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From: [REDACTED]
Sent: Thursday, October 8, 2020 2:50 PM
To: response
Cc: [REDACTED]
Subject: Submission on the Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions (Consultation Paper)

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8 October 2020

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

Dear Sir/Madam,

Submission on the Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions (Consultation Paper)

I am an associate member The Hong Kong Institute of Chartered Secretaries (the “Institute”).

Secondary Disciplinary Liability Problematic

The proposals under the Consultation Paper relating to the imposition of secondary disciplinary liability on the company secretary are problematic. Please see below.

Under Section F of the Corporate Governance Code, the company secretary is specifically stated to play a **supporting role**: “*The company secretary plays an important role in supporting the board by ensuring good information flow within the board and that board policy and procedures are followed.*” Furthermore, referring to paragraph 6.2 of the “Guidance for Boards and Directors” published by the Exchange in July 2018 (the “Guidance”), in which it is stated that company secretaries can generally discharge their duties **by providing advice** to the Board on corporate governance and compliance matters and facilitating continuous training to the Board in accordance with the rules and regulations.

This supporting and advisory role means that any failure by the board could potentially lead to secondary disciplinary liability on the part of the company secretary where the applicable test is simply participation in the contravention. Taking the example under paragraph 93(c) of the Consultation Paper, the board secretary (who is presumably the named company secretary) is suggested to have secondary disciplinary liability given their role in the announcement production and authorization process and presumably as the announcement was issued in their name. This could give rise to a risk of unwarranted findings of secondary disciplinary liability where a company secretary participated in a contravention of the Listing Rules simply by being involved in the announcement production and authorization process, but may not have been privy to all of the details of the underlying transaction.

From the Consultation Paper, secondary disciplinary liability is to be imposed where the company secretary has caused by action or omission or knowingly participated in a contravention of the Listing Rules

That is a professional disciplinary issue. The imposition of secondary disciplinary liability should be whether the company secretary, in discharging his or her roles and responsibilities, should be left to their Institute to determine for their members, and other professional institutes to determine for other professionals, to determine if it has failed to meet the professional standards applicable to him or her. The role of the Exchange should be to refer appropriate cases to the appropriate professional institute to determine whether the company secretary has failed the applicable professional standards contributing to a breach of the Listing Rules concerned.

In the case of the appointment of an external company secretary, the external company secretary is only a service provider. It is similar to those other external parties providing legal or accounting services. Furthermore, under paragraph 6.5 of the Guidance for Boards and Directors, the Exchange recognizes that an external service provider may not have day-to-day knowledge of the issuer's affairs and that there could well be gaps in communication - particularly in relation to time/price sensitive matters. So, the Consultation Paper does not seem to distinguish between internally employed and externally appointed company secretaries.

Please feel free to contact me at [REDACTED] if you have any questions.

Best regards,
Wai Po Louise Yu