed forms or documents as are required under the GEM Listing Rules to be submitted in connection therewith; and

(4) must ensure that at least one Principal is actively involved in the work undertaken by the Compliance Adviser in connection with the application.

6A.35 The Compliance Adviser must, prior to the issue of a listing document of the type referred to in rule 6A.36 within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20, submit to the Exchange a declaration in the form set out in Appendix 7J confirming that:–

(1) all the documents required by the GEM Listing Rules to be submitted to the Exchange prior to issue of the listing document have been so submitted; and

(2) the Compliance Adviser has satisfied itself, to the best of its knowledge and belief, having made due and careful enquiries that the listing document is in compliance with the GEM Listing Rules and that:–

(a) the information contained in the listing document is accurate and complete in all material respects and not misleading;

(b) there are no other matters the omission of which would make any statement in the listing document misleading;

(c) all opinions of the directors of the issuer expressed in the listing document have been arrived at after due and careful consideration on their part and are founded on bases and assumptions that are fair and reasonable; and

(d) the directors of the issuer have made sufficient enquiries so as to enable them to give the confirmations set out in the "responsibility statement" contained in the listing document.

Note: Such declaration must, save in exceptional circumstances, be signed on behalf of the Compliance Adviser by the Principal/s who has/have been most actively involved in the work undertaken by the Compliance Adviser and will be treated by the Exchange as an acknowledgement of his/their personal active involvement in the matter.

6A.36 The following listing documents are relevant for the purposes of rules 6A.34 and 6A.35:–

(1) any listing document which constitutes a prospectus for the purposes of the Companies Ordinance;

(2) any listing document issued in relation to a rights issue or open offer (whether or not it constitutes a prospectus); or

(3) any listing document issued in relation to a transaction or connected transaction (under Chapters 19 and 20 respectively).

Note: In respect of any listing document in relation to a connected transaction, the declaration by the Compliance Adviser required under rule 6A.35 will not be expected to give any form of confirmation on the opinions of the independent non-executive director(s) or the letter from the independent financial adviser.

6A.37 Where a listed issuer proposes to issue a listing document of the type referred to in rule 6A.36 within the minimum period referred to in rule 6A.19 or any period fixed for the purposes of rule 6A.20, it is permissible for any Sponsor, other than the Compliance Adviser appointed by the issuer for the purposes of rule 6A.19 or 6A.20, to act as the adviser to the issuer in relation to the transaction in question. In these circumstances, the newly appointed adviser must assume responsibility for the particular matters referred to in rules 6A.34 and 6A.35.

Note: The term of appointment of any party engaged for these purposes as adviser to the listed issuer may not expire until the relevant securities of the listed issuer have been admitted to listing on GEM (or, if applicable, until the application for listing has been rejected by the Exchange).

6A.38 [Repealed 1 October 2013]

CAPITAL MARKET INTERMEDIARIES

6A.39 (1) Rules 6A.40 to 6A.43 and rules 6A.46(1) and 6A.47 are applicable to the following types of offering involving bookbuilding activities (as defined under the Code of Conduct):

(a) a placing of equity securities to be listed on GEM, including:

(i) a placing in connection with a New Listing (whether by way of a primary listing or secondary listing); and

(ii) a placing of equity securities of a class new to listing or new equity securities of a class already listed under a general or specific mandate in accordance with rule 10.13 or other relevant codes and guidelines; and

(b) a placing of listed equity securities by an existing holder of equity securities if it is accompanied by a top-up subscription by the existing holder of equity securities for new equity securities in the issuer.

(2) Rules 6A.44, 6A.45, 6A.46(2) and 6A.48 are additional requirements applicable only to placings of equity securities that fall under rule 6A.39(1)(a)(i) above.

Note: For the avoidance of doubt, requirements under rule 6A.39 are not applicable to:

(a) bilateral agreements or arrangements between the issuer and the investors (also referred to as "club deals");

(b) transactions where only one or several investors are involved and the terms of the offering are negotiated and agreed directly between the issuer and the investors (also referred to as "private placements"); and

(c) transactions where equity securities are allocated to investors on a pre-determined basis at a pre-determined price.

Appointment of a capital market intermediary

6A.40 The appointment by an issuer of a capital market intermediary must be made under a written engagement agreement before the capital market intermediary conducts any specified activities under paragraph 21.1.1 of the Code of Conduct.

6A.41 The written engagement agreement of a capital market intermediary pursuant to rule 6A.40 must at least specify the following:

(1) the roles and responsibilities of the capital market intermediary;

(2) the fee arrangement (including the fixed fees to be paid to the capital market intermediary as a percentage of the total fees to be paid to all syndicate CMIs);

(3) the time schedule for payment of the fees to the capital market intermediary; and

(4) (for placing in connection with a New Listing) the obligations of the new applicant and its directors to provide the assistance specified in rule 6A.48.

Note: The total fees in this rule, also commonly referred to as "underwriting fees", include fixed and discretionary fees for providing one or more of the following services to the issuer: providing advice, marketing, bookbuilding, making pricing and allocation recommendations and placing the equity securities with investors.

Appointment of an overall coordinator

6A.42 The appointment by an issuer of an overall coordinator must be made under a written engagement agreement before the overall coordinator conducts any specified activities under paragraph 21.2.3 of the Code of Conduct.

Note: Where a new applicant has appointed more than one overall coordinator, arrangements should be made for one designated overall coordinator to provide the required information (for example, information under rule 12.23AA) to the Exchange (except the documents required to be submitted to the Exchange under rules 12.26(6) and 12.27(6), which shall be submitted by each of the overall coordinators and other relevant parties mentioned in rules 12.26(6)(a) and 12.27(6)(a), respectively). Notwithstanding this, each overall coordinator is jointly and severally liable for ensuring that the information provided to the Exchange is accurate and complete and will be provided to the Exchange within the required timeframe.

6A.43 The written engagement agreement of an overall coordinator pursuant to rule 6A.42 must at least specify the following:

(1) the roles and responsibilities of the overall coordinator;

(2) the fee arrangement (including the fixed fees to be paid to the overall coordinator as a percentage of the total fees to be paid to all syndicate CMIs);

(3) the time schedule for payment of the fees to the overall coordinator;

(4) the obligation of the new applicant and its directors to provide the information in rule 12.23AA to the designated overall coordinator for its submission to the Exchange within the required timeframe; and

(5) (for placing in connection with a New Listing) the obligations of the new applicant and its directors to provide the assistance specified in rule 6A.48.

Note: The total fees in this rule, also commonly referred to as "underwriting fees", include fixed and discretionary fees for providing one or more of the following services to the issuer: providing advice, marketing, bookbuilding, making pricing and allocation recommendations and placing the equity securities with investors.

6A.44 In the case of a new applicant effecting a placing involving bookbuilding activities (as defined under the Code of Conduct) in connection with a New Listing, all overall coordinator(s) must be appointed in accordance with rule 6A.42 no later than 2 weeks following the date of the submission (or re-filing, as the case may be) of the listing application, and an OC Announcement on the appointment (which shall also disclose the name(s) of all overall coordinator(s) appointed as at the date of the announcement) must be published in accordance with rules 16.17 to 16.19 and Practice Note 5.

Overall coordinator's declaration

6A.45 As soon as practicable after the issue of the listing document but before dealings commence, each overall coordinator must submit to the Exchange the declaration substantially as in Form I in Appendix 7.

Termination of the overall coordinator's role

6A.46 (1) In the case of termination of the engagement of an overall coordinator, the issuer and the overall coordinator must notify the Exchange in writing, as soon as practicable, of the termination together with (i) the reasons therefor and (ii) a confirmation on whether it had any disagreement with the issuer.

(2) In the case of a placing involving bookbuilding activities (as defined under the Code of Conduct) in connection with a New Listing, where the appointment of the outgoing overall coordinator was previously disclosed in an OC Announcement, an OC Announcement on the termination of its engagement as an overall coordinator must be published in accordance with rules 16.17 to 16.19 and Practice Note 5.

6A.47 For the avoidance of doubt, a replacement overall coordinator shall not be regarded as having satisfied any of the obligations of an overall coordinator by virtue of work performed by a predecessor overall coordinator.

Obligations of a new applicant and its directors to assist the syndicate members

6A.48 To facilitate each syndicate member in a placing involving bookbuilding activities (as defined under the Code of Conduct) in connection with a New Listing to identify investors to whom the allocation of equity securities would be subject to restrictions or require prior consent from the Exchange under the GEM Listing Rules, and for each syndicate CMI to meet its obligations and responsibilities under the Code of Conduct, the written engagement agreement with each syndicate member must contain at least the following obligations of the new applicant and its directors:

(1) to provide the syndicate member with a list of the directors and existing shareholders of the new applicant, their respective close associates and any persons who is engaged by or will act as a nominee for any of the foregoing persons to subscribe for, or purchase, equity securities in connection with the New Listing; and such information should be provided to the syndicate member as soon as practicable and in any event at least 4 clear business days before the date of the Listing Committee's hearing on the listing application;

(2) to keep the syndicate member informed of any material changes to information provided under sub-paragraph (1) above as soon as it becomes known to the new applicant and its directors; and

(3) to provide to, or procure for, the syndicate member all necessary consents for its provision of the information referred to in sub-paragraphs (1) to (2) above to any distributor other than a syndicate member for the same purpose as set out in this rule above.