

香港聯合交易所有限公司

(香港交易及結算所有限公司全資附屬公司)

THE STOCK EXCHANGE OF HONG KONG LIMITED

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

**Directors are responsible for procuring the listed issuer’s compliance with the Exchange Listing Rules. The Exchange expects directors to be familiar with the provisions of the Exchange Listing Rules, and where necessary, seek professional advice, so that any Exchange Listing Rule implications arising from a proposed transaction are promptly identified and steps are taken to procure the listed issuer’s compliance with the Exchange Listing Rules.**

**Failure to comply with the notifiable transactions requirements of the Exchange Listing Rules deprives investors of their right to the timely receipt of information relevant to their investment decisions, and for shareholders, their right to vote on the transactions which require their prior approval. Such failure has a negative impact on market integrity and investors’ confidence in our securities market.**

**The Listing Committee of The Stock Exchange of Hong Kong Limited (“Listing Committee”)**

## **CRITICISES:**

**(1) Wai Chi Holdings Company Limited (“Company”) (Stock Code: 1305)**

for breaching Rules 14.23B(1), 14.34, 14.38A and 14.40 of the *Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited* (“**Exchange Listing Rules**”) for failing to consult the Exchange for aggregation of transactions, and for failing to comply with the announcement and/or circular and prior shareholders’ approval requirements in relation to discloseable transactions and a major transaction;

**(2) Mr Chen Wei Wu (“Mr Chen”), current executive director of the Company;**

for breaching Rule 3.08(f) and his obligations under the *Declaration and Undertaking with regard to Directors* given to the Exchange in the form set out in Appendix 5B to the Exchange Listing Rules (“**Undertaking**”).

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For the avoidance of doubt, the Exchange confirms that the sanctions and directions in this news release apply only to the Company and Mr Chen, and not to any other past or present members of the board of directors (“**Board**”) of the Company.

## HEARING

On 28 October 2020, the Listing Committee conducted a hearing into the conduct of the Company and Mr Chen in relation to their obligations under the Exchange Listing Rules and the Undertaking.

## FACTS

This case involves the Company’s five subscriptions of wealth management products (“**WMPs**”) (namely, index or asset linked deposits) between September and December 2018. The total amount of these investments (the “**Investments**”) was approximately HK\$153 million, recorded as “financial assets at fair value through profit or loss” in the Company’s annual results for the year ended 31 December 2018 (“**2018 Financial Assets**”) and representing 9.8 per cent of the Company’s total assets as at 31 December 2018.

Each of the Investments (except Product 4) constituted a discloseable transaction. Additionally, the three subscriptions made in December 2018 (“**Products 1 to 3**”) in aggregate constituted a major transaction, and the other two subscriptions made in September 2018 (“**Products 4 to 5**”) in aggregate constituted a discloseable transaction. The Company did not comply with the announcement and/or circular and prior shareholders’ approval requirements pursuant to Chapter 14 of the Exchange Listing Rules in relation to the Investments.

Mr Chen was solely responsible for the Investments. He did not notify the Board or consult professional advisers in relation to the proposed subscription of the WMPs, as he considered the Investments were in essence time cash deposits and did not constitute “transactions” under Rule 14.04(1)(a).

The Exchange commenced enquiries in March 2019 about the Company’s 2018 Financial Assets. Despite having the Exchange’s guidance materials on the acquisition of WMPs (eg *Enforcement Newsletter, July 2018*) and having been informed on two occasions that each of the Investments constituted a “transaction” under the Exchange Listing Rules, no remedial action was taken by the Company in relation to the announcement and/or circular and shareholders’ approval requirements.

**EXCHANGE LISTING RULE REQUIREMENTS**

The Investments were subject to the following requirements of the Exchange Listing Rules:

- (a) Rule 14.04(1)(a) provides that the definition of a “transaction” includes the acquisition of assets.
- (b) Rules 14.22 and 14.23 provide that the Exchange may require listed issuers to aggregate a series of transactions and treat them as if they were one transaction if they are all completed within a 12-month period or are otherwise related. Factors which the Exchange will take into account in determining whether transactions will be aggregated include whether the transactions are entered into with the same party or with parties connected or otherwise associated with one another. Rule 14.23B(1) provides that a listed issuer must consult the Exchange before it enters onto any proposed transaction if any such circumstances exist.
- (c) Rule 14.34 provides that a listed issuer must publish an announcement as soon as possible after the terms of, *inter alia*, a major transaction or a discloseable transaction have been finalised and additionally (at the relevant time), the Exchange Listing Rules provided that a listed issuer must inform the Exchange of such a transaction.
- (d) Rules 14.38A and 14.40 provide that a listed issuer which has entered into a major transaction must send a circular to its shareholders and the transaction must be made conditional upon shareholders’ approval.

For a director:

- (a) Rule 3.08 provides that the Exchange expects directors, both collectively and individually, to fulfil fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law, including a duty to apply such degree of skill, care and diligence as may reasonably be expected of a person of his knowledge and experience and holding his office within the issuer (Rule 3.08(f)); and
- (b) pursuant to his Undertaking, a director is under an obligation to comply to the best of his ability with the Exchange Listing Rules and to use his best endeavours to procure the Company’s compliance with the Exchange Listing Rules.

**LISTING COMMITTEE'S FINDINGS OF BREACH**

The Listing Committee considered the written and oral submissions of the Listing Division, the Company, and Mr Chen and concluded as follows:

**Company's breaches**

These Investments were not pure time deposits and were not classified as such by either the relevant banks or the Company's auditor. Each of the Investments constituted a "transaction" under Chapter 14 of the Exchange Listing Rules as it involved an acquisition of assets (ie the WMPs). This is consistent with the Company's classification of the Investments as "Financial assets at fair value through profit or loss", as opposed to "Bank balances and cash" in both its annual results announcement for the year ended 31 December 2018 and annual report for the year ended 31 December 2018. Further, the Company acknowledged at the hearing that it was aware of the relevant guidance materials published by the Exchange at the relevant times when the Investments were made.

Based on the size tests, each of the Investments (except Product 4) constituted a discloseable transaction.

Additionally, the Investments should be aggregated under Rule 14.22 by virtue of the fact that Products 1 to 3 were acquired from the same party within a 12-month period and Products 4 to 5 were acquired from the same party on the same day. The subscriptions of Products 1 to 3 and Products 4 to 5, in aggregate, constituted a major transaction and a discloseable transaction, respectively.

Whilst the Listing Committee noted the Company's submission that the Investments were made at the request of the relevant banks to facilitate the provision of loan facilities even though these requirements were not included in the underlying loan facility agreements, such request did not excuse the Company from complying with the relevant Exchange Listing Rules.

In light of the above, the Listing Committee found that the Company breached Rules 14.23B(1), 14.34, 14.38A and 14.40 for failing to consult the Exchange for the purpose of aggregation of the transactions, and comply with the announcement and/or circular and prior shareholders' approval requirements in respect of the Investments.

**Mr Chen's breaches**

The Listing Committee concluded that Mr Chen breached Rule 3.08(f), and his Undertaking for failing to comply to the best of his ability with the Exchange Listing Rules and to use his best endeavours to procure the Company's compliance with the Exchange Listing Rules:

- (a) Mr Chen was aware of and approved the Company's subscription of the WMPs.
- (b) Despite the significant amounts of the Investments and the Company's regulations that any material resolutions relating to the overall interests of the Group and resource allocation must be raised for the Board's discussion and decision making, Mr Chen failed to notify the Board or seek professional advice when contemplating the subscription of the WMPs.
- (c) The Company's breaches arose from Mr Chen's misinterpretation of the definition of "transaction" under Rule 14.04(1). Whilst the Listing Committee noted Mr. Chen's submission that the Investments were made at the request of the relevant banks to facilitate the provision of loan facilities, such request did not constitute an exemption from the Company's obligation to comply with the relevant Exchange Listing Rules. Further, despite the Exchange's guidance materials available to the market, Mr Chen failed to procure the Company's compliance with the applicable Exchange Listing Rules in relation to the Investments.

**REGULATORY CONCERN**

This matter gives rise to a number of concerns over Mr Chen's ability to procure the Company's compliance with the Exchange Listing Rules:

- (1) Chapter 14 imposes clearly defined and unambiguous obligations on issuers, which are designed to safeguard and protect investors, as they rely on information in the public domain to make their investment decisions.
- (2) The Company's failure to comply with the announcement and/or circular and shareholders' approval requirements of the Exchange Listing Rules has deprived the Company's investors of their right to the timely receipt of information in relation to the Investments, and for the Company's shareholders, their right to vote on those transactions (where required).
- (3) The Company's repeated breaches demonstrate that Mr Chen was unfamiliar with the relevant Chapter 14 requirements for notifiable transactions.

**SANCTIONS**

Having made the findings of breach stated above, the Listing Committee decided to:

- (1) criticise the Company for its breach of Rules 14.23B(1), 14.34, 14.38A and 14.40; and
- (2) criticise Mr Chen for his breach of Rule 3.08(f) and his Undertaking.

The Listing Committee further directed:

- (3) Mr Chen is required to (a) attend 18 hours of training on regulatory and legal topics including Exchange Listing Rule compliance (**Training**). The Training must include at least three hours on each of (i) director's duties; (ii) the Corporate Governance Code; and (iii) the Exchange Listing Rule requirements for notifiable transactions, to be provided by training providers approved by the Listing Division and completed within 90 days from the date of the decision letter of the Listing Committee; and (b) provide the Listing Division with the Training provider's written certification of full compliance with these requirements within two weeks after Training completion.
- (4) The Company is to publish an announcement to confirm that the above direction has been fully complied with within two weeks after Training completion.
- (5) The Company is to submit a draft announcement referred to above for the Listing Division's comment and may only publish the announcement after the Listing Division has confirmed it has no further comment on it.
- (6) Following the publication of this news release, any changes necessary and any administrative matters which may emerge in the management and operation of any of the directions set out in paragraphs (3) to (5) above are to be directed to the Listing Division for consideration and approval. The Listing Division should refer any matters of concern to the Listing Committee for determination.

Hong Kong, 21 December 2020