



3 June 2005

By fax (2295 3180) and by post

Our Ref.: C/CFC, M35194

Ms. Kelly Wick
Assistant Vice President
Listing Division
Hong Kong Exchanges and Clearing Limited
11/F., One International Finance Centre
1 Harbour View Street
Central, Hong Kong

Dear Ms. Wick,

Further submission on “[Consultation Paper on New Structure for Listing Decision-making](#)”

The Hong Kong Institute of Certified Public Accountants (“the Institute”) submitted comments in response to the above-referenced consultation paper on 29 April 2005.

Further comments – Draft Rule 2B.12

Implications for the Memorandum of Understanding between the Institute and The Stock Exchange of Hong Kong Limited (SEHK)

We have recently been alerted to certain Draft Main Board Rule Amendments contained in Appendix 1 to the consultation paper, which are of significant concern to the Institute, but which we omitted to mention in our earlier submission. Our concern relates specifically to proposed Rule 2B.12.

Proposed Rule 2B.12(4) specifies the sanctions that the Adjudicator or the Disciplinary Review Panel may impose against a professional adviser. The term “professional adviser” includes “*any sponsor, ... accountant, ... retained by an issuer or any of its subsidiaries to provide professional advice in relation to a matter governed by the Exchange Listing Rules*” (Proposed Rule 2B.11). The term “accountant” is not further defined.

We are of the view that the proposed Rule 2B.12(4) will have a potentially significant effect on professional advisers, particularly given that, under the proposed rule, the grounds for taking disciplinary action against a professional adviser include negligence, which goes beyond the scope of the existing rules. The Institute considers that this is sufficiently important to warrant being brought specifically to the attention of the respective professional bodies, or at least to have been highlighted in the commentary section of the consultation paper.

As you will be aware, there is a Memorandum of Understanding (MOU) between the SEHK and the Institute, in which the SEHK agreed that it will not make any rules under section 23(2) of the Securities and Futures Ordinance (Cap.571) (SFO), or make any public finding, or impose any penalty or sanctions or take other disciplinary action under the Listing Rules in respect of professional accountants in private practice, save in relation to the circumstances specified under paragraph 3.1 of the MOU.



We understand that the Law Society has raised similar issues on the proposed Rule 2B.12(4) and we share the Law Society's concern that this rule, if implemented, could erode the framework set out by the MOU, which is an arrangement that has been given statutory recognition under section 23(8) of the SFO.

While we note that, under the proposed Rule 2B.11(5), the Adjudicator's power to instigate disciplinary proceedings against a professional adviser is "*subject to any arrangements agreed from time to time between the Exchange and the professional body of which the adviser is a member or by whom the adviser is regulated*", the intention and scope of this proviso are not clear to us.

Severity of the sanctions

Corporate finance practitioners among our members also have expressed understandable concern about the extensive and potentially severe impact of the sanctions imposed under proposed Rule 2B.12(4). The Draft Rule 2B.12(4) empowers the Adjudicator or the Disciplinary Review Panel to "*state publicly that the Exchange has concerns about the ability of that adviser to perform its role as a professional adviser to the standard expected by the Exchange when assisting an issuer to comply with its obligations under the Listing Rules*". This could, in practice, have very damaging repercussions on the ability of a professional adviser to obtain work in future.

Whilst the Listing Rules currently empower the Listing Committee to, amongst other things, "*ban a professional adviser...from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period*", the effect of the existing sanction is clearly limited and the penalty is not necessarily made public. The proposed new sanction, on the other hand, is open-ended and could have the effect of indirectly blacklisting a professional adviser for an indefinite period. We believe that the proposed new sanction needs to be re-considered. The intention and scope of a sanction of this nature must be more clearly defined and its full implications need to be properly discussed and understood.

We should be grateful if you would take note of the additional comments, as set out in this letter, when considering the Institute's response to the above consultation paper. If you have any questions on this submission, please feel free to contact me at the Institute on 2287 7084.

Yours sincerely,

A handwritten signature in black ink that reads 'Peter Tisman'. The signature is written in a cursive, flowing style.

Peter Tisman
Director, Specialist Practices
Hong Kong Institute of CPAs

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