



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會



## JOINT CONSULTATION PAPER

# PROPOSED ENHANCEMENTS TO THE STOCK EXCHANGE OF HONG KONG LIMITED'S DECISION-MAKING AND GOVERNANCE STRUCTURE FOR LISTING REGULATION

**JUNE 2016**

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## CONSULTATION PROCESS

The Securities and Futures Commission (**SFC**) and The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**), invite interested parties to submit written comments on the proposals discussed in this Consultation Paper (using the headings listed in paragraph 141) by **no later than 19 September 2016**.

**Please note that the names of the commentators and the contents of their submissions may be published on the SFC's and/or HKEX's websites and in other documents to be published by the SFC and/or the Exchange.** Please read the Personal Information Collection Statement attached to this Consultation Paper. If you do not wish to have your name and/or submission published, please state that you wish your name and/or submission withheld from publication when you make your submission.

Written comments may be sent by one of the following methods to either the SFC or the Exchange and will be treated as a submission to both bodies:

### Securities and Futures Commission

by hand or by post: Corporate Finance Division  
Securities and Futures Commission  
35/F, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

by fax: (852) 2810 5385

by on-line submission: <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/>

by e-mail: [ListingRegulation@sfc.hk](mailto:ListingRegulation@sfc.hk)

Please mark in the subject line: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

### The Stock Exchange of Hong Kong Limited

by hand or by post: Corporate Communications Department  
c/o Hong Kong Exchanges and Clearing Limited  
12/F, One International Finance Centre  
1 Harbour View Street  
Central, Hong Kong

Re: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation

by fax: (852) 2524 0149

by e-mail: [response@hkex.com.hk](mailto:response@hkex.com.hk)

Please mark in the subject line: Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation  
(for any enquiry regarding submission to HKEX, please contact: (852) 2840 3844)

# EXECUTIVE SUMMARY

## Introduction

1. The Securities and Futures Commission (**SFC**) and The Stock Exchange of Hong Kong Limited (**Exchange**) recently reviewed the listing regulatory regime and, as a result, are proposing structural and procedural enhancements to the way in which listing regulation is carried out (**Proposals**). Under the Proposals, the listing function will remain within the Exchange which will continue to be the frontline regulator for listing matters. The Listing Committee, together with the Listing Department, will continue to decide a large majority of IPO applications and post-IPO matters. However, two new Exchange committees will be established – the **Listing Policy Committee** and the **Listing Regulatory Committee**. These two committees, on which the SFC and the Exchange are equally represented, will decide listing policy and policy-related listing matters with advice from the Listing Committee. The enhancements are intended to:
  - (a) achieve closer coordination and cooperation between the SFC and the Exchange on policy formulation and to provide the SFC with earlier and more direct input on listing policy matters and listing regulation. The Listing Policy Committee, comprising representatives from the SFC and the Listing Committee as well as the Chief Executive of Hong Kong Exchanges and Clearing Limited (**HKEX**) and the Chairperson of the Takeovers and Mergers Panel (**Takeovers Panel**), creates a forum for the relevant regulatory bodies to co-ordinate, collaborate and jointly develop listing policy that is responsive to today's regulatory needs;
  - (b) streamline the processes for making important or difficult listing decisions. The Listing Regulatory Committee, comprising representatives from the SFC and the Listing Committee, will decide cases that involve suitability issues or have broader policy implications. The SFC will retain its existing powers and discretion in relation to listing-related matters under the Securities and Futures (Stock Market Listing) Rules (**Stock Market Listing Rules**), rule 2.04 of the Listing Rules and paragraph 10.6 of the Memorandum of Understanding Governing Listing Matters in January 2003 (**Listing MOU**); however, the Proposals will enable the SFC to have earlier and more direct input on listing matters and to collaborate with the Exchange on decision-making, which will make the overall process more efficient;
  - (c) simplify the process for IPO applications so that they can be vetted and approved more efficiently. Based on past experience, a large majority of IPO applications do not involve suitability issues or give rise to broader policy implications; these cases will be approved by the Listing Committee. In addition, under the proposed regime, the SFC's Corporate Finance Division will no longer as a matter of routine issue a separate set of comments on the statutory filings made by new applicants; and
  - (d) establish clearer accountability for decision-making within the Exchange and enhance oversight of the administration of the Listing Rules.

## Background

2. Hong Kong has developed into a major international financial centre and premier capital formation centre for Mainland and other overseas companies. The total market capitalization of companies listed on the Exchange was HK\$24,684 billion as at 31 December 2015. Equity funds raised through initial public offerings (**IPOs**) on the Exchange in 2015 was HK\$263 billion, representing an increase of 13% over 2014. Average daily turnover was HK\$106 billion, representing an increase of 52% over 2014<sup>1</sup>.
3. There is, however, no room for complacency. We must ensure that the business environment and regulatory system evolves with the market to ensure that quality is maintained and that all participants can have confidence in a system which is fair, efficient, orderly, transparent and competitive.
4. Many regulatory issues that the SFC and the Exchange deal with today, including stock price manipulation, corporate governance shortfalls, disclosure problems and misconduct which prejudice public investors, can be better addressed by adopting a more coordinated approach towards listing regulation. This requires greater interaction between listing policy and the operation of the Listing Rules, on one hand, and the regulation of listed companies under the Securities and Futures Ordinance (**SFO**), intermediaries' conduct regulation, application of the Codes on Takeovers and Mergers and Share Buy-backs (**Takeovers Code**) and SFC enforcement considerations, on the other.
5. To separate the commercial role of the Exchange (which is overseen by the board of directors of the Exchange (**Exchange Board**)) from its regulatory role, the Exchange Board has delegated its powers and functions relating to listing matters, including the formulation of listing policy, to the Listing Committee. The Listing Committee currently comprises 28 members, including representatives of investors, listed companies and market practitioners as well as the Chief Executive of HKEX as an ex officio member. Members of the Listing Committee enable the Exchange to draw on the commercial and business knowledge and experience of market users for policy formulation and regulatory decision-making.
6. Members of the Listing Committee typically have other full time professional commitments. The members in attendance at each regular Listing Committee meeting necessarily vary because they are divided into two "pools" (to reserve one pool of members for any subsequent review of a decision) and members' occasional conflicts with outside professional interests and schedules prevent some from attending. These are inherent characteristics of the current decision-making structure. This structure has served the market well. However, the market has become increasingly large and complex, and carries a greater variety of risks. Coordinated regulatory efforts on different fronts, strategic foresight in policy formulation and constant vigilance are required to address emerging market developments. Accordingly, it is now the right time to revisit this decision-making structure and adopt enhancements that would enable the SFC and the Exchange to better coordinate and address future regulatory needs.

## More Efficient Decision-Making Structure

### Listing Decisions without Policy Implications – The Listing Committee and the Listing Department

7. The Listing Committee will continue as currently to be the decision-maker for IPO applications and, in conjunction with the Listing Department, matters involving listed issuers that do not involve suitability concerns or broader policy implications, which should

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<sup>1</sup> HKEX Fact Book 2015.

be the large majority of cases. The Listing Department will be responsible for deciding whether an IPO application or a post-IPO matter has suitability concerns or broader policy implications and, if so, will refer it to the Listing Regulatory Committee for decision.

8. In addition, the Listing Committee will provide non-binding views to the Listing Regulatory Committee in relation to the latter's decisions on IPO cases or post-IPO matters with suitability concerns or broader policy implications.
9. The Listing Committee will continue to comprise representatives of investors, listed issuers and market practitioners. The Chief Executive of HKEX will cease to be a member of the Listing Committee.

### **Policy Development – The Listing Policy Committee**

10. The Listing Policy Committee will steer the Exchange's work on Listing Rule amendments and overall listing policy. The Listing Policy Committee is designed to be an efficient "one-stop shop" to respond to policy issues which are often multi-faceted and difficult. It will comprise the Chairperson and two Deputy Chairpersons of the Listing Committee, the Chief Executive of HKEX, the Chairperson of the Takeovers Panel, the Chief Executive Officer of the SFC and two senior executives from the Corporate Finance Division of the SFC. It is legitimate for the board of directors of HKEX (**HKEX Board**) to express a view on how a proposed rule amendment or policy may affect the commercial interests of HKEX. The Chief Executive of HKEX will represent, and will consult as necessary, the HKEX Board on the policy matters to be considered by the Listing Policy Committee. In addition, it is proposed that the Chairperson of the Takeovers Panel be appointed a member as the Panel's decisions concern listed companies and can be relevant to listing regulation. The Chairperson of the Listing Committee will act as the Chairperson of the Listing Policy Committee.
11. The proposed composition of the Listing Policy Committee is designed to represent the different bodies within the current listing regulatory system that make policy-related decisions. The Listing Policy Committee will be proactive in identifying and addressing public interest issues arising out of new or prospective market developments or practices, and in related areas such as corporate and intermediaries' behaviour. The Listing Policy Committee will examine whether any problems might have arisen from the way in which market practice and behaviour interact with the Listing Rules and, where appropriate, will propose new Listing Rules or changes to the Listing Rules to address those problems.
12. We expect the Listing Policy Committee to reach its decisions by consensus. If any matter is put to a formal vote of members, a majority in support will be required for any decision (eg, the approval of a public consultation or Listing Rule amendment) to be taken. The Chairperson of the Listing Policy Committee will not have a casting vote<sup>2</sup>.
13. In addition, the full Listing Committee will put forward non-binding views on the policy matters coming before the Listing Policy Committee so that the Listing Policy Committee has the benefit of their input and expertise.
14. Under the existing listing regulatory regime, the Exchange is responsible for making new Listing Rules and Listing Rule amendments, subject to the prior approval of the SFC. The Exchange may impose additional requirements, or waive or modify the Listing Rules, in individual cases as it considers appropriate. However, any waiver or modification that has general effect requires the prior consent of the SFC<sup>3</sup>. In addition, the SFC (after consulting the Financial Secretary and the Exchange) has power under the SFO<sup>4</sup> to direct the

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<sup>2</sup> The Chairperson will not be entitled to exercise a deciding vote in case of a deadlock when the votes are equally divided.

<sup>3</sup> Rule 2.04 of the Listing Rules.

<sup>4</sup> Section 23(3) of the SFO.

Exchange to make specific Listing Rules. Against this background, by creating a single senior body in which the Exchange and the SFC are represented, the Proposals will simplify and more closely align policy decision-making amongst the Listing Department, the Listing Committee and the SFC, which should in future be more efficient and more responsive in dealing with issues as they arise. Under the Proposals, the SFC's powers and functions in relation to listing matters will remain unchanged. However, the SFC will have earlier and more direct input on listing policy matters and listing regulation.

### **Listing Decisions with Policy Implications – The Listing Regulatory Committee**

15. The Listing Regulatory Committee will decide on those day-to-day listing matters concerning individual new listing applicants or listed issuers that have suitability concerns or broader policy implications. This will ensure that important listing decisions are aligned with the overall policy direction set by the Listing Policy Committee.
16. The Listing Regulatory Committee will comprise the same members as the Listing Policy Committee save for the Chairperson of the Takeovers Panel, the Chief Executive Officer of the SFC and the Chief Executive of HKEX. In place of the Chief Executive Officer of the SFC, an additional senior executive of the Corporate Finance Division of the SFC will be appointed. The Listing Regulatory Committee would therefore comprise three SFC executives as well as the Chairperson and two Deputy Chairpersons of the Listing Committee. The Chairperson of the Listing Committee will act as the Chairperson of the Listing Regulatory Committee. Because this committee will hear cases and appeals, it will need to meet much more frequently than the Listing Policy Committee. Alternates will be allowed to attend meetings in place of the appointed members (a) because potential conflicts of interest are more likely to arise, and (b) because the Listing Regulatory Committee will hear reviews of decisions by the Listing Committee, and there is a need to ensure that the members from the Listing Committee do not hear the same case both in the first instance and upon any subsequent review.
17. As in the case of the Listing Policy Committee, the Listing Regulatory Committee is expected to reach its decisions by consensus. If, however, any matter is put to a formal vote among members, a majority vote in support will be required for any decision (eg, the approval of a relevant listing or waiver application) to be taken. The Chairperson of the Listing Regulatory Committee will not have a casting vote.
18. The proposed voting arrangement means that, for those cases that are put to the Listing Regulatory Committee, the SFC would in effect be able to exercise its power under the Stock Market Listing Rules<sup>5</sup> to object to a listing through its participation on the Listing Regulatory Committee. This will, for the relevant cases, simplify the decision-making process involving the Listing Department, the Listing Committee and the SFC, and make it more straightforward and efficient from the market's perspective.

### **Commentary**

19. The new Exchange committees will enable the SFC and the Exchange to work together within a collaborative setting, better share their respective knowledge and perspectives, and promote consensus-building and efficiency in policy- and rule-making.
20. The vetting and approval process for IPO applications that do not present suitability concerns or give rise to broader policy implications, which should be the large majority of cases, is expected to be streamlined. In addition, the SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made by new applicants. Sponsors are expected to assess whether an IPO involves suitability issues. Where

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<sup>5</sup> Section 6 of the Stock Market Listing Rules.

appropriate, listing applicants and their sponsors may use the current pre-IPO enquiry process in relation to specific issues at the pre-IPO application stage.

21. It is relevant to bear in mind that because the Exchange is not a statutory regulator - and the Listing Rules have no statutory effect - the Exchange does not have the standing to enter into formal arrangements with Mainland and other overseas securities regulators. The SFC is the only gateway to these Mainland and other overseas securities authorities under arrangements concerning enforcement and supervisory cooperation. This is significant as a majority of Hong Kong-listed companies conduct business outside of Hong Kong and most listing applicants originate from outside of Hong Kong. Closer coordination between the SFC and the Exchange on policy matters and in regulatory decision-making will facilitate Hong Kong's ability to interact with Mainland and other overseas securities authorities.
22. No legislative change is proposed. The SFC and the Exchange will retain their separate powers and functions as provided by the SFO (including subsidiary legislation) and the Listing Rules.

### **Clearer Responsibility and Accountability for Oversight of the Listing Function**

23. In reviewing the listing regulatory structure, the SFC and the Exchange also considered the ways in which Listing Rules, listing policy and listing decisions are developed or made, as well as the accountability of decision-makers.
24. To avoid potential conflicts of interest and ensure the independence of the Exchange's regulatory function, the Exchange Board has delegated its powers and functions relating to listing matters to the Listing Committee<sup>6</sup>. For the same reasons, the Exchange Board is largely insulated from the day-to-day operations of the listing function and is constrained, in a practical sense, in its ability to oversee the work of the Listing Committee and the Listing Department.
25. At the same time, as mentioned above, members of the Listing Committee typically have outside professional commitments and are only available on a part-time basis. Accordingly, the Listing Committee has arranged for a range of listing powers and functions to be discharged by the Listing Department and by the Chief Executive of the Exchange<sup>7</sup>. This arrangement recognises that, as a practical matter, it is not possible for decision-making to be undertaken by the Listing Committee on the very substantial number of matters arising from the day-to-day administration of the Listing Rules. While the Listing Committee retains formal oversight of the Listing Department, it performs this oversight role primarily by acting as an independent review body for decisions made by the Listing Department.
26. Whilst selected listing decisions of the Listing Committee are published, such publication is not designed or intended to establish accountability on the part of the Listing Committee, as decision-maker, but rather to provide guidance to the market.
27. The current structure was developed at a time when the Hong Kong listing market was much smaller and more local in nature, and standards of governance and public expectations were different from the present day. As the listing market continues to develop, the governance of listing regulation should be revised to establish a clearer reporting structure for decision-making and enhanced oversight of the listing function in line with Hong Kong's status as a leading international financial centre. These considerations are mitigated, but not fully addressed, by the SFC's oversight of the Exchange in the performance of its regulatory role.

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<sup>6</sup> Rule 2A.01 of the Listing Rules.

<sup>7</sup> This is the Chief Executive of The Stock Exchange of Hong Kong Limited.

28. Under the Proposals, the Listing Policy Committee will replace the Listing Committee as the body responsible for oversight of the listing function and the Listing Department's performance within the Exchange. The Listing Department will remain within the Exchange and will remain responsible for the day-to-day administration of the Listing Rules but, going forward, will report to the Listing Policy Committee on its work. To reinforce this oversight role, and establish clear accountability, the Listing Policy Committee will have primary responsibility for appraising senior executives of the Listing Department in the performance of their regulatory responsibilities. HKEX's Remuneration Committee, which is responsible for determining the overall compensation of the Listing Department and its senior executives, will take into account the assessment of the Listing Policy Committee when determining such compensation<sup>8</sup>.
29. To enhance the structure for reviews of listing decisions, (a) the Listing Regulatory Committee will replace the current Listing (Review) Committee<sup>9</sup> as the review body for decisions made by the Listing Committee, and (b) a new **Listing Regulatory (Review) Committee**, which comprises members of the board of directors of the SFC (**SFC Board**) and former members of the Listing Committee, will replace the existing Listing Appeals Committee<sup>10</sup> as the highest review body within the Exchange. The Listing Regulatory (Review) Committee will review listing decisions of the Listing Regulatory Committee on specified matters. This will maintain an appropriate review structure for all listing decisions.
30. To enhance procedural fairness for disciplinary matters, it is proposed that a **Listing Disciplinary Chairperson Group** consisting of practising or retired senior counsel (or other individuals of equivalent qualification) be established by the Exchange. Each disciplinary hearing (whether at first instance or upon review) will be chaired by a member of this Group.
31. To increase transparency and accountability for regulatory decision-making, the Listing Regulatory Committee, the Listing Regulatory (Review) Committee, the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee will routinely publish their decisions, and the reasons for those decisions, on HKEX's website, as soon as reasonably practicable after the relevant hearing. The Listing Regulatory Committee and the Listing Regulatory (Review) Committee may each permit a decision by the committee on an IPO application to be published on a "no-names" basis under exceptional circumstances if disclosure of the applicant's identity would unduly prejudice its interests. In addition, delayed or "no names" publication may be permitted under exceptional circumstances in other cases where the decision is price sensitive or otherwise subject to confidentiality considerations of a commercial nature.

## Summation

32. The modified structure should enable greater coordination and consensus-building on important listing matters with (a) the Listing Policy Committee and the Listing Regulatory Committee as decision-makers in cases with suitability concerns or broader policy implications as well as policy proposals leading to new or amended Listing Rules, (b) the Listing Committee as the decision-maker for cases that do not have suitability concerns or

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<sup>8</sup> The MOU Addendum (as defined in paragraph 53 of this Consultation Paper) will provide that, in this regard, performance assessment will be carried out collectively by all members of the Listing Policy Committee in accordance with HKEX's overall timetable and process for staff year-end performance reviews and against clear objectives for the Listing Department as a whole which will be established at the beginning of each calendar year. The Listing Policy Committee will provide written input to HKEX's Remuneration Committee which will determine the overall compensation of the Listing Department and its senior executives taking into account the Listing Policy Committee's performance assessment to the extent such executives perform regulatory responsibilities.

<sup>9</sup> The Listing (Review) Committee is made up of Listing Committee members who do not have conflicts of interest in the case and were not present at the earlier Listing Committee meeting at which the decision under review was made.

<sup>10</sup> The Listing Appeals Committee comprises the chairman and two other members of the HKEX Board.

broader policy implications and as an advisory body on those matters within the mandates of the Listing Policy Committee and the Listing Regulatory Committee, and (c) the Listing Department as the full time executive body responsible for administering the Listing Rules on a day-to-day basis.

33. Governance within the Exchange's decision-making structure for listing regulation will be enhanced as there will be (a) a clear reporting structure for the Listing Department, which will report and be accountable to the Listing Policy Committee for listing regulation, and (b) increased transparency and accountability to the public for important listing decisions as the Listing Regulatory Committee and the Listing Regulatory (Review) Committee will routinely publish reasoned decisions.

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34. To facilitate the public's understanding, the main body of this Consultation Paper summarises the key aspects of the Proposals, including how different listing matters would be processed under the proposed regime. A chart of the proposed decision-making and governance structure of the Exchange for listing regulation under the proposed regime is set out in **Appendix A**. A fuller description of the proposed decision-making structure and processes for listing matters, including the proposed Listing Rule amendments and certain procedural matters, is set out in **Appendix B**.
35. The Proposals set out in this Consultation Paper will apply to both Main Board and the Growth Enterprise Market (**GEM**) matters. Each reference to a Listing Rule means the relevant Main Board Listing Rule but should also be taken to include a reference to the corresponding GEM Listing Rule.
36. Each reference in this Consultation Paper to a ruling, decision or act of the Listing Department should be taken to mean any ruling, decision or act by the Head of Listing, or any act by any member of the staff of the Listing Department, which is made under any of the powers delegated by the Exchange Board.

## BACKGROUND

### Roles of the SFC and the Exchange in Listing Regulation

37. The Exchange is the frontline regulator of all listing-related matters and issuers listed on its markets. Under the Securities and Futures (Transfer of Functions – Stock Exchange Company) Order, the Exchange is responsible for vetting prospectuses for any shares in or debentures of a listed corporation. Under the SFO, the Exchange also has a duty, among other things, to ensure an orderly, informed and fair market in the securities that are traded through its facilities.
38. The SFC plays a lead role in market regulation and some areas of listing regulation, including (a) the disclosure of interests in securities, (b) activities governed by the Takeovers Code, (c) ensuring that the disclosures made in corporate documents filed under the Stock Market Listing Rules satisfy applicable requirements under those rules, and (d) taking enforcement action against any failure to disclose inside information. Under the Stock Market Listing Rules, listing applicants and listed issuers must file applications and disclosure materials with the SFC, via the Exchange. The SFC's powers and functions in listing regulation are complemented by (a) its powers of investigation and enforcement provided under the SFO and (b) its powers to object to the listing of, and to suspend trading in or de-list, any securities under the Stock Market Listing Rules. In addition, the SFC supervises and monitors the Exchange in the performance of its listing function<sup>11</sup>.
39. To enhance their cooperation, the SFC and the Exchange entered into the Listing MOU which set out their respective roles and responsibilities in relation to listing matters. Among other things, the Listing MOU established the framework and procedures for regulatory cooperation between the SFC and the Exchange on policy formulation and for handling listing applications, complaints and other matters.

### The Exchange's Existing Decision-Making and Governance Structure for Listing Regulation

40. To manage potential conflicts of interest and ensure the independence of its listing function, the Exchange Board has arranged for all of its powers and functions in respect of all listing matters to be discharged by the Listing Committee and/or its delegates, subject to the review procedures set out in Chapter 2A of the Listing Rules<sup>12</sup>. The Listing Committee and, in relation to certain powers of review, the Listing Appeals Committee have sole power and authority to act in relation to all listing matters to the exclusion of the Exchange Board, unless and until the Exchange Board revokes these arrangements<sup>13</sup>.
41. As individuals typically with other full-time professional commitments, Listing Committee members are unable to administer the Listing Rules on a day-to-day basis. Accordingly, the Listing Committee has arranged for its listing powers and functions to be discharged by the Listing Department and by the Chief Executive of the Exchange<sup>14</sup> except for some reserved matters<sup>15</sup> including the approval of equity listing applications by new applicants<sup>16</sup>.

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<sup>11</sup> Section 5(1)(b) of the SFO.

<sup>12</sup> Rule 2A.01 of the Listing Rules.

<sup>13</sup> Rule 2A.01 of the Listing Rules. The Exchange has agreed that its board of directors shall not exercise any overriding rights, powers or jurisdiction in relation to any matter covered by the Listing Rules and under delegation to others, save in exceptional circumstances (section 4.6 of the Listing MOU).

<sup>14</sup> This is the Chief Executive of The Stock Exchange of Hong Kong Limited.

<sup>15</sup> The reserved matters include (a) the power to approve most Main Board listing applications from new applicants – rules 2A.05, 2A.05A and 2A.05B of the Listing Rules; (b) the power to cancel the listing of a listed issuer – rule 2A.08 of the Listing Rules; and (c) the power to impose disciplinary sanctions – rule 2A.09 of the Listing Rules.

<sup>16</sup> Rule 2A.02 of the Listing Rules.

42. The Listing Committee has retained the role of oversight of the Listing Department and the Chief Executive of the Exchange to ensure that they exercise those powers and carry out their day-to-day functions in a professional and impartial manner<sup>17</sup>. The Listing Committee's oversight role does not, however, mean that it is involved in the day-to-day administration of the Listing Rules. Instead, the Listing Committee acts as an independent review body for decisions made by the Listing Department and the Chief Executive of the Exchange<sup>18</sup>.
43. In addition, the Listing Committee has the power to impose directions, regulations or restrictions on the Listing Department and the Chief Executive of the Exchange in respect of the way in which they carry out their delegated authority<sup>19</sup>.

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<sup>17</sup> Rule 2B.01 of the Listing Rules.

<sup>18</sup> Rule 2B.01 of the Listing Rules.

<sup>19</sup> Rule 2B.01 of the Listing Rules.

## REASONS FOR THE PROPOSALS

### Background

44. The Hong Kong listing market has experienced significant growth. Over the past decade, the number of listed companies has increased by 64% from 1,135<sup>20</sup> to 1,866<sup>21</sup>, while total market capitalization has multiplied threefold from HK\$8,180 billion to HK\$24,684 billion. The market has also evolved from one that primarily served local companies and businesses in the early 1990s into a premier capital formation centre for Mainland and overseas companies. Notably, in recent years, there has been rapid growth in the number of Mainland private enterprises listing in Hong Kong<sup>22</sup>. These are positive developments and trends that will continue to be encouraged.
45. Hong Kong has always maintained an open market for international trade and investment. Developments in technology, regulation and financial services have made it easier for investors, intermediaries and other market participants to directly access Hong Kong's markets from offshore. As well as companies that are listed or seeking to list in Hong Kong, investors, intermediaries and other market participants from the Mainland and other overseas jurisdictions are also active in the Hong Kong listing market.
46. We are conscious of the continuous need to protect our market and reputation from being tainted by manipulative activities as well as misconduct on the part of corporate insiders. The developments described above mean that regulatory considerations relating to listing in Hong Kong are increasingly complex and involve new risks and operational challenges. For example, investigations of and enforcement actions against corporate wrongdoing frequently require communication with Mainland and other overseas authorities.

### Objectives of the Proposals

47. In light of these developments, the SFC and the Exchange see a need for enhancing the coordination and cooperation when developing new policy in listing regulation and in regulatory decision-making. Many regulatory issues that arise today, including certain types of stock price manipulation and misconduct on the part of corporate insiders, can be better addressed by adopting a holistic approach towards listing regulation. This requires more interaction between listing policy and the Listing Rules, on one hand, and the regulation of listed companies by the SFO, intermediaries' conduct regulation, application of the Takeovers Code and SFC enforcement considerations, on the other. The Proposals will enable the SFC and the Exchange to closely coordinate on policy and adopt a more proactive approach towards identifying and addressing potential public interest issues relating to new and prospective developments in the market generally and in related areas such as corporate and related intermediaries' conduct.
48. To some extent, the SFC and the Exchange have overlapping powers and functions on listing policy-related matters<sup>23</sup>. It would be simpler and more efficient for their respective

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<sup>20</sup> As at 31 December 2005.

<sup>21</sup> As at 31 December 2015.

<sup>22</sup> The estimated number of Mainland private enterprises listed in Hong Kong increased by 32% from 437 at the end of 2012 to 577 at the end of 2015, while estimated total market capitalisation of these enterprises increased by 75% from HK\$2,863 billion to HK\$5,004 billion. This data excludes Mainland enterprises listed as Red Chip companies or H share companies.

<sup>23</sup> Under the SFO, the SFC may take such steps as it considers necessary to maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry, which is defined to mean the securities market and participants therein including the Exchange and HKEX. The Exchange's statutory duty in section 21(1)(a) (to ensure an orderly, informed and fair market) is a subset of the SFC's statutory objectives. There is also overlap in the power to make Listing Rules as the Exchange can make non-statutory ones under section 23, while the SFC can request the Exchange to make specified listing rules and in the event of non-compliance (and

decision-making on such matters to be conducted within a more collaborative structure that facilitates consensus-building. Such an approach would, among other things, enable the SFC, the Listing Committee and the Listing Department to gain more from one another's knowledge and perspectives and reduce the likelihood of different decisions being reached on the same case.

49. Separately, because it is not a statutory regulator - and the Listing Rules have no statutory effect - the Exchange does not have the standing to enter into formal cooperation arrangements with Mainland and other overseas securities regulators, notwithstanding that it is - and will remain under the Proposals - the frontline regulator for listing matters. The SFC is the only gateway to Mainland and other overseas securities authorities under arrangements concerning enforcement and supervisory cooperation. Closer coordination between the SFC and the Exchange on policy matters and in regulatory decision-making will facilitate Hong Kong's ability to interact with Mainland and other overseas securities authorities.
50. It is in the interest of the market to make the listing regulatory regime as efficient as possible whilst maintaining standards and quality. The arrangements under the Listing MOU have worked well to reduce unnecessary duplication and administrative burden and costs to the market; and the experiences and mutual understanding derived from those arrangements provide a basis for closer regulatory cooperation between the SFC and the Exchange for the benefit of all who participate in Hong Kong's listing market. The Listing MOU contemplates a "High-Level Group" to review systemic and policy issues concerning listing-related matters. To extend their cooperation on policy development and in regulatory decision-making, the SFC and the Exchange propose to build on this concept and establish two new committees - the Listing Policy Committee and the Listing Regulatory Committee - which will be responsible for steering policy-related matters within the Exchange, including day-to-day listing decisions that have suitability concerns or broader policy implications.
51. In reviewing the listing regulatory structure, the SFC and the Exchange also considered the ways in which Listing Rules, listing policy and listing decisions are developed or made, and the accountability of decision-makers. The current governance structure for listing regulation within the Exchange (whereby the Listing Committee oversees the listing function mainly by operating as an independent review body for the Listing Department's decisions) was developed at a time when the Hong Kong listing market was much smaller and more local in nature, and standards of governance and public expectations were different from the present day.
52. As the listing market continues to develop, governance within the listing regulatory structure should be revised to establish a clearer reporting structure for decision-making and enhanced oversight of the listing function in line with Hong Kong's status as a leading international financial centre.
53. The proposed enhancements to the Exchange's decision-making and governance structure for listing regulation would be constituted by resolutions of the Exchange Board, together with relevant Listing Rule amendments. If the Proposals are implemented, the SFC and the Exchange would enter into an addendum to the Listing MOU (**MOU Addendum**) to update the framework and agreed procedures for their regulatory cooperation.

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after consulting the Financial Secretary and the Exchange) step in to make them instead under section 23(3) to (5) of the SFO. The SFC also has power to make statutory listing rules under section 36(1)(a) of the SFO.

## OVERVIEW OF THE PROPOSALS

### The Listing Committee

54. The Listing Committee in its entirety represents the diverse views of the market and brings valuable expertise in specialized areas such as industry knowledge, business analysis, accounting and law. As proposed in this Consultation Paper, the Listing Committee will (a) continue to be the decision-maker for IPO applications that do not have suitability concerns or broader policy implications, which will be a large majority of cases, as well as certain reserved matters under the Listing Rules, and (b) put forward non-binding views to the Listing Policy Committee and the Listing Regulatory Committee on matters reserved for their decision. The composition of the Listing Committee, together with the nomination, appointment and removal process, will remain as present save that the Chief Executive of HKEX will no longer be a member of the Listing Committee, and instead, will become a member of the Listing Policy Committee if the Proposals are implemented.
55. The Chairperson and two Deputy Chairpersons of the Listing Committee will become members of, and will chair (or act as deputy chairpersons of), both the Listing Policy Committee and the Listing Regulatory Committee.

### The Listing Policy Committee

56. It is proposed that a new committee, the Listing Policy Committee, be established by the Exchange to initiate, steer and decide listing policy, including new Listing Rules, Listing Rule amendments<sup>24</sup>, market consultations and other matters that have policy implications or general effect.
57. The proposed composition of the Listing Policy Committee (see paragraph 65 below) is designed to represent the different bodies within the current listing regulatory system that make policy-related decisions - namely, the Listing Committee (as the *de facto* decision-making body within the Exchange on listing policy), HKEX, the Takeovers Panel and the SFC. The even number of market representatives and full time executives is intended to achieve a better balance between regulatory and market perspectives.
58. The Listing Policy Committee would provide a forum to enable representatives of the different regulatory bodies to exchange views on listing policy-related matters, facilitate and foster closer cooperation on policy among the relevant regulatory bodies and promote greater consistency and efficiency in policy- and related rule-making.

### The Listing Regulatory Committee

59. Listing decisions made in the day-to-day administration of the Listing Rules can have suitability concerns or broader policy implications. These include, for example, decisions regarding the type and nature of companies and businesses that are suitable for listing on the Exchange<sup>25</sup> and Listing Rule waivers that either regularly recur or affect more than one issuer at the same time. It is proposed that the Listing Regulatory Committee would make such listing decisions to ensure that important listing decisions are aligned with the overall direction of listing policy set by the Listing Policy Committee. To enhance the structure for reviews of listing decisions, the Listing Regulatory Committee would also replace the current Listing (Review) Committee as the review body for decisions by the Listing Committee.

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<sup>24</sup> Approval from the SFC Board and the Exchange Board on any new Listing Rules and Listing Rule amendments will continue to be required.

<sup>25</sup> See "LISTING OF EQUITY SECURITIES BY NEW APPLICANTS — Introduction" below for a further discussion.

60. The Listing Regulatory Committee will comprise three SFC executives as well as the Chairperson and two Deputy Chairpersons of the Listing Committee. Appropriate arrangements will be made for other Listing Committee members to act as alternates to the chairperson and deputy chairpersons of the Listing Regulatory Committee as necessary (see paragraph 82 below).

### **Other Exchange Committees**

61. To enhance governance and further avoid perceived conflicts of interest, it is proposed that other modifications be made to the decision-making and governance structure of the Exchange in relation to listing regulation as follows:
- (a) a **Listing Regulatory (Review) Committee** is to be established to replace the existing Listing Appeals Committee as the final review body for certain listing decisions as currently prescribed under the Listing Rules; and
  - (b) a **Listing Disciplinary Chairperson Group** comprising practising or retired senior counsel (or other individuals of equivalent qualification) appointed by the Listing Nominating Committee<sup>26</sup> is to be established; each disciplinary hearing (whether at first instance or upon review) will be chaired by a member of this Group.

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<sup>26</sup> The Listing Nominating Committee comprises three non-executive members of the HKEX Board and the Chairman and two Executive Directors of the SFC.

## THE LISTING POLICY COMMITTEE

### Mandate

62. The Listing Policy Committee will initiate, steer and decide listing policy proposals and proposed Listing Rule amendments. Matters within the Listing Policy Committee's mandate will comprise:
- (a) proposed new Listing Rules and proposed Listing Rule amendments;
  - (b) consultation papers and consultation conclusions;
  - (c) oversight of the Listing Department; and
  - (d) any other matter referred by the Listing Regulatory Committee, the Listing Committee (including the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee) or the Head of Listing at their discretion.
63. Each Listing Policy Committee member, and the Head of Listing, may propose any such matter for discussion at a Listing Policy Committee meeting as he or she sees fit<sup>27</sup>.
64. The Listing Department will present to the Listing Committee in advance of any Listing Policy Committee meeting any matter to be discussed by the Listing Policy Committee at that meeting. The views given by Listing Committee members will be disseminated by the Listing Department to the Listing Policy Committee members prior to or at the relevant Listing Policy Committee meeting<sup>28</sup>. In addition, the Listing Policy Committee may request that the Listing Committee consider and render views on any matter or issue to be considered by it.

### Composition

65. The Listing Policy Committee shall consist of:
- (a) the Chairperson of the Listing Committee as an ex officio member;
  - (b) two Deputy Chairpersons of the Listing Committee<sup>29</sup>;
  - (c) the Chief Executive of HKEX as an ex officio member;
  - (d) the Chairperson of the Takeovers Panel as an ex officio member;
  - (e) the Chief Executive Officer of the SFC as an ex officio member;
  - (f) the Executive Director of the Corporate Finance Division, SFC as an ex officio member; and

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<sup>27</sup> The MOU Addendum will provide that matter(s) proposed for discussion by the Head of Listing or a Listing Policy Committee member will be included in the agenda of the next Listing Policy Committee meeting to the extent practicable. If it is not practicable to present all pending agenda items at an upcoming Listing Policy Committee meeting due to time constraints, the urgency of the matter to be considered or for other reason, the Secretary will consult the Listing Policy Committee Chairperson to set the agenda for the relevant meeting. The Listing Policy Committee Chairperson will consider, among other things, the nature and relative urgency of all pending agenda items and give such directions to the Secretary as he considers appropriate (including extending the duration of the relevant meeting and/or convening an ad hoc meeting).

<sup>28</sup> To ensure equal access to information, and because certain Listing Policy Committee members will participate in the Listing Committee's discussions as members, the MOU Addendum will provide that the Listing Department will endeavour to disseminate the views given by the Listing Committee to all members of the Listing Policy Committee as soon as possible after the relevant Listing Committee meeting.

<sup>29</sup> There are currently two Deputy Chairpersons of the Listing Committee, one of whom is an LC investor representative (as defined in paragraph 66 of this Consultation Paper). The Exchange may, in accordance with the nomination of the Listing Nominating Committee, appoint additional Deputy Chairpersons of the Listing Committee as the need arises. If the number of Deputy Chairpersons of the Listing Committee exceeds two at any time, the two longest-serving Deputy Chairpersons on the Listing Committee will be the Deputy Chairpersons of the Listing Policy Committee and the Listing Regulatory Committee, provided that the Chairperson and such Deputy Chairpersons include at least one LC investor representative.

- (g) a Senior Director of the Corporate Finance Division, SFC as nominated by the Executive Director of the Corporate Finance Division, SFC.
66. The Chairperson and the Deputy Chairpersons of the Listing Committee on the Listing Policy Committee must at all times include at least one individual appointed by the Listing Nominating Committee to represent the interests of investors on the Listing Committee (**LC investor representative**).
67. The Chairperson of the Listing Committee shall be the Chairperson of the Listing Policy Committee, and each Deputy Chairperson of the Listing Committee who sits on the Listing Policy Committee shall be a Deputy Chairperson of the Listing Policy Committee (see footnote 29).

## Conduct of Meetings

68. As some policy-related matters can have implications for the commercial functions of the Exchange, it is legitimate for the views of the HKEX Board to be represented (by the Chief Executive of HKEX) in discussions of the Listing Policy Committee, recognising however that there may be potential conflicts from time to time between the interest of the public and the interest of the Exchange. The SFC and the Exchange are satisfied that the composition of the Listing Policy Committee fairly balances these interests and that the Exchange will be in a position to discharge its duty under section 21(2) of the SFO with respect to the matters within the mandate of the Listing Policy Committee.
69. It is expected that the Listing Policy Committee will decide matters on the basis of consensus. However, where no consensus can be reached, a majority vote in support by the members present at a meeting shall be required for any decision to be taken by the Listing Policy Committee. The chairperson of a meeting will not have a casting vote.
70. The objectives of the Proposals are best-served if policy discussions were to take place as much as possible among the same group of individuals at each meeting of the Listing Policy Committee. Regular meetings of the Listing Policy Committee are expected to take place initially on a quarterly basis, which should make scheduling manageable. The nature of the Listing Policy Committee's mandate (ie, rule and policy development) means that conflicts of interest, which would require recusal, are also unlikely to arise.
71. It is expected that most meetings of the Listing Policy Committee will be arranged so that all eight members can be present. However the quorum necessary for the transaction of any business shall be four members present in person<sup>30</sup>, provided that such members include:
- (a) the Chief Executive of HKEX;
  - (b) the LC investor representative; and
  - (c) any two members out of the Chairperson of the Takeovers Panel and the members from the SFC.
72. Nevertheless, to introduce a degree of necessary flexibility and to ensure there is appropriate representation at each meeting, the following members of the Listing Policy Committee will be able to appoint a single named individual to act as his or her alternate when necessary: (i) the Chief Executive of HKEX; (ii) the LC investor representative; (iii) the Chairperson of the Takeovers Panel; and (iv) the Chief Executive Officer of the SFC. Other members of the Listing Policy Committee will not be able to appoint alternates or proxies to act or vote in their absence.

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<sup>30</sup> For the arrangement in respect of a casual or temporary vacancy in the office of a member of the Listing Policy Committee, please refer to paragraph 48 of Appendix B.

## THE LISTING REGULATORY COMMITTEE

### Mandate

73. The Listing Regulatory Committee will oversee, give guidance on and decide in the first instance any matter that arises in the day-to-day administration of the Listing Rules (including (a) practice and guidance notes, and (b) applications, transactions and submissions by or involving listed issuers or listing applicants that require the approval or consent of, or vetting by, the Exchange) in relation to any of the following matters:
- (a) that involve the suitability for listing of a new applicant and its business under rule 8.04 of the Listing Rules;
  - (b) that are of a novel, potentially controversial or sensitive nature;
  - (c) that appear to have policy implications, whether arising from a listing application, a transaction by a listed issuer or otherwise; or
  - (d) which decision will have general effect within the meaning of rule 2.04 of the Listing Rules (collectively, **LRC Matters**).
74. Based on past experience, it is expected that these matters will be small in number compared to the number of matters handled by the Listing Department and the Listing Committee.
75. The Listing Regulatory Committee will also replace the existing Listing (Review) Committee as the review body for decisions made by the Listing Committee, except with respect to disciplinary matters (see “DISCIPLINARY MATTERS” below).

### Composition

76. To align important listing decisions with the policy direction set by the Listing Policy Committee, it would be preferable for the Listing Regulatory Committee to replicate the composition of the Listing Policy Committee to the extent practicable. However, the Chairperson of the Takeovers Panel, the Chief Executive Officer of the SFC and the Chief Executive of HKEX, who are members of the Listing Policy Committee, will not be members of the Listing Regulatory Committee. The proposed mandate of the Listing Regulatory Committee (ie, cases and appeals) means that (a) this committee will need to meet much more frequently than the Listing Policy Committee, and it would not be practical for all members of the Listing Policy Committee to be members of this committee; (b) potential conflicts of interest are more likely to arise; and (c) because the Listing Regulatory Committee will hear reviews of decisions of the Listing Committee, appropriate arrangements are required to ensure that the members from the Listing Committee do not hear the same case both in the first instance at the Listing Committee level and upon review at the Listing Regulatory Committee level. Moreover, it would minimize the perception of conflicts between the Exchange’s commercial and regulatory roles and reinforce the independence of the listing function if the Chief Executive of HKEX no longer participates in individual cases and appeal hearings.
77. The Listing Regulatory Committee shall consist of:
- (a) the Chairperson of the Listing Committee as an ex officio member;
  - (b) two Deputy Chairpersons of the Listing Committee;
  - (c) the Executive Director of the Corporate Finance Division, SFC as an ex officio member; and
  - (d) two Senior Directors of the Corporate Finance Division, SFC as nominated by the Executive Director of the Corporate Finance Division, SFC.

78. The Chairperson and Deputy Chairpersons of the Listing Committee on the Listing Regulatory Committee must at all times include at least one LC investor representative.
79. The Chairperson of the Listing Committee shall be the Chairperson of the Listing Regulatory Committee.
80. Each Deputy Chairperson of the Listing Committee who sits on the Listing Regulatory Committee shall be a Deputy Chairperson of the Listing Regulatory Committee<sup>31</sup>.

## **Conduct of Meetings**

81. It is expected that all decisions of the Listing Regulatory Committee will be reached on a consensus basis. However, where no such consensus can be reached, a majority vote in support by the members present at a meeting shall be required for any decision to be taken by the Listing Regulatory Committee. The chairperson of a meeting will not have a casting vote. The quorum necessary for the transaction of any business shall be any four members or their alternates present in person<sup>32</sup>, provided that the persons in attendance at each meeting must at all times include or represent an even number of:
  - (a) the members from the Listing Committee, provided further that at least one such person present is an LC investor representative; and
  - (b) the members from the SFC.
82. If a member of the Listing Regulatory Committee is unable to attend, or is recused from, a meeting for any reason, an alternate may attend the meeting and vote on his or her behalf, provided that:
  - (a) the alternate for each member from the Listing Committee will (subject to availability and conflicts) be selected by rotation from his or her designated pool of alternates comprising other existing Listing Committee members; and
  - (b) each alternate for the members from the SFC will be a Senior Director of the Corporate Finance Division, SFC or, if none is available, any other Senior Director of the SFC selected by the Executive Director of the Corporate Finance Division, SFC (or where he or she is conflicted, by the Chief Executive Officer of the SFC).
83. If the appointed Chairperson and Deputy Chairpersons of the Listing Regulatory Committee are all unable to attend a particular meeting, arrangements will be made for one of their alternates to chair the relevant meeting.

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<sup>31</sup> See footnote 29.

<sup>32</sup> The Listing Regulatory Committee will adopt similar provisions as the Listing Policy Committee with respect to the arrangement for a casual or temporary vacancy in a relevant office. Please refer to paragraph 48 of Appendix B.

## LISTING OF EQUITY SECURITIES BY NEW APPLICANTS

### Introduction

84. Rule 8.04 of the Listing Rules provides that both the applicant and its business must, in the opinion of the Exchange, be suitable for listing<sup>33</sup>. Suitability for listing is based on many factors, and compliance with the eligibility requirements set out under Chapter 8 of the Listing Rules may not of itself ensure an applicant's suitability for listing<sup>34</sup>.
85. In practice, the Exchange's consideration of suitability under rule 8.04 often overlaps with the SFC's consideration of the public interest and the interest of the investing public under section 6(2)(d) of the Stock Market Listing Rules<sup>35</sup>. Where there is reasonable doubt as to the suitability of the listing applicant or its business for listing under rule 8.04 of the Listing Rules, the decision of whether the relevant listing application should be approved is an important decision concerning the type and nature of companies that should be permitted to access public capital markets in Hong Kong through listing and, given the precedential effect of listing decisions, potentially has broader policy implications.
86. To assist the market's understanding of rule 8.04, the Listing Department has issued a guidance letter<sup>36</sup> (**Suitability Guidance**), based on its past decisions, on the factors that would be considered when assessing whether an applicant and its business are suitable for listing. Past examples include the sustainability of the business, reliance on a parent company, and suitability of directors and potential persons of substantial influence. The examples set out in the Suitability Guidance are non-exhaustive. Relevant listing decisions<sup>37</sup> also provide guidance as to how the Exchange interprets and applies the Listing Rules' eligibility and suitability requirements for new listings. A guidance letter<sup>38</sup> was recently published to provide further guidance on IPO vetting and suitability for listing.
87. As described in paragraph 73, going forward, IPO applications that involve suitability concerns or broader policy implications will be decided by the Listing Regulatory Committee. In this Consultation Paper, IPO applications that require the in-principle approval of the Listing Regulatory Committee are referred to as "**LRC IPO cases**".
88. A listing application will not be automatically referred to the Listing Regulatory Committee simply because it features one or more of the factors cited in the Suitability Guidance. The relevant factor(s) must give rise to reasonable doubt as to the suitability for listing of the applicant or its business. Existing published guidance and listing decisions will assist prospective listing applicants and sponsors to assess whether a listing application is likely to be referred to the Listing Regulatory Committee. In addition, prospective issuers may seek informal and confidential guidance on suitability for listing (see "**— Pre-IPO Enquiries**" below).

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<sup>33</sup> Main Board Rule 8.04 (GEM Rule 11.06).

<sup>34</sup> Main Board Rule 2.06 (GEM Rule 2.09).

<sup>35</sup> It would not be in the public interest or the interest of the investing public to list an applicant that is not suitable for listing; similarly, if it is not in the public interest or the interest of the investing public for a listing to proceed, it is unlikely (although possible) that the applicant would be considered suitable for listing.

<sup>36</sup> HKEX Guidance Letter HKEX-GL68-13 (published in December 2013 and updated in June 2015).

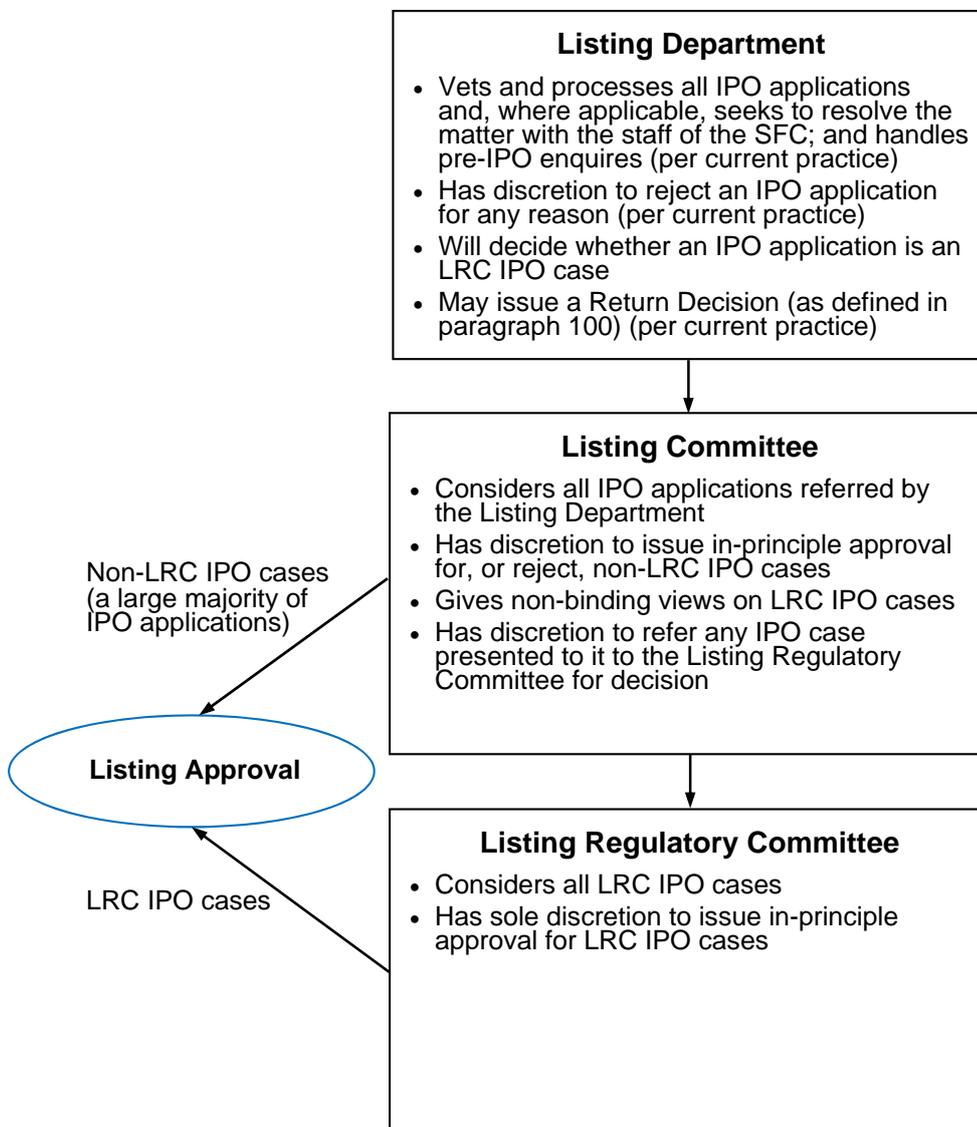
<sup>37</sup> Listing Decision HKEX-LD100-2016 (published in April 2016), HKEX-LD92-2015 (published in June 2015), HKEX-LD74-2013 (published in June 2013), HKEX-LD73-2013 (published in May 2013), HKEX-LD37-2012 (published in September 2012), HKEX-LD34-2012 (published in July 2012), HKEX-LD30-2012 (published in April 2012), HKEX-LD19-2011 (published in September 2011 and updated in September and October 2013), HKEX-LD97-1 (published in July 2010), HKEX-LD92-1 (published in May 2010), HKEX-LD46-1 (published in July 2005), HKEX-LD43-3 (published in first quarter 2005 and updated in November 2011, August 2012, November 2012, December 2012, November 2013, April 2014 and August 2015) and HKEX-LD8-2 (published in November 1999 and updated for rule reference in September 2009).

<sup>38</sup> HKEX Guidance Letter HKEX-GL68-13A (published in June 2016).

## Vetting and Approval Process

89. As mentioned above, under the proposed listing regime, the Listing Regulatory Committee will decide IPO applications involving suitability concerns or broader policy implications. Based on experience, a large majority of IPO applications do not present suitability concerns or give rise to broader policy implications. For this large majority of cases, the vetting and approval process will be streamlined. The SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made by new applicants. Sponsors are expected to assess whether an IPO involves suitability issues and, where appropriate, use the current pre-IPO enquiry process in relation to specific issues at the pre-IPO application stage (see paragraphs 95 to 97 below).
90. The following chart provides an overview of the Exchange's IPO vetting and approval process under the Proposals:

### Vetting and Approval Process for IPO Applications



91. The Listing Department will continue to have primary responsibility for vetting all IPO applications. As currently, the Listing Department will continue to be able to reject an applicant on the grounds of suitability without reference to the Listing Regulatory Committee or the Listing Committee. However, in-principle approval of an IPO application can only be given by the Listing Committee or, if it is an LRC IPO case, by the Listing Regulatory Committee. The Listing Department will refer LRC IPO cases to the Listing Regulatory Committee, except in certain circumstances (see paragraph 2 of Appendix B). Subject to paragraph 92 below, the Listing Department will be responsible for deciding whether to designate an IPO application as an LRC IPO case.
92. The Listing Committee will have the discretion to approve or reject any IPO application other than LRC IPO cases. Non-LRC IPO cases may be processed for listing with the in-principle approval of the Listing Committee. The Listing Committee will have the discretion to designate any IPO application presented to it as an LRC IPO case. The Listing Department will notify the relevant applicant (via its sponsor(s)) as soon as reasonably practicable of any decision (whether by the Listing Department or the Listing Committee) to refer the IPO application to the Listing Regulatory Committee.
93. The Listing Department will present an LRC IPO case to the Listing Regulatory Committee after the Listing Committee has given its comments on the case. The views of the Listing Committee will be made known to the applicant and its sponsor(s). Any representations made by the applicant or its sponsor(s) in response to the Listing Committee's comments will be considered by the Listing Regulatory Committee before making its decision on the case.
94. The Listing Regulatory Committee hearing for each LRC IPO case will be held as soon as practicable following the relevant Listing Committee hearing, taking into account any request from the new applicant and/or its sponsor(s) for an extension.

### **Pre-IPO Enquiries**

95. Prospective applicants will continue to be able to seek informal and confidential guidance from the Listing Department prior to the formal submission of a listing application.
96. At the request of the Listing Department, the Listing Regulatory Committee may give a preliminary indication of its position on any pre-IPO enquiry that involves an LRC Matter (including whether a particular issuer or its business is suitable for listing) with input from the Listing Committee as the Listing Regulatory Committee deems appropriate. The Listing Department may seek guidance from the Listing Committee on any pre-IPO enquiry that does not involve an LRC Matter. Any preliminary indication or guidance on any pre-IPO enquiry, whether given by the Listing Regulatory Committee, the Listing Committee or the Listing Department, shall not be subject to review under Chapter 2B of the Listing Rules.
97. In accordance with current practice, all enquiries by prospective and new listing applicants regarding post-IPO matters would be processed and decided as if it were an enquiry made by a listed issuer (see "MATTERS INVOLVING LISTED ISSUERS" below).

### **IPO Hearing Procedures**

98. Where the Listing Committee is considering an IPO application, the Listing Department will normally invite the new applicant to make itself available to attend the relevant hearing. If the directors and sponsor(s) of a new applicant make themselves available to attend the hearing, they should be prepared to answer questions raised by the Listing Committee. The new applicant may also be accompanied by its proposed authorized representatives. Representatives of the new applicant will normally be invited into the relevant hearing only if the Listing Committee wishes to directly question them.

99. A similar arrangement will be implemented for hearings by the Listing Regulatory Committee.

### **Return Decisions**

100. The Listing Department will continue to have power to return an IPO application on the ground that the application and its related documents are not substantially complete as required by existing rule 9.03(3) of the Listing Rules (**Return Decision**)<sup>39</sup>.

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<sup>39</sup> Under the Proposals, the review structure for a Return Decision will be the same as the current structure, except that the Listing Regulatory Committee will conduct any second review instead of the Listing (Review) Committee. Please refer to paragraph 24 of Appendix B.

## MATTERS INVOLVING LISTED ISSUERS

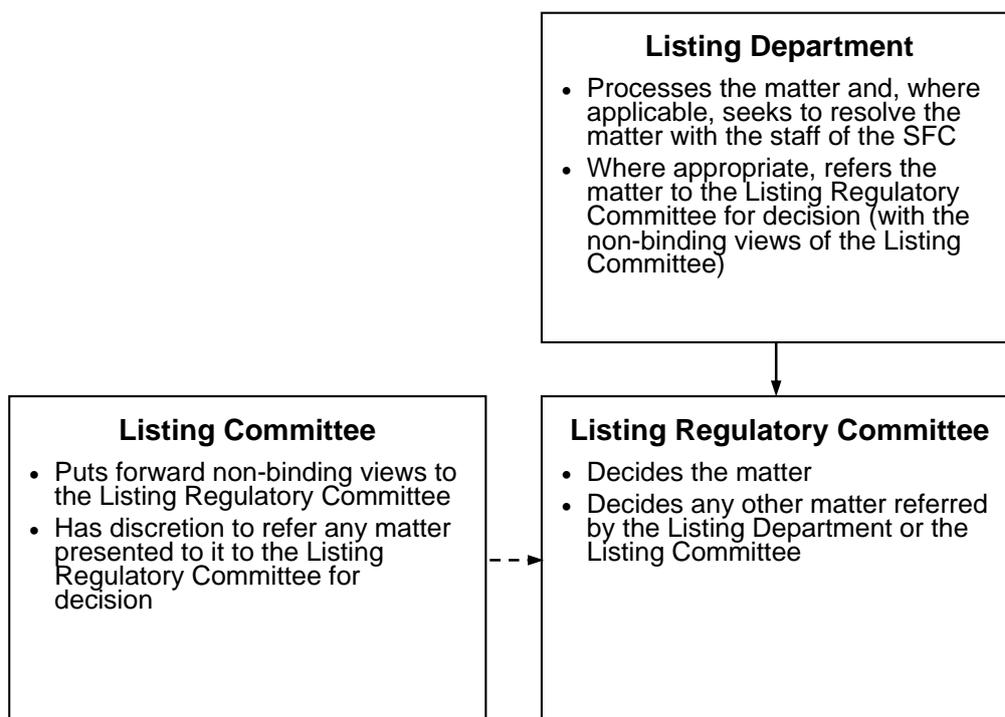
### Introduction

101. In accordance with current practice, the Listing Department will continue to decide most post-IPO matters. Post-IPO matters that involve an LRC Matter (**Post-IPO LRC Matter**) will be referred by the Listing Department to the Listing Regulatory Committee, except in certain circumstances (see paragraph 17 of Appendix B). Subject to paragraph 102 below, the Listing Department will be responsible for designating a matter as a Post-IPO LRC Matter.
102. The Listing Committee will have the discretion to designate any post-IPO matter presented to it for decision as a Post-IPO LRC Matter. The Listing Department will notify the relevant listed issuer as soon as reasonably practicable of a decision (whether by the Listing Department or the Listing Committee) to refer the matter to the Listing Regulatory Committee.

### Vetting and Approval Process

103. The following chart provides an overview of the Exchange's vetting and approval process for Post-IPO LRC Matters:

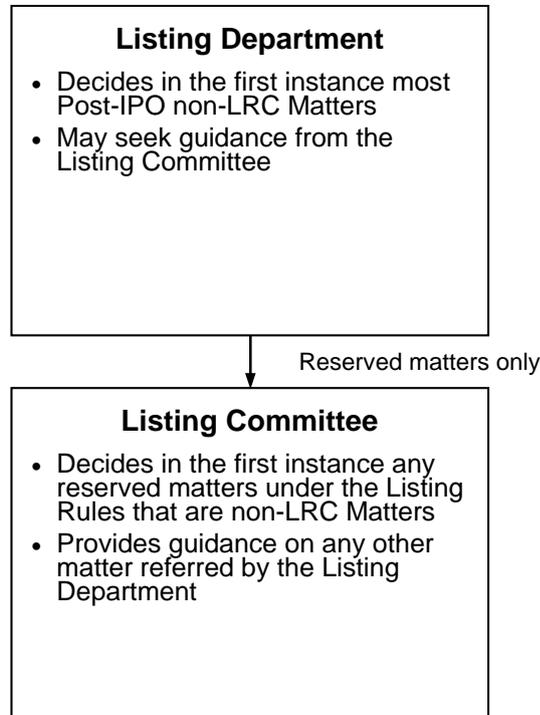
#### Vetting and Approval Process for Post-IPO LRC Matters



104. Arrangements will be made for the Listing Committee to consider any Post-IPO LRC Matter in advance of the Listing Regulatory Committee and to give their non-binding views on the matter. The views given by the Listing Committee will be made known to the listed issuer, who will have the right to make a submission to the Listing Regulatory Committee to address the Listing Committee's comments.

105. The following chart provides an overview of the Exchange's vetting and approval process for post-IPO matters that do not involve an LRC Matter (**Post-IPO non-LRC Matters**):

**Vetting and Approval Process for Post-IPO non-LRC Matters**



106. In accordance with current practice, the Listing Department will continue to decide most post-IPO matters. The Listing Committee will decide in the first instance any reserved matters under the Listing Rules that are non-LRC Matters and, at the request of the Listing Department, provide guidance to the Listing Department on any Post-IPO non-LRC Matter.

## REVIEWS OF LISTING DECISIONS

### Overview

107. At present, reviews of decisions made by the Listing Committee in the first instance are primarily conducted by the Listing (Review) Committee, which consists of members of the Listing Committee who are not conflicted and who did not participate in the initial decision. Under this arrangement, the members who participate in a review depend on extraneous factors, such as their schedules and conflicts considerations, and are not purposely more senior (in terms of time on the Listing Committee) or authoritative regarding the matter under review compared to the members who made the initial decision.
108. To enhance the decision-making structure for reviews, it is proposed that the Listing Regulatory Committee, which includes both market representatives from the Listing Committee and full time executives from the SFC, replace the Listing (Review) Committee as the body to review decisions of the Listing Committee.
109. In addition, the Listing Regulatory (Review) Committee will be formed to replace the Listing Appeals Committee as the final review body within the Exchange for certain types of listing decisions.
110. To establish appropriate accountability on the part of the Listing Department for its own decisions in the administration of the Listing Rules, for matters involving listed issuers, if the Listing Committee overturns a decision by the Listing Department upon review, the Listing Department will have the right to refer the Listing Committee's decision to the Listing Regulatory Committee for a second review. The decision of the Listing Regulatory Committee will be final and conclusive.
111. Detailed information regarding the structure and process, and certain procedural matters, in relation to reviews of listing decisions is set out in Appendix B, paragraphs 21 to 41.

### The Listing Regulatory (Review) Committee

#### Composition

112. The Listing Regulatory (Review) Committee shall consist of:
  - (a) the Chairperson of the SFC as an ex officio member;
  - (b) the Chief Executive Officer of the SFC as an ex officio member;
  - (c) a Non-Executive Director of the SFC as nominated by the SFC Board; and
  - (d) three individuals who have formerly served on the Listing Committee and as nominated by the Listing Nominating Committee (each an **LNC-nominated member**), provided that one such individual shall represent the interests of investors (an **LRRC investor representative**).
113. The Listing Nominating Committee shall nominate four additional individuals (each an **LNC-nominated alternate**) who formerly served on the Listing Committee, including at least one individual who represents the interests of investors (also referred to as an LRRC investor representative), to act as alternates for the LNC-nominated members.
114. The Listing Nominating Committee will designate from amongst the LNC-nominated members the Chairperson, and one or more Deputy Chairpersons, of the Listing Regulatory (Review) Committee.
115. Names of the members of the Listing Regulatory (Review) Committee and each LNC-nominated alternate will be published on HKEX's website.

## **DISCIPLINARY MATTERS**

### **Introduction**

116. To enhance accountability and increase transparency in the administration of the Listing Rules relating to disciplinary matters, the SFC and the Exchange are proposing the following structural enhancements in relation to the conduct of disciplinary proceedings:
- (a) that each disciplinary hearing (whether at first instance or upon review) be chaired by a practising or retired senior counsel (or other individuals of equivalent qualification); and
  - (b) that a reasoned decision be published following each disciplinary hearing (see paragraphs 134 to 137 below).
117. To ensure consistency in listing policy, to the extent that any question or issue that is an LRC Matter arises in relation to a potential disciplinary matter, guidance will be sought by the Listing Department from the Listing Regulatory Committee as far as practicable prior to the commencement of the relevant disciplinary proceedings. The Listing Regulatory Committee shall provide guidance only with respect to the LRC Matter and shall not comment upon the specific facts and circumstances of the relevant case.
118. If disciplinary proceedings are commenced by the Listing Department, any guidance provided by the Listing Regulatory Committee shall be made known to the respondent to the disciplinary proceedings prior to the relevant disciplinary hearing, and shall be put forward by the Listing Department to the Listing (Disciplinary) Committee. The respondent may address any issue relating to the LRC Matter as part of its submission to the Listing (Disciplinary) Committee.

### **Listing Disciplinary Chairperson Group**

119. It is proposed that a Listing Disciplinary Chairperson Group comprising at least five practising or retired senior counsel (or other individuals of equivalent qualification) be appointed by the Exchange Board in accordance with the nomination of the Listing Nominating Committee. Members of the Listing Disciplinary Chairperson Group will be appointed special members of the Listing Committee solely for the purpose of chairing, and acting as members of, any Listing (Disciplinary) Committee or Listing (Disciplinary Review) Committee.
120. Each disciplinary hearing, whether at first instance or upon review, will be chaired by a member of the Listing Disciplinary Chairperson Group determined in accordance with applicable provisions for the conduct of disciplinary hearings, including that an individual may not chair both the first instance hearing and the review hearing for the same disciplinary action against a party.
121. Names of the members of the Listing Disciplinary Chairperson Group will be published on HKEX's website.

### **Listing (Disciplinary) Committee**

122. The Listing (Disciplinary) Committee will decide in the first instance whether a relevant party has committed the alleged rule breaches and the sanctions to be imposed, if any.
123. Each Listing (Disciplinary) Committee shall be constituted as described in this paragraph. If the Listing Department initiates disciplinary proceedings against a party, the Secretary will arrange for a member of the Listing Disciplinary Chairperson Group to chair the first instance hearing before the Listing (Disciplinary) Committee. The Chairperson of the

Listing (Disciplinary) Committee will, with the assistance of the Secretary and subject to applicable provisions regarding conflicts of interest, arrange for at least four members of the Listing Committee to act as members of the Listing (Disciplinary) Committee for the relevant proceedings.

124. The quorum required for the transaction of any business by the Listing (Disciplinary) Committee will be five members present in person.

### **Listing (Disciplinary Review) Committee**

125. As is presently the case, where the Listing (Disciplinary) Committee makes a ruling on a party, the party will have the right to have that ruling reviewed by the Listing (Disciplinary Review) Committee.
126. Each Listing (Disciplinary Review) Committee shall be constituted as described in this paragraph. Upon receiving an application for review, the Secretary will, subject to applicable provisions regarding conflicts of interest, arrange for a member of the Listing Disciplinary Chairperson Group to chair the Listing (Disciplinary Review) Committee. The Chairperson of the Listing (Disciplinary Review) Committee will, with the assistance of the Secretary and subject to applicable provisions regarding conflicts of interest, arrange for at least four members of the Listing Committee who did not participate in the first instance to act as members of the Listing (Disciplinary Review) Committee for the relevant proceedings.
127. The quorum required for the transaction of any business by the Listing (Disciplinary Review) Committee will be five members present in person.
128. The Listing (Disciplinary Review) Committee will conduct a full re-hearing on the merits of the case.

## OVERSIGHT OF THE LISTING FUNCTION

129. The listing function will remain within the Exchange. However, it is intended that the Exchange's decision-making and governance structure be revised to establish clearer accountability for oversight of the listing function in keeping with Hong Kong's status as a leading international financial centre. To establish a clear reporting structure for the Listing Department, it is proposed that the Listing Policy Committee will replace the Listing Committee as the body responsible for oversight of the listing function and, generally, the performance of the Listing Department of its regulatory responsibilities within the Exchange. The Listing Department will remain responsible for the day-to-day administration of the Listing Rules and, going forward, will report to the Listing Policy Committee on its work.
130. The Listing Policy Committee will have primary responsibility for appraising senior executives of the Listing Department in the performance of their regulatory responsibilities. HKEX's Remuneration Committee, which is responsible for determining the overall compensation of the Listing Department and its senior executives, will take into account the assessment of the Listing Policy Committee when determining such compensation<sup>40</sup>.
131. The current delegation of powers and functions in respect of listing matters by the Exchange Board to the Listing Committee will be revoked and amended to give effect to the Proposals.
132. Arrangements will be made for the Listing Policy Committee to receive such work reports from the Head of Listing and other executives of the Listing Department as the Listing Policy Committee considers expedient to perform its role of oversight and for appropriate performance appraisals<sup>41</sup>.
133. The SFC will continue to supervise and monitor the Exchange in its performance of the listing function through arrangements provided under the Listing MOU. To enhance governance, the SFC's annual review shall routinely cover the operation by the Listing Committee of its listing functions.

## MISCELLANEOUS

### Publication of Decisions

134. To enhance accountability and assist the market's understanding of the Listing Rules and the activities of the Listing Department and the respective committees, the Listing Regulatory Committee, the Listing Regulatory (Review) Committee, the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee will, subject to paragraph 135 below, routinely publish their decisions, and the reasons for those decisions, on HKEX's website as soon as reasonably practicable after the relevant hearing.
135. If a request for a review of the first instance decision is not made, the decision will be published at the end of the period allowed under the Listing Rules for making a request for review. However if a request is made for a review of the first instance decision, the decision will be published upon completion of the final review.

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<sup>40</sup> The MOU Addendum will provide that, in this regard, performance assessment will be carried out collectively by all members of the Listing Policy Committee in accordance with HKEX's overall timetable and process for staff year-end performance reviews and against clear objectives for the Listing Department as a whole which will be established at the beginning of each calendar year. The Listing Policy Committee will provide written input to HKEX's Remuneration Committee which will determine the overall compensation of the Listing Department and its senior executives taking into account the Listing Policy Committee's performance assessment to the extent such executives perform regulatory responsibilities.

<sup>41</sup> More detailed provisions relating to such matters will be set out in the MOU Addendum.

136. The Listing Regulatory Committee and the Listing Regulatory (Review) Committee may each permit a decision by the committee on an IPO application to be published on a “no-names” basis under exceptional circumstances if disclosure of the applicant’s identity would be unduly prejudicial to its interests. In addition, delayed or “no-names” publication may be permitted under exceptional circumstances in other cases where the decision is price sensitive or otherwise subject to confidentiality considerations of a commercial nature.
137. The Listing Department and the Listing Committee shall publish their rulings on specific matters where, in the Listing Department’s opinion, publication would assist the market’s understanding of the Listing Rules or the activities of the Listing Department or the Listing Committee. Normally, this will be done on a “no-names” basis in accordance with current practice.

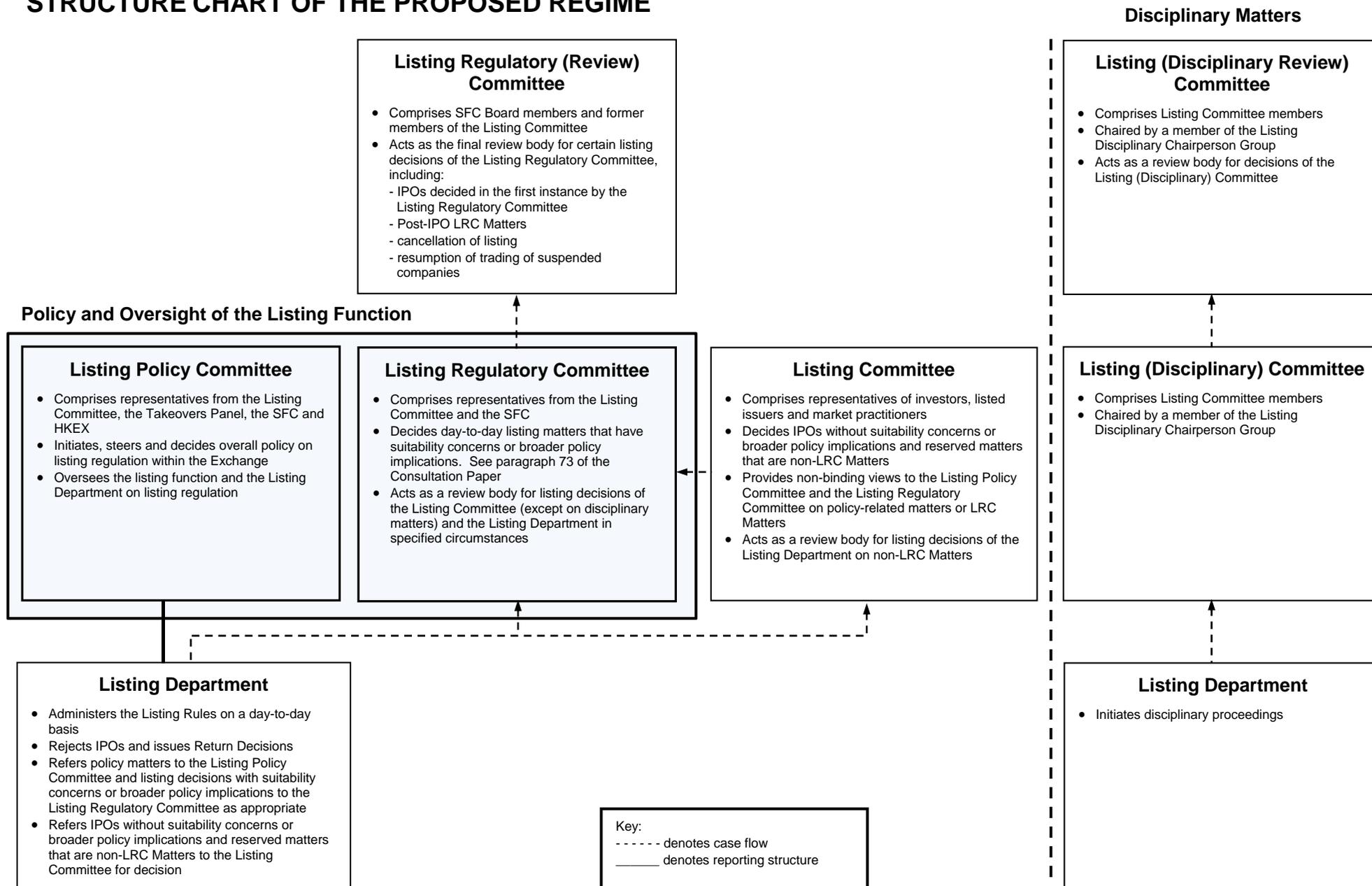
### **Applications for the Listing of Other Securities**

138. The current arrangements under the Listing MOU regarding the listing of securities and products (other than equity securities) will be maintained.

## REQUEST FOR COMMENT

139. This Consultation Paper describes the substantive changes that would be made to the Listing Rules to give effect to the Proposals and we would like to invite public comments on these changes. Except as described in this Consultation Paper, there would be no other substantive changes to the Listing Rules or the Listing MOU, except for consequential amendments that are necessary to give effect to the Proposals. There will be no legislative amendment of the SFO or the Stock Market Listing Rules as a result of the Proposals. Any final Listing Rule amendments and details regarding implementation would be published with the Consultation Conclusions after we have considered the public's views.
140. The Proposals are designed to be considered as a whole. Accordingly this Consultation Paper does not contain specific questions regarding particular aspects of the Proposals. Instead, we would like to invite comments from the public on the Proposals as a whole.
141. To assist our collation of information, please submit your written comments using the following headings as applicable:
- (a) Policy development
  - (b) Listing applications by new applicants
  - (c) Matters involving listed issuers
  - (d) Reviews of listing decisions
  - (e) Disciplinary matters
  - (f) Oversight of the listing function
  - (g) Publication of decisions
  - (h) Composition and Procedures of the Listing Policy Committee
  - (i) Composition and Procedures of the Listing Regulatory Committee
  - (j) Composition and Procedures of the Listing Regulatory (Review) Committee
  - (k) Composition and Procedures of the Listing (Disciplinary) Committee, the Listing (Disciplinary Review) Committee and the Listing Disciplinary Chairperson Group
  - (l) Other matters

# STRUCTURE CHART OF THE PROPOSED REGIME



# DESCRIPTION OF THE PROPOSED REGIME AND RELATED LISTING RULE AMENDMENTS

## LISTING OF EQUITY SECURITIES BY NEW APPLICANTS

### Vetting and Approval Process

1. The Listing Department will continue to have primary responsibility for vetting all IPO applications (including a transfer of listing from GEM to the Main Board). However, in-principle approval of an IPO application can only be given by the Listing Committee or, if it is an LRC IPO case, by the Listing Regulatory Committee. Subject to paragraph 8 below, the Listing Department will be responsible for deciding whether to designate an IPO application as an LRC IPO case.
2. The existing procedures under the Listing MOU<sup>42</sup> for handling matters covered by paragraphs 6.5 and 6.6 of the Listing MOU will continue including those arising at the listing application stage. It is expected that such matters will in most cases be resolved collectively by the Listing Department and the staff of the SFC. If such matters cannot be so resolved, they will be referred by the Listing Department to the Listing Regulatory Committee for a decision (with the non-binding views of the Listing Committee).
3. The Listing Department will continue to have the discretion to reject any IPO application (including an LRC IPO case) without referring the case to the Listing Committee or the Listing Regulatory Committee, subject to review.
4. All IPO applications (including all LRC IPO cases) that are referred by the Listing Department will be considered by the Listing Committee.
5. The Listing Committee will have the discretion to approve or reject any IPO application other than LRC IPO cases. This means that an LRC IPO case that is referred by the Listing Department can only be approved or rejected by the Listing Regulatory Committee.
6. The Listing Committee will have discretion in accordance with current practice to request further information from the listing applicant and/or its sponsor(s) prior to approving or, as the case may be, referring an IPO application to the Listing Regulatory Committee. In accordance with current practice, it is expected that the Listing Committee typically would not request a further hearing.
7. The Listing Department will present an LRC IPO case to the Listing Regulatory Committee for consideration after the Listing Committee has given its comments on the case. The views of the Listing Committee shall be made known to the relevant listing applicant and its sponsor(s) to enable them to, if they wish, make representations to the Listing Regulatory Committee in response to those views. Any such representations from the listing applicant or its sponsor(s) shall be considered by the Listing Regulatory Committee before making its decision on the case. The Listing Regulatory Committee hearing for each LRC IPO case will be held as soon as practicable following the relevant Listing Committee hearing<sup>43</sup>,

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<sup>42</sup> Pursuant to paragraphs 6.5 and 6.6 of the Listing MOU, the Listing Department currently informs the SFC, as soon as reasonably practical, of any matter of a novel or potentially controversial or sensitive nature, or which appear to involve public policy implications, whether arising from a listing application, a transaction by a listed issuer or otherwise. Also, consistent with rule 2.04 of the Listing Rules, the Listing Department is obliged to obtain the consent of the SFC for any decision it intends to implement that will have mandatory effect or general application.

<sup>43</sup> This may include any further Listing Committee hearings if the Listing Committee requires that a case be brought back to it for further consideration before being presented to the Listing Regulatory Committee.

taking into account any request from the new applicant and/or its sponsor(s) for an extension.

8. The Listing Committee will have the discretion to designate any IPO application presented to it as an LRC IPO case. This means that even if an IPO application was not designated by the Listing Department as an LRC IPO case, the Listing Committee will have the discretion to refer the IPO application to the Listing Regulatory Committee for decision. The Listing Department will notify the relevant applicant (via its sponsor(s)) as soon as reasonably practicable of the decision (whether by the Listing Department or the Listing Committee) to refer the IPO application to the Listing Regulatory Committee.
9. The SFC will no longer as a matter of routine issue a separate set of comments on the statutory filings made in connection with IPO applications (regardless of whether the case is to be considered by the Listing Regulatory Committee).

### **Pre-IPO Enquiries**

10. Prospective applicants will continue to be able to seek informal and confidential guidance from the Listing Department prior to the formal submission of a listing application.
11. At the request of the Listing Department, the Listing Regulatory Committee may give a preliminary indication of its position on any pre-IPO enquiry by a prospective applicant or its sponsor on any LRC Matter (including whether a particular issuer or its business is suitable for listing) with input from the Listing Committee as the Listing Regulatory Committee deems appropriate. The Listing Department will arrange for the Listing Committee to provide its non-binding views on the relevant LRC Matter before it is considered by the Listing Regulatory Committee. The Listing Department may also, in its discretion, seek guidance from the Listing Committee on any pre-IPO enquiry that does not involve an LRC Matter. In all such cases, the Listing Regulatory Committee and the Listing Committee (as the case may be) will consider the full IPO application after it has been vetted by the Listing Department. Any preliminary indication or guidance on any pre-IPO enquiry, whether given by the Listing Regulatory Committee, the Listing Committee or the Listing Department, shall not be subject to review under Chapter 2B of the Listing Rules.
12. In accordance with current practice, all enquiries by prospective and new listing applicants regarding post-IPO matters would be processed and decided as if it were an enquiry made by a listed issuer (see "MATTERS INVOLVING LISTED ISSUERS" below).

### **IPO Hearing Procedures**

13. Where the Listing Committee is considering an IPO application, the Listing Department will normally invite the new applicant to make itself available to attend the relevant hearing. If a new applicant is invited to make itself available to attend, the new applicant, including its directors and sponsor(s), should be prepared to answer questions raised by the Listing Committee. The new applicant may also be accompanied by its proposed authorized representatives. Representatives of the new applicant will normally only be invited into the relevant hearing if the Listing Committee wishes to directly question them.
14. A similar arrangement will be implemented for hearings by the Listing Regulatory Committee.

## **Return Decisions**

15. The Listing Department will continue to have power to return an IPO application on the ground that the application and its related documents are not substantially complete as required by existing rule 9.03(3) of the Listing Rules.

## **MATTERS INVOLVING LISTED ISSUERS**

### **Introduction**

16. Under the Proposals, the Listing Department will continue to decide most post-IPO matters. Subject to the following paragraph, if an LRC Matter arises in relation to a post-IPO matter, the Listing Department will refer the matter to the Listing Regulatory Committee for decision in the first instance after obtaining the non-binding views of the Listing Committee. Subject further to paragraph 19 below, the Listing Department will be responsible for deciding whether to designate a matter as an LRC Matter.
17. The existing procedures under the Listing MOU<sup>44</sup> for handling matters covered by paragraphs 6.5 and 6.6 of the Listing MOU will continue in relation to post-IPO matters. It is expected that such matters will in most cases be resolved collectively by the Listing Department and the staff of the SFC. If such matters cannot be so resolved, they will be referred by the Listing Department to the Listing Regulatory Committee for a decision (with the non-binding views of the Listing Committee).

### **Vetting and Approval Process**

18. Arrangements will be made for the Listing Committee to consider an LRC Matter in advance of the Listing Regulatory Committee. The views given by members of the Listing Committee will be presented by the Listing Department to the members of the Listing Regulatory Committee prior to or at the relevant Listing Regulatory Committee meeting. In this regard, members of the Listing Committee will be rendering their non-binding views in an advisory capacity and each member of the Listing Regulatory Committee (including its Chairperson and Deputy Chairpersons) shall have absolute discretion to vote or act as he or she sees fit.
19. The Listing Committee will have the discretion to designate any post-IPO matter as a Post-IPO LRC Matter. This means that even if a post-IPO matter was not designated by the Listing Department as a Post-IPO LRC Matter, the Listing Committee will have the discretion to refer such matter to the Listing Regulatory Committee for decision. The Listing Department will notify the relevant listed issuer as soon as reasonably practicable of the decision (whether by the Listing Department or the Listing Committee) to refer the matter to the Listing Regulatory Committee.
20. Post-IPO non-LRC Matters (as defined in paragraph 105 of the Consultation Paper), which are expected to be a large majority of cases, will be processed in accordance with current practice. This means that the Listing Department will continue to decide such cases in the first instance unless it is a matter reserved for the Listing Committee. The Listing Committee will decide in the first instance any reserved matters under the Listing Rules

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<sup>44</sup> Pursuant to paragraphs 6.5 and 6.6 of the Listing MOU, the Listing Department currently informs the SFC, as soon as reasonably practical, of any matter of a novel or potentially controversial or sensitive nature, or which appear to involve public policy implications, whether arising from a listing application, a transaction by a listed issuer or otherwise. Also, consistent with rule 2.04 of the Listing Rules, the Listing Department is obliged to obtain the consent of the SFC for any decision it intends to implement that will have mandatory effect or general application.

that are non-LRC Matters and, at the request of the Listing Department, provide guidance to the Listing Department on any Post-IPO non-LRC Matter.

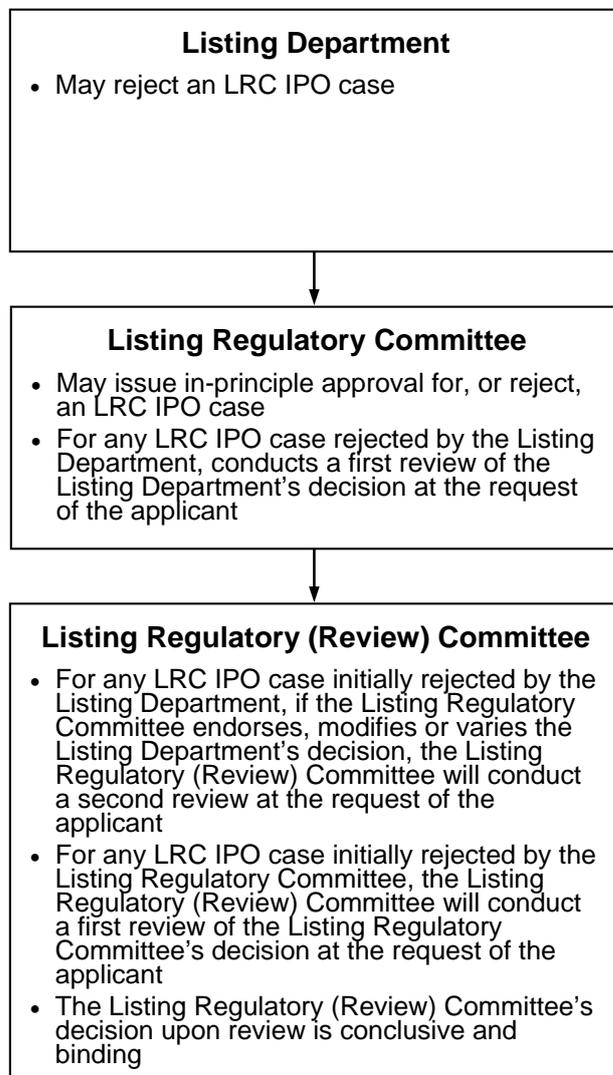
## **REVIEWS OF LISTING DECISIONS**

### **Review cases involving a new applicant**

21. Where the Listing Department rejects a non-LRC IPO case, the applicant will have the right to have that decision reviewed by the Listing Committee. The designation of any listing application as an LRC IPO case and the referral of an LRC IPO case to the Listing Regulatory Committee, whether by the Listing Department or the Listing Committee, shall not be subject to review under Chapter 2B of the Listing Rules.
22. For non-LRC IPO cases, where the Listing Committee (a) rejects an application for listing by a new applicant, or (b) endorses, modifies or varies the Listing Department's decision to reject an application, the new applicant will have the right to have the decision referred to the Listing Regulatory Committee for a review.
23. The decision of the Listing Regulatory Committee on any review of a non-LRC IPO case will be conclusive and binding on the new applicant.
24. A Return Decision (as defined in paragraph 100 of the Consultation Paper) is not a rejection decision for the purposes of the Listing Rules. However, a new applicant and/or its sponsor(s) will have the right to seek a review by the Listing Committee of a Return Decision by the Listing Department. If the Listing Committee endorses a Return Decision after a first review, the new applicant and/or its sponsor(s) will have the right to seek a second review by the Listing Regulatory Committee. The decision made by the Listing Regulatory Committee at any such second review will be conclusive and binding on the new applicant and its sponsor(s).
25. Where the Listing Department rejects an LRC IPO case, the new applicant will have the right to have the decision reviewed by the Listing Regulatory Committee.
26. For LRC IPO cases, where the Listing Regulatory Committee (a) rejects an application for listing by a new applicant, or (b) endorses, modifies or varies the Listing Department's decision to reject an application (as referred to in paragraph 25 above), the new applicant will have the right to have the decision referred to the Listing Regulatory (Review) Committee for a review. The decision made by the Listing Regulatory (Review) Committee will be conclusive and binding on the new applicant.

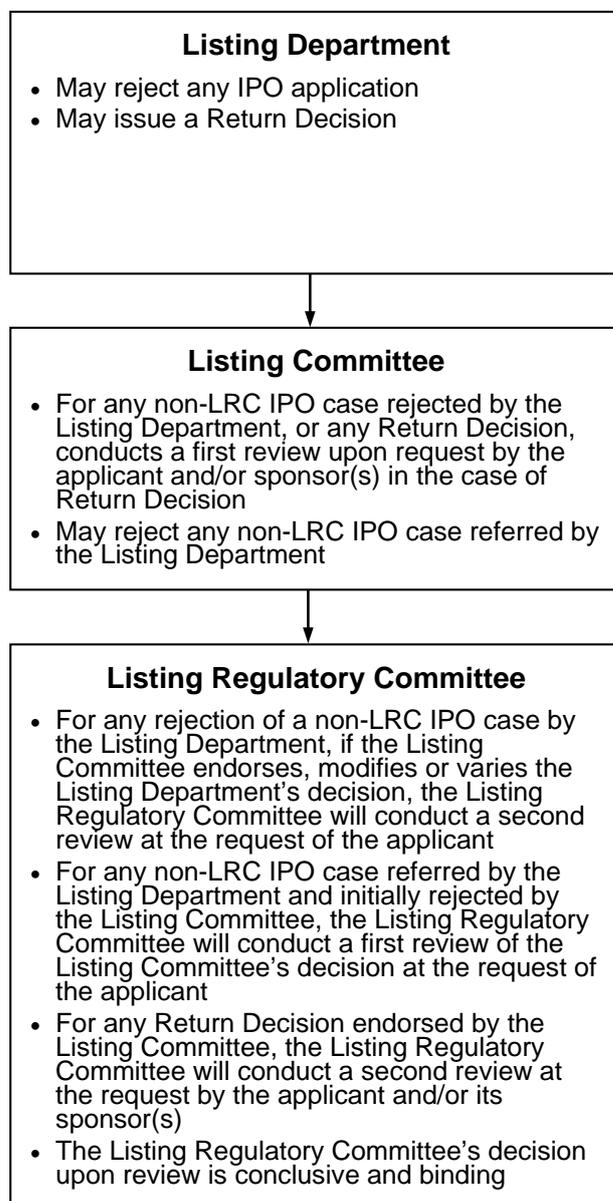
27. The following chart provides an overview of the review structure for LRC IPO cases:

**Reviews of LRC IPO cases**



28. The following chart provides an overview of the review structure for IPO applications other than LRC IPO cases:

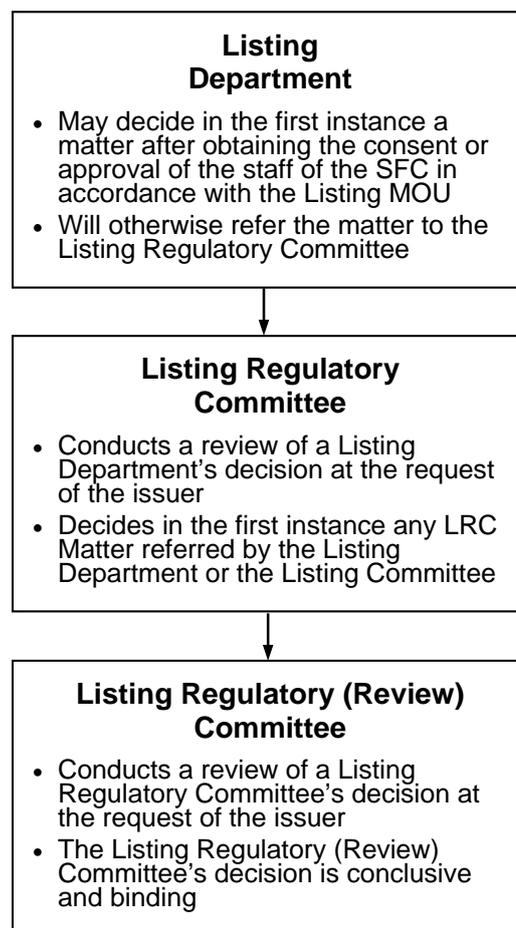
**Reviews of non-LRC IPO cases**



## Review cases involving a listed issuer

29. All Post-IPO LRC Matters will be either (a) decided by the Listing Department after consulting the SFC in accordance with existing procedures under the Listing MOU or (b) decided by the Listing Regulatory Committee. The designation of any post-IPO matter as a Post-IPO LRC Matter and the referral of a Post-IPO LRC Matter to the Listing Regulatory Committee, whether by the Listing Department or the Listing Committee, shall not be subject to review under Chapter 2B of the Listing Rules.
30. Where the Listing Department makes a decision on any post-IPO matter that is an LRC Matter (as contemplated in paragraph 17 of this Appendix), the listed issuer may request that the decision be referred to the Listing Regulatory Committee for review. Where the Listing Regulatory Committee endorses the Listing Department's decision, or makes its own decision on an LRC Matter, the listed issuer may request that the decision be referred to the Listing Regulatory (Review) Committee for review. The following chart provides an overview of the review structure for Post-IPO LRC Matters:

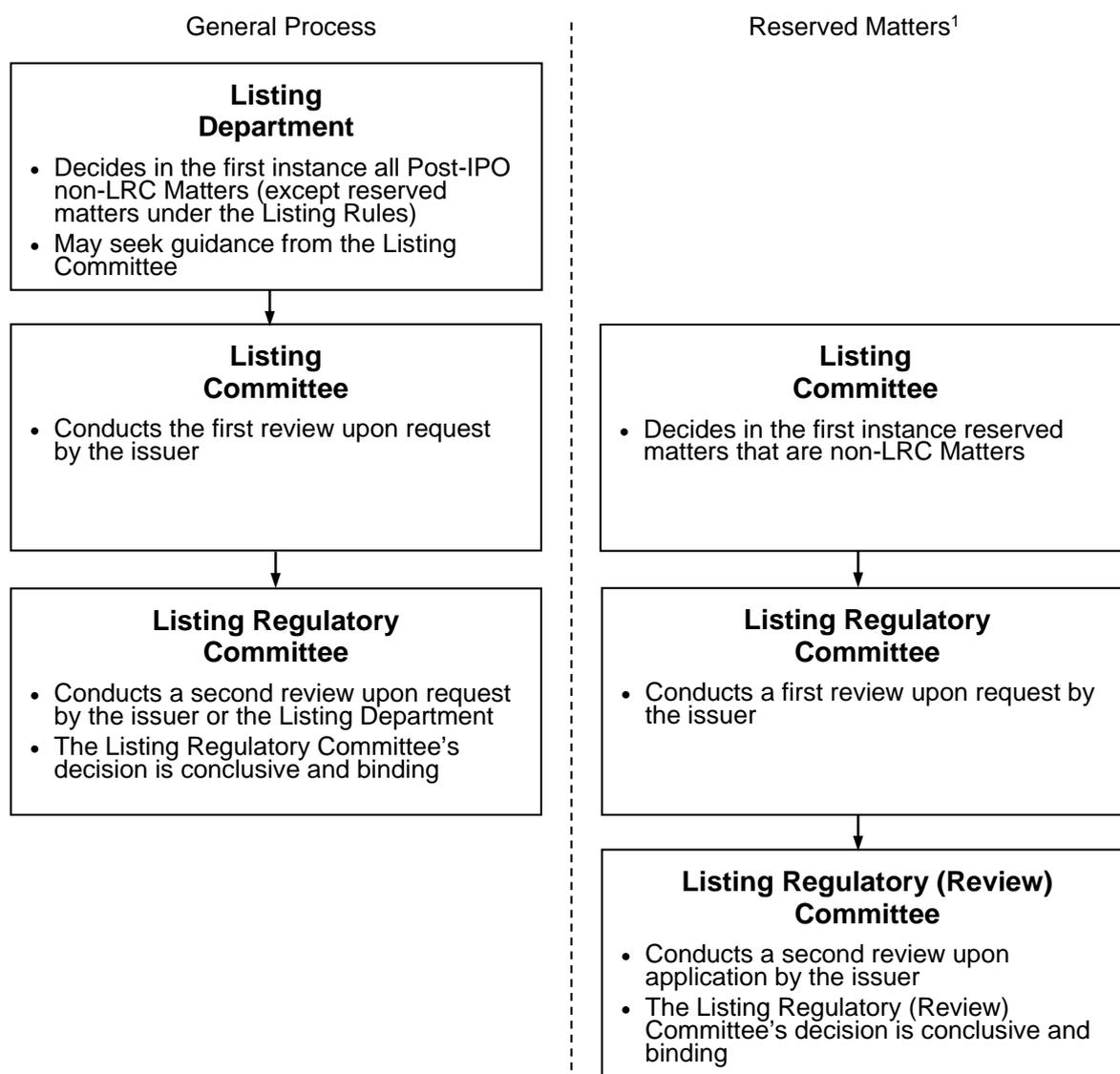
### Reviews of Post-IPO LRC Matters



31. Post-IPO non-LRC Matters will continue to be decided in most instances by the Listing Department. Where the Listing Department makes a decision on any Post-IPO non-LRC Matter, the listed issuer may request that the decision be referred to the Listing Committee for review. Where the Listing Committee endorses the Listing Department's decision or makes its own decision, the listed issuer may request that decision be referred to the Listing Regulatory Committee for review.
32. For any Post-IPO non-LRC Matter, the Listing Regulatory Committee's decision made following its review of a decision by the Listing Committee will be conclusive and binding on the listed issuer.
33. In this regard, where the case does not involve an LRC Matter, the Listing Regulatory Committee will replace the Listing Appeals Committee as the final review body for the following decisions provided under the existing Listing Rules:
  - (a) rejection of an authorised representative (rule 2B.07(3) of the Listing Rules); and
  - (b) rejection of a lifting of suspension of trading (rule 2B.07(4) of the Listing Rules).
34. To enhance the structure for review decisions, even where a post-IPO matter does not involve an LRC Matter, the Listing Regulatory Committee will replace the Listing (Review) Committee, and the Listing Regulatory (Review) Committee will replace the Listing Appeals Committee, for the following types of review decisions under the existing Listing Rules:
  - (a) cancellation of a listing (rule 2B.07(5) of the Listing Rules); and
  - (b) direction of resumption of trading (rule 2B.07(6) of the Listing Rules).

35. The following chart provides an overview of the review structure for Post-IPO non-LRC Matters:

**Reviews of Post-IPO non-LRC Matters**



<sup>1</sup> The reserved matters include (a) the power to approve most Main Board listing applications from new applicants – rules 2A.05, 2A.05A and 2A.05B of the Listing Rules; (b) the power to cancel the listing of a listed issuer – rule 2A.08 of the Listing Rules; and (c) the power to impose disciplinary sanctions – rule 2A.09 of the Listing Rules.

36. To establish appropriate accountability on the part of the Listing Department for its own decisions in the administration of the Listing Rules, where the Listing Committee overturns, modifies or varies a decision by the Listing Department, the Listing Department will have the right to have the Listing Committee's decision referred to the Listing Regulatory Committee for review as follows:

- (a) The Listing Department will notify the listed issuer as soon as practicable of any decision by the Listing Department to seek a review by the Listing Regulatory Committee and its reasons for doing so.

- (b) The relevant party may, within three business days, request that the Listing Department provide a reasoned decision in writing.
- (c) The Listing Department will provide its reasoned decision within 10 business days of receipt of any such request.
- (d) The review hearing by the Listing Regulatory Committee will be held as soon as practicable following (i) confirmation by the relevant party that it does not intend to request a reasoned decision in writing from the Listing Department, or (ii) the day on which such written decision is provided by the Listing Department.
- (e) Both the relevant party and the Listing Department will have the right to attend the review hearing and to make submissions. The relevant party may be accompanied by one representative of each of the sponsor, the authorized representatives, the legal advisor, the financial advisor and the auditors of the listed issuer.
- (f) In advance of the review hearing, the relevant party and the Listing Department will provide each other and the Listing Regulatory Committee through the Secretary with copies of any papers to be presented by it at the hearing.
- (g) The decision of the Listing Regulatory Committee will be final and conclusive.

**General review powers of the Listing Committee, the Listing Regulatory Committee, the Listing Policy Committee and the SFC**

37. The Listing Rules will be amended to reflect as follows:
- (a) the Listing Committee will have the right to review at any time, of its own volition, any decision of the Head of Listing (currently referred to in the Listing Rules as the Executive Director of the Listing Division) or any member of the staff of the Listing Department that is not an LRC Matter and to endorse, modify, vary or reverse any such decision;
  - (b) the Head of Listing or the Listing Committee shall determine whether a given matter involves an LRC Matter;
  - (c) the power of the Listing Committee to impose directions, regulations or restrictions on the Head of Listing (referred to in the rule as the Executive Director of the Listing Division) and the staff of the Listing Department in respect of the way in which they are to carry out their delegated authority shall be amended as appropriate; and
  - (d) save as a member of the Exchange Board, the Chief Executive of the Exchange does not have a role in the administration of the Listing Rules (see paragraph 64 of this Appendix).
38. The Listing Rules will also be amended to provide that the Listing Regulatory Committee may at any time conduct a hearing in relation to any LRC Matter relating to or arising out of the Listing Rules and it may require the attendance at such hearing of such persons and the production to such hearing of such documents as it deems appropriate. The Listing Committee shall have the same discretion and power with respect to non-LRC Matters.
39. In addition, the Listing Rules will be amended to codify paragraph 10.6 of the Listing MOU but the reference to the Listing Appeals Committee shall be deleted.

## **Review Procedures**

40. Review proceedings conducted by the Listing Committee, the Listing Regulatory Committee and the Listing Regulatory (Review) Committee shall be informal. In each case, the chairperson will conduct the proceedings in the manner he or she considers suitable for clarification of the relevant issues and generally for the just handling of the proceedings.
41. Procedures similar to those provided in the existing rules 2B.08 to 2B.14 of the Listing Rules will be made for review proceedings by the Listing Committee, the Listing Regulatory Committee and the Listing Regulatory (Review) Committee (with appropriate modifications to give effect to the Proposals), except that:
  - (a) The quorum necessary for the transaction of any business by the Listing Regulatory Committee and the Listing Regulatory (Review) Committee shall be as described in paragraph 81 of the Consultation Paper and paragraph 59 of this Appendix, respectively.
  - (b) Provisions relating to the Chief Executive of HKEX will be deleted as he will cease to be a member of the Listing Committee (see paragraph 63 of this Appendix).
  - (c) The Listing Department shall not be required to pay a fee for requesting a review.

## **DISCIPLINARY MATTERS**

### **Procedures for Disciplinary Matters**

42. The Listing Department will be responsible for initiating proceedings against potential targets for disciplinary action as set out in existing rule 2A.10 of the Listing Rules for breaches of the Listing Rules. The provisions in rules 2A.11 to 2A.16 of the Listing Rules will continue to apply, subject to the following modifications:
  - (a) the decision of the Listing (Disciplinary Review) Committee shall be conclusive and binding upon the relevant party. References in the Listing Rules to reviews by the Listing Appeals Committee for disciplinary matters will be deleted;
  - (b) the chairperson of each Listing (Disciplinary) Committee and each Listing (Disciplinary Review) Committee will have the discretion to prescribe or amend any procedures or regulations for any disciplinary meetings or hearings instead of the Listing Committee;
  - (c) proceedings of the Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee shall generally be informal. The chairperson will conduct the proceedings in the manner he or she considers suitable for clarification of the relevant issues and generally for the just handling of the proceedings;
  - (d) the Listing (Disciplinary) Committee and Listing (Disciplinary Review) Committee will each provide a copy of its ruling and the reasons for it in writing to the parties as soon as practicable following the hearing (regardless of whether a request for a written decision is made by such parties); and
  - (e) on determining a matter, the Listing (Disciplinary) Committee and Listing (Disciplinary Review) Committee may each, in its ruling and in accordance with the Listing Rules, impose such sanctions and/or make such directions as appear to it to be necessary and appropriate in the circumstances of the case.
43. The Listing (Disciplinary) Committee and the Listing (Disciplinary Review) Committee will routinely publish their rulings following each disciplinary hearing (see paragraphs 134 to 137 of the Consultation Paper).

## APPOINTMENT AND REMOVAL OF MEMBERS

### Listing Policy Committee and Listing Regulatory Committee

44. There are currently two Deputy Chairpersons of the Listing Committee, one of whom is an LC investor representative. The Exchange may (in accordance with the nomination of the Listing Nominating Committee) appoint additional Deputy Chairpersons of the Listing Committee. If the number of Deputy Chairpersons of the Listing Committee exceeds two at any time, subject to paragraph 66 of the Consultation Paper, the two longest-serving Deputy Chairpersons of the Listing Committee will become the Deputy Chairpersons of the Listing Policy Committee and Listing Regulatory Committee<sup>45</sup>.
45. The term of each Deputy Chairperson of the Listing Policy Committee and Listing Regulatory Committee shall not exceed his or her term as a Deputy Chairperson of the Listing Committee.
46. Members of the Listing Policy Committee and Listing Regulatory Committee shall be appointed by the Exchange Board either as ex officio members or in accordance with the relevant nominations made by the Listing Nominating Committee or the Executive Director of the Corporate Finance Division, SFC (as applicable). The term of each member of the Listing Policy Committee and Listing Regulatory Committee shall not exceed his or her term in the relevant office.
47. It is proposed that the Listing Rules shall be amended to permit a Chairperson or a Deputy Chairperson of the Listing Committee to remain in office including, where applicable, as a member of and as Chairperson or Deputy Chairperson (as the case may be) of the Listing Policy Committee and the Listing Regulatory Committee beyond the maximum term of six consecutive years provided under existing rule 2A.25 of the Listing Rules. Subject to re-appointment by the Listing Nominating Committee each year, a Chairperson or a Deputy Chairperson (as the case may be) of the Listing Committee would be permitted to remain in office beyond the six-year term limit until he or she had either served three years as Chairperson or Deputy Chairperson (from the date of their appointment as Chairperson or Deputy Chairperson) or nine years as a Listing Committee member, whichever is the shorter period. For the avoidance of doubt, a member of the Listing Committee may be appointed by the Listing Nominating Committee as the Chairperson or a Deputy Chairperson at the expiry of his or her six-year term on the Listing Committee for a further maximum three-year period.
48. A rule similar to existing rule 2A.26 of the Listing Rules<sup>46</sup> (with the same proviso therein) will be proposed with respect to a vacancy in the office of a member of the Listing Policy Committee and the Listing Regulatory Committee. If a casual vacancy arises on the Listing Policy Committee and the Listing Regulatory Committee as a result of resignation, retirement or otherwise, or if a temporary vacancy arises as a result of the unavailability of a member (for example, due to illness), the Exchange Board shall make an appointment to fill the vacancy in accordance with the nomination of the Listing Nominating Committee, in the case of the members from the Listing Committee, or the nomination of the Executive Director of the Corporate Finance Division, SFC in the case of an appointed Senior Director of the SFC, in each case, for so long as is necessary or expedient. Any such

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<sup>45</sup> See footnote 29.

<sup>46</sup> This rule makes provision for the office to be vacated under certain circumstances, including a receivership or creditor arrangement, insanity, resignation or a finding of serious misconduct.

vacancy in respect of the office of an ex officio member<sup>47</sup> will be filled in accordance with the usual procedures in relation to the particular office.

### **Listing Regulatory (Review) Committee**

49. Members of the Listing Regulatory (Review) Committee shall be appointed by the Exchange Board either as ex officio members or in accordance with the nomination of the SFC Board and the Listing Nominating Committee, as applicable.
50. Members of the Listing Regulatory (Review) Committee (other than the ex officio members) shall normally be appointed for a term of approximately 12 months. All members of the Listing Regulatory (Review) Committee shall vacate office at the end of their term unless they are re-appointed for a further full term or such shorter period as stipulated at the time of their re-appointment.
51. Appropriate provision will be made for appointments to fill any casual or temporary vacancies that may arise in the Listing Regulatory (Review) Committee.
52. All members of the Listing Regulatory (Review) Committee are eligible for re-appointment, provided that each member (except an ex officio member) may only remain in office for a maximum of six consecutive years in addition to any period of appointment for filling a casual vacancy. An ex officio member of the Listing Regulatory (Review) Committee will be re-appointed as long as he or she holds the relevant office. A member who has served for the maximum period permitted by this rule may be eligible for re-appointment after the lapse of two years from the date on which he or she last vacates office. Notwithstanding the foregoing, in exceptional circumstances, the SFC Board and the Listing Nominating Committee (as applicable) shall have the discretion to nominate a person for re-appointment at any time before the lapse of two years from the date such person vacates office.
53. The office of a member of the Listing Regulatory (Review) Committee shall be vacated if any of the events contemplated by existing rule 2A.26 of the Listing Rules<sup>48</sup> occurs subject to the proviso in that rule.

### **Listing Disciplinary Chairperson Group**

54. Members of the Listing Disciplinary Chairperson Group shall normally be appointed for a term of approximately 24 months. All members of the Listing Disciplinary Chairperson Group shall vacate office at the end of their term unless they are re-appointed for a further full term or such shorter period as stipulated at the time of their re-appointment.
55. The Exchange Board may make an appointment in accordance with a nomination by the Listing Nominating Committee to fill any casual vacancies that may occur in the Listing Disciplinary Chairperson Group by reason of resignation, retirement or otherwise. The term of a member appointed to fill a casual vacancy in an office shall end on the same date as the term of the member whose vacation from that office created the vacancy.
56. All members of the Listing Disciplinary Chairperson Group are eligible for re-appointment, provided that each member may only remain in office for a maximum of six consecutive

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<sup>47</sup> The ex officio members of the Listing Policy Committee are the Chairperson of the Listing Committee, the Chief Executive of HKEX, the Chairperson of the Takeovers Panel, the Chief Executive Officer of the SFC and the Executive Director of the Corporate Finance Division, SFC. The ex officio members of the Listing Regulatory Committee are the Chairperson of the Listing Committee and the Executive Director of the Corporate Finance Division, SFC.

<sup>48</sup> This rule makes provision for the office to be vacated under certain circumstances, including a receivership or creditor arrangement, insanity, resignation or a finding of serious misconduct.

years in addition to any period of appointment for filling a casual vacancy. A member who has served for the maximum period permitted may be eligible for re-appointment after the lapse of two years from the date on which he last vacates office. In exceptional circumstances, the Listing Nominating Committee shall have the discretion to nominate a person for re-appointment at any time before the lapse of two years from the date such person vacates office.

57. The office of a member of the Listing Disciplinary Chairperson Group shall be vacated if any of the events contemplated by existing rule 2A.26 of the Listing Rules<sup>49</sup> occurs subject to the proviso in that rule.

## **CONDUCT OF MEETINGS**

58. The respective new committees shall conduct their meetings in accordance with provisions made for this purpose, including rules governing members' conflicts of interest.

### **Listing Regulatory (Review) Committee**

59. A majority vote in support by the members present at a meeting is required for any decision to be taken by the Listing Regulatory (Review) Committee. The chairperson of a meeting will not have a casting vote. The quorum necessary for the transaction of any business shall be any four members or their alternates present in person, provided that such persons include or represent:
- (a) at least two LNC-nominated members and at least one of the attendees is an LRRC investor representative; and
  - (b) at least two members from the SFC.
60. An alternate may attend and vote at a meeting on behalf of a member of the Listing Regulatory (Review) Committee, provided that:
- (a) each alternate for an LNC-nominated member must be an LNC-nominated alternate, and provided further that there must be at least one LRRC investor representative in attendance at each meeting of the Listing Regulatory (Review) Committee; and
  - (b) each alternate for a member from the SFC must be a Non-Executive Director of the SFC, except that an alternate for the Chief Executive Officer of the SFC may also be any Executive Director of the SFC (other than the Executive Director of the Corporate Finance Division, SFC).
61. If an LNC-nominated member of the Listing Regulatory (Review) Committee has a conflict of interest in relation to a matter to be considered by the committee or is otherwise unable to attend a meeting, the Secretary will arrange for an LNC-nominated alternate to attend and vote in place of the conflicted or absent member. If a member from the SFC has a conflict of interest or is otherwise unable to attend, the Chairperson of the SFC (or if he or she is conflicted, the Chief Executive Officer of the SFC) will arrange for a Non-Executive Director (or, where applicable, an Executive Director) of the SFC to act as alternate to the conflicted or absent member.

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<sup>49</sup> These events include a receivership or creditor arrangement, insanity, resignation and a finding of serious misconduct.

## **MISCELLANEOUS**

### **The Secretary**

62. The provisions in existing rule 2B.12 will be amended to reflect the formation of the new committees and the proposed role of the Secretary in relation to the proceedings of these committees.

### **The Chief Executive of HKEX and of the Exchange**

63. The Chief Executive of HKEX will be an ex officio member of the Listing Policy Committee and will cease to be a member of the Listing Committee.
64. To reflect the fact that he does not have a role in the administration of Listing Rules save as a member of the Exchange Board, references to the Chief Executive of the Exchange will be removed from rules 2A.02, 2A.03, 2A.04, 2A.05, 2B.01 and 38.05 of the Listing Rules.

### **Bona Fide Acts of Committee Members**

65. Rule 2A.38 of the Listing Rules will be amended to apply to the Listing Policy Committee, the Listing Regulatory Committee, the Listing Regulatory (Review) Committee, the Listing Committee and the Listing Disciplinary Chairperson Group.

### PERSONAL INFORMATION COLLECTION STATEMENT

1. This Personal Information Collection Statement is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data (**Privacy Commissioner**). It sets out the purposes for which your Personal Data<sup>50</sup> will be used following collection, what you are agreeing to with respect to the SFC's and HKEX's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (**PDPO**).

#### Purpose of collection

2. The Personal Data provided in your submission to the SFC and/or the Exchange (a wholly owned subsidiary of HKEX) in response to this consultation paper may be used by the SFC and/or HKEX for one or more of the following purposes –
  - (a) in the case of the SFC, to administer the relevant provisions<sup>51</sup> and codes and guidelines published pursuant to the powers vested in the SFC; and in performing its statutory functions under the relevant provisions;
  - (b) in the case of HKEX, to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
  - (c) for research and statistical purposes;
  - (d) for other purposes permitted by law.

#### Transfer of personal data

3. Personal Data may be disclosed by the SFC and/or HKEX to members of the public in Hong Kong and elsewhere, as part of the public consultation on this consultation paper. The names of persons who submit comments on this consultation paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the website(s) of the SFC and/or HKEX and in documents to be published by the SFC and/or HKEX during the consultation period or at its conclusion.

#### Access to data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submissions on this consultation paper. All data access requests shall be made using the form prescribed by the Privacy Commissioner which may be found on the official website of the Office of the Privacy Commissioner. The SFC and/or HKEX have the right to charge a reasonable fee for processing any data access request.

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<sup>50</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

<sup>51</sup> The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

## Retention

5. Personal Data provided to the SFC and/or HKEX in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of their respective functions.

## Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this consultation paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

In the case of the SFC:

The Data Privacy Officer  
Securities and Futures Commission  
35/F, Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

In the case of HKEX:

Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
12/F, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

By e-mail: [pdpo@hkex.com.hk](mailto:pdpo@hkex.com.hk)

A copy of the Privacy Policy Statement adopted by the SFC is available upon request. A copy of the Privacy Policy Statement adopted by HKEX is available on HKEX's website at [http://www.hkex.com.hk/eng/global/privacy\\_policy.htm](http://www.hkex.com.hk/eng/global/privacy_policy.htm).