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

Speech at Foreign

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Good afternoon and thank you very much for inviting me to speak at the Foreign
In a rather odd article in the SCMP just yesterday, the writer
e what my predecessor Martin Wheatley started. A good measure of his success will be how

consistent in recent years. We use and are obliged to use the full range of remedies and sanctions available to us to tackle wrongdoing that affects market confidence and integrity.

This means we will pursue both criminal and civil remedies either separately or in tandem. We must give priority to deterrent sanctions especially criminal sanctions but we will also address the consequences of misconduct through remedial orders whenever we are able to

operate as intended but also of whether the existing provisions in the law which deal with false or misleading statements in our market actually work properly.

The SFC is currently taking action against 22 defendants in ongoing section 213 proceedings in which insider dealing allegations have been made. All of these cases are an expression of our focus on mitigating investor losses through remedial measures ordered by the court.

Coming back to those who believe that the SFC has unbounded powers to do what it likes in enforcement cases, the fact is that in every action, the SFC is required to prove its case before independent judges where the SFC bears the burden and the evidence is scrutinized by all those affected. And the same goes for the MMT.

It is also important to understand that in disciplinary proceedings under our licensing system for brokers, asset managers and the like, our decision is not operative or final unless and until those involved have had the chance to seek a review by the Securities and Futures Appeals Tribunal. This is another decision maker which is entirely independent of the SFC. The tribunal is able to conduct a full merit review of cases and is part of a single disciplinary process. For this reason no announcement is made until either there is no appeal or until an appeal is decided.

The bottom line is that we regard hard, rigorous testing of our cases in the public eye by independent courts and tribunals to be of fundamental importance to the integrity of the regulatory framework in Hong Kong. This scrutiny is vital to ensure that all involved are treated fairly, including the regulator, the regulated, and the investing public.

Regulation of sponsors

I would now like to move onto IPO sponsors.

We published a Consultation Paper on this subject about two weeks ago. Given the extensive press coverage, I am sure many of you are familiar with the proposals and t

prospectuses provide quality information that allows investors to make informed decisions. If we succeed in this aim we will also succeed in another goal: that we will not have to resort to enforcement action.

Many have asked why this focus on IPO sponsors. The simple answer is that confidence in the information given to the market in an IPO flows from confidence in those who have a pivotal role in selecting companies to list, marketing shares directly to institutional investors and in ensuring the accuracy, completeness and relevance of the information disclosed to the public. The sponsors have this pivotal role. But that is not to say that others are not important. Advisors such as lawyers and accountants are crucial and, above all, the directors know most about a company. However, we expect the sponsors to test the information they are given by the directors and senior management and in many cases to collate information from other sources to establish a complete picture.

The proposals were strongly influenced by the deficiencies we have seen in some sponsor work over the past few years. Let me stress that some of this work has been performed to high standards, but unfortunately there is no consistency even within one bank. In essence, our concerns relate to sponsors not devoting enough resources to an IPO and, as a result, overtrading. This includes not assigning the right individuals to a deal at the right time and a lack of senior management involvement to ensure proper deal planning and execution. In brief there are three key proposals relating to sponsor work:

1. First, they should complete the majority of their due diligence on the company before submitting an advanced draft prospectus to the Stock Exchange. Sponsors should kick the tires hard all four of them before submitting an application for listing approval. This ensures that issues are identified and addressed and the draft prospectus is sufficiently complete to allow the formal listing process to be far more reliable and efficient. We also propose that the draft of the prospectus submitted with the listing application is published on the Stock Exchange website. This public exposure is designed to enhance the quality of the work done to produce this draft.

2. Second, sponsors are responsible for due diligence whether they carry it out directly or seek assistance from others. They should review the results of the due diligence carried out by others and ensure that the results are reflected in disclosure in the prospectus or in additional work.

3. Third, sponsors cannot just place blind reliance on experts such as accountants and valuers whose reports are included in the prospectus. For example the sponsor needs to review the draft financial statements produced by the auditors, and assess whether they are consistent with all the other information the sponsor knows about the listing applicant. This does not mean that sponsors should repeat work done by

already covered but unfortunately this is not explicit. What we are now consulting on is whether or not it should be made clear in the Companies Ordinance that sponsor firms that is firms as distinct from individuals should be subject to civil and criminal liability for untrue statements in prospectuses. Lack of clarity is not the right outcome for anyone involved.

I should also say that it is absolutely clear that a criminal prosecution should only be pursued in serious cases reflecting a community expectation about conduct meriting criminal punishment. And as a starting point there must be an untrue statement in the prospectus about someth
short where there is no major problem with the prospectus. This would potentially be a licensing issue but has nothing to do with legal liability. As the law now stands, liability is about a lack of belief that an important representation in a prospectus is in fact true.

I should also say that coverage of the criminal topic has obscured the need for clarity about civil liability, which would provide investors with the potential to seek redress directly. Although our civil litigation system can be off putting in part because of expense we think that clarity about the availability of both civil remedies and criminal liability will have a further positive influence on behaviour amongst sponsor firms.

As I said, the proposals about liability are about sponsor firms. We are not proposing to identify individuals. I would say, however, that if individuals actively assist in the inclusion by anyone of untrue statements in a

In closing, I should just say on a personal note that I was aware when joining the SFC that being a regulator is not a popularity game: you have to get used to well informed and not so well informed commentary, and that goes with the territory worldwide. However, I would just like to make clear that all commentary is informative and some is extremely helpful, so I would encourage all of you here at the FCC who work in the media to remain engaged in financial and regulatory issues which more than ever have a profound effect on the real economy.