

The Enforcement of the Listing Rules by the Exchange

Under section 21 of the Securities and Futures Ordinance, the Exchange has a statutory duty to ensure, as far as reasonably practicable, an orderly, informed and fair market for the trading of securities listed on the Exchange.

In discharging this statutory obligation, the Exchange enforces the Listing Rules, and cooperates with the statutory regulator (the SFC) and other law enforcement authorities in their enforcement work which concern listed companies.

Enforcement of the law will take priority over that of the Listing Rules. The Exchange will report conduct which may amount to possible breaches of the law to the appropriate law enforcement authority, and will suspend its investigation if it overlaps with their investigation, to avoid duplication of regulatory resources and possible prejudice to their enforcement action. However, the Exchange may, where appropriate, take disciplinary action in respect of those matters after the law enforcement authority has concluded its enforcement action.

The Exchange is committed to enforcement of the Listing Rules. Through its enforcement actions, the Exchange seeks to deter future breaches, educate the market, influence compliance culture and attitude, and enhance corporate governance.

Each year, the Exchange investigates conduct which may give rise to breaches of the Listing Rules where identified (whether during the process of monitoring compliance with the Listing Rules, referrals from other regulatory or law enforcement bodies, or complaints from the public).

Depending on the conduct involved and the facts and circumstances, a variety of regulatory responses to the conduct may be appropriate. Regulatory responses include taking disciplinary action against issuers and their officers for serious breaches, or issuing a warning or caution letter where, for example, breaches are minor or no breach is established but the conduct involved does not meet the expectation of the Exchange. Where appropriate, we may direct issuers to appoint compliance advisers for advice on future Listing Rule compliance matters or for carrying out internal control reviews. We may also make referrals to other law enforcement or regulatory bodies for conduct which falls within their jurisdiction. If the circumstances justify, the Exchange may direct a trading suspension, and in exceptional cases, cancel the listing of the issuer.

The Exchange focuses its resources on pursuing the most blatant and serious conduct with a view to utilizing its existing resources to the best regulatory effect. This conduct tends to be cases where some form of public sanction may be warranted against the parties whose conduct is responsible for the breaches.

Factors against which the appropriate level of enforcement action is considered

Where the conduct justifies it, the Exchange will not hesitate to take appropriate action against the relevant parties, including those responsible for the conduct. The decision as to the level of regulatory response and whether disciplinary action is appropriate will be guided by the following non-exhaustive factors:

- the nature and seriousness of the possible breach;
- the circumstances and manner in which the conduct giving rise to the possible breach was committed;
- the conduct of directors and senior management, e.g. whether they have acted deliberately, recklessly, negligently or otherwise egregiously;
- the market impact and prejudice (or risk of prejudice) to investors as a result of the possible breach;
- any personal benefit accruing to the parties responsible for the possible breaches and its magnitude;
- the post-breach conduct of the relevant parties;
- whether the directors and senior management implemented and maintained adequate and effective internal controls;
- whether the possible breach reveals serious or systemic weaknesses or failings in the issuer's procedures;
- the level of cooperation received from the issuer and its directors during the investigation of the conduct;
- the compliance history of the issuer and its directors; and
- any other mitigating or aggravating factors as outlined in the [“Statement on principles and factors in determining sanctions and directions imposed by the Disciplinary Committee and the Review Committee”](#) attached to the new disciplinary procedures adopted with effect from 13 September 2013 (published on the Exchange's website).

Role of the Listing Division

The Listing Division is responsible for conducting investigations into possible breaches of the Listing Rules. This is primarily by way of inviting written submissions from listed issuers and their directors to explain their conduct in question, and to provide relevant information and documents. Meetings with directors or officers of issuers will be conducted where the Listing Division considers that they would facilitate and expedite the investigation process.

At the conclusion of the investigation a decision will be taken as to what, if any, disciplinary action is required. The matter may be disposed of by warning from the Listing Division.

However, where formal disciplinary action is taken, the Listing Division will act as the *“prosecutor”* and present its case to the Listing Committee for a ruling.

Disciplinary proceedings before the Listing Committee

If formal disciplinary action is taken, the Listing Committee is the decision maker as to whether the parties subject to disciplinary action have committed the breaches alleged and of the sanctions to be imposed, if any.

The Exchange observes the principles of natural justice and due process, and ensures that the parties have the right to be heard. The disciplinary process is primarily by way of exchange of written submissions to be followed by a disciplinary hearing before the Listing Committee at which the parties have the right to make supplementary oral representations and the obligation to answer any questions which the Listing Committee may have.

To expedite disciplinary proceedings and ensure that regulatory outcomes are delivered in a timely and efficient manner whilst balancing the need for fairness to the parties subject to disciplinary action, the Listing Committee has revised its procedures. Central to the new procedures is enhanced case management powers for the chairman of a Listing (Disciplinary) Committee who can make any directions concerning the conduct of the proceedings for the just and expeditious disposal of the matter. The new procedures also seek to reduce the number of written submissions to be filed as a matter of course during the disciplinary process and to encourage earlier hearing dates. Delay in filing submissions and unjustified postponement of hearing dates will not be tolerated. The granting of time extensions will not be the norm, but only in exceptional circumstances and in the interests of fairness. The Listing Committee will not permit excessive and extensive delays against the efficient and timely delivery of regulatory outcomes, as this is not, it is believed, in the interests of the investing community and the market.

Sanctions available to the Listing Committee

The sanctions which the Listing Committee can impose, upon making findings of breaches, are listed in Main Board Listing Rule 2A.09 and GEM Listing Rule 3.10. They include, amongst others, a reputational public sanction of two levels of severity (public censure and public statement of criticism), directing remedial and enhancement action to be taken, and denial of facilities of the market in cases of wilful or persistent failure by an issuer to discharge its responsibilities under the Listing Rules. These Rules also confer power on the Listing Committee to direct a trading suspension, and in exceptional cases, cancel the listing of the issuer in appropriate circumstances.

The Listing Committee seeks to punish past conduct with the application of the sanctions available but of equal importance is to ensure improvement in the future and enhance corporate governance:

- To punish past conduct, the Committee may, amongst other things, impose a reputational sanction; and
- to ensure improvement in the future and enhance corporate governance, the Committee directs remedial and enhancement actions, e.g. internal control review, appointment of a compliance adviser for consultation on future Listing Rule compliance matters, and directors' training on Listing Rule obligations and directors' duties.

In determining the sanctions for Listing Rule breaches, the Listing Committee will seek to achieve consistency, and may refer to the sanctions guide attached to the new disciplinary procedures.

The settlement of disciplinary or prospective disciplinary action is encouraged in accordance with the [statement](#) published on the Exchange website in 2007.

Reminders

In the context of the operation of the Listing Rule enforcement regime by the Exchange, directors and senior management of listed companies are reminded of the following matters:

(a) Collective and individual responsibility of directors

The collective and individual responsibility of directors for compliance is a cornerstone of the Exchange's enforcement regime and is clearly established by the Listing Rules. The Exchange also expects directors to fulfill fiduciary duties and duties of skill, care and diligence to a standard at least commensurate with the standard established by Hong Kong law. This obligation is refined and re-inforced by the personal undertaking given by the directors to the Exchange to procure Listing Rule compliance by listed companies. This obligation encompasses a dual responsibility for ensuring substantive compliance with the Listing Rules and creating the conditions for compliance through the creation of appropriate internal controls.

Executive directors who have executive and management roles and responsibilities within a company obviously have a crucial role to play in procuring the company's Listing Rule compliance. However, non-executive directors (including independent non-executive directors) also have an important role to play. Not only are they expected to give the board the benefit of their skills, expertise, varied backgrounds and qualifications, and exercise their independent judgement in making decisions for the company, they also have responsibilities to procure the company's Listing Rule compliance. Like the executive directors, they are also required to take an active interest in the issuer's affairs and obtain a general understanding of the issuer's business, and must follow up anything untoward that comes to their attention.

(b) Adequate Compliance Controls

It is important that all directors and senior management take steps to ensure that issuers have sound and effective systems in place to support and achieve Listing Rule compliance. The Exchange would remind directors that the Corporate Governance Code contains code provisions to the effect that directors should at least annually review the effectiveness of the issuer's internal control systems, covering all material controls, including operational and compliance controls and risk management functions. Past disciplinary decisions illustrate that the Listing Committee takes a very serious view of those directors who fail in this respect.

(c) Training and Education

A sound knowledge and understanding of their obligations is important. The Corporate Governance Code also contains code provisions conveying the expectation that directors should receive briefings and professional development necessary to ensure that they have a proper understanding of the issuer's operations and business. Further, they should also be fully aware of their responsibilities under the Listing Rules, all relevant legal and regulatory requirements and the issuer's business and governance policies.

The Listing Rules and corporate governance obligations change and develop over time. Directors and senior management are therefore urged to keep abreast of changes to the Listing Rules through regular training in the interests of good corporate governance and the performance of their obligations to the Exchange and the wider financial market.