

January 2019

CONSULTATION CONCLUSIONS

REVIEW STRUCTURE IN RELATION TO LISTING COMMITTEE DECISIONS

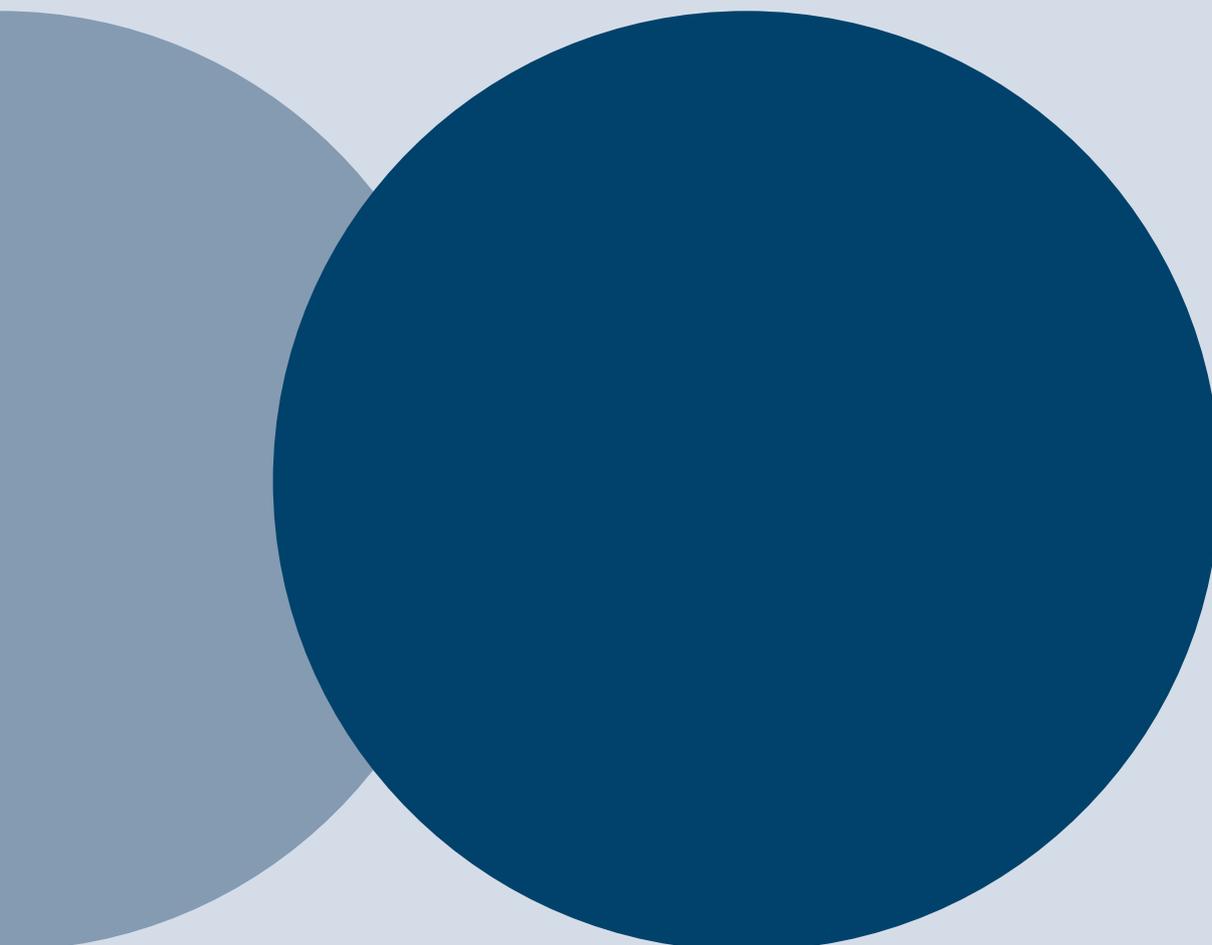


TABLE OF CONTENTS

	Page No.
EXECUTIVE SUMMARY.....	1
CHAPTER 1: INTRODUCTION.....	3
CHAPTER 2: PROPOSALS ADOPTED AND DISCUSSION ON SPECIFIC RESPONSES.....	5
CHAPTER 3: IMPLEMENTATION AND TRANSITIONAL ARRANGEMENTS....	17
 APPENDICES	
APPENDIX I: SUMMARY RESULTS OF QUANTITATIVE ANALYSIS	
APPENDIX II: AMENDMENTS TO MAIN BOARD LISTING RULES	
APPENDIX III: AMENDMENTS TO GEM LISTING RULES	
APPENDIX IV: LIST OF RESPONDENTS	

EXECUTIVE SUMMARY

Introduction

1. This paper presents the results of the consultation conducted by the Exchange on proposals to enhance governance within the Exchange's structure for reviewing Listing Committee decisions and to promote transparency, accountability and consistency in decision-making. The consultation paper was published in August 2018 (**Consultation Paper**) and the consultation period closed in October 2018.
2. We received a total of 22 submissions¹ from professional parties, market practitioners, listed issuers, industry associations, other entities and individuals. 19 responses contained original content, whilst three responses were entirely identical, in content, to the other responses².

Market feedback

3. All our proposals received support from a large majority of the respondents (about 63% or above)³.
4. We will implement the proposals outlined in the Consultation Paper, with minor modifications in response to market comments as discussed in Chapter 2.

Major changes adopted

5. The current review structure will be revised so that decisions of Material Significance⁴ made by the Listing Committee will be subject to only one level of review. The Listing Appeals Committee (**LAC**) will be discontinued without being replaced.
6. An independent review committee consisting entirely of outside market participants with no current Listing Committee members or representatives of the SFC or HKEX (to be named the "**Listing Review Committee**") will be established to replace the existing Listing (Review) Committee (**LRC**) and the Listing (Disciplinary Review) Committee (**LD(R)C**) and to hear reviews currently conducted by them.
7. Having considered the responses, modifications will be made to the composition of the new Listing Review Committee. We will expand the size of the new Listing Review Committee such that it will comprise 20 members or such greater number of members. An individual who was a member of the Listing Committee may be eligible for appointment as a member of the Listing Review Committee after the lapse of two years from the date on which he last vacates office of the Listing Committee.
8. The Listing Review Committee shall comprise:
 - (a) at least six individuals who the Listing Nominating Committee considers will represent the interest of investors; and

¹ Three of which were received after the close of the consultation period.

² Submissions with entirely identical content were counted as one response. Submissions by a professional body or an industry association were counted as one response irrespective of the number of individual members that the body/association represents.

³ Please refer to a quantitative analysis of the responses to the consultation questions set out in Appendix I.

⁴ Decisions of material significance refer to (i) rejection of a new applicant's listing application solely on the ground of unsuitability for listing; (ii) cancellation of listing; and (iii) imposition of certain disciplinary sanctions.

- (b) the remaining members who the Listing Nominating Committee considers will represent a suitable balance of representatives of listed issuers and market practitioners, including lawyers, accountants, corporate finance advisers and Exchange Participants (or their officers), and who have experience and expertise in Listing Rule⁵ matters, or are familiar with the work of the Listing Committee.

No current Listing Committee members or representatives of the SFC or HKEX shall be members of the Listing Review Committee. Similar to Listing Committee members, members of the Listing Review Committee will normally be appointed for a term of approximately twelve months and may only remain in office for a maximum of six consecutive years. The Exchange expects that members of the Listing Review Committee will not serve on the committee for a full term of six consecutive years in most cases.

9. At least four members of the Listing Review Committee (nominated by the Listing Nominating Committee and appointed by the Board of the Exchange) will form a chairmen pool. Any review hearing by the Listing Review Committee will ordinarily be chaired by a member from such chairmen pool.
10. The proposal to routinely publish decisions of the new Listing Review Committee for non-disciplinary matters will be adopted.
11. The provisions in the Listing Rules for the SFC to request a consideration or review of any matter, including a decision of the Listing Committee, will also be made.

Implementation date

12. The amended Main Board Listing Rules (**MB Rules**) (including consequential changes) are set out in Appendix II, while corresponding amendments made to the GEM Listing Rules (**GEM Rules**) (including consequential changes) are set out in Appendix III. They have been approved by the Board of the Exchange and the Board of the SFC, and will become effective around mid-2019 (**Effective Date**). While Listing Rule references in this paper are to the MB Rules, they apply equally to the GEM Rules. Transitional arrangements are set out in Chapter 3.
13. As mentioned in the Consultation Paper, the Exchange will conduct a separate consultation on (i) its disciplinary powers and sanctions; and (ii) the procedural issues for disciplinary hearings and non-disciplinary review hearings. This is expected to be published in the first half of 2019. The implementation of the new review structure will not be affected by such consultation.

⁵ The Rules Governing the Listing of Securities (both Main Board Listing Rules and GEM Listing Rules).

CHAPTER 1: INTRODUCTION

Background

14. On 10 August 2018, the Exchange published the Consultation Paper which sets out the proposals relating to the review structure for Listing Committee decisions.
15. The purpose of the consultation was to enhance governance within the Exchange's structure for reviewing Listing Committee decisions and to promote transparency, accountability and consistency in decision-making.
16. Our proposals are summarised below:
 - (a) Revise the current two-level review structure for decisions of Material Significance made by the Listing Committee so that those decisions will be subject to only one level of review, and discontinue the LAC.
 - (b) Establish a new independent review committee consisting entirely of outside market participants with no current Listing Committee members or representatives of the SFC or HKEX to replace the LRC and the LD(R)C.
 - (c) Decisions of the new review committee for non-disciplinary matters will be published routinely.
17. In addition, Listing Rule provisions will be made for the SFC's power to request a consideration or review of any matter, including a decision of the Listing Committee by the new review committee.
18. The consultation period ended on 12 October 2018.

Number of responses and nature of respondents

19. We received 22 submissions from a broad range of respondents, three of which were received after the close of the consultation period. 19 responses contained original content, whilst three responses were entirely identical, in content, to the other responses⁶. All responses are available on the HKEX website⁷, and a list of the respondents (other than those who requested anonymity) is set out in Appendix IV.

⁶ Submissions with entirely identical content were counted as one response. Submissions by a professional body or an industry association were counted as one response irrespective of the number of individual members that the body/association represents.

⁷

https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_January_2019?sc_lang=en

Table 1: Number and percentage of responses by category⁸

RESPONDENT CATEGORY	NUMBER OF RESPONSES	PERCENTAGE OF RESPONSES
INSTITUTIONS		
Listed Companies	6	32%
Professional Bodies/ Industry Associations	6	32%
Corporate Finance Firms	2	11%
Law Firms	2	11%
INDIVIDUALS		
Individual Investor	1	5%
Accountant	1	5%
Lawyer	1	5%
TOTAL	19	100%

Market feedback

20. All of the proposals in the Consultation Paper received support from a large majority of the respondents, with some further suggestions and comments. Chapter 2 summarises the major comments and our responses and conclusions. This paper should be read in conjunction with the Consultation Paper, which is posted on the HKEX website at:
<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Pre-sent/August-2018-Review-Structure-to-LC-Decisions/Consultation-Paper/cp201808.pdf>
21. The amended Listing Rules are set out in Appendices II and III (for Main Board and GEM respectively). They have been approved by the Board of the Exchange and the Board of the SFC, and will become effective around mid-2019.
22. We would like to express gratitude to all the respondents for their time and effort in reviewing the Consultation Paper and sharing with us their detailed and thoughtful views.

⁸ The percentages in the table may not total 100% due to rounding up.

CHAPTER 2: PROPOSALS ADOPTED AND DISCUSSION ON SPECIFIC RESPONSES

23. In this Chapter we set out our proposals and analyse the responses to each of them, including some specific comments received which may be of interest to the market, and our views in respect of them. We then set out our decisions whether to adopt each of the proposals (with or without modifications), as the case may be.

A. NUMBER OF LEVELS OF REVIEW FOR DECISIONS OF MATERIAL SIGNIFICANCE

Proposal

24. In the Consultation Paper, we proposed to revise the current review structure so that decisions of Material Significance made by the Listing Committee will be subject to only one level of review. The LAC would be discontinued without being replaced (see Chapter 2 of the Consultation Paper).

Q1: Do you agree to revise the current review structure so that decisions of Material Significance made by the Listing Committee will be subject to only one level of review? Please give reasons for your views.

Comments received

25. 63% of the respondents supported the proposal and 32% opposed. 5% of the respondents declined to express a view as they did not consider there to be a correct answer to the question.
26. Some of the respondents who supported the proposal agreed that the current two-level review structure for decisions of Material Significance made by the Listing Committee would not appear to add much to the overall process when the Listing Committee and the LRC (or the LD(R)C) have already found against the new applicant or listed issuer. There was a view that the two-level review structure is not expeditious and not an effective use of market resources, and welcomed a more efficient and streamlined review process. A few respondents mentioned that cases appealed to the LAC have only a low chance of success, and it might not be time and cost efficient given the likelihood of receiving the same outcome from a second review. A respondent agreed that it is logical to question why a person should have three chances to make an application *de novo* at the Listing Committee, the LRC or LD(R)C and then the LAC, and therefore supported the proposal based on practical governance. There was also a view that the existing review structure is one of the main reasons why unsuitable or problematic companies (e.g. long suspended companies) cannot be delisted within a few years.
27. The arguments given by the respondents who opposed the proposal included:
- (a) Unless there are cogent justifications, the system currently in place, which was devised applying the rules of natural justice, should be allowed to continue. With regards to the concern that, having two levels of review may give a review applicant an unfair advantage, it is noted that only two out of 12 cases were overturned at the second review hearing. The importance is that the

affected parties consider that there exist reasonable avenues for review without having to resort to judicial review proceedings.

- (b) As decisions of Material Significance have drastic consequences against the review applicant in question, it appears to be draconian to remove the last right of appeal for expedience on the basis that giving two chances “unduly favours” the new applicant or the listed issuer. This ignores the possibility that Listing Committee members (as a whole) may possibly be pro Exchange to the extent that they are contributors to the policies implemented by the Exchange from time to time, and the fact that considerable resources would normally be dedicated by a new applicant or listed issuer towards its fight to pursue an IPO and/or to retain the listing.
- (c) The affected parties of matters with serious implications to new applicants or listed issuers (including rejection of IPO, resumption/suspension of trading, commencement of delisting procedure, continuing listing criteria that a listed issuer must carry out a sufficient level of operations or assets and cancellation of listing) should have two “as of right” opportunities to make “face-to-face” submissions to the decision-making body at the Listing Committee level. One level of review process without an appeal mechanism is too controversial since these serious matters are complicated and have significant impact on listed companies and their shareholders (or new applicants and their stakeholders).
- (d) Delisting decisions should be afforded more opportunities to be reviewed as a safeguard for protecting shareholders from any possible faults and errors on the Exchange’s part. The Exchange should bear in mind shareholders’ interests as they already have the misfortunes of investing in companies that are subject to a delisting decision. An inequitable delisting decision of any issuer would unfairly deprive shareholders’ rights. The Listing Rules allow the Exchange to exercise its own judgement in matters such as cancellation of listing. With the high level of autonomy, it is critical for check and balance to be in place to ensure that such discretion is properly and fairly exercised. The availability of a second level of review ensures that any identified procedural or other defects in relation to the initial decisions of the Listing Committee or subsequent decisions of the LRC can be corrected before the decisions are final. The existing “two-tier” review structure has worked well and there is no evidence that conflicts have resulted in decisions contrary to public interest.

Our responses and conclusion

- 28. As explained in the Consultation Paper, there is not necessarily a “correct” answer as regards whether there should be one level or two levels of review in respect of decisions of Material Significance made by the Listing Committee.
- 29. The Exchange appreciates its unique role in that it is the only recognised stock exchange in Hong Kong and offers companies the only route by which they may become listed in Hong Kong. The Exchange’s decisions can therefore have the potential to affect the interests of a large number of people. It is important that the decision-making and review processes afford adequate opportunities to correct any decision which is wrong.
- 30. The Exchange however recognises the importance of having a robust system which produces timely regulatory outcome. As set out in the Consultation Paper, the two-level review structure is not, by itself, essential to a fair and due process. The

Exchange also believes the establishment of the new independent review committee (see part B of this Chapter below) would help to address the concerns of the opposing respondents to a certain extent.

31. In conclusion, with the support from the majority of respondents, we will adopt the proposal to revise the current review structure so that decisions of Material Significance made by the Listing Committee will be subject to only one level of review. As such, the LAC will be discontinued without being replaced.
32. Currently, reviews of Listing Committee decisions in respect of the rejection of an authorised representative under Rule 3.05 and the rejection of a lifting of suspension of trading are conducted by the LAC. Going forward, these reviews will be conducted by the new Listing Review Committee⁹.

B. ESTABLISHMENT OF INDEPENDENT REVIEW COMMITTEE

Proposal

33. In the Consultation Paper, we proposed to establish a new independent Listing Review Committee consisting entirely of outside market participants with no current Listing Committee members or representatives of the SFC or HKEX to replace the LRC and the LD(R)C and to hear reviews currently conducted by them (see Chapter 3 of the Consultation Paper). The new Listing Review Committee will be a committee of the Exchange.
34. It was further proposed that the new Listing Review Committee will comprise at least 15 members, with at least four investor representatives and the remaining members representing a suitable balance of representatives of listed issuers and market practitioners (including lawyers, accountants, corporate finance advisers and Exchange participants (or their officers)). Members of the new Listing Review Committee are expected to be former Listing Committee members. However, persons with experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee, may also be appointed to sit on the new Listing Review Committee. The quorum for a review hearing by the new Listing Review Committee will be five members present in person.
35. Any review hearing by the new Listing Review Committee will ordinarily be chaired by a member from a pool of chairmen appointed from among the members of the new Listing Review Committee (and nominated by the Listing Nominating Committee). An honorarium will be offered to each of the members and the chairmen respectively.
36. Similar to the Listing Committee, members of the new Listing Review Committee will be nominated by the Listing Nominating Committee¹⁰. The selection process will also be similar to that for the Listing Committee. The Listing Nominating Committee will seek applications from candidates, and short-listed candidates will be interviewed before appointments are made. Members of the new Listing Review Committee will normally be appointed for a term of approximately twelve months (which is expected to run concurrently with the term of the Listing Committee members), and may only remain in office for a maximum of six consecutive years.

⁹ Under the GEM Rules, reviews of the GEM Listing Committee's decisions in respect of the rejection of a new applicant solely on the ground of unsuitability for listing, the rejection of a compliance officer or an authorised representative and the rejection of a lifting of suspension of dealings are also conducted by the LAC. Going forward, these reviews will be conducted by the new Listing Review Committee.

¹⁰ Rules 2A.21 and 2A.22. The Listing Nominating Committee comprises three non-executive directors of HKEX and the chairman and two executive directors of the SFC.

Q2: Do you agree with:

(a) the proposal to establish a new independent review committee to replace the LRC and the LD(R)C respectively and to hear reviews currently conducted by them?

(b) the size and composition of the new independent review committee (including the mix of members' representation)?

Please give reasons for your views.

Q3: If the Exchange decides to retain the two levels of review for decisions of Material Significance made by the Listing Committee, do you agree that the LAC is to be replaced by a review committee with members being drawn from the proposed new independent review committee and chaired by a member of a separate chairperson panel? Are there any additional process or safeguards that you would suggest to enhance this aspect of the review structure for such decisions of Material Significance? Please give reasons for your views.

Comments received

Establishment of the new Listing Review Committee

37. Our proposal to establish a new independent Listing Review Committee to replace the LRC and the LD(R)C received support from a large majority of respondents. 79% of the respondents supported the proposal and 21% opposed.
38. Respondents supporting the proposal agreed that the establishment of the new independent review committee would promote a higher degree of independence for review bodies. A respondent stated that the perception of independence is even more important where decisions of the Listing Committee will be subject to only one of level of review. Another respondent supported the proposal on the ground that it will lighten the workload of the Listing Committee.
39. A respondent who opposed the proposal considered that delisting decisions are vital to listed issuers and investors and should not be entirely delegated to non-HKEX board members. Another respondent disagreed that a completely new review committee will provide consistency (which is vital in a listing regime), but worried that unpredictable appeal decisions may create chaos in the listing process. The statistics provided in the Consultation Paper indicated that the chance of success at the final appeal stage in the LAC is low. This demonstrated that the existing structure works very well and there is no good reason to have it replaced in its entirety. Another respondent considered that the existing structure has already created a layer of independence, and if the workload of Listing Committee members is considered too heavy, its membership pool should be expanded so that there are more members to draw from for review hearings.

Size and composition of the new Listing Review Committee

40. Regarding the proposed size and composition of the new Listing Review Committee, 68% of the respondents supported the proposal and 26% opposed. 5% of the respondents did not comment on this question as the respondent did not agree that the new Listing Review Committee is necessary. Suggestions were received from both respondents who supported and opposed the proposal. The major suggestions and/or comments from the respondents included:
- (a) Some respondents commented that the size of the new Listing Review Committee should be expanded for enhancing its capacity to handle the potential number of cases and to have diverse views and expertise.
 - (b) A respondent expressed concern that the reduced number of investor representatives of the new Listing Review Committee may not have sufficient market driven input being considered before making a decision taking into account the practicalities of issuers' situation on a case by case basis.
 - (c) A number of respondents expressed reservation about the new Listing Review Committee comprising only or mainly former Listing Committee members. The establishment of the new review committee would seem to be an opportunity to broaden horizon and identify a pool of fairly senior and experienced market participants and professionals who would be eligible to serve, but who have never served, on the Listing Committee, or persons with experience and expertise in Listing Rule matters or are familiar with the work of the Listing Committee. In particular, the respondents had concerns about:
 - (i) the former Listing Committee members being less familiar with the Exchange's current policy objectives which may result in decisions that are inconsistent with the Exchange's objectives and with the standard currently adopted by the Listing Committee. They suggested that the new Listing Review Committee should continue to comprise existing Listing Committee members in the majority, with non-existing Listing Committee members (who could be former Listing Committee members, HKEX board members or seasoned reputable market professionals with strong legal and finance expertise). The non-existing Listing Committee members should be appointed for a term of no more than three years to ensure refreshing of ideas and perspectives at shorter intervals;
 - (ii) a review committee with predominantly former Listing Committee members may not be seen to be entirely consistent with the objective of enhancing independence of the review process;
 - (iii) recruiting mainly former Listing Committee members will mean that someone can be sitting on the Listing Committee for six years and followed by another six years on the new Listing Review Committee. This will leave important listing decisions to the same group of people over a period of 12 years, which is not ideal. This may promote linear thinking in listing-related matters and lead to decisions unduly influenced by personal preferences or even biases; and
 - (iv) the risk of replicating the disadvantages of the current system.

- (d) A respondent also commented that the former Listing Committee members sitting on the new Listing Review Committee should not be members who have just stood down from the Listing Committee.

Replacement for the LAC if the two-level review structure is retained

41. In the Consultation Paper, we proposed that, if the two-level review structure for decisions of Material Significance made by the Listing Committee is retained, the LAC is to be replaced by a review committee with members being drawn from the proposed new Listing Review Committee and chaired by a member of a separate chairperson panel.
42. As the two-level review structure will not be retained, Q3 has therefore become redundant. We however set out the respondents' comments below for transparency purposes. 63% of the respondents supported the proposal and 21% opposed. 16% of the respondents did not respond to the proposal or considered unnecessary to respond given that they supported the proposal that decisions of Material Significance made by the Listing Committee should be subject to only one level of review.
43. A respondent commented that, while the chairman will be chosen from a separate chairperson panel, the current issues regarding perceived lack of independence and the possibility of the less experienced members reviewing a decision at the second level would apply to such second level review committee if all (except one) of its members will be from the first level review committee. An entirely separate review committee would seem inevitable in addressing such issues. Yet, this could be challenging in light of a limited number of suitable and willing candidates.
44. Another respondent commented that the concerns about the perception of "self-review" and the lack of independence may still arise. These perceptions may engender the view that the members of the independent review committee in the second level review would be inclined to uphold the decision of their peers at the first level. The chairman being a member of a separate chairperson panel only mitigates such perception.
45. Respondents who opposed the proposal recognised that HKEX board should have some power to decide who are allowed to participate in the market operated by the Exchange. The current system of a final appeal in front of the highest authority of the Exchange which has a public interest obligation should not be delegated to a committee where no board members of HKEX will participate.

Our responses and conclusion

Establishment of the new Listing Review Committee

46. We concur with the majority view that establishing a new independent Listing Review Committee would promote a higher degree of independence for the review bodies, and address market concerns and perception.
47. In view of the strong support, we will adopt the proposal to establish a new independent review committee, i.e. the Listing Review Committee, to replace the LRC and the LD(R)C respectively and to hear reviews currently conducted by them. The new Listing Review Committee will be a committee of the Exchange. All review hearings of the new Listing Review Committee will take the form of a hearing *de novo*. The new Listing Review Committee will rehear the case and decide it afresh, after

considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the Listing Review Committee¹¹. The Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

Size and composition of the new Listing Review Committee

48. We note the suggestions for expanding the size of the new Listing Review Committee. We recognise the importance of ensuring a sufficient number of members to be drawn from the new Listing Review Committee for any particular case, and have considered (i) our practical experience regarding convening a meeting in light of members' availability and conflict; and (ii) the possibility that the new Listing Review Committee may be required to hear a further and final review sought by the relevant party after an SFC-initiated review against a Listing Committee decision (see paragraph 69). We therefore believe expanding the size to at least 20 members would ensure that there are sufficient members to efficiently discharge the review matters.
49. At least four members of the Listing Review Committee (nominated by the Listing Nominating Committee and appointed by the Board of the Exchange) will form a chairmen pool. Any review hearing by the new Listing Review Committee will ordinarily be chaired by a member from such chairmen pool. In the unusual event that members of the chairmen pool have a conflict of interest in a case or are otherwise unavailable to act as chairman for the case, an acting chairman may be chosen from the remaining Listing Review Committee members on an ad hoc basis. Members in the chairmen pool are also allowed to participate as members in review hearings of the Listing Review Committee¹².
50. In response to a respondent's view that the new Listing Review Committee should not be confined to former Listing Committee members, we clarify that, the Consultation Paper stated that "*members of the new Listing Review Committee are expected to be former Listing Committee members, however, persons with experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee, will also be appointed*". We have made it clear in the Rules that an individual who was a member of the Listing Committee may be eligible for appointment as a member of the Listing Review Committee.
51. While we recognise that the members of the new Listing Review Committee may be less familiar with the objectives, policy and approach of the Listing Committee (as they are not current Listing Committee members), we are confident that such concerns can be managed by appointing members who are experienced market participants that are close to and under the market, as well as by providing briefings to the new Listing Review Committee members to update them on the latest policy and approach of the Listing Committee.
52. To ensure that the composition of the new Listing Review Committee will achieve the right balance in public interest representation, knowledge, experience and technical skills appropriate for the role the new Listing Review Committee is to play, the new

¹¹ This also applies to review hearings of the Listing Committee. For disciplinary review hearings, new evidence can only be adduced in exceptional circumstances and with leave of the chairman of the new Listing Review Committee.

¹² Subject to no conflict of interest in the case.

Listing Review Committee will comprise at least six investor representatives and the remaining members representing a suitable balance of representatives of listed issuers and market practitioners (including lawyers, accountants, corporate finance advisers and Exchange participants (or their officers)), and who have experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee. No current Listing Committee members or representatives of the SFC or HKEX shall be members of the Listing Review Committee.

53. We note the comment that the former Listing Committee members sitting on the new Listing Review Committee should not have just stood down from the Listing Committee and the rationale. We believe such concern can be addressed by imposing a cooling-off period of two years before a former Listing Committee can be appointed to the new Listing Review Committee. This is in line with the period for a former Listing Committee member to be eligible for re-appointment to the Listing Committee¹³.
54. Similar to Listing Committee members¹⁴, members of the Listing Review Committee will normally be appointed for a term of approximately twelve months and may only remain in office for a maximum of six consecutive years. The Exchange expects that members of the new Listing Review Committee will not serve on the Committee for a full term of six consecutive years in most cases¹⁵. The Exchange has been and will continue to encourage more frequent turnover of members to ensure refreshing of ideas and perspectives. With respect to the inaugural Listing Review Committee, as all members will be appointed at the same time, it is contemplated that some members will retire after two years of serving on the Committee. This is to create vacancies for new members and to ensure continuity and consistency in decision-making, i.e. the arrangement will avoid the situation where a large number of members will retire from the Listing Review Committee at the same time at the expiry of the first six-year period.
55. As the proposal is to enhance governance within the Exchange's structure for reviewing Listing Committee decisions, we will not adopt the suggestion to include existing Listing Committee members or HKEX board members in the new Listing Review Committee.
56. In conclusion, with the support from a large majority of the respondents, we will adopt the proposal with modifications set out in paragraphs 48 to 55 above.

Replacement for the LAC if the two-level review structure is retained

57. As the two-level review structure will not be retained, the LAC will be discontinued without being replaced.

C. PUBLICATION OF DECISIONS OF THE NEW LISTING REVIEW COMMITTEE FOR NON-DISCIPLINARY MATTERS

Proposal

58. We proposed to routinely publish the decisions of the new Listing Review Committee for non-disciplinary matters (see Chapter 4 of the Consultation Paper). We further

¹³ Rule 2A.25.

¹⁴ Rules 2A.22A and 2A.25.

¹⁵ Based on our record, in the past ten years, fewer than half of the members of the Listing Committee served on the committee for six consecutive years.

proposed that, if the Exchange considers that the disclosure of the review applicant's identity may be unduly prejudicial to a party's interests or that the decision is price sensitive or may contain price-sensitive information, the Exchange may: (a) publish a review decision on a "no-names" basis; or (b) publish a review decision on a delayed basis.

59. Under the proposal, to ensure that published decisions of the new Listing Review Committee are not misinterpreted by the market, the Exchange will emphasise that they do not represent binding precedents which must be followed by other committees and do not constrain the discretion of the Exchange in the future.
60. The new Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The new Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision. Published decisions of the new Listing Review Committee will be sufficiently detailed to enable readers who were not involved in the review proceedings to understand the issues, the essential facts and the reasoning of the new Listing Review Committee in reaching its decision (including, where applicable, why the decision under review was upheld or overturned). However, the decisions will necessarily represent only a summary of the new Listing Review Committee's analysis, and will not be in the nature of legal judgments which exhaustively set out the facts and address all of the arguments presented. There will be no requirement that members of the new Listing Review Committee add dissenting views where they have dissented from a decision.

Q4: Do you agree with the proposal to routinely publish decisions of the new Listing Review Committee for non-disciplinary matters on the basis described in paragraphs 102 to 105 of the Consultation Paper? Please give reasons for your views.

Comments received

61. 84% of the respondents supported the proposal and 5% opposed. 11% of the respondents did not respond to the question.
62. The respondents supporting the proposal agreed that the proposal would enhance transparency and accountability in the Exchange's decision-making, and would help the market to better understand the Exchange's interpretation and application of the Listing Rules. Specific comments from these respondents included:
 - (a) To avoid misinterpretation by the market, the Exchange should make it clear that the decisions do not represent binding precedents and do not constrain the discretion of the Exchange in the future. The decisions should be sufficiently detailed to enable readers to understand the issues, essential facts and the reasoning of the decisions, albeit the decisions will necessarily represent only a summary of the analysis.
 - (b) A respondent commented that the publication on a "no-names" or delayed basis should not be subject to the Exchange's discretion. It was further suggested that:
 - (i) In the case of a new applicant, the review decision should always be published on a no-names basis. The objective of promoting

transparency and accountability should not outweigh the confidentiality of any negative information about a new applicant when it is not yet listed on the Exchange.

- (ii) In the case of a review decision relating to any price sensitive information of a listed issuer, the publication of the review decision on a named basis should always be delayed until the listed issuer announces the price sensitive information. The fact that the price sensitive information is subject to the review process should not accelerate the disclosure of the price sensitive information under the Listing Rules and the SFO. If the listed issuer is allowed under the Listing Rules and the SFO not to announce the price sensitive information, the review decision should never be published on a named basis.
 - (c) There were divergent views regarding whether to include dissenting views in the published decisions. There was suggestion that the Exchange should encourage dissenting views to be included in the published decisions or that the decisions should indicate whether there are dissenting views and if so, the number of dissenting views. There was also a view that the decision should confine to the decision of a majority of the members hearing a matter and dissenting views should not be required to be published.
63. The respondent who opposed the proposal considered that the publication of decisions would make the decision-making process more in line with those of a court which would probably result in a formalised and precedent-based approach over time. The current *de novo* flexible hearings approach would eventually be changed.

Our responses and conclusion

64. We note there was overwhelming support for the proposal.
65. As mentioned in the Consultation Paper, while we believe the publication of detailed reasons for decisions will promote transparency and accountability in decision-making, and that the routine publication of decisions may also help the market to better understand the Exchange's interpretation and application of the Listing Rules, we also recognise the routine publication of decisions has the potential to give rise to certain issues, including confidentiality concerns and the risk that publication may cause unfair prejudice to the subject company or individual concerned or may result in the disclosure of price-sensitive information.
66. We note the suggestion as stated in paragraph 62(b) above. In respect of new applicants, except in situations where the Exchange has permitted an applicant to file its application proof on a confidential basis, all application proofs are published on the Exchange's website at the time the listing applications are made. In respect of listed issuers, there may be instances where the price-sensitive information may never be announced (e.g. the proposed transaction that was not previously announced has subsequently been terminated). We therefore believe that our original proposal (i.e. the Exchange has the discretion to publish a review decision on a "no-names" basis or on a delayed basis if the Exchange considers that the disclosure of the review applicant's identity may be unduly prejudicial to a party's interests or that the decision is price sensitive or may contain price-sensitive information) will allow more flexibility in dealing with different scenarios.
67. In conclusion, with the overwhelming support, we will adopt the proposal.

D. CODIFICATION OF THE SFC'S POWER TO REQUEST REVIEW OF DECISIONS

68. As stated in the Consultation Paper, we will make provisions in the Listing Rules for the SFC to have a right to request a consideration or review of any matter, including a decision of the Listing Committee by the new Listing Review Committee (see Chapter 5 of the Consultation Paper). The SFC will not request a consideration or review of any decisions of the new Listing Review Committee¹⁶.
69. The provisions in the Listing Rules will also provide that, where the review body in an SFC-initiated review overturns, modifies or varies the decision subject to review, the relevant party will have a further and final opportunity to seek a review by the new Listing Review Committee and that, in each case, the review body will take into account written submissions from the relevant party, the Listing Department (**Department**) and the SFC in reaching its decision. Where the SFC had requested a review by the new Listing Review Committee of a decision made by the Listing Committee, any further and final review requested by the relevant party will be heard by a second group of members from the new Listing Review Committee, who do not have any conflict of interest in the case and who did not participate in the earlier review hearing by the first Listing Review Committee. All non-disciplinary decisions of the new Listing Review Committee (whether acting as the first or second review body) will be routinely published at the end of the process with reasons addressing any submissions made by the SFC (where applicable) and other provisions in Chapter 4 of the Consultation Paper will apply as appropriate.
70. The SFC may request written reasons for a decision of the Listing Committee or the new Listing Review Committee if no written reasons were provided and the relevant party does not request written reasons within the time stipulated in the Listing Rules. Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the SFC and the Department. Similarly, written reasons provided to the SFC pursuant to the SFC's request will also be provided to the relevant party and the Department. If the SFC decides to initiate a review, it will do so within seven business days after receipt of the relevant decision or, if the SFC or the relevant party requests written reasons for the decision, those written reasons.
71. The Exchange did not consider that specific consultation was required in relation to the provisions for the SFC's power to request review of decisions (as they reflected the MOU and the administrative procedures) but invited comments from respondents.

Comments received

72. Only six respondents (32%) provided comments on this issue.
73. Some of these respondents expressed support for the codification of the SFC's power to request review of decisions to provide clarity and transparency to the market.
74. A respondent commented that, where the SFC requests a review of a Listing Committee decisions, the procedure may then revert to two levels of review, because if the independent review committee overturns, modifies or varies the decision of the Listing Committee, the relevant party will have the right to seek a further review by a

¹⁶ For the reasons: (i) the new Listing Review Committee will serve as the final review body; (ii) the new Listing Review Committee is a separate and independent committee from the Listing Committee; and (iii) all non-disciplinary decisions of the new Listing Review Committee will be routinely published. This will be reflected in a further addendum to the Memorandum of Understanding Governing Listing Matters between the SFC and the Exchange dated 28 January 2003 (**MOU**).

second group of members. This creates the perception of “self-review” albeit by a different group of members. Assuming that the independent review committee is composed of sufficiently independent and suitably qualified members, it could be argued that its decisions should be accepted as final, regardless of who has initiated the review, particularly given that the relevant party will be invited to make submissions to the independent review committee and will be informed of the grounds on which the SFC has requested the review.

75. Another respondent considered that the SFC already has wide and substantial enforcement power under the SFO. Decisions of the Listing Committee (and the new Listing Review Committee) should remain market driven. Such decisions are already subject to judicial review. To give the SFC power to request review of decisions of the Listing Committee may invite too early an interference on that market-driven decision process.
76. There was also a view that it would be helpful if the SFC will confirm that it will exercise its right to initiate a review only in exceptional circumstances (and where there is new information unavailable to the parties/ the Department/ the relevant Committee) given that the SFC is privy, especially in the case of an IPO, to all materials to which the Department is given in connection with a listing application.

Our responses and conclusion

77. As stated in the Consultation Paper, the SFC’s power to request a consideration or review of any matter is currently contained in the MOU, and codification of the same into the Listing Rules would be adopted¹⁷. This is to provide clarity to the market.
78. We note the respondents’ comments in paragraphs 75 and 76. As mentioned in the Consultation Paper, in the past 15 years, the SFC has invoked its power under the MOU on non-disciplinary matters in four instances.
79. With regards to the comment on the relevant party’s further and final right of review, we recognise the concern about the perceived independence of the review bodies. We however reiterate that any further and final review requested by the relevant party will be heard by a separate group of members from the new Listing Review Committee, who do not have conflicts of interest in the case and who did not participate in the earlier review hearing by the first Listing Review Committee. There is therefore no “real” overlap between the first Listing Review Committee and the second Listing Review Committee for any particular case.
80. The provisions to codify the SFC’s power to request review of decisions are set out in Appendices II and III (for Main Board and GEM respectively).

¹⁷ In the joint consultation on “Proposed Enhancements to the Exchange’s Decision-Making and Governance Structure for Listing Regulation” by the Exchange and the SFC in June 2016, it was proposed that paragraph 10.6 of the MOU (which provides that the SFC may request the Listing Committee and the LAC to consider or review any matter, including a decision by the respective committee itself) should be codified in the Listing Rules, with the reference to the LAC deleted. In the conclusions (which were published in September 2017), it was concluded that this proposal would be adopted and no further formal consultation would be required.

CHAPTER 3: IMPLEMENTATION AND TRANSITIONAL ARRANGEMENTS

81. The new Rules and the new review regime will become effective around mid-2019. The following transitional arrangements will be adopted.
82. All disciplinary review hearings for disciplinary proceedings commenced before the Effective Date will be conducted under the Listing Rules then in force. For the purpose of this arrangement:
- (a) Disciplinary proceedings are commenced upon the Department submitting a report to the Secretary setting out its case and all material facts and submissions upon which it intends to rely on.
 - (b) The LD(R)C and the LAC in existence before the Effective Date will continue in existence until all relevant disciplinary review proceedings have been concluded, and the rules and procedures then in force will continue to apply for the purpose of the conduct of such proceedings.
83. All non-disciplinary review hearings in respect of the following decisions will be conducted under the Listing Rules in force immediately before the Effective Date:
- (a) subject to (b) and (c) below, any first instance decision¹⁸ made before the Effective Date;
 - (b) any decision made under Practice Note 17¹⁹;
 - (c) any decision under Rule 6.10(1) made before the Effective Date and any follow on or further decision made in relation to those decisions (including a decision to cancel the listing if an issuer fails to remedy the specified matters within the specified period); and
 - (d) any review decision of the decisions referred to in (a), (b) or (c) above.
- The LRC and the LAC in existence before the Effective Date will continue in existence until all relevant non-disciplinary review proceedings have been concluded, and the rules and procedures then in force will continue to apply for the purpose of the conduct of such proceedings.
84. For the avoidance of doubt, for listed issuers whose securities have been suspended from trading before the Effective Date and which may be delisted under Rule 6.01A(1), the new review regime applies if the delisting decision under Rule 6.01A(1) is made after the Effective Date.
85. The following are some illustrative examples of the application of the existing review regime and the new review regime:

¹⁸ "First instance decision" refers to the date of the decision letter setting out such decision (whether made by the Department or the Listing Committee).

¹⁹ Effective from 1 August 2018, Practice Note 17 (which set out a three-stage delisting procedure for issuers without sufficient operations or assets) has been removed. Under Rule 6.01A(2)(a), for a suspended listed issuer which has been placed in a delisting stage under Practice Note 17 before the effective date of Rule 6.01A(1), Practice Note 17 continues to apply.

(a) Example 1 - Rejection of an IPO solely on the ground of unsuitability for listing

A new applicant's listing application is rejected by the Listing Committee solely on the ground of unsuitability for listing (**1st instance Decision**), and the date of the decision letter is before the Effective Date. The new applicant seeks a first review of the 1st instance Decision, and the date of the review decision is after the Effective Date (**1st review Decision**).

Since the 1st instance Decision is before the Effective Date, the existing review regime applies, i.e. the new applicant is allowed to seek a further and final review of the decision of the LRC by the LAC.

(b) Example 2 – Cancellation of listing under Practice Note 17

The Listing Committee decides to cancel the listed issuer's listing under Practice Note 17 after the Effective Date. The decision to place the listed issuer into the 1st-delisting stage is before the Effective Date.

Since the decision to place the listed issuer into the 1st-delisting stage is before the Effective Date, the existing review regime applies, i.e. the listed issuer is allowed to seek a first review of the Listing Committee decision by the LRC, and a further and final review by the LAC.

(c) Example 3 – Cancellation of listing under Rule 6.10

Prior to the Effective Date, a listed issuer is allowed by the Department to remedy matters which have given rise to circumstances set out in Rule 6.01 within six months (**LD Decision**). The listed issuer however fails to do so and the Listing Committee decides to cancel the listed issuer's listing under Rule 6.10 after the Effective Date (**LC Decision**).

Since the LD Decision is before the Effective Date, the existing review regime applies, i.e. the listed issuer is allowed to seek a first review of the LC Decision by the LRC, and a further and final review by the LAC.

(d) Example 4 – Findings of breach of Listing Rules and sanction imposed

Prior to the Effective Date, the Department submits a report to the Secretary which recommends the commencement of disciplinary action. The disciplinary hearing is held after the Effective Date and the Listing Committee finds the respondent in breach of the Listing Rules and imposes a public censure on him.

Since the disciplinary proceeding is commenced before the Effective Date, the existing review regime applies, i.e. the respondent is allowed to seek a review by the LD(R)C, and a further and final review by the LAC.

86. In light of the above, it is expected that the LAC and the LRC will continue to operate, concurrently with the new Listing Review Committee, for a certain period.

APPENDIX I: SUMMARY RESULTS OF QUANTITATIVE ANALYSIS

Proposals in the Consultation Paper		Feedback		
		Agree	Disagree	No view ¹
1	Revise current review structure so that decisions of Material Significance made by the Listing Committee will be subject to only one level of review	63%	32%	5% ²
2(a)	Establish a new independent review committee to replace the LRC and the LD(R)C	79%	21%	0%
2(b)	Size and composition of the new independent review committee	68%	26%	5% ³
3	If the two-level review structure is retained, the LAC will be replaced by a review committee with members being drawn from the proposed new independent review committee and chaired by a member of a separate chairperson panel	63%	21%	16% ⁴
4	Routinely publish decisions of the new Listing Review Committee for non-disciplinary matters	84%	5%	11% ⁵
5	Provisions will be made to the Listing Rules to codify SFC's power to request review of decisions	Note 1		

Note 1: This was not a proposal under the Consultation Paper but comments were invited from respondents. Six respondents (32%) gave comments with regard to the provisions to codify SFC's power to request review of decisions.

¹ This includes those respondents who did not indicate a view or those respondents who did not respond to the proposal.

² One respondent declined to express a view.

³ Most of the respondents for this question (whether supporting or opposing the proposal) provided comments on the size and the composition of the new independent review committee. Please refer to paragraph 40 in the body of the paper for further details.

⁴ One respondent considered unnecessary to answer the question given its answer to Question 1 and two respondents did not respond to the proposal.

⁵ Two respondents did not respond to the proposal.

APPENDIX II: AMENDMENTS TO THE MAINBOARD LISTING RULES

Chapter 1

GENERAL

INTERPRETATION

1.01 Throughout these Rules, the following terms, except where the context otherwise requires, have the following meanings:

...

“Listing Appeals Committee”	the listing appeals sub-committee of the Board
“Listing Committee”	the listing sub-committee of the Board
“Listing Division”	the Listing Department of the Exchange
<u>“Listing Nominating Committee”</u>	<u>the listing nominating sub-committee of the Board</u>
<u>“Listing Review Committee”</u>	<u>the listing review sub-committee of the Board</u>

...

Chapter 2A

GENERAL

COMPOSITION, POWERS, FUNCTIONS AND PROCEDURES OF THE LISTING COMMITTEE, THE LISTING APPEALS REVIEW COMMITTEE AND THE LISTING DIVISION

General

2A.01 The 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 this Chapter and Chapter 2B. Any function which under the ~~Exchange~~-Listing Rules may be performed by the Exchange or any power which under the ~~Exchange~~-Listing Rules may be exercised by the Exchange may, therefore, be performed or exercised by the Listing Committee and/or its delegates. Accordingly, the Listing Committee and, in relation to certain powers of review, the

Listing ~~Appeals-Review~~ Committee have sole power and authority to act in relation to all listing matters to the exclusion of the Board, unless and until the Board revokes these arrangements.

2A.02 The Listing Committee has arranged for most of these powers and functions to be discharged by the Listing Division and the Chief Executive of the Exchange, subject to the reservations and review procedures set out in this Chapter and Chapter 2B. In the first instance, therefore, all matters concerning the ~~Exchange-Listing~~ Rules will be dealt with by the Listing Division. The Listing Division will also interpret, administer and enforce the ~~Exchange-Listing~~ Rules subject to the review procedures set out in this Chapter and Chapter 2B.

2A.03 In discharging their respective functions and powers the Listing ~~Appeals-Review~~ Committee, the Listing Committee, the Listing Division and the Chief Executive of the Exchange are required to administer the ~~Exchange-Listing~~ Rules, and otherwise to act, in the best interest of the market as a whole and in the public interest.

...

Disciplinary Procedures

2A.09 In addition to its powers to suspend or cancel a listing, if the Listing Committee finds there has been a breach by any of the parties named in rule 2A.10 of the ~~Exchange~~ Listing Rules it may:—

...

(7) in the case of wilful or persistent failure by a director of a listed issuer to discharge his responsibilities under the ~~Exchange-Listing~~ Rules, state publicly that in the Exchange's opinion the retention of office by the director is prejudicial to the interests of investors;

...

(9) in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the ~~Exchange-Listing~~ Rules, order that the facilities of the market be denied for a specified period to that issuer and prohibit dealers and financial advisers from acting or continuing to act for that issuer;

...

2A.10 The sanctions in rule 2A.09 may be imposed or issued against any of the following:

...

(j) any independent financial adviser of a listed issuer.

For the purposes of this rule "listed issuer" includes an issuer of listed structured products and "professional adviser" includes any financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer to provide professional advice in relation to a matter governed by the ~~Exchange-Listing~~ Rules. It does not include sponsors or Compliance Advisers.

Notes: (1) The scope of any disciplinary action taken, in particular any ban imposed on a professional adviser pursuant to rule 2A.09(5), shall be

limited to matters governed by or arising out of the ~~Exchange~~-Listing Rules.

- (2) *In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie in pursuance of rule 2A.10. In particular, professional advisers' obligations to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of the ~~Exchange~~ Listing Rules are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member.*

2A.11 The Listing Committee will, if requested by any party to be reprimanded, criticised, censured or otherwise sanctioned in pursuance of the powers contained in rules 2A.09 and 2A.10 (as ~~an~~ "review applicant~~appellant"~~), give its reasons in writing for the decision made against that ~~review applicant~~appellant pursuant to rules 2A.09 and 2A.10 and that ~~review applicant~~appellant shall have the right to have the decision against him referred to the Listing Review Committee ~~again~~ for a further and final review. ~~If the Listing Review Committee may endorse, overturn, modify or vary the ruling of the earlier meeting, it will, if requested by the appellant, give its reasons in writing for the modification or variation and, in respect of decisions pursuant to rule 2A.09(2), (3), (5), (7), (8) or (9) only, the appellant shall have a right to a further and final review of the decision against the appellant by the Listing Appeals Committee. Subject to rule 2A.16A, the decision of the Listing Appeals Review Committee on review shall be conclusive and binding on the review applicant~~appellant. If requested by the ~~appellant~~review applicant, the Listing ~~Appeals~~Review Committee will give reasons in writing for its decision on review.

...

2A.13 Any request for the Listing Division, the Listing Committee ~~or the Listing Review Committee~~ or the Listing Review Committee to give its reasons in writing for its decision shall be made within three business days of its decision. Where requested, written reasons for a decision will be provided to all parties to the proceedings by the Listing Division, the Listing Committee ~~or the Listing Review Committee~~ or the Listing Review Committee (as the case may be) as soon as possible and, in any event, within ~~fourteen~~14 days of the request.

...

2A.15 The Listing Committee and the Listing Review Committee may from time to time prescribe such procedures and regulations for any review meetings or hearings of the respective Committee as ~~it~~they may think fit, including procedures for appointing from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.

Rights of Parties to be Heard

2A.16 In any disciplinary proceedings of the Listing Committee and on any further and final review of the decision resulting from those proceedings by ~~the Listing Committee~~ the Listing Review Committee ~~or the Listing Appeals Committee~~, the party the subject of such proceedings shall have the right to attend the meeting, to make submissions and to be accompanied by its professional advisers. In all disciplinary

proceedings the Listing Division will provide the parties with copies of any papers to be presented by it at the meeting, in advance of the meeting.

Disciplinary Reviews Initiated by the Commission

- 2A.16A (1) The Commission shall have the right to request in writing a review of any disciplinary decision of the Listing Committee by the Listing Review Committee under this rule.
- (2) In reviewing a matter, the Listing Review Committee shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.
- (3) The Commission may request written reasons for a decision of the Listing Committee or the Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 2A.13. The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 2A.13. Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
- (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.
- (5) The Listing Review Committee and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.
- (6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the Listing Review Committee, and the Listing Review Committee shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 2A.16A(7).
- (7) Where the Listing Review Committee overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by a second Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the Listing Review Committee, all of the members present at the further and final review shall be persons who were not present at the earlier review hearing of the Listing Review Committee. In the event there are insufficient persons available to make up the required quorum for the Listing Review Committee, the proposed Chairman of the Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

...

Appointment and Removal of Members of the Listing Committee

...

- 2A.22 The Chairman and the Deputy Chairmen of the Listing Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The Listing Nominating Committee may choose to nominate one or more than one Deputy Chairman and the Board may choose to appoint one or more than one Deputy Chairman. The Chief Executive of HKEC may not be elected as either Chairman or Deputy Chairman of the Listing Committee.

...

Functions and Powers of the Listing Committee

- 2A.27 The Listing Committee shall exercise all the powers and functions of the Board in relation to all listing matters. The Listing Committee's exercise of such powers and functions is only subject to the powers of review in the ~~Listing Appeals Committee~~ Listing Review Committee.

Conduct of Meetings of the Listing Committee

- 2A.28 The Listing Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule 2A.28. The quorum necessary for the transaction of any business by the Listing Committee shall be five members present in person. The Chief Executive of HKEC will not attend meetings of the Listing Committee at which the Listing Committee is determining a matter in the first instance or on review, ~~pursuant to any disciplinary proceedings. At any meeting held to review an earlier decision of the Listing Committee pursuant to any disciplinary proceedings, all of the members present at the second meeting must be persons who were not present at the first meeting.~~

Composition of the Listing Appeals Committee

- 2A.29 ~~[Repealed [•] 2019] The Listing Appeals Committee shall consist of the chairman and two other members of the board of HKEC.~~
- 2A.30 ~~[Repealed [•] 2019] The Chairman of the Listing Appeals Committee shall be the chairman of the board of HKEC.~~
- 2A.31 ~~[Repealed [•] 2019] The Chairman of the Listing Appeals Committee shall appoint a Deputy Chairman from amongst the members of the board of HKEC, except the Chief Executive of HKEC. The Chairman of the Listing Appeals Committee shall vacate office upon a new chairman of the board of HKEC being appointed by the members of the board of HKEC and approved in writing by the Chief Executive of Hong Kong or upon his earlier removal from the chairmanship of the board of HKEC. The Deputy Chairman of the Listing Appeals Committee shall vacate office upon (i) the expiry of his term as a director of HKEC unless he is re-appointed or re-elected as a director of HKEC (as the case may be) and reappointed by the Chairman of the Listing Appeals Committee as Deputy Chairman; or (ii) his earlier removal as director of HKEC.~~

- 2A.32 ~~[Repealed [•] 2019]~~ ~~The third member shall be chosen and invited to sit on the Listing Appeals Committee by the Chairman of the Listing Appeals Committee as and when the Listing Appeals Committee is required to review a decision of the Listing Committee and shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The third member shall be a member of the board of HKEC, except the Chief Executive of HKEC.~~
- 2A.33 ~~[Repealed [•] 2019]~~ ~~In the event that either the Chairman or the Deputy Chairman of the Listing Appeals Committee is materially interested in the outcome of a review (otherwise than as a member of the board of HKEC and, where applicable, of the Board) or is otherwise unavailable to hear a review then the one who is available shall appoint a replacement member for the purposes of hearing that review and such person shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The replacement member appointed must be a member of the board of HKEC, except the Chief Executive of HKEC.~~
- 2A.34 ~~[Repealed [•] 2019]~~ ~~In the event that both the Chairman and the Deputy Chairman of the Listing Appeals Committee are materially interested in the outcome of a review (otherwise than as a member of the board of HKEC and, where applicable, of the Board) or are otherwise unavailable to hear a particular review the board of HKEC shall appoint a temporary Chairman of the Listing Appeals Committee from the members of the board of HKEC. The temporary Chairman shall appoint a temporary Deputy Chairman and a third member of the Listing Appeals Committee from the members of the board of HKEC to hear that review. The temporary Chairman, the temporary Deputy Chairman and the third member appointed by the temporary Chairman shall all cease to be members of the Listing Appeals Committee once the Listing Appeals Committee has given its decision upon the matter or upon resignation whichever is the sooner. The provisions of rule 2A.33 and this rule shall apply mutatis mutandis to the temporary Chairman and temporary Deputy Chairman as if all references to the Chairman and Deputy Chairman were references to the temporary Chairman and temporary Deputy Chairman respectively.~~
- 2A.35 ~~[Repealed [•] 2019]~~ ~~The Chairman of the Listing Appeals Committee may not invite a person to sit on the Listing Appeals Committee if that person was present at any meeting of the Listing Committee at which the decision under review was made or considered or is otherwise materially interested in the outcome of the review (otherwise than as an Exchange Participant or a member of the board of HKEC and, where applicable, of the Board).~~

Functions and Powers of the Listing Appeals Committee

- 2A.36 ~~[Repealed [•] 2019]~~ ~~The Listing Appeals Committee shall be the review body in respect of any decision of the Listing Committee on any of the following matters:—~~
- ~~(1) [Repealed 1 January 2007]~~
 - ~~(2) that the role of an authorised representative appointed under rule 3.05 must be terminated;~~
 - ~~(3) that an application for listing by a new applicant has been rejected solely on the grounds that the issuer or its business is unsuitable for listing;—~~

- ~~(4) that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;~~
- ~~(5) that the listing of a listed issuer be cancelled; or~~
- ~~(6) any decision pursuant to rule 2A.09(2), (3), (5), (7), (8) or (9).~~
- ~~(7) [Repealed 1 August 2018]~~

Conduct of Meetings of the Listing Appeals Committee

~~2A.37 [Repealed [•] 2019] The Listing Appeals Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule 2A.37. The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be three members present in person.~~

Composition of the Listing Review Committee

~~2A.37A Subject to casual vacancies from time to time the Listing Review Committee shall consist of 20 members or such greater number of members as the Board may from time to time agree. An individual who was a member of the Listing Committee may be eligible for appointment as a member of the Listing Review Committee after the lapse of two years from the date on which he last vacates office of the Listing Committee.~~

~~2A.37B The Listing Review Committee shall comprise:~~

- ~~(1) at least six individuals who the Listing Nominating Committee considers will represent the interest of investors; and~~
- ~~(2) the remaining members who the Listing Nominating Committee considers will represent a suitable balance of representatives of listed issuers and market practitioners, including lawyers, accountants, corporate finance advisers and Exchange Participants (or their officers), and who have experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee.~~

~~No current Listing Committee members or representatives of the Commission or the HKEC shall be members of the Listing Review Committee.~~

Appointment and Removal of Members of the Listing Review Committee

~~2A.37C Members of the Listing Review Committee shall be appointed by the Board. The Board may appoint only persons nominated in accordance with rule 2A.37D.~~

~~2A.37D The persons eligible for appointment or re-appointment in each year as members of the Listing Review Committee shall be nominated by the Listing Nominating Committee.~~

~~2A.37E Members of the chairmen pool of the Listing Review Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The chairmen pool shall comprise at least four members of the Listing Review Committee.~~

2A.37F Members of the Listing Review Committee shall normally be appointed for a term of approximately twelve months.

2A.37G All members of the Listing Review Committee shall vacate office at the end of their term unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment. Subject to rule 2A.37I, all members of the Listing Review Committee are eligible for re-appointment.

2A.37H The Board may fill any casual vacancies that may occur in the Listing Review Committee by reason of resignation, retirement or otherwise. A person eligible for appointment to fill any such casual vacancy shall be nominated by the Listing Nominating Committee and shall be a person who is eligible within the same category of rule 2A.37B as the member who has vacated office. 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 casual vacancy.

2A.37I Members of the Listing Review Committee may only remain in office for a maximum of six consecutive years in addition to any period of appointment pursuant to rule 2A.37H for the purpose of filling a casual vacancy. 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 last vacates office. Notwithstanding the foregoing, 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 and the Board shall have the power to appoint such person.

2A.37J The office of a member of the Listing Review Committee shall be vacated if any one of the following events occurs:—

- (1) if a receiving order is made against him or he makes any arrangement or composition with his creditors;
- (2) if he becomes insane or is found to be of unsound mind within the meaning of the Mental Health Ordinance (Cap. 136);
- (3) if by notice in writing to the Board and the Listing Review Committee, he resigns from his office; or
- (4) if by reason of serious misconduct he is removed by the Board and a written statement setting out the reasons for his removal has been delivered to the Commission,

provided that the acts of such member shall nevertheless be treated as valid and effectual in all respects up to and until an entry of the vacation of office shall be entered in the minutes of the Listing Review Committee.

Functions and Powers of the Listing Review Committee

2A.37K The Listing Review Committee shall be the review body in respect of any decision of the Listing Committee and, where the Commission had requested a review by the Listing Review Committee of a decision made by the Listing Committee, the further and final review body for decisions of the Listing Review Committee as provided in rules 2A.16A(7) and 2B.16(7).

Conduct of Meetings of the Listing Review Committee

2A.37L The Listing Review Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule 2A.37L. The quorum necessary for the transaction of any business of the Listing Review Committee shall be five members present in person. All review hearings shall be heard *de novo*. The Listing Review Committee will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the Listing Review Committee. The Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

Bona Fide Acts of Committee Members

2A.38 All bona fide acts of a member of the Listing Committee or any member of the Listing ~~Appeals~~ Review Committee pursuant to the resolutions passed at any meeting of those Committees shall, as regards all persons dealing in good faith with the Exchange, notwithstanding that it be subsequently discovered that there was some defect in the appointment of any such member or that such member was for some reason ineligible for appointment, be deemed to be valid as if every member had been duly appointed and was qualified to be a member of the relevant Committee.

Transitional

2A.39 All disciplinary review hearings for disciplinary proceedings commenced before the implementation of [the new rules] will be conducted under Chapters 2A and 2B of the Listing Rules in force as at the time of commencement of disciplinary proceedings. The Committees in existence before the implementation of the [new rules] will continue in existence until all such proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of these matters.

Note: (1) *Disciplinary proceedings are commenced upon the Listing Division submitting a report to the Secretary setting out its case and all material facts and submissions upon which it intends to rely.*

(2) *For the purpose of this rule, the reference to "new rules" refers to the amendments to this Chapter and Chapter 2B which came into effect on [•] 2019.*

Chapter 2B

GENERAL

REVIEW PROCEDURE

General

- 2B.01 ~~Rule 2A.03 provides that~~ The Listing Committee has retained the role of oversight of the Listing Division 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. This oversight role does not mean, however, that the Listing Committee will be involved in the day-to-day administration of the ~~Exchange~~-Listing Rules but the Listing Committee will act as an independent review body and has retained the right to review at any time, on its own volition, any decision of the Chief Executive of the Exchange, the Executive Director of the Listing Division or any member of the staff of the Listing Division which is made under any of the powers delegated by the Listing Committee and to endorse, modify, vary or reverse any such decision. In addition, the Listing Committee has the power to impose directions, regulations or restrictions on the Chief Executive of the Exchange, the Executive Director of the Listing Division and the staff of the Listing Division in respect of the way in which they are to carry out their delegated authority.

Definitions and Interpretation

- 2B.01A In this Chapter:

...

- (3) “Review Request” means a written request by the relevant party for a review of the decision of the Listing Division, Listing Committee or the Listing ~~(Review)~~ Committee (as the case may be) under rules 2B.05, 2B.06 ~~and 2B.07~~, 2B.06A and 2B.16(7) which must be served on the Secretary of the Listing Committee, ~~or the Secretary of the Listing (Review) Committee or the Secretary of the Listing Appeals Committee~~ (hereinafter referred to as the “Secretary”), as the case may be
- 2B.02 The Listing Committee may at any time conduct a hearing in relation to any matter relating to or arising out of the ~~Exchange~~-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. As provided in this ~~chapter~~Chapter, certain decisions of the Listing Division may be referred to the Listing Committee for review; and certain decisions of the Listing Committee may be referred to the Listing ~~(Review)~~ Committee for a further and final review; ~~certain decisions of the Listing Committee or the Listing (Review) Committee may also be referred to the Listing Appeals Committee for review.~~
- 2B.02A This Chapter sets out the mechanism, procedures and related provisions for the review of non-disciplinary decisions by the Listing Committee and the Listing Review Committee.

- 2B.03 The Listing Committee and the Listing Review Committee may from time to time prescribe such procedures and regulations for any review hearings of the respective Committee as it they may think fit, including procedures for appointing from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.
- 2B.04 (1) Notwithstanding Rule 2B.03 and provisions in respect of Form A1, a listed issuer or new applicant shall submit to the Listing Committee, information for an application for listing pursuant to each Form A1 no more than two times subject always to:-
- (a) the Listing Committee to permit otherwise if it considers necessary; and
 - (b) only one right of review by the listed issuer or new applicant against the latest decision made by the Listing Committee as at the date of the Review Request pursuant to Rule 2B.08; ~~and~~
 - (c) [Repealed [•] 2019] to Rule 2B.11(5).

...

Review cases of a new applicant to be considered by the Listing Committee and the Listing (Review) Committee

- 2B.05 (1) (a) Where the Listing Division rejects an application for listing by a new applicant, the new applicant has the right to have ~~that ruling the decision reviewed by~~ referred to the Listing Committee for a review.
- (b) Where the Listing Committee rejects an application for listing by the new applicant or endorses, modifies or varies the Listing Division's decision to reject an application, the new applicant has the right to have the decision referred to the Listing (Review) Committee for a further and final review.
- (c) Subject to rule 2B.16, t~~The~~ decision of the Listing (Review) Committee on the review is conclusive and binding on the new applicant ~~except where a new applicant is rejected solely on the grounds of unsuitability of the new applicant itself or its business.~~

Note: A rejection decision under rule 2B.05(1) does not include a Return Decision.

(2) ...

- (b) Where the Listing Committee endorses the Return Decision, the new applicant and/or the sponsor have the right to have the Return Decision referred to the Listing (Review) Committee for a further and final review. Subject to rule 2B.16, t~~the~~ decision of the Listing (Review) Committee on the review is conclusive and binding on the new applicant and the sponsor.

Review cases of a listed issuer to be considered by the Listing Committee and the Listing (Review) Committee

- 2B.06 (1) Where the Listing Division makes a ruling decision on the listed issuer, the listed issuer may request ~~that the ruling decision to~~ be referred to the Listing

~~Committee, the Listing Committee may, in its sole discretion, review the ruling at a first- for a review hearing of by the Listing Committee.~~

- ~~(2) Subject to Rule 2B.04, where the Listing Committee endorses, modifies or varies the Listing Division's rulingdecision or makes its own rulingdecision, the listed issuer may request that application to the decision be referred to the Listing (Review) Committee again for a second further and final review of the ruling.~~
- ~~(3) Subject to rule 2B.16, The decision of the Listing Division or, the Listing Committee, the Listing (Review) Committee or the Listing Appeals Committee, as the case may be, shall be conclusive and binding on the listed issuer if the listed issuer does not seek review of the decision of the Listing Division, or the Listing Committee or the Listing (Review) Committee, as the case may be; otherwise, the decision of the Listing (Review) Committee or, in the cases to which Rule 2B.07 applies, the decision of the Listing Appeals Committee, shall be conclusive and binding on the listed issuer.~~

Review cases of an authorised representative to be considered by the Listing Committee and the Listing Review Committee

- ~~2B.06A (1) Where the Listing Division decides that the role of an authorised representative appointed under rule 3.05 be terminated, that authorised representative shall have the right to have that decision referred to the Listing Committee for review.~~
- ~~(2) Where the Listing Committee endorses, modifies or varies the Listing Division's decision, the authorised representative shall have the right to have that decision reviewed by the Listing Review Committee, whose decision shall be conclusive and binding on both the listed issuer and the authorised representative.~~

Review cases to be considered by the Listing Appeals Committee

~~2B.07 [Repealed [•] 2019]~~

~~The Listing Appeals Committee shall be the review hearing body in respect of any decision of the Listing Committee or the Listing (Review) Committee on any of the following matters:-~~

- ~~(1) Rejection of a new applicant – unsuitability of listing~~

~~Where the Listing Committee rejects the new applicant solely on the ground that the new applicant or its business is not suitable for listing, the new applicant shall have a right to a further review of the application by the Listing (Review) Committee and a further and final review of the application by the Listing Appeals Committee. The Listing Appeal Committee's decision will then be conclusive and binding on the new applicant.~~

- ~~(2) [Repealed 1 January 2007]~~

- ~~(3) Rejection of an authorised representative~~

- ~~(a) Where the Listing Division decides that the role of an authorised representative appointed under Rule 3.05 be terminated, that~~

~~authorised representative shall have the right to have that decision referred to the Listing Committee for review.~~

~~(b) Where the Listing Committee endorses, modifies or varies the Listing Division's decision, that authorised representative shall have the right to have that decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on both the listed issuer and that authorised representative.~~

~~(4) Rejection of a lifting of suspension of trading~~

~~(a) Where the Listing Division rejects an application by a listed issuer to lift a suspension of dealings which has been in effect for more than 30 days, the listed issuer shall have the right to have that decision referred to the Listing Committee for review.~~

~~(b) Where the Listing Committee endorses, modifies or varies the Listing Division's decision, that listed issuer shall have the right to have that decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on that listed issuer.~~

~~(5) Cancellation of a listing~~

~~(a) Following a decision to cancel the listing of a listed issuer, the Listing Committee will set down a detailed review procedure upon the receipt of the written request made including time limits for submitting documents on a case by case basis.~~

~~(b) Where the Listing Committee considers it necessary to cancel the listing of a listed issuer for the protection of investors or the maintenance of an orderly market pursuant to rule 6.01, or in any of the circumstances set out in rule 6.01(2), (3) or (4) or rule 6.01A(1), the listed issuer shall have the right to have that decision referred to the Listing (Review) Committee for review.~~

~~(c) Where the Listing (Review) Committee endorses, modifies or varies the earlier decision of the Listing Committee, the listed issuer shall have a right to further and final review of that decision by the Listing Appeals Committee, whose decision shall be conclusive and binding on the listed issuer.~~

~~(d) For the avoidance of doubt, any decision to cancel a listing within subparagraph (b) above is subject to the procedures set out in this Chapter, notwithstanding that the reasons for the cancellation include or amount to a breach of the Exchange Listing Rules by the listed issuer.~~

~~(6) [Repealed 1 August 2018]~~

Time for application

- 2B.08 (1) Subject to (3) below, a Review Request for reviewing any decision of the Listing Division, the Listing Committee or the Listing (Review) Committee (as the case may be) under rules 2B.05(1), 2B.06, ~~2B.06A~~ and ~~2B.07~~ and 2B.16(7) must be served on the Secretary within ~~7~~seven business days of receipt of

either the relevant decision, or if the relevant party requests ~~a written decision~~ reasons under rule 2B.13(1), ~~that those written decision reasons.~~

- (2) A Review Request for reviewing a Return Decision or a Listing Committee's decision to endorse a Return Decision must include the grounds for the review together with reasons and be served on the Secretary within five business days of receipt of the written decision under rule 2B.13(2).
- (3) A Review Request made under rule 2B.06 for reviewing a decision of the Listing Division to direct the resumption of trading or, if such decision has been referred to the Listing Committee for review, the Listing Committee's decision on such review, must include the grounds for the review together with reasons and be served on the Secretary within five business days of receipt of the written decision under rule 2B.13(3).

Notice of review hearing

2B.09 Upon the receipt of ~~the written request for a review of any decision of the Listing Division, the Listing Committee or Listing (Review) Committee~~ a Review Request, the Listing Committee, ~~or the Listing (Review) Committee or the Listing Appeals Committee~~, as the case may be, will convene a hearing to review the matter in accordance with the procedures as prescribed by the Secretary; provided that when the Listing Committee or the Listing (Review) Committee considers that it is necessary to resolve an issue urgently, it may stipulate such time as may be necessary within which the relevant party should be informed as to the date for the review hearing.

Prehearing procedures

2B.10 In all review cases, the Listing Division and the relevant parties will provide each other and the Listing Committee, ~~or the Listing (Review) Committee, as the case may be, or the Listing Appeals Committee~~ through the Secretary of the relevant Committee with copies of any papers to be presented by it at the hearing, in advance of the review hearing.

Conduct of review hearing

2B.11 (1) The Listing Committee, ~~or the Listing (Review) Committee or the Listing Appeals Committee~~ shall meet for the despatch of business, adjourn and otherwise regulate its hearings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. All review hearings under this Chapter shall be heard *de novo*. The Listing Committee and the Listing Review Committee (as the case may be) will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the Listing Committee or the Listing Review Committee. The Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

- (2) The quorum necessary for the transaction of any business by the Listing Committee or the Listing (Review) Committee shall be five members present in person. ~~The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be three members present in person.~~
- (3) The Chief Executive of HKEC will not attend meetings of the Listing Committee at which the Listing Committee is determining a matter in the first instance or attend review hearings of the Listing Committee ~~or the Listing (Review) Committee.~~
- (4) ~~[Repealed [•] 2019] At any meeting held to review an earlier decision of the Listing Committee, subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of either the Chairman of the Listing Committee or the Listing (Review) Committee, as the case may be, all of the members present at the review hearing shall be persons who were not present at the earlier Listing Committee meeting.~~
- (5) (a) ~~[Repealed [•] 2019] The relevant party shall have provided the Listing Committee with all or any new information for the consideration by the Listing Committee before seeking to review a Listing Committee decision by the Listing (Review) Committee.~~
- (b) ~~[Repealed [•] 2019] A party may only request a review of a decision of the Listing Committee when all the relevant information and evidence has been provided to the Listing Committee. A party seeking to review shall not seek to present to the Listing (Review) Committee new information or evidence that was not previously presented to the Listing Committee.~~
- (c) ~~[Repealed [•] 2019] If the Listing Division upon receipt of the written submission from the relevant party discovers that the relevant party adduces new information in its written submissions prepared for the review hearing, the Listing Division shall notify the Secretary immediately so that arrangements may be made for the relevant party to withdraw its application for review. The new submission will then be considered by the Listing Committee as a first instance hearing.~~
- (d) ~~Sub-rules (a), (b) and (c) do not apply to a review relating to a Return Decision. In a review of a Return Decision or a Listing Committee's decision to endorse a Return Decision, any materials submitted to the Listing Committee or the Listing (Review) Committee must be based on the original materials submitted to the Listing Division when the new applicant first filed its listing application.~~
- ...
- (7) At a review hearing before the Listing Committee or the Listing (Review) Committee or Listing Appeals Committee hearing, the directors of the new applicant or the listed issuer (as the case may be) have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the sponsor, authorised representatives, proposed or otherwise, the financial adviser, the legal adviser and auditors of the new applicant or the listed issuer (as the case may be); an authorised representative may be accompanied by his legal adviser.

- (8) In the case of a review hearing sought by an authorised representative under rule 2B.06A7(3), the authorised representative has the right to attend the review hearing, to make submissions and may be accompanied by his legal adviser.
- (9) Sub-rules (6) and (7) do not apply to a review relating to a Return Decision. In a review hearing of a Return Decision by the Listing Committee or the Listing ~~{Review}~~ Committee, the directors of the new applicant and/or one representative of each sponsor have the right to attend the hearing, to make submissions and to be accompanied, in the case of the directors of the new applicant, by one representative of each of the new applicant's financial adviser, legal adviser and auditors; and in the case of each sponsor, by its legal adviser. If all the parties seeking a review decide not to attend the hearing, the hearing will proceed based on the documents submitted for hearing. For the avoidance of doubt, if a party seeking a review decides not to attend the hearing, the hearing will proceed in his absence.

Role of Secretary

2B.12 ...

- (2) Any notices, notifications and all other documents required to be submitted to the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or the Listing Appeals Committee~~ must be served upon the Secretary who will ensure that copies are provided to the other parties and members of the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or the Listing Appeals Committee~~, as appropriate.
- (3) The Secretary shall advise the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or the Listing Appeals Committee~~ on procedural matters, but all decisions on such matters shall be made only by the Listing Committee, or the Listing ~~{Review}~~ Committee, ~~or the Listing Appeals Committee~~ as the case may be; and the Secretary shall carry out such duties as may from time to time be authorised by the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or the Listing Appeals Committee~~.

...

- (5) The Secretary shall refer any pre-review hearing enquiries or matter, procedural or otherwise, to the Chairman proposed for any of the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or Listing Appeals Committee~~, as the case may be, for confirmation or decision or if the proposed Chairman so directs, the Secretary shall refer the same to the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or the Listing Appeals Committee~~, as the case may be, for its decision.

Request for written reasons

- 2B.13 (1) Except for a review relating to a Return Decision or a decision to direct the resumption of trading, on receipt of a decision by the Listing Division, the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or the Listing Appeals Committee~~ (as the case may be) a relevant party has ~~3~~three business days to request written reasons for the decision. The Listing Division, the Listing Committee, or the Listing ~~{Review}~~ Committee ~~or the Listing Appeals Committee~~ (as the case may be) will provide written reasons within 14

business days of receipt of the request. Such written reasons will be provided to all parties to the review.

- (2) The Listing Division, the Listing Committee or the Listing (Review) Committee (as the case may be) will provide written reasons for its Return Decision or decision to endorse a Return Decision.
- (3) The Listing Division, the Listing Committee or the Listing (Review) Committee (as the case may be) will provide written reasons for its decision to direct the resumption of trading under rule 6.07 or decision to endorse such a decision.

Publication of decisions

2B.13A The conclusive and binding decisions of the Listing Review Committee under this Chapter shall be published on the Exchange's website unless otherwise directed by the review body. In the event of a further and final review under rule 2B.16(7), the decision of the Listing Review Committee which heard the review initiated by the Commission and the decision of the Listing Review Committee which heard the further and final review shall both be published.

Costs

2B.14 Upon submission of a Review Request pursuant to Rule 2B.08, a non-refundable fee of HK\$60,000 is payable to the Exchange, for each review, by any party seeking to review a decision of the Listing Division, the Listing Committee or (in relation to a review under rule 2B.16(7)) the Listing Review Committee or the Listing (Review) Committee, as the case may be, pursuant to this Chapter 2B.

...

Non-disciplinary reviews initiated by the Commission

- 2B.16
- (1) The Commission shall have the right to request in writing a review of any non-disciplinary matter, including a decision of the Listing Committee by the Listing Review Committee under this rule.
 - (2) In reviewing a matter, the review body shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.
 - (3) The Commission may request written reasons for a decision of the Listing Committee or the Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 2B.13(1). The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 2B.13(1). Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
 - (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.

- (5) The review body and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.
- (6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the review body, and the review body shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 2B.16(7).
- (7) Where the review body overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by the Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the Listing Review Committee, all of the members present at the further and final review shall be persons who were not present at the earlier review hearing of the Listing Review Committee (if any). In the event there are insufficient persons available to make up the required quorum for the Listing Review Committee, the proposed Chairman of the Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

Transitional

- 2B.17 (1) All non-disciplinary review hearings in respect of the following decisions will be conducted under Chapters 2A and 2B of the Listing Rules in force immediately before the implementation of [the new rules]:
- (a) subject to (b) and (c) below, any first instance non-disciplinary decision made before the implementation of [the new rules];
 - (b) any decision made under Practice Note 17;
 - (c) any decision made under rule 6.10(1) before the implementation of [the new rules] and any follow on or further decision made in relation to those decisions (including a decision to cancel the listing if an issuer fails to remedy the specified matters within the specified period); and
 - (d) any review decision of the decisions referred to in (a), (b) or (c) above.
- (2) The Committees in existence before the implementation of the [new rules] will continue in existence until all relevant review proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of the above matters.

Note: For the purpose of this rule, the reference to "new rules" refers to the amendments to this Chapter and Chapter 2A which came into effect on [•] 2019.

...

Chapter 38

LISTING OF HKEC

...

The SFC (HKEC Listing) Committee, SFC (HKEC Listing) Appeals Committee and SFC (HKEC Listing) Executive

- 38.05 The Commission has established a framework for exercising its listing related powers and functions with respect to HKEC. The framework comprises committees established by the Commission pursuant to section 8 of the Securities and Futures Ordinance and persons who will exercise with respect to HKEC applicable powers and functions, in so far as is practicable and applicable, in a like manner to the Listing Committee, Listing ~~Review~~Appeals Committee, Listing Division and the Chief Executive of the Exchange, respectively. The relevant committees and persons are:
- (1) the SFC (HKEC Listing) Committee, which shall exercise applicable powers and functions equivalent to those of the Listing Committee ~~including applicable powers and functions equivalent to those of the Listing (Review) Committee;~~
 - (2) the SFC (HKEC Listing) Appeals Committee, which shall exercise applicable powers and functions equivalent to those of the Listing ~~Review~~Appeals Committee;
 - ...
 - (5) the Secretary to the SFC (HKEC Listing) Committee and/or to the SFC (HKEC Listing) Appeals Committee, who shall exercise applicable powers and functions equivalent to those of the Secretary to the Listing Committee and/or Listing ~~Review~~Appeals Committee.
- 38.06 The SFC (HKEC Listing) Committee shall consist of not less than 10 members, comprising at least five representatives from the Commission (each being an “SFC representative”) and at least five individuals (not being directors or employees of the Commission) with experience of the securities market in Hong Kong appointed by the Commission (each of the latter individuals being a “market representative”). The SFC representatives shall consist of all Executive Directors of the Commission from time to time (except the Chairman of the Commission and the Executive Director in charge of the Corporate Finance Division) and such Senior Directors or Directors of all or any of the divisions of the Commission (except the Chairman’s Office and the Corporate Finance Division) as the Commission shall appoint from time to time. The SFC representatives shall not be subject to any fixed term of appointment. The market representatives shall normally hold office for a one-year term and shall be eligible for re-appointment at the end of a term. The quorum necessary for the transaction of any business of the SFC (HKEC Listing) Committee shall be three individuals including at least one Executive Director of the Commission and one market representative. Not more than five members shall normally attend any meeting of the SFC (HKEC Listing) Committee. ~~Any meeting of the SFC (HKEC Listing) Committee convened to review an earlier decision or ruling of the SFC (HKEC Listing) Committee (i.e. where the SFC (HKEC Listing) Committee is performing a role equivalent to that of the Listing (Review) Committee) shall consist of members who were not present at the meeting which made the earlier decision or ruling.~~

...

38.08 Each of the SFC (HKEC Listing) Committee and the SFC (HKEC Listing) Appeals Committee may elect any of its members to be chairman and may regulate its own procedures and business subject to any directions given to it by the Commission for this purpose. In so doing, each such committee may have regard to (but shall not be bound by) the practices and procedures of the Listing Committee or Listing Review Appeals Committee as set out in Chapters 2A and 2B, as the case may be. The Chief Executive Officer of the Commission shall from time to time appoint a person or persons, who may be an employee or employees of the Commission, to act as Secretary of the SFC (HKEC Listing) Committee and/or SFC (HKEC Listing) Appeals Committee.

...

APPENDIX III: AMENDMENTS TO THE GEM LISTING RULES

Chapter 1

GENERAL

INTERPRETATION

1.01 Throughout these Rules, the following terms, except where the context otherwise requires, have the following meanings:

...

“GEM” GEM operated by the Exchange

“GEM Listing Committee” the GEM listing sub-committee of the Board

“GEM Listing Review Committee” the GEM listing review sub-committee of the Board

...

~~“Listing Appeals Committee”~~ ~~the listing appeals sub-committee of the Board~~

~~“Listing Committee”~~ ~~the listing sub-committee of the Board~~

“Listing Division” the Listing Department of the Exchange

“Listing Nominating Committee” the listing nominating sub-committee of the Board

...

“Main Board Listing Committee” the Listing Committee as defined in the Main Board Listing Rules

...

Chapter 3

GENERAL

COMPOSITION, POWERS, FUNCTIONS AND PROCEDURES OF THE GEM LISTING COMMITTEE, THE GEM LISTING APPEALS REVIEW COMMITTEE AND THE LISTING DIVISION

General

3.01 The Board has arranged for all of its powers and functions in respect of all listing matters in relation to GEM to be discharged by the GEM Listing Committee and/or its delegates, subject to the review procedures set out in this Chapter and Chapter 4.

Any function which under the GEM Listing Rules may be performed by the Exchange or any power which under the GEM Listing Rules may be exercised by the Exchange may, therefore, be performed or exercised by the GEM Listing Committee and/or its delegates. Accordingly, the GEM Listing Committee and, in relation to certain powers of review, the ~~Listing Appeals Committee~~ GEM Listing Review Committee have sole power and authority to act in relation to all listing matters to the exclusion of the Board unless and until the Board revokes these arrangements.

...

- 3.03 In discharging their respective functions and powers ~~the Listing Appeals Committee~~ the GEM Listing Review Committee, the GEM Listing Committee, the Listing Division and the Chief Executive are required to administer the GEM Listing Rules, and otherwise to act, in the best interest of the market as a whole and in the public interest.

...

Disciplinary procedures

...

- 3.12 The GEM Listing Committee will, if requested by any party to be reprimanded, criticised, censured or otherwise sanctioned in pursuance of the powers contained in rules 3.10 and 3.11 (an "review applicant~~appellant~~"), give its reasons in writing for the decision made against that ~~appellant~~ review applicant pursuant thereto and that ~~appellant~~ review applicant shall have the right to have the decision against him referred to the GEM Listing Review Committee again for a further and final review. If ~~the GEM Listing Review Committee may endorse, overturn, modify or vary the ruling of the earlier meeting, it will, if requested by the appellant, give its reasons in writing for the modification or variation and, in respect of decisions pursuant to rule 3.10(2), (3), (5), (7), (8) or (9) only, the appellant shall have a right to a further and final review of the decision against the appellant by the Listing Appeals Committee.~~ Subject to rule 3.17A, the decision of the Listing Appeals Committee GEM Listing Review Committee on review shall be conclusive and binding on the ~~appellant~~ review applicant. If requested by the ~~appellant~~ review applicant, the GEM Listing Appeals Review Committee will give reasons in writing for its decision on review.

...

- 3.14 Any request for the Listing Division, the GEM Listing Committee or the ~~Listing Appeals Committee~~ GEM Listing Review Committee to give its reasons in writing for its decision shall be made within ~~3~~ three business days of its decision. Where requested, written reasons for a decision will be provided to all parties to the proceedings by the Listing Division, the GEM Listing Committee or the ~~Listing Appeals Committee~~ GEM Listing Review Committee (as the case may be) as soon as possible and, in any event, within 14 days of the request.

...

- 3.16 The GEM Listing Committee and the GEM Listing Review Committee may from time to time prescribe such procedures and regulations for any review meetings or hearings of the respective Committee as it may think fit, including procedures for appointing from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.

Rights of parties to be heard

- 3.17 In any disciplinary proceedings of the GEM Listing Committee and on any further and final review of the decision resulting from those proceedings by the GEM Listing Review Committee ~~Listing Committee~~ or the ~~Listing Appeals Committee~~, the party the subject of such proceedings shall have the right to attend the meeting, to make submissions and to be accompanied by its professional advisers. In all disciplinary proceedings the Listing Division will provide the parties with copies of any papers to be presented by it at the meeting, in advance of the meeting.

Disciplinary reviews initiated by the Commission

- 3.17A (1) The Commission shall have the right to request in writing a review of any disciplinary decision of the GEM Listing Committee by the GEM Listing Review Committee under this rule.
- (2) In reviewing a matter, the GEM Listing Review Committee shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.
- (3) The Commission may request written reasons for a decision of the GEM Listing Committee or the GEM Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 3.14. The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 3.14. Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
- (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.
- (5) The GEM Listing Review Committee and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.
- (6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the GEM Listing Review Committee, and the GEM Listing Review Committee shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 3.17A(7).
- (7) Where the GEM Listing Review Committee overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by a second GEM Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the GEM Listing Review Committee, all of the members present at the further and final review shall be persons who were

not present at the earlier review hearing of the GEM Listing Review Committee. In the event there are insufficient persons available to make up the required quorum for the GEM Listing Review Committee, the proposed Chairman of the GEM Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

...

Appointment and removal of members of the GEM Listing Committee

...

- 3.23 The Chairman and the Deputy Chairmen of the GEM Listing Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The Listing Nominating Committee may choose to nominate one or more than one Deputy Chairman and the Board may choose to appoint one or more than one Deputy Chairman. The Chief Executive of HKEC may not be elected as either Chairman or Deputy Chairman of the GEM Listing Committee.

...

Functions and powers of the GEM Listing Committee

- 3.28 The GEM Listing Committee shall exercise all the powers and functions of the Board in relation to all listing matters in relation to GEM. The GEM Listing Committee's exercise of such powers and functions is only subject to the powers of review in the ~~Listing Appeals Committee~~ GEM Listing Review Committee.

Conduct of meetings of the GEM Listing Committee

- 3.29 The GEM Listing Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. The quorum necessary for the transaction of any business by the GEM Listing Committee shall be five members present in person. The Chief Executive of HKEC will not attend meetings of the GEM Listing Committee at which the GEM Listing Committee is determining a matter in the first instance or on review, pursuant to any disciplinary proceedings. ~~At any meeting held to review an earlier decision of the GEM Listing Committee pursuant to any disciplinary proceedings, all of the members present at the second meeting must be persons who were not present at the first meeting.~~

~~Composition of the Listing Appeals Committee~~

- 3.30 ~~[Repealed [•] 2019] The Listing Appeals Committee, being the final appellate body of the Exchange in respect of both GEM and the Main Board, shall consist of the chairman and 2 other members of the board of HKEC.~~
- 3.31 ~~[Repealed [•] 2019] The Chairman of the Listing Appeals Committee shall be the chairman of the board of HKEC.~~

- 3.32 ~~[Repealed [•] 2019] The Chairman of the Listing Appeals Committee shall appoint a Deputy Chairman from amongst the members of the board of HKEC, except the Chief Executive Officer of HKEC. The Chairman of the Listing Appeals Committee shall vacate office when a new chairman of the board of HKEC is appointed by the members of the board of HKEC and approved in writing by the Chief Executive of Hong Kong or upon his earlier removal from the chairmanship of the board of HKEC. The Deputy Chairman of the Listing Appeals Committee shall vacate office upon (i) the expiry of his term as a director of HKEC unless he is re-appointed or re-elected as a director of HKEC (as the case may be) and re-appointed by the Chairman of the Listing Appeals Committee as Deputy Chairman; or (ii) his earlier removal as director of HKEC.~~
- 3.33 ~~[Repealed [•] 2019] The third member shall be chosen and invited to sit on the Listing Appeals Committee by the Chairman of the Listing Appeals Committee as and when the Listing Appeals Committee is required to review a decision of the GEM Listing Committee and shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The third member shall be a member of the board of HKEC, except the Chief Executive of HKEC.~~
- 3.34 ~~[Repealed [•] 2019] In the event that either the Chairman or the Deputy Chairman of the Listing Appeals Committee is materially interested in the outcome of a review (otherwise than as a member of the board of HKEC and, where applicable, of the Board) or is otherwise unavailable to hear a review then the one who is available shall appoint a replacement member for the purposes of hearing that review and such person shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The replacement member appointed must be a member of the board of HKEC.~~
- 3.35 ~~[Repealed [•] 2019] In the event that both the Chairman and the Deputy Chairman of the Listing Appeals Committee are materially interested in the outcome of a review (otherwise than as members of the board of HKEC and, where applicable, of the Board) or are otherwise unavailable to hear a particular review the board of HKEC shall appoint a temporary Chairman of the Listing Appeals Committee from the members of the board of HKEC. The temporary Chairman shall appoint a temporary Deputy Chairman and a third member of the Listing Appeals Committee from the members of the board of HKEC to hear that review. The temporary Chairman, the temporary Deputy Chairman and the third member appointed by the temporary Chairman shall all cease to be members of the Listing Appeals Committee once the Listing Appeals Committee has given its decision upon the matter or upon resignation whichever is the sooner. The provisions of rule 3.34 and this rule shall apply mutatis mutandis to the temporary Chairman and temporary Deputy Chairman as if all references to the Chairman and Deputy Chairman were references to the temporary Chairman and temporary Deputy Chairman respectively.~~
- 3.36 ~~[Repealed [•] 2019] The Chairman of the Listing Appeals Committee may not invite a person to sit on the Listing Appeals Committee if that person was present at any meeting of the GEM Listing Committee at which the decision under review was made or considered or is otherwise materially interested in the outcome of the review (otherwise than as an Exchange Participant or a member of the board of HKEC and, where applicable, of the Board).~~

Functions and powers of the Listing Appeals Committee

- 3.37 ~~[Repealed [•] 2019] The Listing Appeals Committee shall be the review body in respect of any decision of the GEM Listing Committee on any of the following matters:—~~
- ~~(1) — that an application for listing by a new applicant has been rejected solely on the grounds that the issuer or its business is unsuitable for listing;~~
 - ~~(2) — [Repealed 1 January 2007]~~
 - ~~(3) — that a person's appointment as an issuer's compliance officer or authorised representative should be terminated;—~~
 - ~~(4) — that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;~~
 - ~~(5) — [Repealed 1 August 2018]~~
 - ~~(6) — that the listing of a listed issuer be cancelled; or~~
 - ~~(7) — any decision pursuant to rule 3.10 (2), (3), (5), (7), (8) or (9).~~

Conduct of meetings of the Listing Appeals Committee

- 3.38 ~~[Repealed [•] 2019] The Listing Appeals Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.~~

Composition of the GEM Listing Review Committee

3.38A Subject to casual vacancies from time to time the GEM Listing Review Committee shall consist of 20 members or such greater number of members as the Board may from time to time agree. An individual who was a member of the GEM Listing Committee may be eligible for appointment as a member of the GEM Listing Review Committee after the lapse of two years from the date on which he last vacates office of the GEM Listing Committee.

3.38B The GEM Listing Review Committee shall comprise:

- (1) at least six individuals who the Listing Nominating Committee considers will represent the interest of investors; and
- (2) the remaining members who the Listing Nominating Committee considers will represent a suitable balance of representatives of listed issuers and market practitioners including lawyers, accountants, corporate finance advisers and Exchange Participants (or their officers), and who have experience and expertise in GEM Listing Rule matters, or are familiar with the work of the GEM Listing Committee.

No current GEM Listing Committee members or representatives of the Commission or the HKEC shall be members of the GEM Listing Review Committee.

Appointment and Removal of Members of the GEM Listing Review Committee

3.38C Members of the GEM Listing Review Committee shall be appointed by the Board. The Board may appoint only persons nominated in accordance with rule 3.38D.

3.38D The persons eligible for appointment or re-appointment in each year as members of the GEM Listing Review Committee shall be nominated by the Listing Nominating Committee.

3.38E Members of the chairmen pool of the GEM Listing Review Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The chairmen pool shall comprise at least four members of the GEM Listing Review Committee.

3.38F Members of the GEM Listing Review Committee shall normally be appointed for a term of approximately twelve months.

3.38G All members of the GEM Listing Review Committee shall vacate office at the end of their term unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment. Subject to rule 3.38I, all members of the GEM Listing Review Committee are eligible for re-appointment.

3.38H The Board may fill any casual vacancies that may occur in the GEM Listing Review Committee by reason of resignation, retirement or otherwise. A person eligible for appointment to fill any such casual vacancy shall be nominated by the Listing Nominating Committee and shall be a person who is eligible within the same category of rule 3.38B as the member who has vacated office. 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 casual vacancy.

3.38I Members of the GEM Listing Review Committee may only remain in office for a maximum of six consecutive years in addition to any period of appointment pursuant to rule 3.38H for the purpose of filling a casual vacancy. 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 last vacates office. Notwithstanding the foregoing, 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 and the Board shall have the power to appoint such person.

3.38J The office of a member of the GEM Listing Review Committee shall be vacated if any one of the following events occurs:—

- (1) if a receiving order is made against him or he makes any arrangement or composition with his creditors;
- (2) if he becomes insane or is found to be of unsound mind within the meaning of the Mental Health Ordinance (Cap. 136);
- (3) if by notice in writing to the Board and the GEM Listing Review Committee, he resigns from his office; or

(4) if by reason of serious misconduct he is removed by the Board and a written statement setting out the reasons for his removal has been delivered to the Commission,

provided that the acts of such member shall nevertheless be treated as valid and effectual in all respects up to and until an entry of the vacation of office shall be entered in the minutes of the GEM Listing Review Committee.

Functions and powers of the GEM Listing Review Committee

3.38K The GEM Listing Review Committee shall be the review body in respect of any decision of the GEM Listing Committee and, where the Commission had requested a review by the GEM Listing Review Committee of a decision made by the GEM Listing Committee, the further and final review body for decisions of the GEM Listing Review Committee as provided in rules 3.17A(7) and 4.16(7).

Conduct of meetings of the GEM Listing Review Committee

3.38L The GEM Listing Review Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule 3.38L. The quorum necessary for the transaction of any business of the GEM Listing Review Committee shall be five members present in person. All review hearings shall be heard *de novo*. The GEM Listing Review Committee will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the GEM Listing Review Committee. The GEM Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The GEM Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

Bona fide acts of eCommittee members

3.39 All bona fide acts of a member of the GEM Listing Committee or any member of the ~~GEM Listing Appeals Review~~ Committee pursuant to the resolutions passed at any meeting of those Committees shall, as regards all persons dealing in good faith with the Exchange, notwithstanding that it be subsequently discovered that there was some defect in the appointment of any such member or that such member was for some reason ineligible for appointment, be deemed to be valid as if every member had been duly appointed and was qualified to be a member of the relevant Committee.

Transitional

3.40 All disciplinary review hearings for disciplinary proceedings commenced before the implementation of [the new rules] will be conducted under Chapters 3 and 4 of the GEM Listing Rules in force as at the time of commencement of disciplinary proceedings. The Committees in existence before the implementation of the [new rules] will continue in existence until all such proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of these matters.

Note: (1) Disciplinary proceedings are commenced upon the Listing Division submitting a report to the Secretary setting out its case and all material facts and submissions upon which it intends to rely.

(2) For the purpose of this rule, the reference to “new rules” refers to the amendments to this Chapter and Chapter 4 which came into effect on [•] 2019.

Chapter 4

GENERAL

REVIEW PROCEDURE

...

Definitions and Interpretation

4.01A In this Chapter:

...

(3) “Review Request” means a written request by the relevant party for a review of the decision of the Listing Division, GEM Listing Committee or the GEM Listing (Review) Committee (as the case may be) under rules 4.05, 4.06 and 4.07, 4.06A and 4.16(7) which must be served on the Secretary of the GEM Listing Committee, or the Secretary of the GEM Listing (Review) Committee ~~or the Secretary of the Listing Appeals Committee~~ (hereinafter referred to as the “Secretary”), as the case may be

4.02 The GEM Listing Committee may at any time conduct a hearing in relation to any matter relating to or arising out of the GEM 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. As provided in this Chapter, certain decisions of the Listing Division may be referred to the GEM Listing Committee for review; and certain decisions of the GEM Listing Committee may be referred to the GEM Listing (Review) Committee for a further and final review ~~(as defined in rule 4.06(2)) for review; certain decisions of the GEM Listing Committee or the GEM Listing (Review) Committee may also be referred to the Listing Appeals Committee for review.~~

4.02A This Chapter sets out the mechanism, procedures and related provisions for the review of non-disciplinary decisions by the GEM Listing Committee and the GEM Listing Review Committee.

4.03 The GEM Listing Committee and the GEM Listing Review Committee may from time to time prescribe such procedures and regulations for any review hearings of the respective Committee as it they may think fit, ~~including procedures for appointing~~

from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.

- 4.04 (1) Notwithstanding rule 4.03 and provisions in respect of the application form set out in Appendix 5A, a listed issuer or new applicant shall submit to the GEM Listing Committee or the Listing Division, as the case may be, information for an application for listing pursuant to each application form no more than 2 times, subject always to:—
- (a) the GEM Listing Committee or the Listing Division, as the case may be, permitting otherwise if it considers necessary; and
 - (b) only one right of review by the listed issuer or new applicant against the latest decision made by the GEM Listing Committee or the Listing Division, as the case may be, as at the date of the Review Request pursuant to rule 4.08; ~~and~~
 - (c) [Repealed [•] 2019] rule 4.11(5).

...

Review cases of a new applicant to be considered by the GEM Listing Committee and the GEM Listing (Review) Committee

- 4.05 (1) (a) Where the Listing Division rejects an application for listing by a new applicant, the new applicant has the right to have ~~that ruling~~ the decision reviewed by referred to the GEM Listing Committee for a review.
- (b) Subject to rule 4.16, tThe decision of the GEM Listing Committee on review is conclusive and binding on the new applicant except where a new applicant is rejected solely on the grounds of unsuitability of the new applicant itself or its business, in which case the new applicant has the right to have the decision referred to the GEM Listing Review Committee for a further and final review. Subject to rule 4.16, the decision of the GEM Listing Review Committee on the review is conclusive and binding on the new applicant.

Note: A rejection decision under rule 4.05(1) does not include a Return Decision.

(2) ...

- (b) Where the GEM Listing Committee endorses the Return Decision, the new applicant and/or the Sponsor have the right to have the Return Decision referred to the GEM Listing (Review) Committee for a further and final review. Subject to rule 4.16, tThe decision of the GEM Listing (Review) Committee on the review is conclusive and binding on the new applicant and the Sponsor.

Review cases of a listed issuer to be considered by the GEM Listing Committee and the GEM Listing (Review) Committee

- 4.06 (1) Where the Listing Division makes a rulingdecision on the listed issuer, the listed issuer may request ~~that the rulingdecision~~ be referred to the GEM Listing Committee ~~and the GEM Listing Committee may, in its sole discretion, review the ruling at a first for a review hearing of by~~ the GEM Listing Committee.
- (2) Subject to rule 4.04, where the GEM Listing Committee endorses, modifies or varies the Listing Division's rulingdecision or makes its own rulingdecision, the listed issuer may request ~~that it the decision~~ be referred to the GEM Listing (Review) Committee for a further and final review of the ruling.
- (3) Subject to rule 4.16, t~~The decision of the Listing Division or, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee, as the case may be, shall be conclusive and binding on the listed issuer if the listed issuer does not seek review of the decision of the Listing Division, or the GEM Listing Committee or the GEM Listing (Review) Committee, as the case may be; otherwise, the decision of the GEM Listing (Review) Committee or, in the cases to which rule 4.07 applies, the decision of the Listing Appeals Committee, shall be conclusive and binding on the listed issuer.~~

Review cases of a compliance officer or an authorised representative to be considered by the GEM Listing Committee and the GEM Listing Review Committee

- 4.06A (1) Where the Listing Division decides that a person's appointment as an issuer's compliance officer appointed under rule 5.19 or authorised representative under rule 5.24 should be terminated, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision referred to the GEM Listing Committee for review.
- (2) Where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision reviewed by the GEM Listing Review Committee, whose decision shall be conclusive and binding on both the listed issuer and that compliance officer or authorised representative, as the case may be.

~~Review cases to be considered by the Listing Appeals Committee~~

- 4.07 ~~[Repealed [•] 2019] The Listing Appeals Committee shall be the review hearing body in respect of any decision of the GEM Listing Committee or GEM Listing (Review) Committee on any of the following matters:—~~

- ~~(1) — Rejection of a new applicant — unsuitability for listing —~~

~~Where the GEM Listing Committee on review of an earlier decision by the Listing Division rejects the new applicant solely on the ground that the new applicant or its business is not suitable for listing, the new applicant shall have a right to a further and final review of the application by the Listing Appeals Committee. The Listing Appeal Committee's decision will then be conclusive and binding on the new applicant.~~

- ~~(2) — [Repealed 1 January 2007]~~

~~(3) Rejection of a compliance officer or an authorised representative~~

- ~~(a) Where the Listing Division decides that a person's appointment as an issuer's compliance officer appointed under rule 5.19 or authorised representative under rule 5.24 should be terminated, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision referred to the GEM Listing Committee for review.~~
- ~~(b) Where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on both the listed issuer and that compliance officer or authorised representative, as the case may be.~~

~~(4) Rejection of a lifting of suspension of dealings~~

- ~~(a) Where the Listing Division rejects an application by a listed issuer to lift a suspension of dealings which has been in effect for more than 30 consecutive days, the listed issuer shall have the right to have that decision referred to the GEM Listing Committee for review.~~
- ~~(b) Where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision, that listed issuer shall have the right to have that decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on that listed issuer.~~

~~(5) [Repealed 1 August 2018]~~

~~(6) Cancellation of a listing~~

- ~~(a) Following a decision to cancel the listing of a listed issuer, the GEM Listing Committee will set down a detailed review procedure upon the receipt of the written request made including time limits for submitting documents on a case by case basis.~~
- ~~(b) Where the GEM Listing Committee considers it necessary to cancel the listing of a listed issuer in any of the circumstances set out in rule 9.14 or rule 9.14A(1), the listed issuer shall have the right to have that decision referred to the GEM Listing (Review) Committee for review.~~
- ~~(c) Where the GEM Listing (Review) Committee endorses, modifies or varies the earlier decision of the GEM Listing Committee, the listed issuer shall have a right to further and final review of that decision by the Listing Appeals Committee, whose decision shall be conclusive and binding on the listed issuer.~~
- ~~(d) For the avoidance of doubt, any decision to cancel a listing within sub-paragraph (b) above is subject to the procedures set out in this Chapter, notwithstanding that the reasons for the cancellation include or amount to a breach of the GEM Listing Rules by the listed issuer.~~

Time for application

- 4.08 (1) Subject to (3) below, a Review Request for reviewing any decision of the Listing Division, the GEM Listing Committee or the GEM Listing ~~(Review) Committee~~ (as the case may be) under rules 4.05(1), 4.06, 4.06A and 4.16(7) ~~4.07~~ must be served on the Secretary, within seven business days of receipt of either the relevant decision, or if the relevant party requests a written decision reasons under rule 4.13(1), ~~that those written decision reasons~~.
- (2) A Review Request for reviewing a Return Decision or a GEM Listing Committee's decision to endorse a Return Decision must include the grounds for the review together with reasons and be served on the Secretary within five business days of receipt of the written decision under rule 4.13(2).
- (3) A Review Request made under rule 4.06 for reviewing a decision of the Listing Division to direct the resumption of dealings or, if such decision has been referred to the GEM Listing Committee for review, the GEM Listing Committee's decision on such review, must include the grounds for the review together with reasons and be served on the Secretary within five business days of receipt of the written decision under rule 4.13(3).

Notice of review hearing

- 4.09 Upon the receipt of ~~the written request for a review of any decision of the Listing Division, the GEM Listing Committee or GEM Listing (Review) Committee~~ a Review Request, the GEM Listing Committee, or the GEM Listing ~~(Review) Committee~~ or the Listing Appeals Committee, as the case may be, will convene a hearing to review the matter in accordance with the procedures as prescribed by the Secretary; provided that when the GEM Listing Committee or the GEM Listing ~~(Review) Committee~~ considers that it is necessary to resolve an issue urgently, it may stipulate such time as may be necessary within which the relevant party should be informed as to the date for the review hearing.

Prehearing procedures

- 4.10 In all review cases, the Listing Division and the relevant parties will provide each other and the GEM Listing Committee, or the GEM Listing ~~(Review) Committee~~, as the case may be, ~~or the Listing Appeals Committee~~ through the Secretary of the relevant Committee with copies of any papers to be presented by it at the hearing, in advance of the review hearing.

Conduct of review hearing

- 4.11 (1) The GEM Listing Committee, or the GEM Listing ~~(Review) Committee~~ ~~or the Listing Appeals Committee~~ shall meet for the despatch of business, adjourn and otherwise regulate its hearings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. All review hearings under this Chapter shall be heard de novo. The GEM Listing Committee and the GEM Listing Review Committee (as the case may be) will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the GEM Listing Committee or the GEM Listing Review Committee. The GEM Listing Review Committee will consider

the decision of the previous decision making body and state the reasons for its own decision. The GEM Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

- (2) The quorum necessary for the transaction of any business by the GEM Listing Committee or the GEM Listing (Review) Committee shall be 5 members present in person. ~~The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.~~
- (3) The Chief Executive of HKEC will not attend meetings of the GEM Listing Committee at which the GEM Listing Committee is determining a matter in the first instance or attend review hearings of the GEM Listing Committee ~~or the GEM Listing (Review) Committee.~~
- (4) ~~[Repealed [•] 2019] At any meeting held to review an earlier decision of the GEM Listing Committee, subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of either the Chairman of the GEM Listing Committee or the GEM Listing (Review) Committee, as the case may be, all of the members present at the review hearing shall be persons who were not present at the earlier GEM Listing Committee meeting.~~
- (5)
 - (a) ~~[Repealed [•] 2019] Before seeking to review a decision of the GEM Listing Committee or the Listing Division (the “Original Body”) by the GEM Listing (Review) Committee or the GEM Listing Committee (the “Reviewing Body”), the relevant party shall have provided the Original Body with all or any new information for consideration by the Original Body.~~
 - (b) ~~[Repealed [•] 2019] A party may only request a review of a decision of the Original Body when all the relevant information and evidence has been provided to the Original Body. A party seeking to review shall not seek to present to the Reviewing Body new information or evidence that was not previously presented to the Original Body.~~
 - (c) ~~[Repealed [•] 2019] If the Listing Division upon receipt of the written submission from the relevant party discovers that the relevant party adduces new information in its written submissions prepared for the review hearing, the Listing Division shall notify the Secretary immediately so that arrangements may be made for the relevant party to withdraw its application for review. The new submission will then be considered by the GEM Listing Committee or the Listing Division, as the case may be, as a first instance hearing.~~
 - (d) Sub-rules (a), (b) and (c) do not apply to a review relating to a Return Decision.—In a review of a Return Decision or a GEM Listing Committee’s decision to endorse a Return Decision, any materials submitted to the GEM Listing Committee or the GEM Listing (Review) Committee must be based on the original materials submitted to the Listing Division when the new applicant first filed its listing application.

...

- (7) (a) At a GEM Listing Committee or ~~Listing Appeals Committee~~ a GEM Listing Review Committee hearing, the directors of the new applicant have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the Sponsor, the Compliance Adviser, authorised representatives, proposed or otherwise, the financial adviser, the legal adviser and auditors of the new applicant; a Sponsor, Compliance Adviser or authorised representative may be accompanied by its/his legal adviser.
- (b) At a review hearing before the GEM Listing Committee or the GEM Listing (Review) Committee ~~or Listing Appeals Committee~~ hearing, the directors of the listed issuer have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the Compliance Adviser, authorised representatives, the financial adviser, the legal adviser and auditors of the listed issuer; a Compliance Adviser or authorised representative may be accompanied by its/his legal adviser.
- (8) In the case of a review hearing sought by a compliance officer or an authorised representative under rule ~~4.07(3)~~4.06A, the compliance officer or authorised representative, as the case may be, shall have the right to attend the review hearing, to make submissions and may be accompanied by his legal adviser.
- (9) Sub-rule (7) does not apply to a review relating to a Return Decision. In a review hearing of a Return Decision by the GEM Listing Committee or the GEM Listing (Review) Committee, the directors of the new applicant and/or one representative of each Sponsor have the right to attend the hearing, to make submissions and to be accompanied, in the case of the directors of the new applicant, by one representative of each of the new applicant's financial adviser, legal adviser and auditors; and in the case of each Sponsor, by its legal adviser. If all the parties seeking a review decide not to attend the hearing, the hearing will proceed based on the documents submitted for hearing. For the avoidance of doubt, if a party seeking a review decides not to attend the hearing, the hearing will proceed in his absence.

Role of the Secretary

4.12 ...

- (2) Any notices, notifications and all other documents required to be submitted to the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~ must be served upon the Secretary who will ensure that copies are provided to the other parties and members of the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~, as appropriate.
- (3) The Secretary shall advise the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~ on procedural matters, but all decisions on such matters shall be made only by the GEM Listing Committee, or the GEM Listing (Review) Committee, ~~or the Listing Appeals Committee~~ as the case may be; and the Secretary shall carry out such duties as may from time to time be authorised by the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~.

...

- (5) The Secretary shall refer any pre-review hearing enquiries or matters, procedural or otherwise, to the Chairman proposed for any of the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or Listing Appeals Committee~~, as the case may be, for confirmation or decision or if the proposed Chairman so directs, the Secretary shall refer the same to the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~, as the case may be, for its decision.

Request for written reasons

- 4.13 (1) Except for a review relating to a Return Decision or a decision to direct the resumption of dealings, on receipt of a decision by the Listing Division, the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~ (as the case may be) a relevant party has three business days to request written reasons for the decision. The Listing Division, the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~ (as the case may be) will provide written reasons within 14 business days of receipt of the request. Such written reasons will be provided to all parties to the review.
- (2) The Listing Division, the GEM Listing Committee or the GEM Listing (Review) Committee (as the case may be) will provide written reasons for its Return Decision or decision to endorse a Return Decision.
- (3) The Listing Division, the GEM Listing Committee or the GEM Listing (Review) Committee (as the case may be) will provide written reasons for its decision to direct the resumption of trading under rule 9.12 or decision to endorse such a decision.

Publication of decisions

- 4.13A The conclusive and binding decisions of the GEM Listing Review Committee under this Chapter shall be published on the Exchange's website unless otherwise directed by the review body. In the event of a further and final review under rule 4.16(7), the decision of the GEM Listing Review Committee which heard the review initiated by the Commission and the decision of the GEM Listing Review Committee which heard the further and final review shall both be published.

Costs

- 4.14 Upon submission of a Review Request pursuant to rule 4.08, a non-refundable fee of HK\$60,000 is payable to the Exchange, for each review, by any party seeking to review a decision of the Listing Division, the GEM Listing Committee or (in relation to a review under rule 4.16(7)) the GEM Listing (Review) Committee, as the case may be, pursuant to this Chapter.

...

Non-disciplinary reviews initiated by the Commission

- 4.16 (1) The Commission shall have the right to request in writing a review of any non-disciplinary matter, including a decision of the GEM Listing Committee by the GEM Listing Review Committee under this rule.
- (2) In reviewing a matter, the review body shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.
- (3) The Commission may request written reasons for a decision of the GEM Listing Committee or the GEM Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 4.13(1). The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 4.13(1). Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
- (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.
- (5) The review body and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.
- (6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the review body, and the review body shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 4.16(7).
- (7) Where the review body overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by the GEM Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the GEM Listing Review Committee, all of the members present at the further and final review shall be persons who were not present at the earlier review hearing of the GEM Listing Review Committee (if any). In the event there are insufficient persons available to make up the required quorum for the GEM Listing Review Committee, the proposed Chairman of the GEM Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

Transitional

- 4.17 (1) All non-disciplinary review hearings in respect of the following decisions will be conducted under Chapters 3 and 4 of the GEM Listing Rules in force immediately before the implementation of [the new rules]:

- (a) subject to (b) below, any first instance non-disciplinary decision made before the implementation of [the new rules];
 - (b) any decision made under rule 9.15(1) before the implementation of [the new rules] and any follow on or further decision made in relation to those decisions (including a decision to cancel the listing if an issuer fails to remedy the specified matters within the specified period); and
 - (c) any review decision of the decisions referred to in (a) or (b) above.
- (2) The Committees in existence before the implementation of the [new rules] will continue in existence until all relevant review proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of the above matters.

Note: For the purpose of this rule, the reference to “new rules” refers to the amendments to this Chapter and Chapter 4 which came into effect on [•] 2019.

...

Chapter 36

...

The Commission's powers and functions in the event of a conflict of interest

...

36.04 Where, pursuant to section 74 of the Securities and Futures Ordinance and this Chapter, the Commission exercises powers and functions with respect to applicants for listing or listed issuers in place of the Exchange:

...

- (2) the Commission shall exercise such powers and functions through and within the framework described in rules 38.05 to 38.08 of the Main Board Listing Rules as if:

...

- (c) references to “Listing {Review} Committee” were replaced with “GEM Listing {Review} Committee”;

...

APPENDIX IV: LIST OF RESPONDENTS

Listed Companies (6 in total)

1. Cathay Pacific Airways Limited¹
2. China Securities (International) Financial Holding Company Limited
3. CK Hutchison Holdings Limited
4. Great Eagle Holdings Limited
5. Ping An Insurance (Group) Company of China, Ltd.
6. 1 listed company requested anonymity

Professional Bodies and Industry Associations (6 in total)

7. Hong Kong Institute of Certified Public Accountants
8. Hong Kong Securities Professionals Association
9. The Chamber of Hong Kong Listed Companies
10. The Hong Kong Institute of Chartered Secretaries
11. The Hong Kong Institute of Directors
12. The Law Society of Hong Kong

Corporate Finance Firms (2 in total)

13. Anglo Chinese Corporate Finance, Limited
14. Asian Capital Limited

Law Firms (2 in total)

15. Withers
16. 1 law firm requested anonymity

Individuals (3 in total)

17. Leung Alvin
- 18-19. 2 individuals requested anonymity

Remarks:

1. *If the entire body of the response is identical, word-for-word, with the entire body of another response, it will be recorded as a “duplicate response” and will not be counted for the purpose of a quantitative and qualitative analysis of the responses.*
2. *The total number of responses is calculated according to the number of submissions received and not the underlying members that they represent.*

¹ Cathay Pacific Airways Limited’s submission is identical to the submissions of Hong Kong Aircraft Engineering Company Limited, Swire Pacific Limited and Swire Properties Limited. Therefore, we count the four submissions as one response.

Hong Kong Exchanges and Clearing Limited
8/F, Two Exchange Square, 8 Connaught Place,
Central, Hong Kong

info@hkex.com.hk
電話：+852 2522 1122 傳真：+852 2295 3106
hkexgroup.com | hkex.com.hk