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香港中環
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國際金融中心一期 12 樓
香港交易及結算所有限公司
企業及投資者傳訊部

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敬啟者

「有關上市發行人財務報表附有核數師發出之不表示意見聲明或否定意見的建議」
諮詢文件回應

本會有超過 2,500 名成員，成員是 證券及期貨條例 所指的香港聯合交易所有限公司的參與者。

現隨函附上本會對諮詢文件的回應。本會同意香港交易所將本會的身份及回應意見公開發佈。

如您有任何疑問，請致電 [REDACTED] 與本會會長李細燕太平紳士聯繫。

[REDACTED]
香港證券學會
會長李細燕太平紳士

抄送: 財經事務及庫務局局長劉怡翔先生, JP
香港立法會金融服務界議員張華峰議員, SBS, JP
財經事務及庫務局常任秘書長(財經事務)黃灝玄先生, JP
證券及期貨事務監察委員會主席雷添良先生, SBS, JP

Q1: 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? If not, why?

Response

We strongly disagree. We believe this proposal is far too stringent, non-commercial and do more harm than help to shareholders, investors and stock market as a whole.

Our rationale is as follows:

1. The proposal basically means to shift the power of the Stock Exchange to auditors in deciding trading suspension / suspension leading delisting of issuers.
2. The Proposal basically put issuers in much higher risk than ever. As the Exchange may be aware, many restrictive covenants in loan documents require issuer not to suspend over certain days. Otherwise, it will trigger a technical default of loan. Once a loan is in default, it may trigger a cross default of other loans. The Proposal just intensifies and complicates the problems that issuers are facing.
3. The current provisions of main board rules, rule 6.01, rule 13.24, together with the inside information provision of Securities and Futures Ordinance and rule 8(1) of Securities and Futures (Stock Market Listing) Rules provide sufficient safeguard to market stakeholders to ensure issuers have sufficient assets or operations to maintain their listing status. Up to now, we have not heard of any major problems or complaints from any stakeholders and stockbrokers on the trading of shares of issuers which had qualified opinion in their audited accounts. As such, to this end, we consider the Proposal is redundant and is over the top.



4. The Proposal suggests that “or has indicated that it will issue, a disclaimer or an adverse opinion on the issuer’s financial statement”. This blunt suspension will not help shareholders and will create undue extreme pressure on auditors, management team of issuers as auditors will definitely be under extreme pressure from the management not to issue disclaimer opinion and thus will indirectly affect the independency of auditors and quality of audit opinions.
5. The Proposal also expresses that disclaimer of opinion due to going concern will lead to suspension. If the issuer is having going concern problem, the immediate solution available to the issuer is to raise fund, by means of equity or debt or convertible securities. This proposed suspension will put a complete stop to issuer to raise fund to solve the going concern problem. By the same token, under the proposal, the Exchange is asking a patient, who happen to be found to be bleeding, to leave the hospital immediately, when actually, at that time, he needs the hospital most during his life.
6. The Stock Exchange has been adopting a disclosure base regulatory approach for many years and the recent adaptation of inside information rules is a good example. After an issuer’s publication of an audited results with disclaimer opinion, shareholders, investors and other stakeholder can judge or estimate their respective next course of action. The Proposal is simply to stop trading bluntly and leave all uncertainties to stakeholders whether the trading of the issuer can be resumed and if so, at what time the trading can be resumed.
7. On page 5 of the consultation paper, the Exchange tries to draw reference from other major markets and try to “internationalise” the suggestion contained in the proposal. However, as suggested in your wordings “the Financial Conduct Authority may suspend trading in an issuer’s securities where the issuer is unable to assess accurately its financial position AND INFORM the market accordingly”, it appears to us that the Exchange is trying to jump the gun and rushes to conclude that the Proposal is that of the Financial Conduct Authority in the UK. We disagree and view this differently.



Suggestion to the Exchange

Alternatively, the Exchange can consider, instead of suspension of trading of shares, to add a special designated short code, like S represents secondary listing and W represents companies with weighted voting rights. We suggest the Exchange can add Q to short code for those issuers with qualified audit opinion.

We are available to meet with the Exchange to express our views further if required.

Q2 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 above)? If not, why?

Response: disagree and not applicable. See reply to Q1.