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# THE SECURITIES AND FUTURES COMMISSION OF HONGKONG: TAKING THE BIT BETWEEN ITS TEETH

**Better Late Than Never**

The **S**ecurities and **F**utures **C**ommission (**SFC**) of the Hongkong Special Administrative Region (HKSAR) of the People's Republic of China (PRC) has just published and disseminated that which could be construed as being not-so-veiled warnings to all aspiring issuers of **I**nitial **P**ublic **O**fferings (**IPO**s) on the secondary equity market of the territory (The **G**rowth **E**nterprise **M**arket [the **GEM**] of The Stock Exchange of Hongkong Ltd).

Whether or not the SFC will spread its '*wings*', so to speak, to include IPOs, destined for the premier equity market (the Main Board of The Stock Exchange of Hongkong Ltd) of the territory, one will just have to wait to see.

For many years, now, **TARGET** () had been suggesting, in no uncertain terms, of the many (deliberate) anomalies that have taken place by on the GEM.

These anomalies were especially true during the first week or so of the commencement of trading in the shares of select companies, anomalies that have had the effect, by accident or design, of the creation of a false market in the shares of the GEM companies.

At last, however, the SFC has taken the bit between its teeth.

Ah, well! Better late than never.

**The SFC Statement**

In the SFC's three-page Statement, Paragraphs Two and Three make the following observations:

> '2. *Out of 45 GEM listings in 2016, 36 were listed by way of placing only and nine included a public offer tranche. The average first day share price change (as against the offer price) for the placing-only GEM IPOs was an increase of 656%, with the highest one increasing 2005%. Out of these 36 placing-only listings, 30 experienced a 100% or more increase in share price on their trading debut, nine of which saw their prices tumble by more than 90% from their first day closing price as at 31 January 2017 and another 10 saw their prices drop by between 50% and 90% as of the same date. The shareholdings of the top 25 placees for the placing-only GEM listings ranged from 70.0% to 99.6% of the total number of placing shares. The number of placees for these 36 placing-only listings ranged from 107 to 578.*
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> '3. *For GEM listings in 2016 with a public offer tranche, the number of valid public subscriptions received ranged from 647 to 17,031 applications. The average first day share price change for these nine listings was a 22% increase.'*

Then, at Paragraphs Five through to Seven, the SFC has stated:

***'Our Approach to GEM Listing Applications***

> '5. *Where there are regulatory concerns about a listing application, the SFC or the Exchange* (The Stock Exchange of Hongkong Ltd) *may raise enquiries before dealings in the shares commence. The SFC may object to a listing under section 6(2) of the Securities and Futures (Stock Market Listing) Rules (**SMLR**), for example, where it appears to the SFC that the applicant has failed to comply with a Listing Rule, or where it would not be in the interest of the investing public or in the public interest for the shares to be listed.*
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> '6. *After the issue of the Guideline and the Joint Statement, four listing applicants delayed their listing plans. In each of these four cases, the SFC had concerns about the applicants' compliance with the open market requirement and raised enquiries in that regard as well as their placing agents' compliance with the Guideline. Those enquiries mainly focused on the overall strategy and allocation basis leading to the high shareholding concentration, and the "know your client" procedures conducted by the placing agents in view of the potential red flags identified from the placee lists submitted in support of their listing applications (for example, multiple groups of placees sharing the same addresses and establishment of fund source as referred to in paragraph 13 of the Guideline).*
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> '7. *In view of the findings in paragraph 2 above, the SFC reminded listing applicants who adopted a placing-only method of listing of their obligation to ensure that the conditions exist for an open market to develop at the time of listing. The SFC also drew their attention to the possible exercise of its power of suspension under section 8 of the SMLR if it notes irregularities in the trading of shares after listing.'*

At Paragraphs 10 and 11 of the SFC's Statement, one reads:

> '10. *Historically, the SFC has most often directed suspension when it has identified evidence of possible and material breaches of the Securities and Futures Ordinance during the course of an investigation. Sufficient indicators that an open market does not exist, unusual trading patterns that may suggest possible market manipulation or evidence of false or misleading disclosures may also lead to suspension by the SFC.*
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> '11. *A decision to suspend is taken to protect a broad range of market participants, including to protect potential investors from investing on an uninformed basis, while also weighing the effect on existing shareholders. The SFC will only intervene after careful consideration of the relevant facts and circumstances.'*

The SFC Statement goes on to mention, definitively, that it is the issuer's responsibility '*to ensure an open market*' in the shares of the issuer's company, under the GEM Listing Rule 11.23, and that sponsors have a duty of fidelity, inter alia, to advise and guide the issuers in this regard.

The SFC makes it clear that the number of shareholders is not the only criteria for an open market to exist.

Placing agents, one is told by this missive, '*should have a robust marketing and placing strategy and an allocation basis with a view to achieving an open market in the offered securities, including an adequate spread of shareholders. A placing agent is generally expected to notify all of its active clients of each placing opportunity …*'.

Paragraphs 16, 17 and 18 of the SFC's Statement ends with the following, no holds barred, rather explicit warning:

> '16. *The SFC expects appropriate policies and procedures to be put in place to avoid any undue concentration of shareholdings and to maximise the likelihood of an open, fair*

*and orderly market in the securities at the time of listing, which should include a marketing programme directed to a wide range of clients.*

*'17. The SFC noted that certain placing agents have bought shares in the market for their existing clients shortly after the listing at a price substantially higher than the IPO price. This suggests that placing agents might not have approached all of their active clients who would be interested in buying shares in the IPO.*

*'18. The SFC has a statutory objective to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry. Where appropriate, we will consider exercising our powers under the SMLR in order to promote this objective.'*

**The Flotation Of Dining Concepts Holdings Ltd**

When Dining Concepts Holdings Ltd () (Code: 8056, the GEM) went public, on the first day of trading in the shares of this company (Friday, August 5, 2016), its share price rose from the Placing Price of 45 cents to $HK8.02.

The volume of trading was just 2.05 million shares.

The share price closed the trading day at $HK3.30.

At the closing price of the shares of this company for this day, the increase over the 45-cent, Placing Price was exactly 633.33 percent.

At the highest transaction point of the trading day, being $HK8.02, the increase over the 45-cent Placing Price was 1,682.22 percent!

The following trading day (Monday, August 8, 2016), on a volume of trading of 40 million shares, the share price of this restaurant-management company hit a high of $HK6.50, a low of 98 cents, ending the trading day at $HK1.01.

At the closing price for this Monday, the increase over the Placing Price of 45 cents was 124.44 percent.

On the third trading day, the share price of Dining Concepts hit a high of $HK1.38, a low of 60 cents, ending the trading day at 74 cents.

At the closing price of this company's shares for that Tuesday, the increase over the Placing Price was 64.44 percent.

Today, the share price is about 37 cents, a fall of about 17.78 percent from the 45-cent Placing Price.

On July 27, 2016, Dining Concepts issued and disseminated its Placing Prospectus.

Investors were offered 200 million shares in the company by Placement, only.

The 200-million, Share Placement was broken down into 140.99 million, New Company Shares and 59.01 million Sale Shares.

The Selling Shareholder of the 59.01 million Sale Shares was, ultimately, Total Commitment Holdings Ltd, a company, domiciled in the **B**ritish **V**irgin **I**slands (**BVI**).

This BVI company is beneficially owned by the Controlling Shareholder of Dining Concepts, to wit, Mr Sandeep Sekhri ().

About seven months after Dining Concepts issued its Placing Prospectus, that is on February 13, 2017, the company announced that, in respect of the nine months, ended December 31, 2016, the Net Loss Attributable to Shareholders was $HK28 million.

That figure compared with the like period in 2015, prior to the company, donning the purple toga of a publicly listed, corporate entity, when the company turned in a Net Profit Attributable to Shareholders of about $HK12 million.

For the full Financial Year, ending March 31, 2017, it is an odds-on favourite that the company will report anaemic financial results.

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