

ENFORCEMENT OF THE LISTING RULES – POLICY STATEMENT

Introduction

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. The Listing Rules have been adopted for the proper regulation and efficient operation of the market. The Exchange is the frontline regulator of listing-related matters; its enforcement of the Listing Rules is an element essential to the discharge of its statutory duty.

Enforcement objectives

Through its enforcement actions, the Exchange seeks to:

- deter future breaches;
- educate the market;
- influence compliance culture and attitude; and
- enhance corporate governance.

Cooperation with other regulatory bodies and law enforcement agencies

The Exchange cooperates with and supports the Securities and Futures Commission and other authorities in their enforcement work concerning listed companies and relevant individuals.

Enforcement of the law will take priority over enforcement of the Listing Rules. The Exchange will report conduct which may amount to possible breaches of the law to the appropriate law enforcement authority. Depending on the circumstances of the matter, the Exchange may commence or continue its own action in relation to the conduct, or may suspend its action if appropriate, e.g. if continuing may risk causing prejudice to the action of the relevant law enforcement authority.

Role of the listing division and the nature of enforcement action

Enforcement of the Listing Rules includes investigating potential breaches of the Listing Rules, and then implementing the appropriate regulatory response, through disciplinary action if necessary.

Potential breaches may be identified through the Exchange's own monitoring of issuers, self-reporting, referrals from other regulatory or law enforcement bodies, whistle-blowing, or complaints from the public.

The Listing Division is responsible for conducting investigations into potential breaches. An investigation will normally involve inviting written submissions from listed issuers, directors and other relevant parties to explain what has happened and their conduct, and to provide relevant information and documents. Meetings may also be conducted in appropriate cases.

At the conclusion of the investigation, the Listing Division will take into consideration all the facts and circumstances of the case, and decide what, if any, regulatory action is required on a respondent-by-respondent basis. Amongst other things, this may involve a warning from the Listing Division, or the commencement of a disciplinary action.

Disciplinary proceedings

Where disciplinary action is taken, the Listing Committee is the decision maker as to whether the parties subject to disciplinary action have committed breaches and the sanctions to be imposed, if any. The Listing Division will act as the “prosecutor”. The respondent parties have the opportunity to make both written and oral representations, and a right to attend the hearing before the Listing Committee.

Respondents are normally expected to attend the hearing, and to answer any questions which the Listing Committee may have, particularly if the respondent has undertaken to the Exchange to attend before any meeting or hearing at which they are requested to appear. [Procedures](#) for disciplinary hearings can be found on the HKEX website. The procedures are intended to enable disciplinary matters to be dealt with expeditiously, as the efficient and timely delivery of regulatory outcomes is in the interests of the investing community and the market.

Settlement

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

Sanctions available

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.

The sanctions which the Listing Committee can impose, upon making findings of breaches, and the parties that may be subject to such sanctions, are set out in Chapter 2A of the Main Board Listing Rules and Chapter 3 of the GEM Listing Rules.

These sanctions include, amongst others, a graduated range of public reputational sanctions (public statement of criticism; public censure; prejudice statement; director unsuitability statement).

The Listing Committee may also direct remedial action to be taken (e.g. an internal control review, the appointment of a compliance adviser, or directors’ training on regulatory and legal topics including Listing Rule compliance), the denial of facilities of the market to an issuer, a trading suspension, or the cancellation of listing of the issuer.

See also the statement on principles and factors in determining sanctions and directions (the [Sanctions Statement](#)), available on the HKEX website.

Enforcement priorities

The Exchange focuses on pursuing serious misconduct with a view to utilising its resources to the best regulatory effect. The Exchange accordingly tends to focus on cases in which some form of public sanction may be warranted against the parties responsible for the breaches.

The decision as to the level of regulatory response and whether disciplinary action is appropriate will be guided by many factors including, but not limited to, those set out in the Sanctions Statement.

All those involved in Listing Rule-related matters should take note of the following three concepts, as they underlie many of the Exchange's enforcement decisions.

(A) Responsibility

Listed issuers are, by definition, companies. But these companies can only operate under the control, and through the acts, of individuals. A key priority behind the Exchange's enforcement actions is to ensure that those individuals who are responsible for discharging duties in connection with listing matters, and those who are culpable of failures and misconduct, are held to account.

Directors have primary responsibility for listed issuers, and have duties both under Hong Kong law and set out in the Listing Rules, as well as obligations contained in the undertakings they give to the Exchange. This includes a wide-ranging and fundamental obligation to use their best endeavours to procure Listing Rule compliance by listed companies.

The principle of collective and individual responsibility of directors for compliance is a cornerstone of the Exchange's enforcement regime. 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 important responsibilities in this regard. 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.

Responsibility does not stop with the directors. All who participate in and use the market have a responsibility to uphold the integrity of the Listing Rules. There are many other individuals with important roles to play in respect of compliance and corporate governance, and who fall within the Exchange's enforcement jurisdiction including, amongst others, the senior management of the listed issuer. The Exchange will take enforcement action in appropriate cases if such individuals cause by action or omission, or knowingly participate in, a contravention of the Listing Rules.

All those with a responsibility for Listing Rule compliance are reminded that delegation to, or unquestioning reliance on, others will often not be sufficient to discharge their duties, even if those relied upon are other directors or professional advisers. For example, a director will normally be expected to play at least a continuing supervisory role for, and demonstrate sufficient continuing interest in, matters delegated to other directors, staff or advisers. Similarly, whilst it is often advisable for the directors to seek professional advice, directors are expected to continue to apply an enquiring mind to the advice received, and to have used their own wisdom, experience and independent judgement.

(B) Controls and Culture

It is critical that, within listed issuers, appropriate conditions for compliance are created and maintained. This includes as a minimum the implementation of appropriate and effective internal controls. However, this also extends to the culture of the company, and the attitude towards compliance and corporate governance.

Whether such controls and culture are evident amongst a listed issuer, its directors and senior management, can be a significant factor in the Exchange's consideration as to the appropriate enforcement action to be taken.

Directors and senior management must therefore take steps to ensure that issuers have sound and effective systems in place to support and achieve Listing Rule compliance. Risk management and internal control systems should be regularly reviewed for effectiveness.

A sound knowledge and understanding of their obligations is also important. Directors should regularly receive briefings and professional development necessary to ensure that they have a proper understanding of the issuer's operations and business. Further, they should be fully aware of their responsibilities under the Listing Rules, all relevant legal and regulatory requirements and the issuer's business and governance policies.

Directors, senior management and any others with a responsibility for Listing Rule compliance are 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.

The implementation of appropriate controls, systems and culture will also involve ensuring the proper keeping of books and records. Enforcement investigations will often request documentary evidence of steps taken by individuals and listed issuers to discharge duties and comply with the Listing Rules. The absence of such evidence will call into question whether those steps have been taken, the adequacy of the listed issuer's controls and compliance culture, and whether duties have been properly discharged.

(C) Cooperation

Cooperation with the Exchange is an essential element for the maintenance of an orderly, informed and fair market.

Listed issuers and directors, amongst others, are required to provide to the Exchange any information that the Exchange may reasonably require for investigating a suspected breach of or verifying compliance with the Listing Rules. The Listing Rules further provide that those interacting with the Exchange in respect of its enquiries or investigations must provide complete, accurate and up-to-date information.

There is simply no room for a failure to cooperate with the Exchange. Any non-cooperation, failure to respond, or provision of misleading information will be viewed as serious misconduct, warranting the imposition of some of the most severe sanctions available.

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