

Our Ref: B1/15C

31 March 2005

The Chief Executive  
All Registered Institutions  
(Including those institutions deemed to be registered under the  
transitional arrangements of the Securities and Futures  
Ordinance)

Dear Sir / Madam,

**SFC press release – Extracts and Advertisements Concerning  
Prospectuses under the Companies Ordinance**

I am writing to draw your attention to the press release recently issued by the Securities and Futures Commission (SFC), which reminds all intermediaries that it is unlawful to advertise any extract from or abridged version of a prospectus without proper authorisation. A copy of the press release is attached at the Annex.

The SFC notes that extracts from recent IPO prospectuses have been published without Stock Exchange authorisation on webpages of certain websites that advertise securities investment services. Such practice may have violated the advertising prohibition in section 38B(1) of the Companies Ordinance.

Registered institutions are required to put in place adequate controls and procedures to ensure compliance with section 38B of the Companies Ordinance.

Yours faithfully,

Y. K. Choi  
Executive Director  
(Banking Supervision)

Encl. Annex (MS Word, 29KB)  
c.c. SFC (Attn: Mr Peter Au-Yang)

 TOP

29 March 2005

### **Extracts and Advertisements Concerning Prospectuses under the Companies Ordinance**

The SFC reminds all licensed persons and registered institutions that it is unlawful to advertise any extract from or abridged version of a prospectus without proper authorisation.

The SFC notes that extracts from recent IPO prospectuses have been published without Stock Exchange authorisation on webpages of certain websites that advertise securities investment services. Such webpages commonly offer eIPO services or advertise traditional brokerage services (or both) to existing clients as well as the public in respect of IPO subscriptions referred to in these extracts.

Whether these extracts constitute "advertisements" within the meaning of the Companies Ordinance (CO) is a question of fact. If such extracts are published with the intention of inducing existing customers to make IPO subscriptions or prospective customers to open investment accounts for the purposes of IPO subscriptions (thus potentially resulting in benefits being received by the relevant entities), this is a factor which may be taken into consideration in determining whether the extracts are published by way of advertisement.

The SFC is concerned that in such cases, investors may have made their investment decisions on the basis of selective information which may not present a balanced picture of the securities in question.

The prospectus regime in the CO provides that:

1. any document offering shares or debentures to the public must comply with stipulated disclosure requirements (unless exempted) and contain all information that prospective investors would reasonably require;
2. no advertisement, whether by way of an extract from or abridged version of a prospectus, or in relation to a prospectus or proposed prospectus, is allowed to be published unless it falls within a specified exemption (Note 1);
3. an extract from or abridged version of a prospectus may be published in tandem

with the prospectus, if authorisation is given by the SFC (in respect of unlisted offers) or the Stock Exchange (in respect of listed offers) (Note 2);

4. an advertisement in relation to a prospectus or proposed prospectus may be published if it complies with certain stipulated requirements (where no authorisation in relation to its publication is required) (Note 3) or its issue is authorised by the SFC under section 105 of the Securities and Futures Ordinance (Note 4); and

5. prospectus liability (both civil and criminal) will attach to such an extract, abridged version or advertisement (Note 5).

The SFC wishes to take this opportunity to remind all licensed persons and registered institutions that it is unlawful to publish or cause to be published by way of advertisement any extract from or abridged version of a prospectus, or an advertisement in relation to a prospectus or proposed prospectus (Note 6), unless such publication is authorised by the SFC (for unlisted offers) or the Stock Exchange (for listed offers).

Ends

Notes to Editor:

1. Section 38B(1) of the CO provides that it shall be unlawful for any person to publish or cause to be published by way of advertisement any extract from or abridged version of a prospectus, or an advertisement in relation to a prospectus or proposed prospectus, unless an exemption in section 38B(2) applies.

2. Section 38B(2A)(b) of the CO provides that the SFC may in any particular case, specify requirements applicable to and authorise the form and manner of, and any other matters relating to, publication of any extract from or abridged version of a prospectus. Such function has been transferred to the Stock Exchange for listed offers under section 3 of the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order.

3. Section 38B(2)(e) of the CO contains an exemption from the advertising prohibition for the publication of an advertisement which complies with the requirements of the Nineteenth Schedule to the Ordinance. The Nineteenth Schedule

sets out certain discretionary disclosures which may be placed in the advertisement (but no others) such as the name and place of incorporation of the company, a description of the shares or debentures being offered, the dates on which, and places at which, the prospectus is or will be available and details of relevant administrative procedures.

4. Section 38B(2)(c) of the CO contains an exemption from the advertising prohibition for the publication of an advertisement, invitation or document which has been authorised by the SFC under section 105 of the Securities and Futures Ordinance.

5. Sections 40(6) and 40A(4) of the CO provide that a publication falling within any of the exemptions in section 38B(2) from the advertising prohibition will attract liability as if it were a prospectus.

6. Any person who acts in contravention of the advertising prohibition in section 38B(1) shall be liable to a level 6 fine.