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October 6, 2020

By Hand and By Email (response@hkex.com.hk)

Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place, Central
Hong Kong

Re: Consultation Paper – Review of Listing Rules relating to Disciplinary Powers and Sanctions

Dear Sirs / Madams:

This submission is made in response to the consultation paper issued by The Stock Exchange of Hong Kong Limited (the “**Exchange**”) in August 2020 regarding the “Review of Listing Rules Relating to Disciplinary Powers and Sanctions” (the “**Consultation Paper**”). Unless otherwise defined, terms used in this letter have the same meanings as used in the Consultation Paper.

We refer to consultation question 10 of the Consultation Paper relating to the proposal to impose secondary liability on “Relevant Parties” in circumstances where the Exchange determines that they have “*caused by action or omission or knowingly participated in a contravention of the Listing Rules*”. “Relevant Parties” are to include any professional adviser of a listed issuer or its subsidiaries (a “**Professional Adviser**”), which includes a law firm retained by an issuer to provide professional advice on a matter governed by the Rules. We further refer to the proposal to include employees of a Professional Adviser as “Relevant Parties” as stipulated under consultation question 15 of the Consultation Paper. We understand that the implementation of the above proposals (the “**Proposals**”) would entitle the Exchange to impose disciplinary sanctions on law firms and their employees or individual solicitors through a finding of secondary liability for Rule breaches.

While we appreciate efforts of the Exchange to enhance its disciplinary regime, we **disagree** with the expansion of the Rules to actualize the proposed secondary liability regime insofar as it relates to legal professional advisers and their employees, for the reasons set out in Appendix I as attached.

If you have any questions on any aspect of our submission, please do not hesitate to contact [REDACTED] of this office on [REDACTED].

Thank you for your attention.

Yours faithfully,

[REDACTED]

Sullivan & Cromwell (Hong Kong) LLP

cc: The Law Society of Hong Kong

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Appendix I

Solicitors owe a duty to the Court

A solicitor is an officer of the court and owes a paramount duty to the court. Accordingly, the determination of proper standards of a solicitor's conduct and the responsibility of disciplining a solicitor falls to the court's jurisdiction. The court recognizes the Law Society of Hong Kong (the "Law Society") as the professional body entitled to exercise statutory functions in the regulation of solicitors' conduct. It is unclear what legal basis the Exchange intends to rely upon to discipline and sanction a solicitor outside of exceptional circumstances which have been agreed between the Exchange and the court/Law Society, such as under the memorandum of understanding (the "MoU") entered into between the Law Society and the Exchange in December 1996.

The Proposals potentially undermine attorney-client privilege, a fundamental pillar of the legal justice system

It is fundamental to the justice system that attorney-client privilege is preserved and that clients have the right to consult solicitors openly, secure in the knowledge that neither the clients nor their lawyers can be forced to divulge the content of any matter disclosed. To the extent that the current Proposals invite situations whereby a lawyer's preparation of defense against disciplinary action necessitates the disclosure of confidential communications, attorney-client privilege would be undermined. Against the backdrop that a client's integral right to confidential advice is enshrined in Article 35 of the Basic Law, as well as respected by Hong Kong courts in all litigation proceedings, it is inappropriate for the Exchange to implement a regime that may obstruct the protection of client's confidences for the purposes of regulating Rules compliance.

The current framework which regulates solicitors' conduct is sufficient and effective

The Law Society is the primary body regulating solicitors' conduct and is responsible for maintaining proper standards for the legal profession. This is a well-established concept and is recognized by the Exchange under the MoU. If a solicitor is alleged to have acted negligently or in breach of his or her duties, the Exchange may refer the matter to the Law Society for investigation and determination in accordance with established disciplinary procedures. In addition, the Law Society may discipline solicitors by imposing a wide range of penalties including imposing a fine on the solicitor, suspending the solicitor from practice and striking-off the solicitor. The current framework has been effective in ensuring the delivery of high quality legal services by solicitors and protecting the interests of the public. In light of this, it is not necessary for the Exchange to attempt to implement and administer an additional regime which could conflict with the current framework.

It is inappropriate for the Exchange, as final arbiter of the Rules, to become the disciplinary authority for solicitors in listing-related matters

The Rules are broadly drafted to regulate the conduct of a wide variety of market participants and under a range of situations. In interpreting the Rules, the Exchange is not bound to apply legal construction principles or adhere to a natural interpretation of the relevant language if the needs of

the specific case require otherwise. There may be situations whereby a certain conduct of the client is advised by his solicitor as permissible based on a strictly legal interpretation of the relevant Rule, yet determined as a breach by the Exchange upon its taking into account of other factors it deems relevant. In such circumstances, it is unfair for the Exchange, as final arbiter of the Rules, also to be the authority to have sanction powers against the solicitor for his or her conduct.

The proposed language is overly broad

The proposed language suggests that lawyers may be subject to secondary liability in circumstances where the Exchange determines they have caused “by omission” a contravention of the Rules, regardless of whether they have knowingly done so. In light of the extensive and multifaceted nature of the Rules, the threshold for disciplinary action as currently suggested by the proposed language sets an unreasonable and unattainable expectation on solicitors, especially external lawyers, to be fully informed of all affairs of the client at all times and to pro-actively take steps to avoid the client being in breach of the Rules.