

Hong Kong Stock Exchange enhances the disciplinary regime under the Listing Rules

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On 20 May 2021, The Stock Exchange of Hong Kong Limited (the “**Stock Exchange**”) published its conclusions (the “**Conclusion**”) to its consultation paper on proposed changes to disciplinary powers and sanctions under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “**Main Board Rules**”) and the Rules Governing the Listing of Securities on GEM (the “**GEM Rules**”, together with Main Board Rules as the “**Listing Rules**”) which was published on 7 August 2020 (the “**Consultation Paper**”).

The Stock Exchange will adopt all the proposals set out in the Consultation Paper, with one minor modification by adding a new note to the new Listing Rules. In summary, the main changes to the Listing Rules include:

Enhancements to Existing Disciplinary Sanctions and Adoption of a New Sanction

Main Board Rules 2A.09 and 2A.10 of the Listing Rules and GEM Rules 3.10 and 3.11 of the GEM Rules set out the current sanction regime of the Stock Exchange, which includes (i) reputational sanctions (e.g., private reprimand, public statement involving criticism, public censure and a public

statement that the retention of office by the director is prejudicial to the interests of investors (“**PII Statement**”), (ii) rectification or remedial sanctions, (iii) denial of facilities of the market, (iv) suspension or cancellation of listing and (v) ancillary or operational sanctions such as imposing a ban on professional advisers or their employees from representing a specified party in relation to matters coming before the Listing Division or the Listing Committee.

The Stock Exchange retained all the existing sanctions with the following enhancements and adoption of a new sanction:

Existing Sanctions		Enhancements to the existing sanctions and adoption of a new sanction
Reputational Sanctions	Private reprimand	Enhance by enabling publication of the substance (without disclosing the identity of the parties)
	PII Statement	<p>Enhance by:</p> <p>(a) lowering existing thresholds of “wilful” or “persistent” (failure to discharge responsibilities); and</p> <p>(b) applying to <u>former</u> and current directors and <u>senior management members</u>^{Note(1)} of named listed issuers and their subsidiaries</p> <p>New sanction:</p> <p>In the case of serious or repeated failure by a director to discharge his / her responsibilities under the Listing Rules, the Stock Exchange may publicly state that in the Stock Exchange’s opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries (the “Director Unsuitability Statement”).</p> <p>This new sanction will only apply in egregious or severe cases, where in the Stock Exchange’s view, the conduct of the director may not only be prejudicial to the interests of investors but also may not meet all the requirements of a director under the Listing Rules.</p>
Remedial Sanctions	Suspension or cancellation of listing as follow-on action if individual subject to PII Statement remains in office (of the specific issuer)	Enhance by including denial of facilities of the market as follow-on actions, such as withholding approval of any matters that require approval from the Stock

Existing Sanctions		Enhancements to the existing sanctions and adoption of a new sanction
		Exchange including the issuance of shares
	Denial of facilities of the market	Enhance by: (a) removing existing thresholds of “wilful” or “persistent” (failure to discharge responsibilities); and (b) extending the scope of the sanction to require a listed issuer to fulfill specified conditions (e.g. to remedy the breach), rather than merely wait for a specified period to lapse.
Ancillary or Operational Sanctions	Ban on professional advisers	Enhance by extending the ban to cover representation of any or a specified party

In the event an individual who is subject to a PII Statement continues to occupy the position specified in the statement after such date as determined or specified by the Listing Committee or the Listing Review Committee, follow-on actions will be triggered which include the denial of facilities of the market to that listed issuer for a specific period, in addition to suspension or cancellation of the listing of that listed issuer’s securities under the Listing Rules.

After a PII Statement with follow-on actions has been made against an individual, the listed issuer identified in the statement must include a reference to the PII Statement in all of its announcements and corporate communications, unless and until that individual is no longer a director or senior management member of the relevant listed issuer. The other listed issuers of which the individual is a director are required to announce the PII Statement as soon as

practicable. Any other listed issuers which appoint the individual as a director are required to disclose in the appointment announcement that the director is subject to a PII Statement.

The follow-on actions and the publication requirement in respect of the PII Statement above also apply in respect of a case of Director Unsuitability Statement, however, only against the listed issuer named in the statement and will not automatically apply to other listed issuers of which the individual continues to hold office of a director. Instead, the Stock Exchange may take separate and independent action in relation to that listed issuer and the director.

Introduction of Secondary Liability

Under the Listing Rules, the Relevant Parties^{Note(2)} are subject to disciplinary sanctions. However, the Listing Rules do not

impose any obligation on some of the existing Relevant Parties (i.e. senior management of listed issuers and their subsidiaries, and significant shareholders). In addition, the Listing Rules do not impose secondary liability for breach of Listing Rules, i.e. the responsibility of a person or entity which arises when the party directly liable fails to discharge an obligation. To impose disciplinary action against the Relevant Parties, the Stock Exchange has introduced secondary liability for breach of the Listing Rules where the Stock Exchange determines the person has caused by action or omission or knowingly participated in a contravention of the Listing Rules.

New parties included within "Relevant Parties"

The Stock Exchange has decided to include following new parties within the scope of "Relevant Parties" under both Main Board Rules and GEM Rules:

- (a) employees of a professional adviser of a listed issuer or any of its subsidiaries;
- (b) guarantors of structured products; and
- (c) a party who provides an undertaking to or who enters into an agreement with the Stock Exchange, such as an offeror in a mandatory offer who may give an undertaking to the Stock Exchange to take appropriate steps to ensure that sufficient public float in the shares exists after the offer closes.

Pursuant to GEM Rule 3.11(i), guarantors for an issue of debt securities also falls under the definition of "Relevant Parties" under the GEM Rules, but not the Main Board Rules. To align the list of Relevant Parties under the Main Board Rules and GEM Rules, the Stock Exchange has included guarantors for an issue of debt securities as a Relevant Party under the Main Board Rules.

Removal of independent financial advisers as a standalone Relevant Party

Pursuant to Main Board Rule 2A.10(j), "independent financial advisers" of a listed issuer is an existing Relevant Party under the Main Board Listing Rules but not the GEM Rules. The Stock Exchange removed independent financial advisers as a separate Relevant Party for disciplinary action but made it clear that the term "professional advisers" includes independent financial advisers.

Additional circumstances where disciplinary sanctions can be imposed

New provisions have been introduced to explicitly (i) permit the Stock Exchange to impose sanctions on Relevant Parties in circumstances where they have failed to comply with a requirement imposed by the Listing Division or the Listing Committee; and (ii) provide in the Listing Rules the obligation to provide accurate, complete and up-to-date information when responding to the enquiries or investigations from the Stock Exchange. Disciplinary action may be taken by the Stock Exchange where these obligations are not properly discharged.

Conclusion

Through implementation of the new Listing Rules, the Stock Exchange will strengthen its powers to impose disciplinary sanctions on individuals responsible for misconduct and breaches of the Listing Rules, to protect the integrity of the markets and the investing public, as well as to promote strong corporate governance and deter misconduct. The amendments to the Listing Rules set out in the Conclusion have come into effect on 3 July 2021.

Notes:

- (1) A definition of “**senior management**” has been introduced by the Stock Exchange for disciplinary purpose, which include:
 - (a) any person occupying the position of chief executive, supervisor, company secretary, chief operating officer or chief financial officer, by whatever name called;
 - (b) any person who performs managerial functions under the directors’ immediate authority; or
 - (c) any person referred to as senior management in the listed issuer’s corporate communication or any other publications on the Stock Exchange’s website or on the listed issuers’ website.
- (2) Before the amendments set out in the Conclusion coming into effect, under the Main Board Rule 2A.10 and GEM Rule 3.11, the original definition of “**Relevant Parties**” include:
 - (a) a listed issuer or any of its subsidiaries;
 - (b) any director of a listed issuer or any of its subsidiaries (or any alternate of such director);
 - (c) any member of senior management of a listed issuer or any of its subsidiaries;
 - (d) any substantial shareholder of a listed issuer;
 - (e) any significant shareholder (for GEM Rule only (GEM Rule 3.11(e)));
 - (f) any professional adviser of a listed issuer or any of its subsidiaries;
 - (g) any authorized representative of a listed issuer;
 - (h) any supervisor of a PRC issuer;
 - (i) any independent financial adviser of a listed issuer; and
 - (j) the guarantor of an issuer in the case of a guaranteed issue of debt securities (for GEM Rule only (GEM Rule 3.11(i))).

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