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Skadden

Hong Kong Regulatory Update

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This Hong Kong regulatory update provides a brief overview of the principal Hong Kong regulatory developments in the preceding three months relevant to companies listed or proposed to be listed on The Stock Exchange of Hong Kong Limited (**HKEx**) and their directors, management and advisers. The updates include HKEx announcements and rule or guidance changes, Securities and Futures Commission (**SFC**) decisions and updates, and HKEx and SFC enforcement-related news. In this update we cover:

- HKEx publishes results of its latest review of listed companies' financial reports
- HKEx revises guidance letter clarifying the conditions for waivers from strict compliance with Listing Rule 4.04(1)
- HKEx successfully launches Closing Auction Session for its securities market
- HKEx revises publication window for publishing on its website
- SFC and HKEx issue joint consultation on listing regulation
- SFC publishes annual review of HKEx's performance in regulating listing matters
- CSRC and SFC jointly approve Shenzhen-Hong Kong Stock Connect
- SFC publishes Takeovers Bulletin No. 37
- Recent enforcement actions and penalties

HKEx Publishes Results of Its Latest Review of Listed Companies' Financial Reports

In July 2016, the HKEx published a report summarizing key findings from its review of 100 periodic financial reports released by listed companies between March 2015 and April 2016. The HKEx's report highlighted the following areas where there is room for improvement:

- **Enhancements to MD&A.** Management Discussion and Analysis (**MD&A**) should be balanced (with coverage of both good and bad news) and sufficiently tailored to the company's specific circumstances, including coverage of the nature and impact of significant events or material balances and transactions.
- **Disclosures under the Companies Ordinance.** Companies should pay attention to the recent Listing Rule amendments with reference to the new Companies Ordinance (Cap 622), which is applicable to all companies (whether or not they are incorporated in Hong Kong).

- **Resolution of Issues Relating to Modified Auditors' Reports.** Companies whose financial statements include auditors' reports with modified opinions should take proactive steps to resolve the issues identified with their auditors as soon as practicable.
- **Extended Auditor Reporting.** Companies, in particular their audit committees, should note that for audits of financial statements for periods ending on or after 15 December 2016, they should have in-depth conversations with their auditors about key audit matters, going-concern issues, and other significant events or transactions that occurred during the reporting period.
- **Key HKFRSs That Will Soon Become Effective.** Companies should note that a number of key accounting standards have been issued and will soon become effective, such as Hong Kong Financial Reporting Standard (**HKFRS**) 9, "Financial Instruments"; HKFRS 15, "Revenue from Contracts with Customers"; and HKFRS 16, "Leases". Companies should perform a detailed review of these standards as soon as practicable, as these new standards are expected to have material impact on some companies, particularly on their information systems, accounting processes, internal controls and business contracting processes.
- **Rigorous Assessment of Impairment of Assets.** Companies should aim to improve the quality of their disclosures of how they carried out their work on the impairment of assets, particularly where the recoverable amount was based on value in use, which required management's estimation of cash-flow projections, growth rates and appropriate discount rates.
- **Non-HKFRS Financial Information.** Companies that choose to present non-HKFRS financial information to provide additional insight into their performance should ensure that the information is not misleading, would not obscure their financial results and financial position, and would not provide an incomplete description of their financial results based on accounting standards.
- **Determination of Control Over Investees.** Companies should ensure that the relevant facts and circumstances are clearly disclosed so that investors and other users of financial statements understand why the company has control over an investee, particularly in cases where the company only has *de facto* control over the investee.

The overarching principle for high-quality financial reporting is that the "information provided should be relevant, material and entity-specific". In addition, companies should avoid making irrelevant and immaterial disclosures.

HKEx Revises Guidance Letter Clarifying the Conditions for Waivers From Strict Compliance With Listing Rule 4.04(1)

HKEx-GL25-11 sets out the conditions for the waivers from strict compliance with Listing Rule 4.04(1), which requires a listing applicant to include in the accountants' report its consolidated results for each of the three financial years immediately preceding the issue of the listing document. Historically, the HKEx has granted waivers from this requirement provided that the company lists before the end of the third month after the end of its three-year track record period, subject to certain conditions (including that it present the third year's financial information if it does not issue its listing document until the third month after the latest year end).

In July 2016, the HKEx clarified that it will not ordinarily grant the Listing Rule 4.04(1) waiver if there is a material adverse change in the applicant's performance since the date to which the latest audited accounts of the applicant have been made up and/or a downward trend in an applicant's recent business performance to the extent that it may not meet the minimum profit requirement if such waiver is not granted. In other cases where a waiver has been recommended, the HKEx may impose conditions on the disclosure in the listing document to ensure that there is reasonably sufficient information to enable investors to have an informed assessment of the company absent an accountants' report that complies with Rule 4.04(1), including (i) a profit/loss forecast; (ii) a qualitative analysis of the change in the applicant's performance since the date to which the latest audited accounts of the applicant have been made up to the latest practicable date and how it compares with the previous period; and (iii) the detailed reasons for the change.

HKEx Successfully Launches Closing Auction Session for Its Securities Market

On 25 July 2016, the HKEx introduced its Closing Auction Session (**CAS**) for securities, following extensive research on overseas practices, consultation with market participants, and consideration of the needs and concerns of various market segments. A "closing auction" is a trading mechanism commonly used in securities markets to allow execution at securities' closing prices. During a closing auction, market participants may input buy and sell orders, with the price that most volume can be traded at forming the closing price. All orders will then be executed at that price.

For CAS securities, the market close is between 4:08 p.m. and 4:10 p.m. on normal trading days; for other securities, it is 4:00 p.m. The closing time for the trading of stock index futures and options, currency futures and commodities futures in HKEx's derivatives market has been extended from 4:15 p.m. to 4:30 p.m. on normal trading days, other than the last trading day of the month.

There is a two-stage price limit to curb excessive price movements during the CAS: (i) initially at ±5 percent from the reference price (based on the median of five nominal prices in the last minute of the Continuous Trading Session (*i.e.*, from 3:59 p.m. to 4:00 p.m.), and then (ii) between the best bid and best ask.

HKEx Revises Publication Window for Publishing on Its Website

To align with the revised closing time for trading equity index futures and options due to the implementation of CAS in July (with effect from 25 July 2016), the publication windows for announcements and notices (other than those specified to be excluded in Main Board Listing Rule 2.07C(4)(a) or GEM Listing Rule 16.18(3)(a)) will be changed as follows:

Current Publication Windows	New Publication Windows After Implementation of CAS
Normal business day: 6:00 a.m. to 8:30 a.m. 12:00 p.m. to 12:30 p.m. 4:15 p.m. to 11:00 p.m.	**Normal business day:** 6:00 a.m. to 8:30 a.m. (no change) 12:00 p.m. to 12:30 p.m. (no change) **4:30 p.m.** to 11:00 p.m.
On the eves of Christmas, New Year and Lunar New Year when there is no afternoon trading session: 6:00 a.m. to 8:30 a.m. 12:00 p.m. to 11:00 p.m.	**On the eves of Christmas, New Year and Lunar New Year when there is no afternoon trading session:** 6:00 a.m. to 8:30 a.m. (no change) **12:30 p.m.** to 11:00 p.m.
Non-business day preceding a business day: 6:00 p.m. to 8:00 p.m.	**Non-business day preceeding a business day:** 6:00 p.m. to 8:00 p.m. (no change)

SFC and HKEx Issue Joint Consultation on Listing Regulation

Under the current regulatory regime, the SFC is the principal regulator of Hong Kong's securities and futures markets, and is responsible for administering the laws governing those markets. The HKEx is the frontline regulator of all listing-related matters and of companies listed on its markets, and is responsible for the administration of the listing rules of the relevant markets. Furthermore, under the dual filing arrangement, a perspective listing applicant must also file via the HKEx a copy of its prospectus for review by the SFC. The SFC will comment on and may object to the listing application.

On 17 June 2016, the SFC and the HKEx jointly issued a consultation on proposed enhancements to the HKEx's decision-making and governance structure for listing regulation. Under the proposals, the listing function will remain within the HKEx, which will continue to be the frontline regulator for listing matters, and the SFC's powers and functions in relation to listing matters will remain unchanged. The Listing Committee, together with the Listing Department, will continue to decide a large majority of initial listing applications and post-listing matters. However, two new HKEx committees on which the SFC and the HKEx are equally represented will be established:

- **Listing Policy Committee**, which will initiate, steer and decide listing policy with participation by representatives of the HKEx Board and the Takeovers and Mergers Panel, and
- **Listing Regulatory Committee**, which will decide on IPO and post-IPO matters that have suitability concerns or broader policy implications. It will also replace the existing Listing (Review) Committee as the review body for decisions made by the Listing Committee.

Other proposed changes include:

- for matters reserved for the Listing Policy Committee and the Listing Regulatory Committee, the Listing Committee will put forward nonbinding views to them;
- the SFC will no longer as a matter of routine issue a separate set of comments on the filings made by new applicants; and
- the chief executive of the HKEx will no longer be a member of the Listing Committee, but will instead become a member of the Listing Policy Committee.

The SFC and the HKEx have extended the consultation period to 18 November 2016.

SFC Publishes Annual Review of HKEx's Performance in Regulating Listing Matters

On 24 June 2016, the SFC published its annual review of the performance of The Stock Exchange of Hong Kong Limited (**Exchange**) in its regulation of listing matters. The review covered matters from 2014, focusing on the decision-making process and procedures for each of the Listing Department's operational teams, with a particular emphasis on:

- issuance of guidance relating to the Listing Rules;
- whether reverse takeover transactions were processed in accordance with the guidance letter issued by the HKEx in May 2014; and
- the HKEx's monitoring of liquidity provision performance of structured products companies.

The SFC was of the view that, within the scope reviewed during the period, the HKEx's operational procedures and decision-making processes, other than certain procedures involving issuance of guidance to the market, were appropriate to enable it to discharge its statutory obligations to maintain an orderly, informed and fair market.

The SFC recommended that:

- in regards to guidance relating to the Listing Rules, the HKEx reviews the process for determining when post-listing matters, such as waiver applications, rule interpretations or decisions, should be escalated to the Listing Committee for its consideration and endorsement — relevant information and the rationale for decisions should be clearly set out in published guidance materials to facilitate the public's understanding of the issues; and
- in regards to liquidity performance of structured product companies, the Exchange should adopt a more stringent approach towards repeated noncompliance of the active quote requirement under the Guide on Enhancing Regulation of the Listed Structured Products Market.

CSRC and SFC Jointly Approve Shenzhen-Hong Kong Stock Connect

To further promote the development of capital markets in both the Mainland China and Hong Kong, the Securities Regulatory Commission (**CSRC**) and the SFC jointly announced the approval of the Shenzhen-Hong Kong Stock Connect on 16 August 2016. Similar to the Shanghai-Hong Kong Stock Connect, the Shenzhen-HK Stock Connect will comprise the Northbound Shenzhen Trading Link and the Southbound Hong Kong Trading Link and will adopt the principal arrangements under the Shanghai-Hong Kong Stock Connect.

Eligible shares

In respect to the Northbound Shenzhen Trading Link, eligible shares refer to any constituent stock of the SZSE Component Index and SZSE Small/Mid Cap Innovation Index that has a market capitalization of RMB6 billion or above and all SZSE-listed shares of companies that have issued both A shares and H shares. At the initial stage of the Northbound Shenzhen Trading Link, investors eligible to trade shares that are listed on the ChiNext Board of SZSE under the Northbound Shenzhen Trading Link will be limited to institutional professional investors as defined in the relevant Hong Kong rules and regulations. Subject to the resolution of related regulatory issues, other investors may subsequently be allowed to trade such shares.

In respect of the Southbound Hong Kong Trading Link under Shenzhen-Hong Kong Stock Connect, the scope of eligible shares will be the constituent stocks of the Hang Seng Composite LargeCap Index and Hang Seng Composite MidCap Index, any constituent stock of the Hang Seng Composite SmallCap Index that has a market capitalization of HK$5 billion or above, and all SEHK-listed shares of companies that have issued both A and H shares.

As to the detailed formulas and methods for calculating the above-mentioned market capitalizations, the Shenzhen Stock Exchange (**SZSE**) and HKEx will make separate announcements in due course.

In respect to the Northbound Shanghai Trading Link and the Southbound Hong Kong Trading Link under Shanghai-Hong Kong Stock Connect, the scope of eligible shares will remain unchanged for the time being.

Investment Quota

There will be no aggregate quota under Shenzhen-Hong Kong Stock Connect. The Shenzhen-Hong Kong Stock Connect daily quota will be the same as that currently under Shanghai-Hong Kong Stock Connect, *i.e.*, a daily quota of RMB13 billion for the Northbound Shenzhen Trading Link and RMB10.5 billion for the Southbound Hong Kong Trading Link under Shenzhen-Hong Kong Stock Connect. The investment quota may be adjusted by the parties in light of actual operational performance.

The aggregate quota under Shanghai-Hong Kong Stock Connect will be abolished with immediate effect on the date of this announcement.

Formal Launch

The Shenzhen-Hong Kong Stock Connect will only be launched after (i) preparation for the relevant trading and clearing rules and systems has been finalized, (ii) all regulatory approvals have been granted, (iii) market participants have sufficiently adapted their operational and technical systems, and (iv) all necessary arrangements for cross-boundary regulatory and enforcement cooperation, as well as investor education, have been put in place. It is expected to take four months from the date of the joint announcement to complete the preparations.

SFC Publishes Takeovers Bulletin No. 37

In June 2016, the SFC issued a Takeovers Bulletin (Issue No. 37) regarding issues relating to the Codes on takeovers, mergers and share buy-backs. The highlights of this bulletin include the following:

Confidentiality, Talks Announcements and Minimum Suspensions

- The SFC noticed a growing trend of "talks" announcements being issued under Rule 3.7 of the Takeovers Code.

- The SFC noted that the publication of these Rule 3.7 announcements has an impact on the market price of the subject offeree companies and therefore reminded parties, their advisers and subject offeree companies that these announcements should not be issued as a matter of convenience.
- The SFC also emphasized that if confidentiality of negotiation of an offer is maintained, there should not be a need to issue a "talks" announcement as the obligation to make an announcement under the other provisions of Rule 3 should not arise.
- The SFC would normally expect Rule 3.7 announcements to be relatively short and to disclose no more than the fact that talks are taking place, and would not normally find it acceptable for information relating to the indicative offer price and/or the form of consideration to be disclosed in these announcements.
- The SFC reiterated the importance of maintaining confidentiality and taking all necessary steps to ensure there is no leakage of information prior to the announcement of a firm intention to make an offer.
- The SFC also reiterated that every effort should be made to avoid unnecessary trading suspensions.

Engagement of Financial Advisers on Code-Related Transactions

- The SFC emphasized that retention of a legal adviser to advise on a transaction does not absolve the financial advisor from its obligations under Section 1.7 of the Introduction to the Takeovers Code (*i.e.*, financial advisors' competence, professional expertise and adequate resources to fulfil their role and discharge their responsibilities).
- The SFC noted that it is common for a potential offeror or an offeree company to engage a financial advisor in Code-related transactions at an early stage.
- The SFC takes the view that a financial advisory relationship arises as soon as an advisor starts working with its client and that the signing of an engagement letter should not be determinative of when an advisory relationship arises. Accordingly, a financial advisor should ensure proper policies and procedures are in place to allow prompt communication among all its relevant departments to ensure the provisions of the Takeovers Code (in particular Rules 21 and 22, *i.e.*, restrictions on dealings before and during the offer and disclosure of dealings during the offer period) are observed.

Whitewash Waiver May Not Be Granted if There Is Non-Compliance With the Listing Rules or Other Applicable Rules and Regulations

- The SFC emphasized that, notwithstanding the compliance with all relevant requirements under the Takeovers Code, it may not grant a whitewash waiver in respect to a transaction involving the issue of new securities under Note 1 on dispensations from Rule 26 if the subject transaction does not comply with the other applicable rules and regulations, including Listing Rules.
- In a whitewash transaction, if there are concerns about compliance with other applicable rules and regulations, parties and their advisers are reminded to consult the relevant authority (*e.g.*, the Stock Exchange if there is any concern about compliance with the Listing Rules). The executive should also be informed of any relevant matters.
- A Rule 3.5 announcement relating to a whitewash waiver should include the following statement or a statement of similar effect:

"As at the date of this announcement, the [Company] does not believe that the [proposed transaction(s)] gives rise to any concerns in relation to compliance with other applicable rules or regulations (including the Listing Rules). If a concern should arise after the release of this announcement, the Company will endeavour to resolve the matter to the satisfaction of the relevant authority as soon as possible but, in any event, before the dispatch of the whitewash circular. The Company notes that the Executive may not grant the whitewash waiver if the [proposed transaction(s)] does not comply with other applicable rules and regulations]."

Recent Enforcement Actions and Penalties

The Listing Committee Censures Rosan Resources and Certain of Its Directors for Breaching Listing Rules and/or the Director's Undertaking

The Listing Committee has censured Rosan Resources (**Rosan**) for breaches of Rules 14.34, 14.38A and 14.40 of the Listing Rules and certain of its directors for breaches of Rule 3.08(f) of the Listing Rules and their respective Directors' Undertakings. The Listing Committee has also directed Rosan to appoint an independent compliance adviser and to comply with director training requirements.

The penalties arose from a series of transactions (**Acquisition**) entered into by Rosan to purportedly acquire a target company (**Target**) from the vendor (**Vendor**). The Acquisition did not ultimately materialize. The manner in which certain deposits were paid and refunded raised concerns with the HKEx.

The table below summarizes the material agreements in connection with the Acquisition.

Date	Relevant Agreement	Description
16 March 2011	Framework Agreement	A subsidiary of Rosan (Subsidiary B) agreed to acquire the Vendor's shareholding in the Target and would pay RMB50 million as deposit.
17 March 2011	Supplemental Agreement	Subsidiary B agreed to pay (and did pay) RMB51.5 million to the Vendor (RMB50 million as deposit already agreed in the Framework Agreement, and RMB1.5 million for the Vendor's capital).
15 December 2011	Further Supplemental Agreement	The Vendor confirmed that it would, subject to formal agreement, transfer its interest in the Target to Subsidiary B; Subsidiary B would pay (and did pay) a further RMB60 million as deposit to the Vendor.
31 December 2012	Cancellation Agreement	Subsidiary B and the Vendor agreed to cancel the Framework Agreements and allowed the Vendor to refund the deposits paid (RMB111.5 million in total) (Overpaid Deposit) without interest or security in two equal tranches by 30 June and 31 December 2013.
31 December 2012	Acquisition Agreement	On the same day as the Cancellation Agreement was completed, another subsidiary of Rosan (Subsidiary A) agreed with the Vendor to acquire the Vendor's equity interest in the Target for RMB63 million. This was announced as a disclosable transaction. Eventually, Subsidiary A paid RMB55 million to the Vendor (Part Payment). However, the Part Payment included RMB22 million that was only payable upon completion as contemplated of the Acquisition Agreement (Advance Payment).
11 November 2013	Termination Agreement	Subsidiary A agreed with the Vendor to terminate the Acquisition. It was announced that the Vendor would refund the Part Payment to Subsidiary A by 31 December 2013.

While Rosan had announced the Acquisition Agreement, it did not disclose any of the Framework Agreements or the Cancellation Agreement. On 14 November 2013, Rosan announced that the Part Payment had been fully settled and that approximately RMB103.1 million "had been settled to the Group" as part refund of the Overpaid Deposit. On 26 December 2013, Rosan received the outstanding balance (RMB8.4 million) from the Vendor.

Rosan's Breaches

- **Financial Assistance.** The Cancellation Agreement allowed the Vendor to return the Overpaid Deposit in two equal tranches to Subsidiary B within six to 12 months. The Listing Committee took the view that the Overpaid Deposit was made for the purported acquisition, and in accordance with the agreed terms under the Framework Agreement. Instead of requiring the Vendor to return the Overpaid Deposit within three days after the cancellation (the timing of refund of deposit under the Framework Agreement is three days), or requiring refund within a reasonable period of time, the Group entered into the Cancellation Agreement which allowed the refund to be postponed without interest or security to the end of June and December 2013, *i.e.*, one tranche by six months and the other tranche by almost a year. The Listing Committee concluded the Cancellation Agreement in substance constituted a granting of credit (*i.e.* financial assistance under the Listing Rules) by Rosan. According to the size test results, such financial assistance constituted a major transaction under the Listing Rules.
- **Aggregation of Transactions.** Rosan would further pay RMB63 million to the Vendor under the Acquisition Agreement. The consideration ratio in respect of such transaction constituted, and was announced as a discloseable transaction. Together with the then outstanding Overpaid Deposits (RMB111.5 million) under the Cancellation Agreement, the Company in total had committed RMB174.5 million (RMB63 million plus RMB111.5 million) to the Vendor at that time. The Listing Committee took the view that these transactions as inter-related and should be aggregated in the above circumstances under Rules 14.22 and 14.23. Therefore, the consideration for the aggregated transactions (including the Cancellation Agreement and the Acquisition Agreement) should be RMB174.5 million (RMB111.5 million plus RMB63 million). Based on the size test results, the series of transactions as a whole constituted a major transaction subject to the announcement, circular and

shareholders' approval requirements. However, Rosan only announced the Acquisition Agreement as a discloseable transaction. The Listing Committee therefore concluded that Rosan breached Rules 14.34 (in respect of the Cancellation Agreement), 14.38A and 14.40.

The Directors' Breaches

The Listing Committee concluded that the directors of Rosan (including executive directors, non-executive directors and independent non-executive directors) at the relevant time of the Acquisition (Relevant Directors) had not exercised such degree of skill, care and diligence as may be reasonably expected under the Listing Rules to, among other things, have due regard to Rosan's interests in deposit payments for the Acquisition and refund and failed to use their best endeavours to procure Rosan's compliance with the Listing Rules, in particular:

- the Vendor was allowed to retain the Overpaid Deposit for six to 12 months under the Cancellation Agreement, the value of which exceeded that of the Vendor's interest in the Target, without interest and security;
- the Part Payment was made to the Vendor notwithstanding that the Overpaid Deposit had not yet been refunded to the Group;
- the Advance Payment was made to the Vendor without completion taking place, not in accordance with the Acquisition Agreement;
- no immediate action was taken to procure the recovery of the first tranche refund of the Overpaid Deposit after it was due on 30 June 2013;
- the directors did not procure Rosan to consult professional advisers and/or the HKEx in a timely manner;
- the issues, including the implication of the terms of the Cancellation Agreement, its relationship with the Acquisition Agreement, the refund and the recovery of deposits, should have been raised to the full board for consideration;
- all of Rosan's independent non-executive directors were aware of the Framework Agreements, the Overpaid Deposit and the associated credit risks raised by the auditors, but they had not paid due consideration to the concern raised by the auditors and there was a lack of proactivity on their part in procuring Rosan's compliance with the Listing Rules; there is no evidence to suggest that they had followed up with the executive directors as to the recovery of the Overpaid Deposit and the payment of the Part Payment; they also failed to discharge the duties of the audit committee; and
- even if a director had not been present in a board meeting, he or she should have been aware of the relevant issues from his or her fellow directors after the meeting or after the meeting minutes were prepared.

SFC Commences MMT Proceedings Against Senior Executive of ENN Energy Over Alleged Insider Dealing

The SFC has commenced proceedings in the Market Misconduct Tribunal (**MMT**) against Cheng Chak Ngok, former executive director, chief financial officer and company secretary of ENN Energy Holdings Limited (**ENN Energy**), over alleged insider dealing in the shares of China Gas Holdings Limited (**China Gas**). On 7 December 2011, before the market opened, trading in China Gas' shares was suspended pending the release of a price sensitive information announcement. On 12 December 2011, ENN Energy and China Petroleum & Chemical Corporation issued a joint Pre-Conditional Voluntary General Offer (**PVGO**) announcement regarding their offer to acquire all of the outstanding shares of China Gas at HK$3.50, representing a premium of 25 percent to the previous closing price of China Gas' shares. On 13 December 2011, trading in the China Gas' shares resumed and the share price jumped 20.4 percent from the previous closing price of HK$2.80 to close at HK$3.37.

The SFC alleges that Cheng, who was aware of the details of the PVGO since mid-November 2011, purchased China Gas' shares via a nominee account between mid-November 2011 and early December 2011. The shares were sold shortly after the announcement at a profit of around HK$3 million. The SFC also alleges that Cheng was aware that the details of the PVGO (in particular, the offer price range) was relevant information, in that it was specific information about China Gas that was not generally known to the persons who are accustomed to or would be likely to deal in the listed securities of China Gas, but the information would, if generally known by such investors, be likely to materially affect the price of the listed securities.

Market Misconduct Tribunal Finds No Insider Dealing in Warderly Shares

In 2015, the SFC commenced proceedings in the Market Misconduct Tribunal (**MMT**) against Lo Hang Fong, a former company secretary of Warderly International Holdings Limited (Warderly), and Luu Hung Viet Derrick, a lender and potential investor of Warderly, for alleged insider dealing in the shares of Warderly. The SFC alleged that Lo and Luu were aware that Warderly was in a perilous financial position with banks withdrawing credit facilities when they sold the company's shares in 2007 and avoided a total loss of HK$12,564,516. The SFC alleged that Lo and Luu, being connected persons of Warderly, had knowledge of all or various of the following five events that constituted relevant information that, if made public, would have adversely affected Warderly's share price in a material way (Events): (i) the tightening of banking facilities since July 2006 and subsequent events such as overdue loans, rescheduled payments and demand letters issued by banks; (ii) Warderly's taking out of HK$2 million loan in November 2006 that carried a 5 percent interest rate per month; (iii) Warderly taking out another loan, totaling HK$7.2

million, in December 2006; (iv) Warderly's inability to repay the loans and interest after they came due in January 2007; and (v) Warderly's taking out a loan from Luu that carried a 3 percent interest rate per month.

Expert evidence proved important in the outcome of the case. One expert was of the view that the Events constituted relevant information at the time of dealing, while two others took the contrary view. The Tribunal was unanimous in finding that the evidence did not support the finding that all or any of the Events relied upon by the SFC had been shown to meet the requisite standard of proof to constitute relevant information that would, if generally known to persons accustomed to or likely to deal in the listed securities of Warderly, would be likely to materially affect the price of the listed securities. Accordingly, the Tribunal found no market misconduct in this case.

The Listing Committee Censures Global Bio-chem Technology Group Company Ltd. and Its Directors

In or around November 2010, Global Bio-chem Technology Group Company Ltd. (**Global Bio-chem**) and nine of its subsidiaries each granted a guarantee in favor of Bank of China (**BOC**) for the benefit of a long-term supplier for a maximum guaranteed amount of RMB3 billion. The guarantees were renewed for the years 2011 and 2012 and, in 2014 and 2015, were again renewed with five of the subsidiaries for maximum guaranteed amounts of RMB2.5 billion each year. The guarantees constituted (i) major transactions under Rule 14.06 (applicable percentage ratios either alone or aggregated exceeding 25 percent) and (ii) advances to an entity under Rule 3.13 (assets ratio over 8 percent), and therefore were subject to reporting, announcement and independent shareholders' approval. In censuring Global Bio-chem and certain of its directors for failing to announce and seek shareholder approval for the guarantees, the Listing Committee noted, among other things, that:

- there was no proper risk assessment carried out in respect of the guarantees despite the amounts being significant and the potential exposure to a high level of financial risk, particularly in the current challenging financial circumstances; and
- it appeared that no training or guidance materials on the Listing Rules had been given or provided to the staff, senior management and/or directors of Global Bio-chem's subsidiaries.

The Listing Committee Censures a Former Director and CFO of Tianli Holdings Group Limited for Failing to Cooperate With the HKEx

Xu Chun Cheng was an executive director and chief financial officer of Tianli Holdings Group Limited (Tianli) from 1 May 2010 to 18 September 2013. Tianli delayed the publication of its annual results and reports for 2012 and 2013, and its interim results and report for the first six months of 2013. Tianli's former auditors issued qualified and disclaimer opinions on Tianli's annual results for 2011 and 2012, respectively, and a qualified opinion on its annual results for 2013.

In light of Xu's role as executive director and chief financial officer of Tianli, the Listing Department of the HKEx sent enquiry letters to Xu for the purposes of the investigation. Despite some delay, Xu responded to the Listing Department's first set of inquiries. However, Xu failed to respond to the Listing Department's further inquiries and written reminders. The Listing Committee concluded that Xu breached the Director's Undertaking for failing to cooperate with the Listing Department in its inquiries. In addition to the public censure, the Listing Committee has further stated that Xu's conduct will be taken into account in assessing his suitability under Rule 3.09 of the Listing Rules in the event that he should wish to become a director of any company listed on the HKEx in the future.

SFC Fines Quam Capital Limited HK$800,000 Over Sponsor Failures

The SFC has fined Quam Capital Limited (**Quam**) HK$800,000 for failing to discharge its duties as a sponsor in relation to the listing of Gayety Holdings Limited (**Gayety**) (now known as Food Idea Holdings Limited) on the Growth Enterprise Market (**GEM**) of the HKEx in July 2011. The SFC found that Quam breached the SFC's Code of Conduct and the Corporate Finance Adviser Code of Conduct for its failure to act with due skill, care and diligence when preparing Gayety's prospectus. Specifically, the prospectus stated that none of the directors of Gayety had any interest in four of its five largest suppliers during the track record period. However, one of these suppliers was owned by two directors of Gayety, who also were its chairman and chief executive officer. The prospectus also wrongly represented that none of the key suppliers had ceased supply to Gayety and its group companies, when in fact the arrangement with one supplier had discontinued by the end of the track record period.

SFC Reprimands and Fines Schroder Investment Management (Hong Kong) Limited HK$1.8 Million for Disclosure Failures

The SFC has reprimanded Schroder Investment Management (Hong Kong) Limited (**Schroder**) and fined it HK$1.8 million for failing to disclose all notifiable interests in Hong Kong listed shares. An SFC investigation found that, from August 2005 to January 2013, Schroder failed to disclose notifiable interests in Hong Kong listed shares held in client portfolios and managed by Schroders plc and certain of its subsidiaries where they did not have or were unable to exercise proxy voting rights. Although legal advice obtained by Schroder advised that an "interest" in shares was broadly defined and was not confined to the exercise of a voting right, Schroder failed to properly follow the advice. Schroder subsequently filed 236 substantial shareholders notices to correct the situation.