

# THE STOCK EXCHANGE OF HONG KONG LIMITED

## DISCIPLINARY HEARINGS

### PROCEDURES

#### Preamble

1. Under section 21 of the Securities and Futures Ordinance, The Stock Exchange of Hong Kong Limited has the duty to ensure, as far as reasonably practicable, an orderly, informed and fair market for the trading of securities that are traded on it or through its facilities.
2. Under section 23 of the Securities and Futures Ordinance, the Exchange has made the Listing Rules (also referred to as the MB Rules) and the GEM Listing Rules for the proper regulation and efficient operation of the market which it operates. The Listing Rules and GEM Listing Rules confer upon the Listing Committee certain disciplinary powers. In particular, the Listing Committee may impose the sanctions set out in MB Rule 2A.09 and GLR 3.10 upon the parties identified in MB Rule 2A.10 and GLR 3.11. Under MB Rule 2A.15 and GLR 3.16, the Listing Committee may also prescribe such procedures and regulations for any meetings or hearings as it may think fit.
3. These procedures have been made by the Listing Committee under MB Rule 2A.15 and GLR 3.16, for the purposes of achieving a just and expeditious disposal of disciplinary business before the Listing Committee. The procedures are intended to enable the Listing Committee to deal with all disciplinary matters expeditiously and on the merits. To this end, the procedures are flexible and may be varied at any time to suit the circumstances of any particular case.
4. The process under these procedures is intended to be informal and to be conducted primarily on the papers. Parties are required to file written submissions addressing all relevant issues. Whilst parties may be permitted to supplement their written submissions orally at hearings, oral submissions must be kept to a minimum and be limited as far as possible to matters not dealt with by way of the written submissions.
5. Parties should also appreciate that the disciplinary process established under the Listing Rules and the GEM Listing Rules is potentially a multi-stage process involving:
  - (a) a first instance hearing before the Disciplinary Committee;
  - (b) a review hearing before the Review Committee; and
  - (c) a further and final review hearing before the Listing Appeals Committee.
6. Each stage will be a re-hearing on the merits. This ensures that all parties are given a reasonable opportunity to be heard before any final determination is made. To enable the Exchange to comply with its duty under section 21 of the Securities and Futures Ordinance, however, it is essential that the process is completed expeditiously. For

this reason, parties must strictly adhere to all time limits provided for in these procedures. Extensions of time will only be granted in exceptional circumstances.

## **Procedures**

### **1. Interpretation**

1.1 Definitions in the Listing Rules and the GEM Listing Rules apply to these Rules of Procedure.

1.2 In these Rules, unless the context otherwise requires:

“**appellant(s)**” means any party reprimanded, criticised, censured or otherwise sanctioned by the Disciplinary Committee under MB Rules 2A.09 and 2A.10 or GLRs 3.10 and 3.11;

“**Chairman**” means the Chairman of the Disciplinary Committee or of the Review Committee, as appropriate;

“**Disciplinary Committee**” means the Listing Committee convened to hear any first instance proceedings initiated under MB Rule 2A.02 or GLR 3.02;

“**first instance hearing(s)**” means hearing(s) of the Disciplinary Committee in the first instance;

“**GEM Listing Rules**” or “**GLR**” means the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Exchange;

“**Listing Rules**” or “**MB Rules**” means the Rules Governing the Listing of Securities on the Exchange;

“**party**”/“**parties**” means either or both of the Listing Division and the respondent(s) in disciplinary proceedings initiated under MB Rule 2A.02 or GLR 3.02, or either or both of the Listing Division and the parties to the Resolution Proposal referred to in paragraph 21.2 below, or either or both of the appellant(s) and the Listing Division in review proceedings initiated under MB Rule 2A.11 or GLR 3.12, as appropriate;

“**Resolution Proposal**” means a proposal for concluding intended or disciplinary proceedings on a no-contest basis or by settlement referred to in paragraph 21.2 below;

“**respondent(s)**” means the person(s) against whom proceedings are brought by the Listing Division;

“**Review Committee**” means the Listing Committee convened to hear any review proceedings initiated under MB Rule 2A.11 or GLR 3.12; and

“**Secretary**” means the Secretary to the Listing Committee.

**A. Disciplinary Proceedings**

**2. Commencement of disciplinary proceedings**

2.1 The Listing Division will initiate disciplinary proceedings by submitting a report setting out its case and all material facts and submissions upon which it intends to rely to the Secretary who will serve a copy of the report on the respondents.

**3. Service of disciplinary documents**

3.1 (a) Unless otherwise notified by the parties, the Secretary shall deliver all correspondence, including written submissions, to the parties by hand, registered or ordinary post, email (if a confirmed email address is available to the Secretary) or fax with a confirmatory copy by post or by hand:

- (i) in the case of a company, to its place of business or registered office;
- (ii) in the case of a current director, to the place of business or registered office of the company concerned; and
- (iii) in the case of any other party or if there is no principal place of business or registered office of the company concerned, to the address provided to the Exchange by that person or to the last known address of the party.

(b) The parties shall send all correspondence, including written submissions, to the Secretary by hand, ordinary post, or fax with a confirmatory copy by post or by hand.

(c) Service shall be deemed effective:

- (i) on the date of delivery by hand, email or fax;
- (ii) on the fourth business day after sending by ordinary or registered post to an address in Hong Kong; and
- (iii) on the tenth business day after sending by ordinary or registered post to an address outside Hong Kong (including addresses in Macau and the mainland of the People's Republic of China).

3.2 The deemed service provisions in the undertaking of the respondents to the Exchange in the form of Appendices 5B or 5H to the Listing Rules, and Appendices 6A, 6B or 6C to the GEM Listing Rules, shall apply.

**4. Response submission**

4.1 Respondents to disciplinary proceedings will normally have 28 days to deliver a submission, supporting documents and evidence in response to the report of the Listing Division, with the presumption that no extension of time will be granted.

## **B. Disciplinary Committee**

### **5. Membership**

- 5.1 Following initiation of proceedings by the Listing Division or invoking the disciplinary powers of the Disciplinary Committee referred to in paragraphs 21.1 and 21.2, the Secretary will arrange for a member of the Listing Committee to act as the Chairman. The Chairman of a Disciplinary Committee will usually be the chairman of the Listing Committee. If he cannot accept this role, then one of the deputy chairmen of the Listing Committee may do so. If neither of them can accept this role, a senior member in terms of length of service of the Listing Committee may do so. Before agreeing to act as Chairman, the member concerned will do his best to satisfy himself that he has no professional or personal interest in the case. The Secretary may arrange for a new Chairman if the original Chairman becomes unavailable.
- 5.2 After accepting the role the Chairman will, with the assistance of the Secretary, arrange for at least four other members of the Listing Committee to be members for the hearing or to consider the Resolution Proposals.
- 5.3 The proposed members to be appointed to that Disciplinary Committee should raise with the Secretary any concerns over possible conflicts of interest at the earliest opportunity. The Secretary will notify the parties of the names of the Chairman and other members of the Disciplinary Committee at least two business days before the hearing, or as soon as reasonably practicable.
- 5.4 The parties must raise any concerns over possible conflicts of interest with the Secretary at the earliest opportunity.
- 5.5 The Chairman will consider and rule upon issues of conflicts of interest as soon as possible after the issues are raised and in any event before the Listing Division is allowed to make its supplementary submission at the hearing, or before the Disciplinary Committee considers a Resolution Proposal.

## **C. Chairman's Directions**

### **6. Directions**

- 6.1 In all cases and at any time the Chairman may give such directions as he considers appropriate in writing, with the objective of achieving a just and expeditious resolution of the disciplinary proceedings. The directions may include, amongst other matters, the filing of submissions or evidence. If the Chairman deems it appropriate, he may convene a meeting for the purpose.
- 6.2 If the parties wish to raise a procedural issue, they must do so in writing and at the earliest opportunity possible. Save in exceptional circumstances, procedural issues (including any procedural issue raised by the Disciplinary Committee on its own initiative) may be dealt with by the Chairman on the basis of written submissions only (if submissions are required by the Chairman), without the need for a hearing.

- 6.3 The disciplinary proceedings are conducted on the basis of the report of the Listing Division and any written submissions filed by the parties. Only one submission is to be filed by each respondent except in exceptional circumstances where directed by the Chairman. The Secretary will arrange for a copy of all the submissions filed in the course of the disciplinary proceedings to be provided to all the other respondents.
- 6.4 After receiving the report and any submission referred to in paragraphs 2.1 and 4.1 above, the Chairman:
- (a) may, if he considers appropriate and in his sole discretion, give written directions to the parties specifying:
    - (i) whether any further written submissions are required from any party and if so the time by which they must be delivered to the Secretary. Further submissions should be required only where new material facts or circumstances have arisen since the date of the submissions delivered under paragraphs 2.1 and 4.1 or in exceptional circumstances, for example, where the submissions delivered under paragraph 4.1 contain material facts not previously disclosed by a party to the Listing Division; and
    - (ii) any other matters;
  - (b) will, in his sole discretion, give written directions to the parties specifying the date, time and place of hearing. The Disciplinary Committee may sit at such times and in such places as it deems most convenient and appropriate in all the circumstances.
- 6.5 In making directions for the hearing, the Chairman:
- (a) may, as a matter of courtesy and convenience, consult the parties before fixing a date. However, the Chairman is the sole decision maker on the date of a hearing, whether original or adjourned; and
  - (b) will consider, in his sole discretion, timely requests for an adjournment of the hearing supported by reasons from the parties, and may require evidence of the circumstances being put forward in support of an application. Adjournments will rarely be granted and late applications for an adjournment will only be considered in exceptional circumstances.
- 6.6 A party does not have a right to insist that a hearing should be adjourned for reasons of convenience of the party or any of its advisers or witnesses. Parties are expected to rearrange their schedules to accommodate the hearing.
- 6.7 In all cases, the Chairman may, in the interests of fairness, modify previous directions and issue new directions as required by the circumstances.

## **7. Extensions of time and failure to comply with directions**

- 7.1 If a party has reason(s) to seek an extension of time for complying with a direction or time limit, the party may apply in writing setting out the reason(s). The Chairman will consider reasonable requests for time extensions and may grant time extensions of such duration as deemed appropriate in his sole discretion. However, extensions of time for filing submissions will only be granted in exceptional circumstances. If a party fails, without reasonable excuse, to comply with any direction of the Chairman or any time limit, the Disciplinary Committee may, as appropriate, proceed as if it had been notified by the party that he will not be serving any document or doing whatever else was directed under that direction or in accordance with that time limit.

## **8. Pre-hearing Procedure**

- 8.1 At least three business days before the disciplinary hearing, each party shall provide the Secretary with a list of all persons attending the hearing together with that party and the respective capacity in which such persons will attend the hearing.
- 8.2 The Secretary will provide the parties to the proceedings with a list of persons attending the disciplinary hearing together with the parties and will set out the capacity in which such persons will be attending the disciplinary hearing once the necessary information has been received by him under paragraph 8.1 above.

## **D. The Hearing**

### **9. Attendance of parties**

- 9.1 Each respondent has the right to attend the disciplinary hearing and to be accompanied by a professional adviser. Subject to the discretion of the Chairman to be exercised where appropriate based on the facts and circumstances of the disciplinary proceeding, where the respondents are advised by the same company or firm of professional advisers, only one person from that company or firm of advisers may accompany those respondents at the hearing. Respondents can only participate in proceedings if they attend in person or, if a company, by the personal attendance of an appropriate and authorised representative.
- 9.2 The representative attending a disciplinary hearing on behalf of a respondent company must be a director of that company.
- 9.3 It is expected that respondents will attend the disciplinary hearing, and that they will ensure they are in a position to make supplementary oral submissions if necessary, and to answer any questions which the Disciplinary Committee may have. This is particularly so in respect of the respondent directors who have undertaken to the Exchange to attend before any meeting or hearing at which they are requested to appear.
- 9.4 The disciplinary hearing will be conducted in English. Any party may, if he wishes, be accompanied by a person who is capable of speaking English and acting as an

interpreter, but he must inform the Secretary as soon as possible, and in any event, at least three business days before the hearing in accordance with paragraph 8.1 above.

- 9.5 Where a party is not familiar with the English language, but wishes to address the Disciplinary Committee during the hearing in a language other than English, he must inform the Secretary as soon as possible, and in any event, at least three business days before the hearing, of such intention.
- 9.6 It is the responsibility of any party desiring the attendance of witnesses to procure their attendance at the hearing. Any party who wishes to call witnesses at the hearing must apply to the Chairman for consent at the same time its/his submission is filed under paragraph 4.1. The Chairman may direct the party to file a statement of the evidence of the potential witnesses.
- 9.7 Any respondent who does not intend to attend the disciplinary hearing must notify the Secretary in writing and provide written reasons for the intended absence as soon as reasonably practicable and in any event at least three business days before the hearing.

## **10. Conduct of hearings**

- 10.1 The proceedings of the Disciplinary Committee are informal. The Chairman will conduct the proceedings in the manner he considers suitable for clarifying the issues before it and generally for handling the proceedings in a just and expeditious manner. Unless otherwise directed by the Chairman the hearing will be conducted as follows:
- (a) At the beginning of the hearing the Chairman will make a short opening statement to explain the manner and order of the proceedings.
  - (b) Each member of the Disciplinary Committee, including the Chairman, will confirm that he has no personal or professional interest in the case before the Disciplinary Committee. Any member present who has a personal or professional interest in the case will be invited to make a declaration of his interest. All parties will then be invited to confirm whether they have any objection to any member present being part of the Disciplinary Committee and if they have an objection to state the reasons for the objection.
  - (c) The Chairman will rule on the objection referred to in sub-paragraph (b) above. If the Chairman is the subject of the objection, the other members of the Disciplinary Committee except for the Chairman will rule on the objection. If an objection is sustained, the remaining members of the Disciplinary Committee can continue with the hearing provided that there is a quorum and with the agreement of the parties.
  - (d) The Chairman confirms that a quorum of five is present and introduces the members of the Disciplinary Committee to all the parties. The Chairman then invites the parties and their representatives to introduce themselves. The parties should also introduce any persons attending the hearing with them and the respective capacity in which such persons attend the hearing.

- (e) The Chairman will invite the representatives of the Listing Division to make any oral submission to supplement, but not repeat, the written submissions of the Listing Division. He will then invite the respondent(s) to make any oral submission to supplement, but not repeat, his/their written submissions. Any party accompanied by a professional adviser may confer with his professional adviser before making any oral submission. Such oral submissions must be kept as short as reasonably practicable.
  - (f) The Disciplinary Committee may ask the parties and any persons attending the disciplinary hearing any question relevant to the disciplinary action. Persons answering questions are expected to do so directly and not through their professional advisers, although any party accompanied by a professional adviser may confer with his professional adviser before answering such questions. However, any member of the Disciplinary Committee may request any professional adviser present to clarify or elaborate any answers given by their clients.
  - (g) The representatives of the Listing Division, to be followed by the respondent(s), may make a final oral submission if they so wish. Any party accompanied by a professional adviser may confer with his professional adviser before making that final submission. Such oral submissions must be kept as short as reasonably practicable.
- 10.2 At any hearing, the Disciplinary Committee may, at its full discretion, admit or reject any evidence adduced, whether oral or written, and attach such weight to the evidence as the Disciplinary Committee considers appropriate in its discretion. The Evidence Ordinance (Cap. 8, Laws of Hong Kong) and laws relating to the admissibility of evidence shall not apply.
- 10.3 At hearings before the Disciplinary Committee, the matter is usually presented in person by the parties. Except in very exceptional circumstances and, in any event, only with the leave of the Chairman, professional advisers accompanying the parties do not have any right of audience at the hearing.
- 10.4 The Disciplinary Committee or the Chairman may obtain advice from an independent professional adviser or an expert in any relevant area of practice in respect of substantive issues of the disciplinary proceedings. The substance of the advice will be disclosed to the parties so that they may comment upon it before a decision is made. The Disciplinary Committee or the Chairman may seek to secure the attendance of the adviser at the hearing if it or he considers this to be necessary.
- 10.5 A recording of the hearing will normally be made for administrative purposes. A transcript of the hearing (i.e. without the deliberations of the Disciplinary Committee) may also be made. Any party to the hearing may request a copy of the transcript, which will normally be provided, subject to confidentiality considerations.

## **11. The burden of proof**

- 11.1 The party making an assertion has the burden of proving it.

## **12. The standard of proof**

- 12.1 Proceedings before the Disciplinary Committee are civil in nature. Accordingly, the standard of proof is on the balance of probabilities.

## **13. Failure of the parties to attend**

- 13.1 If a party fails to be present or represented at a hearing, the Disciplinary Committee may hear and decide the matter before it in the absence of that party if:

- (a) it is satisfied that the party has been duly notified of the hearing; and
- (b) (i) no good reason for the absence has been given to it; or  
(ii) for the just and expeditious conduct and determination of the matter.

- 13.2 Before deciding to dispose of any hearing in the absence of a party, the Disciplinary Committee must consider the written submissions of the party, if any.

## **14. The decision**

- 14.1 The Disciplinary Committee will consider the submissions, written and oral, presented to it in the absence of both parties in coming to its decision.

- 14.2 The Secretary and any legal advisers to the Disciplinary Committee may be present during the Committee's deliberations for the purposes of providing administrative and legal support. They may assist in recording the Disciplinary Committee's decision in writing, after the Committee, having deliberated, has arrived at its decision and communicated its decision, findings and reasoning to the Secretary and/or advisers.

- 14.3 Where the Disciplinary Committee has obtained legal advice on substantive issues of the disciplinary proceedings, it may, if so advised, disclose the entire legal advice, and invite the parties to make submissions in respect of the legal issues in question. The Disciplinary Committee will consider the submissions of the parties before making a ruling.

- 14.4 The Disciplinary Committee will provide a copy of its ruling and the reasons for it in writing to the parties as soon as practicable following the hearing.

- 14.5 In determining the issues before it, the Disciplinary Committee may, in its ruling and in accordance with the Listing Rules or the GEM Listing Rules (as appropriate) impose such sanctions and/or make such directions as appear to the Disciplinary Committee to be appropriate in the circumstances of the case. The Disciplinary Committee will do so including by reference to the Statement on principles and factors in determining sanctions and directions referred to in paragraph 23 below.

**15. After the decision**

- 15.1 If one or more of the respondents seek a review of its decision, the Disciplinary Committee shall have the power to revise the draft press release containing the sanctions imposed to permit publication at any time of a separate press release in respect of those respondent(s) not seeking a review in appropriate terms.

**E. Review Proceedings**

**16. Initiating review proceedings**

- 16.1 A party reprimanded, criticised, censured or otherwise sanctioned by the Disciplinary Committee under MB Rules 2A.09 and 2A.10 or GLR 3.10 and 3.11 may apply to the Listing Committee for a review of the decision of the Disciplinary Committee under MB Rule 2A.11 or GLR 3.12.
- 16.2 An application for review must be made in writing to the Listing Committee within the time specified under MB Rule 2A.12 or GLR 3.13. The application must state whether the review is in respect of the findings of breach(es) of, and/or the sanction(s) and direction(s) imposed by, the Disciplinary Committee, and state the full grounds of review together with reasons.
- 16.3 A review of the decision of the Disciplinary Committee is by way of a re-hearing.

**17. Membership of the Review Committee**

- 17.1 After receiving an application for review in writing, the review process will commence by the Secretary arranging a member of the Listing Committee who did not participate in the first instance hearing as the Chairman of the Review Committee. Paragraph 5.1 in respect of who will act as the Chairman applies.
- 17.2 After accepting the role the Chairman of the Review Committee will, with the assistance of the Secretary, arrange for at least four other members of the Listing Committee who did not participate in the first instance hearing to be members of the Review Committee.
- 17.3 Paragraphs 5.3 to 5.5 concerning issues of possible conflicts of interest also apply to the Review Committee, except that the reference to the Listing Division in paragraph 5.5 shall be reference to the appellant(s).

**18. Directions**

- 18.1 Paragraphs 6.1 to 6.3 above also apply to review proceedings, except that the filing of submissions is governed by paragraph 18.2(a) below and that references to the Disciplinary Committee shall be to the Review Committee.
- 18.2 After receiving the application for review in the form required by paragraph 16.2 above, the Chairman:

- (a) may, if he considers appropriate and in his sole discretion, give written directions to the parties specifying:
  - (i) whether any further written submissions are required from any party and if so the time by which they must be delivered to the Secretary. In considering whether to make this direction, the Chairman may consider, amongst other matters, the following:
    - (1) A review of the decision of the Disciplinary Committee is by way of a re-hearing, based on the report of the Listing Division and the submissions of the parties filed for the first instance hearing;
    - (2) As a rule, no further submissions from the parties should be required unless relevant and material new facts have emerged since the date of the report of the Listing Division; and
    - (3) The party who seeks to file a further submission has the burden of satisfying the Chairman that a further submission is appropriate and necessary in the interests of fairness.
  - (ii) any other matters;
- (b) will, in his sole discretion, give written directions to the parties specifying the date of the review hearing.

## **19. Nature of review hearings**

- 19.1 A review under MB Rule 2A.11 and GLR 3.12 is a re-hearing at which the Review Committee may make any finding irrespective of the decision of the Disciplinary Committee. The hearing will be conducted on the basis of:
- (a) the same materials considered by the Disciplinary Committee in reaching its decision at the first instance, including all written submissions;
  - (b) the ruling of the Disciplinary Committee and the reasons for it;
  - (c) the written grounds for review of the appellant and its reasons; and
  - (d) any further written submissions delivered in accordance with the directions of the Chairman of the Review Committee.
- 19.2 Save in exceptional circumstances and with the leave of the Chairman, no new evidence may be adduced at a hearing before the Review Committee.

## **20. Other applicable provisions**

- 20.1 Paragraphs 6.5 to 6.7 and 7 to 15 shall also apply to review hearings, except that:

- (a) the order of making supplemental and final oral submissions referred to in paragraphs 10.1(e) and 10.1(g) shall be reversed with the appellant(s) making submissions first, followed by the representatives of the Listing Division; and
- (b) references to the Disciplinary Committee shall be references to the Review Committee.

**F. Resolution of Disciplinary Business by Agreement**

**21. Procedures after reaching a Resolution Proposal**

- 21.1 The Listing Division and the parties subject to disciplinary action or proposed disciplinary action may agree terms for disposing of that disciplinary action either by means of no contest or by settlement at any time. If disciplinary sanctions or other actions within the scope of MB Rule 2A.09 or GLR3.10 are necessary, the agreement of the Disciplinary Committee will be required.
- 21.2 In that event, the disciplinary jurisdiction of the Listing Committee under MB Rule 2A.01 or GLR 3.01 may be invoked for the purposes of considering such a Resolution Proposal. For the purposes of these procedures, the term “Resolution Proposal” shall encompass both intended and disciplinary actions to be concluded by no contest or settlement.
- 21.3 The Listing Division may invoke the disciplinary jurisdiction of the Listing Committee by giving written notice to the Secretary if either:
  - (a) before disciplinary proceedings are commenced the Listing Division and one or more prospective parties to those proceedings agree terms for resolving the proposed disciplinary action; or
  - (b) after disciplinary proceedings are commenced the Listing Division and one or more parties to those disciplinary proceedings reach an agreement for resolving the disciplinary proceeding.
- 21.4 The application should be supported by a short report prepared by the Listing Division setting out the facts of the case and the Resolution Proposal. The parties (prospective or actual) must have confirmed in writing their agreement to the Resolution Proposal. A copy of the report will be provided to the parties to the Resolution Proposal.

**22. Consideration and endorsement of a Resolution Proposal**

- 22.1 In either case referred to in paragraph 21.3, on the Secretary receiving a written notice, a Chairman will be arranged and a Disciplinary Committee will be formed in the same way as that required under paragraph 5.
- 22.2 The Chairman can make such directions as he sees fit for the efficient and timely consideration of the Resolution Proposal, including dispensing with an oral hearing to deal with the Resolution Proposal.

- 22.3 The Disciplinary Committee will consider and if appropriate, approve, a Resolution Proposal on the basis of the report referred to in paragraph 21.4, the report of the Listing Division referred to in paragraph 2.1, the written submissions of the parties, and oral submissions of the parties at the hearing referred to in paragraph 22.4, if any. It may do so with or without a hearing.
- 22.4 Where the Chairman considers it necessary, he may fix a hearing for considering the Resolution Proposal. Each of the parties should, or instruct an officer of the respondent company to, be available to answer any questions which the Disciplinary Committee may have. It is at the sole discretion of the Chairman whether the attendance of the parties is necessary before approving the Resolution Proposal.
- 22.5 The Disciplinary Committee may accept in whole or in part the Resolution Proposal put before it. If the Disciplinary Committee intends to vary the terms of a Resolution Proposal, it will give due notice to the parties to the proposal, and will also give the parties an opportunity to comment on any proposed variation either orally or in writing in its absolute discretion. It may not vary the terms of Resolution Proposals without the consent of the Listing Division and the relevant party to the proposal. It may reject any Resolution Proposals put to it giving reasons for so doing to the parties to the proposal.
- 22.6 In coming to its decision on the merits of the Resolution Proposal, the Disciplinary Committee shall have regard to [the criteria for disposing of disciplinary actions by settlement dated 22 June 2007](#) and the Statement on principles and factors in determining sanctions and directions imposed by the Disciplinary Committee and the Review Committee dated 13 September 2013, both published on the Exchange's website.
- 22.7 Where a Resolution Proposal is rejected, the entire proposal will lapse. No submissions made or evidence adduced in respect of the Resolution Proposal shall be used as evidence or referred to in the disciplinary proceedings which the Listing Division may continue to pursue as a result of the rejection.
- 22.8 Where a Resolution Proposal is rejected in whole or in part, the Listing Division may proceed with the disciplinary proceedings or of that part not endorsed by the Disciplinary Committee subject to any directions made by the Chairman:
- (a) the proceedings, if continued, will be restored from the point in the process which they had reached before the Resolution Proposal was presented; and
  - (b) the Secretary will arrange for a new Chairman and a new Disciplinary Committee will be formed for the disposal of the restored proceedings unless otherwise agreed by the parties.

## **G. Principles and Factors in Determining Sanctions and Directions**

### **23. Statement**

- 23.1 The Disciplinary Committee, the Review Committee and the parties should refer to the Statement on principles and factors in determining sanctions and directions

imposed by the Disciplinary Committee and the Review Committee annexed as **Appendix** to these procedures.

## **H. Miscellaneous Matters**

### **24. Point of contact**

- 24.1 The Secretary will be the point of contact for all parties in respect of any procedural matter. Unless the Secretary specifies an alternative means of communication, such as email or fax, all communications with the Disciplinary Committee or the Review Committee should be delivered by hand or sent by post and addressed to the Secretary to the Listing Committee, The Stock Exchange of Hong Kong Limited, 11th Floor, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong.

### **25. Discrepancies**

- 25.1 Where any discrepancy exists between the Listing Rules (or the GEM Listing Rules, as applicable) and these Rules of Procedure, the Listing Rules (or the GEM Listing Rules, as applicable) shall prevail.

**THE STOCK EXCHANGE OF HONG KONG LIMITED**

**DISCIPLINARY HEARINGS**

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

1. **General**

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

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

2.1 This statement:

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

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

2.3 General principles:

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

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

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

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

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