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PRESS RELEASE

Hong Kong SFC Released Consultation Paper on Regulatory Oversight of Credit Rating Agencies

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On July 19th 2010, the Hong Kong Securities and Futures Commission (“SFC”) published Consultation Paper Concerning the Regulatory Oversight of Credit Rating Agencies (“Consultation Paper”), setting out its proposed regulatory regime to license and supervise the activities of credit rating agencies (“CRAs”) in Hong Kong. The consultation period will be end on August 20 and the proposed regulation is supposed to take effect by the end of January 2011.

The Consultation Paper has mainly discussed the background, objectives, regime and transitional arrangements in connection with regulating CRAs, with the appendixes of proposed legislative amendments, SFC codes and guidelines.

(1) Background

CRAs are said to play an important role in global securities and banking markets in that their credit ratings are used to make informed decisions. It is a global consensus to further regulate CRAs to promote their independence and objectivity, and a number of jurisdictions have already announced regulatory measures strengthening oversight of CRAs.

(2) Objectives

The Consultation Paper sets out the objectives for oversight of CRAs as: (a) to adhere to international financial standards in response to IOSCO’s recent revision of its regulation; (b) to ensure that credit ratings are independent, objective, and of adequate quality; and (c) to keep ratings prepared in Hong Kong serviceable in other jurisdictions.

(3) Regulatory Regime

SFC suggests that the most appropriate regime to supervise CRAs is to subject CRAs to the regulation of the existing Securities and Futures Ordinance (“SFO”). The Consultation Paper proposes to create a new type of regulated activity under the SFO as Type 10: “providing credit rating services”. To achieve the goal, it is proposed to make legislative amendments to both primary and subsidiary legislations. SFC will also issue its Code of Conduct and Guidelines in accordance with the legislation.

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(4) Transitional Arrangements

To secure a smooth transition, SFC proposes a “grandfathering” approach for the existing staff members, who are supposed to be required to complete a course rather than pass the local papers.

Wang Donghui, Senior Attorney of Lehman, Lee & Xu, remarked, “It is a global trend to impose stricter regulation on activities of CRAs. The public are hoping for objective and qualified credit ratings to guide their investments.” He added, “It is a wise choice to regulate oversight through Hong Kong’s existing licensing regime, which will definitely save time and expenses for setting up a new regime.”

Lehman, Lee & Xu is a prominent Chinese corporate law firm and trademark and patent agency with offices in Beijing, Shanghai, Shenzhen, Hong Kong, Macau, and Mongolia. The firm has also been recognized as one of the top full service as well as intellectual property firms in China by several international magazines. The law firm is managed by Mr. Edward Lehman, a leading expert on corporate law with 20 years of practice experience in Mainland China.

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