Hong Kong Institute of
Certified Public Accountants
香港會計師公會

By email (response@hkex.com.hk) and by hand

8 December 2017

Our Ref.: [redacted]

Hong Kong Exchanges and Clearing Limited
12th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs,

Consultation Paper on Delisting and other Rule Amendments

Please find attached a submission from the Hong Kong Institute of Certified Public Accountants on the above consultation paper. We appreciate that additional time has been allowed for us to make this submission and we are submitting our views in accordance with that extended deadline.

Broadly speaking, we agree with most of the HKEX's proposals for changes to the framework for delisting, although we consider that there should be closer alignment between the proposals relating to the Main Board and those relating to the GEM. Furthermore, we consider that specific arrangements should be made where an insolvency officeholder has been appointed to restructure a company whose shares have been long suspended. In our responses to the relevant questions in the attached questionnaire, we propose certain arrangements that provide a framework for additional time for a restructuring while preserving the objective of establishing greater certainty in the delisting process.

Should you have any questions on the submission, please contact either Mary Lam, Director of Member Support, or myself at the Institute.

Yours faithfully,

[redacted]

Peter Tisman
Director, Advocacy & Practice Development

[redacted]

Encl.

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Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEX website at:
http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp2017091.pdf

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

1. Do you agree with our proposed MB Rule amendment to add a fixed period delisting criterion?

   ☑ Yes

   ☐ No

The HKICPA agrees with the need to maintain the quality and reputation of the market to support Hong Kong's status as an international financial centre, as well as to protect the interests of shareholders. In general, we support the proposal to establish an effective delisting framework, facilitating the timely delisting of issuers that no longer meet the existing continued listing criteria, and providing certainty to the market on the delisting process. At the same time, we recommend that the Stock Exchange (Exchange) consider requiring issuers that are subject to delisting to provide exit arrangements for minority shareholders to dispose of their shares for some value in return. We also consider that specific arrangements need to be made for companies in financial distress, where a provisional liquidator (PL) or other insolvency officeholder has been appointed by the court and is working on a proposal to enable the company's shares to resume trading. A PL or liquidator is an officer of the court and acts under the supervision of the court. In so doing, when undertaking a restructruing, he/she seeks to protect the interests creditors and shareholders (in particular the minority shareholders).

Experience demonstrates that some companies in financial distress can be turned around and there are many examples of this happening in Hong Kong. Restructuring efforts are often complex and likely to involve court procedures which could also include overseas court procedures. Seeking and obtaining court approvals to convene the requisite meetings of stakeholders, for example, can be very time consuming and the timelines of such procedures are not be fully within the control of the officeholder. While the framework as proposed in the consultation paper may allow up to 24 months after suspension before a company is delisted, in practice, this may not be sufficient time to allow for the successful completion of a scheme of arrangement. There are various examples that we can provide of cases where a PL was appointed and the shares in the company resumed trading after more that 24 months.

It is also anticipated that a bill to implement a statutory framework for corporate rescue in Hong Kong will be introduced into the Legislative Council in 2018. This was first proposed by the Law Reform Commission 20 years ago and, in the intervening time, other jurisdictions have introduced and/ or refined a range of formal procedures for corporate rescue or administration of companies in financial distress. Hong Kong is lagging behind, as is ca nbe seen from the recent news that Hong Kong has dropped down a place in the World Bank's "ease of doing business" 2018 rankings, due to a lower score in the area of "resolving insolvency". Hong Kong (ranked 43) is signficantly lower than Singapore (ranked 23), for example. Singapore meanwhile has recently introduced new restructuring laws on rescue financing and is marketing itself as as the restructuring hub of Asia, so as to create a better busienss environment to attraft investors and initial public offerings. The listed company sector is an important part of the economy in Hong Kong and if Hong Kong does not have practical procedures for dealing with listed companies in financial distress, this will also have an impact on our reputation and the perception that investors have of Hong Kong's all-round business environment.

The new proposals should be considered in the wider context of alternatives in Hong Kong for distressed restructurings and corporate rescue and, at this moment, the options are few and far between. Therefore, as indicated above, we propose specific arrangements to cater for such situations and, we would add, arrangements that should also provide a greater degee of certainty for all parties than the current arrangements under Practice Note 17.

If your answer is “No”, please explain why.

2. Do you think the appropriate period under the fixed period delisting criterion should be:

☐ 12 months

☐ 18 months

☐ 24 months

☑ Other 24 months subject to the exception explained below (please state)

Please also explain why.

Based on the data provided in the consultation paper on long suspended issuers whose securities resumed trading between 2012-2016, we wonder why the option of a 36-month fixed period has not also been offered. This is the same fixed period as adopted by the Australian Securities Exchange and 36 months would have covered 92% of the issuers whose securities resumed trading between 2012-2016.

Nevertheless, given the situation in the other markets studied (apart from Australia), and in order to reduce the period of uncertainty, we can still support a fixed period of 24 months.

The caveat is that where an insolvency officeholder has been appointed (i.e., a PL, liquidator, or, in the future, assuming the legislation is passed, a provisional supervisor overseeing a corporate rescue), more time should be allowed. If a company can be successfully restructured and resume trading, the outcome offers a better solution for creditors, shareholders and the market a whole.

We propose, therefore, that where an appointment has been made within the first 18 months after the issuer's shares have been suspended, the officeholder should be given an additional 12 months to produce a viable resumption proposal. If the first proposal is rejected by the Exchange, the officeholder should be given up to a further six months to produce an acceptable proposal. If this revised proposed is also rejected, that will be an end to the matter. This would mean that where an insolvency officeholder had been appointed within the first 18 months after suspension, in total, there would be maximum suspension period of 36 months, excluding any time taken for the Exchange to consider the resumption proposal. The timelines proposed above are based on practitioners' actual experience and should ensure, firstly, that an appointment is not made just before the expiry of the 24-month fixed period, simply to stave off delisting; and, secondly, that sufficient time is allowed for the officeholder to understand the issuer's situation and develop a viable and meaningful resumption proposal.

3. Do you agree with our proposed MB Rule amendment to allow the Exchange to delist an issuer under any applicable delisting criteria in MB Rule 6.01 immediately, or publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting?

   ☑ Yes

   ☐ No

   If your answer is “No”, please explain why.

4. Do you agree with our proposal to remove Practice Note 17 and to delist issuers without sufficient operations or assets under either the fixed period criterion or the new delisting process for MB Rule 6.01?

   ☑ Yes

   ☐ No

   If your answer is “No”, please explain why.

5. Do you agree with our proposal to add a note to MB Rule 13.24 setting out the characteristics of issuers which are unable to comply with MB Rule 13.24?

   ☑ Yes

   ☐ No

   If your answer is “No”, please explain why.

6. Do you agree with our proposal to remove MB Rule 6.01(1)?

   ☑ Yes

   ☐ No

   If your answer is “No”, please explain why.

7. Do you agree with our proposal to clarify in MB Rule 2B.07(5) the applicable procedures for reviewing decisions to suspend or cancel a listing under MB Rule 6.01?

   ☑ Yes

   ☐ No

   If your answer is “No”, please explain why.

8. Do you agree with our proposed MB Rule amendment to require suspended issuers to announce quarterly updates?

   ☑ Yes

   ☐ No

   If your answer is “No”, please explain why.

9. Do you agree with the proposed transitional arrangements described in paragraph 52 of the consultation paper, and the proposed commencement dates of the fixed period under different situations?

☐ Yes

☑ No

If your answer is "No", please explain why.

We are of the view that, rather than drawing a line artbitrarily, the same commencement date of the fixed period criterion should be applied to all suspended securities. In order to minimise confusion to the market, it is more appropriate that the Main Board and the GEM adopt the same transitional arrangements, i.e., the fixed period should commence from the effective date of the proposed fixed period criterion (as proposed for the GEM transitional arrangements, at paragraph 59 of the consultation paper). This will also align the Main Board and the GEM listing rules regarding the delisting framework.

10. Do you agree with our proposed GEM Rule amendment to add a fixed period delisting criterion?

☑ Yes

☐ No

If your answer is "No", please explain why.

11. Do you think the appropriate period under the fixed period delisting criterion should be:

☐ 6 months

☐ 12 months

☑ Other 24 months__ (please state)

Please also explain why.

This suggested period aligns with the corresponding Main Board Listing Rules (see our response to Q2).

12. Do you agree with the proposed transitional arrangement described in paragraph 59 of the consultation paper?

☑ Yes

☐ No

If your answer is “No”, please explain why.

See also our response to Q9.

13. Do you agree with our proposal to align the wording of GEM Rule 9.15 with MB Rule 6.10?

☑ Yes

☐ No

If your answer is “No”, please explain why.

14. Do you agree with our proposal to remove GEM Rule 9.04(5)?

☑ Yes

☐ No

If your answer is “No”, please explain why.

15. Do you agree with our proposal to clarify in GEM Rule 4.07(6) the applicable procedures for reviewing decisions to suspend or cancel a listing under Chapter 9 of the GEM Rules?

☑ Yes

☐ No

If your answer is “No”, please explain why.

16. Do you agree with our proposed GEM Rule amendment to require suspended issuers to announce quarterly updates?

☑ Yes

☐ No

If your answer is “No”, please explain why.

17. Do you agree with our proposal to remove MB Rule 14.37(1) / GEM Rule 19.37(1)?

☐ Yes

☑ No

If your answer is “No”, please explain why.

We prefer to keep this bright line trading halt requirement in the Listing Rules to provide clarity to the market.

18. Do you agree with our proposal to remove MB Rule 14.37(2) / GEM Rule 19.37(2)?

☐ Yes

☑ No

If your answer is “No”, please explain why.

See our response to Q17.

19. Do you agree with our proposed MB / GEM Rule amendment to delegate authority to the Listing Department to direct resumption of trading and to provide for an accelerated review procedure?

☐ Yes

☑ No

If your answer is “No”, please explain why.

The existing listing rule requirement, stating that the Exchange's power to direct a resumption of trading of halted or suspended securities cannot be exercised without first giving the issuer the opportunity of being heard by the Listing Committee, prevents concentration of power within the Listing Department and provides checks and balances. While we support the intention to provide for an accelerated review procedure for reviewing a decision to direct the resumption of trading of securities, we consider that requiring the listed issuer concerned to serve a review notice (including grounds for the review together with reasons) within 2 business days of receipt of the written decision from the Exchange would be too rushed for the listed issuer. Therefore, instead of the normal 7 business days notice period for reviewing of decisions (Main Board rule 2B.08(1)), we would suggest requiring the review notice to be served within 3 business days of receipt of the written decision from the Exchange or, similarly to a request for reviewing a Return Decision, allow a notice period of 5 business days (Main Board rule 2B.08(2)).

- End -