

August 2019

Suspension of Trading – Listed Issuers with Disclaimer or Adverse Audit Opinion on Financial Statements

1. The Stock Exchange of Hong Kong Limited (the “**Exchange**”) sought market’s views on the proposal to introduce a specific suspension requirement applicable to listed issuers with disclaimer or adverse audit opinion on their financial statements¹ in September 2018 (the “**Consultation Paper**”). The results of the consultation² were published in May 2019 (the “**Consultation Conclusion**”).
2. The proposal in the Consultation Paper sought to afford better investors’ protection by safeguarding the quality and reliability of financial information published by listed issuers. It also sought to encourage issuers to strengthen their risk management and internal control systems, and to resolve audit issues promptly with their auditors.
3. A disclaimer or adverse opinion on the financial statements indicates that the risk of misstatements could be both material and pervasive, and investors may not have sufficient information to make an informed assessment of the issuer’s financial position.
4. In the Consultation Paper, the Exchange proposed new Main Board Listing Rules 13.50A and GEM Listing Rules 17.49B (the “**Proposed Rules**”):
 - the Exchange will normally require suspension of trading in an issuer’s securities if the issuer publishes a preliminary results announcement for a

¹ <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2018-Adverse-Audit-Opinion/Consultation-Paper/cp201809.pdf>

² [https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2018-Adverse-Audit-Opinion/Conclusions-\(May-2019\)/cp201809cc.pdf?la=en](https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2018-Adverse-Audit-Opinion/Conclusions-(May-2019)/cp201809cc.pdf?la=en)

financial year and the auditor has issued, or has indicated that it will issue, a disclaimer or adverse opinion on the issuer's financial statements; and

- the suspension will normally remain in force until the issuer has addressed the issues giving rise to the disclaimer or adverse opinion, provided comfort that a disclaimer or adverse opinion in respect of such issues would no longer be required, and disclosed sufficient information to enable investors to make an informed assessment of its financial positions.
5. After balancing comments from respondents and Exchange's rationale, the Proposed Rules have been revised with the following modifications:

(a) Modified suspension requirement

Suspension requirement will be dis-applied where (i) the disclaimer or adverse opinion relates solely to going concern; or (ii) the underlying issue giving rise to the audit modification has been resolved before the issuer publishes the preliminary results announcement.

(b) Transitional arrangement

New Main Board Listing Rules 13.50B³ and GEM Listing Rules 17.49C⁴ are now added regarding the transitional arrangement. The remedial period will be extended to 24 months for both Main Board and GEM issuers that are suspended solely due to a disclaimer or adverse opinion being issued in the first two financial years after the implementation of the new rules. Accordingly, the 24 months remedial period will apply to issuers suspended solely due to disclaimer or adverse opinions on their financial statements for the financial years commencing on or after 1 September 2019 and up to and including 31 August 2021.

(c) Modified remedial period

Under the current delisting rules, issuers may be delisted after their

³ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Listing-Rules-Contingency/Amendments-to-Main-Board-Listing-Rules/2019/Update-No-125/mb_aao_1905.pdf?la=en

⁴ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Listing-Rules-Contingency/Amendments-to-GEM-Listing-Rules/2019/Update-No-60/gem_aao_1905.pdf?la=en

continuous suspension for 18 months (or 12 months for a GEM issuer). The Exchange acknowledged that where the resolution of issues giving rise to the disclaimer or adverse opinion is outside the issuer's control, the remedial period of 18 months may be insufficient for the issuers to resolve the issues. As such, it intends to amend the guidance letter on long suspension and delisting (HKEx-GL95-18⁵) to clarify that if the issuer satisfies the Exchange that it has made all reasonable efforts to resolve the issues giving rise to the disclaimer or adverse opinion but, due to reasons outside of its control, such underlying issues remain unresolved, a longer remedial period will be considered, with the duration of the extension to be determined on a case by case basis. Examples of circumstances which would be considered to be beyond an issuer's control include: (a) a delay in government granting a requisite approval due to change in government policies; (b) a temporary suspension of business upon request of a regulatory or government authority due to changes in regulatory requirements; and (c) where the audit issue can only be completely resolved by a court order or final arbitral award with respect to outstanding proceedings.

6. The new Main Board Listing Rules 13.50A⁶ and 13.50B⁷ and the new GEM Listing Rules 17.49B⁸ and 17.49C⁹ will be applied to issuers' preliminary annual results announcements for financial years commencing on or after 1 September 2019.
7. In respect of issuers currently with disclaimer or adverse opinions on their financial statements, unless the issuers continue to receive such opinion on their financial statements for the financial years commencing on or after 1 September 2019 and the issues giving rise to the audit modifications remain unresolved, they will not be required to suspend trading under the new rules. For the avoidance of doubt, the new rules do not apply to financial statements with a qualified opinion or a clean opinion with an emphasis of matter.

⁵ https://en-rules.hkex.com.hk/sites/default/files/net_file_store/new_rulebooks/g/1/GL95-18.pdf

⁶ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Listing-Rules-Contingency/Amendments-to-Main-Board-Listing-Rules/2019/Update-No-125/mb_aao_1905.pdf?la=en

⁷ *ibid*

⁸ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Listing-Rules-Contingency/Amendments-to-GEM-Listing-Rules/2019/Update-No-60/gem_aao_1905.pdf?la=en

⁹ *ibid*

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For enquiries, please contact:

Dennis Fong & Co., Solicitors *(in Association with Links Law Offices)*

Dennis Fong

Partner

Tel: +852 2592 1978

Email: dennis.fong@llinkslaw.com.hk

Bosco Leung

Counsel

Tel: +852 2592 1978

Email: bosco.leung@llinkslaw.com.hk