

THE STOCK EXCHANGE OF HONG KONG LIMITED

DISCIPLINARY HEARINGS

STATEMENT ON PRINCIPLES AND FACTORS IN DETERMINING SANCTIONS AND DIRECTIONS IMPOSED BY THE DISCIPLINARY COMMITTEE AND THE REVIEW COMMITTEE

1. **General**

- 1.1 Unless otherwise stated, abbreviated terms used in this statement shall have the same meanings as defined in the procedures for disciplinary hearings of The Stock Exchange of Hong Kong Limited.

2. **Principles and factors in determining sanctions**

2.1 This statement:

- (a) sets out the general principles and factors that a Disciplinary Committee or a Review Committee should generally take into account when considering and determining sanctions for breaches of the MB Rules or the GEM Listing Rules (collectively the “**Rules**”); and
- (b) serves to assist a Disciplinary Committee or a Review Committee in achieving consistency in determining and imposing sanctions, always recognising that over time the general approach to the imposition of sanctions may need to change for policy or other reasons.

- 2.2 The guidelines below do not derogate from the obligation of a Disciplinary Committee or a Review Committee to have regard to all relevant circumstances in any individual case. Nor do they purport to comprise an exhaustive list of the principles or factors which a Disciplinary Committee or a Review Committee may need to take into account.

2.3 General principles:

- (a) Disciplinary sanctions should be imposed to protect the public and the integrity of the market and facilities the Exchange operates, deter further breaches of the Rules by the respondent(s), improve corporate governance, remedy conduct in breach of the Rules, and deter all other parties subject to the disciplinary jurisdiction of the Listing Committee from engaging in the same or any similar misconduct.
- (b) A Disciplinary Committee or a Review Committee will take into account the circumstances of the breach(es), the seriousness of the misconduct, and any relevant mitigating or aggravating factors.

- (c) Disciplinary sanctions should be more severe for repeated misconduct, or where the relevant misconduct evidences an intentional, wilful or reckless disregard for the Rules.
- (d) A Disciplinary Committee or a Review Committee will determine the disciplinary sanction on the basis of the evidence and submissions before it, and exercise its powers fairly and impartially and with due regard for the principles of natural justice.

2.4 A Disciplinary Committee or a Review Committee may, where relevant, consider the following principal factors (in mitigation or aggravation) in determining an appropriate sanction:

- (a) The disciplinary history of the respondent(s).
- (b) Disciplinary sanctions previously applied by a Disciplinary Committee or a Review Committee in relation to the same or similar types of breach(es), or in comparable circumstances.
- (c) Whether the respondent(s) fully assisted and cooperated with the Exchange in its investigation, and whether the level of the assistance and cooperation provided by the respondent(s) minimised the time and costs of the investigation (or conversely, whether there was a failure fully to assist or cooperate with the Exchange in its investigation).
- (d) Whether the respondent(s) made an early decision not to contest the breach(es) brought against it/them, thereby saving time and costs, and assisting the Disciplinary Committee or a Review Committee in the efficient administration of the disciplinary process.
- (e) Whether the misconduct was unintentional, negligent, wilful, reckless, intentional, deceptive, manipulative and/or fraudulent, as the case may be.
- (f) Whether the misconduct was an isolated instance or occurred over an extended period of time.
- (g) Whether the misconduct was self-reported in a timely and comprehensive manner, or there was a failure to report (or an attempt to conceal) the relevant misconduct.
- (h) Whether the relevant misconduct was systemic or indicative of a pattern of non-compliance with the Rules.
- (i) The size of any commercial advantage or financial benefit obtained as a result of the misconduct.
- (j) Whether a corporate culture conducive to compliance with the Rules is evident, e.g. effective educational and compliance programs.

- (k) Whether the misconduct resulted in, or had the potential to result in, loss or injury to other parties (e.g. shareholders, the investing public, other market participants, creditors, etc.), and if so, the nature and extent of that loss or injury.
 - (l) Any steps taken to redress the loss or injury caused to other parties.
 - (m) Whether the respondent(s) had placed reasonable reliance upon its receipt of independent professional and considered accounting or legal advice.
 - (n) Whether, at the time of the breach(es), the respondent(s) had appropriate supervisory, operational or technical procedures and/or controls in place for procuring compliance with the Rules.
 - (o) Whether the respondent(s) has, subsequent to the breach(es), taken steps or measures to prevent any recurrence of the contravening conduct.
 - (p) Whether the relevant conduct damaged, or had the potential to damage, the reputation of the Exchange or the integrity of the market and facilities it operates.
 - (q) Whether the respondent(s) has/have participated in the disciplinary proceedings by filing written submissions and by attending the disciplinary hearing.
- 2.5 A Disciplinary Committee or a Review Committee will consider the level of seriousness of the misconduct by reference to the circumstances of the matter and the conduct involved together with any relevant mitigating or aggravating factors.
- 2.6 Where there are multiple respondents, e.g. a number of directors of a listed company, a Disciplinary Committee or a Review Committee will consider the position of each individual separately to determine whether the individual circumstances of each person and the extent and nature of their involvement in, and knowledge or otherwise of, the breach(es) warrant different or the same sanctions being imposed on them.
- 2.7 A Disciplinary Committee or a Review Committee shall have regard to at least the following matters before directing that the facilities of the market be denied for a specified period to that issuer under MB Rule 2A.09(9) or GLR 3.10(9):
- (a) whether there was wilful or persistent failure by the issuer to discharge its responsibilities under the Rules;
 - (b) the seriousness of the misconduct of the respondent(s) and/or individual(s) involved;
 - (c) the respondent's history of similar misconduct; and
 - (d) the financial impact that such an order is likely to have on the respondent or on any individual(s) involved.