Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at:
http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2018-Adverse-Audit-Opinion/Consultation-Paper/cp201809.pdf

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree with the proposal to add a Rule to require trading suspension if an issuer has published a preliminary annual results announcement and its auditor has issued, or has indicated that it will issue, a disclaimer or an adverse opinion on the issuer's financial statements?

   ☐ Yes

   ☒ No

   If your answer is "No", please give reasons for your views.

   A disclaimer of opinion or an adverse opinion only represent the viewpoint and judgement of the company's auditors to the financial statements. It is not necessary representing the true picture of the Company. With sufficient disclosure in annual report and annoucments and, possibly, additional indicator to investor such as the suggestion of webb-site.com of putting a "D" suffix to the stock short names from the HKEx, the investors should be able to make their own assessment and judgement in dealing in the company's stock. The suspension of the Company's stock may lead to significant loss and liquidity problems to the public investors as they are unable to offload their holdings in the public market.

   We also notice that for A-shares in China, the mandatory trading suspension requirement formerly applicable to A-shares with modified opinions was abolished in 2018 and now replaced by disclosure-based new rules similar to the existing rules in Hong Kong. We agree with CSRC's view that investor best interest is upheld by information disclosure rather than mandatory suspension for modified audit opinion issuers.

2. Do you agree with the proposed Rule 13.50A to require the issuer to address the issues giving rise to the disclaimer or adverse opinion, provide comfort that a disclaimer or adverse opinion in respect of such issues would no longer be required, and disclose sufficient information for investors to assess its updated financial position before trading resumption (as described in paragraph 32 of the Consultation Paper)?

☐ Yes

☒ No

If your answer is "No", please give reasons for your views.

As explained above, we are of the view that investors interest is better upheld by information disclosure under existing rules, rather than mandatary suspension as proposed in the consultation. Many issuers get disclaimer audit opinion not because of its fault but because of circumstances beyond its control. Examples such as disclaimer opinion due to going concern, suspension will hinder the company from raising additional funds by equity issue which makes it harder to remove the disclaimer opinion in the first place. For disclaimer opinion due to litigation or dispute, the proposed suspension imposition will put significant pressure to the issuer to avoid litigation or dispute with business counterparty, putting Hong Kong listed issuers in a handicapped position against unlisted business counterparty.

We are concerned as to the following hypothetical situation if the rule change under the proposed consultation is put into effect. For example, if a small HK listed issuer is exploring whether it should sue for a breach of a significant contract against a business counterparty which happens to be a mega-sized HK listed issuer. Assuming that the litigation may pose uncertainty on a significant asset or income of the smaller company making the smaller issuer susceptible to audit disclaimer and thereby trading suspension, the smaller company is put in unfair and handicapped bargaining situation because the prospect of trading suspension can be fatal and irreversible to the smaller issuer and it would rather acquiesce or otherwise concede to any contractual breach of the mega-sized business counterparty. For the mega-sized issuer, there is no risk for trading suspension because the contract is small to it and the prospect of litigation or dispute over the contract is minimal, giving free hands the mega-sized issuer to behave in oppressive manner against smaller issuers. Further, if the smaller issuer insists on suing the bigger issuer, the trading suspension is almost withdrawing the life-supporting machine of a victim under a contractual breach of the bigger business counterparty because without the ability to raise fund by equity issue, the smaller issuer may find it difficult to sustain the ongoing litigation, making it impossible to uphold its own legal right by litigation. We therefore consider that trading suspension is the ultimate measure reserved for those issuers unsafe for continual trading and unsuitable for continual listing. Disclaimer opinion can be the result of many reasons not being the fault of the issuer itself, and suspension is not the right answer to the question.

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