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RGC Theme-based Research Scheme Project:
"Enhancing Hong Kong's Future as a Leading International Financial Centre"

Seminar

"Decoupling" and the Governance of Public Corporations -- "Empty Creditors," "Empty Voters," and Hidden Interests

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Friday, 17 March 2017, 12:30 - 1:30 pm
Academic Conference Room, 11/F Cheng Yu Tung Tower
The University of Hong Kong

The new worldwide phenomenon of "decoupling" has profound implications for longstanding principles of corporate and debt governance. Corporate law generally makes voting power proportional to economic ownership. Yet the emergence of hedge funds, the proliferation of derivatives, and other developments now allow stockholders to readily decouple voting rights from economic ownership. Such equity decoupling can result in certain "empty voting" and "hidden (morphable) ownership" patterns that can sometimes undermine both the main "internal" mechanism of corporate governance (the shareholder vote) and the main "external" mechanism (the takeover market). On the debt side, decoupling strategies based on credit default swaps can, in extreme circumstances, result in "empty creditors" who have the incentive to see their borrowers go into bankruptcy. This talk will offer an overview of debt and equity decoupling, and some actual and possible responses.

Henry T.C. Hu holds the Allan Shivers Chair in the Law of Banking and Finance at the University of Texas Law School. Hu's research and public service center on the law and economics of corporate governance, financial innovation, institutions, and markets, and systemic risk. *Misunderstood Derivatives*, a 1993 YALE LAW JOURNAL article, was the first to show how cognitive biases, compensation, financial "science," and other factors can cause financial institutions to take excessive risk and make mistakes in derivatives. Sole- and lead-authored articles in 2006-2009 offered the first systematic analysis of "decoupling," showed the phenomenon's impact on corporate and debt governance, and coined terms now in worldwide use among academics, market participants, and regulators (e.g., "empty creditor" and "empty voter"). Articles in 2012 and 2014 reconceptualized the classic approach to public disclosure relied on by the Securities and Exchange Commission (SEC) and other regulators, and showed the approach's inadequacies in in such complex contexts as asset-backed securities and "too-big-to-fail" banks. This research offers a new analytical framework for "information."

Hu was the inaugural Director of the SEC's "Division of Risk, Strategy, and Financial Innovation" (2009-2011) (now "Division of Economic and Risk Analysis"), the first new Division in 37 years. He has been a member of the Legal Advisory Board of the National Association of Securities Dealers (NASD) (now FINRA), the NASD and NASDAQ Market Regulation Committees, and the Board of Trustees of the Center for American and International Law. In 2010, the National Association of Corporate Directors named him as one of the 100 most influential people in corporate governance ("Directorship 100"). Hu has given many talks worldwide at major universities and at a wide range of non-academic venues. He has testified before Congress as an academic, and on behalf of the SEC on landmark derivatives legislation. He has consulted for U.S. and non-U.S. law firms and governmental authorities on seminal matters. He received the Massey Prize for Research in Law, Innovation, and Capital Markets, as recognized at an international symposium in 2014. Hu teaches corporate law, modern finance and governance, and securities regulation, and has also taught them at Harvard Law School. He holds a B.S. (Molecular Biophysics and Biochemistry), M.A. (Economics), and J.D., all from Yale.

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