

## Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at:

<http://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2018-Review-Structure-to-LC-Decisions/Consultation-Paper/cp201808.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. 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?

Yes

No

Please give reasons for your views.

For non-disciplinary matters, one level of review is adequate, given that any decisions of the new Listing Review Committee will be subject to judicial review. This has worked well with non-disciplinary hearings of the Takeovers and Mergers Panel for many years. For disciplinary matters under the Takeovers Code only sanctions are subject to further appeal.

2. 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?

Yes

No

Please give reasons for your views.

Given the work load of the Listing Committee it is sensible to give some of it to a newly formed committee. Further, this new Listing Review Committee will be seen to be independent of it.

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

Yes

No

Please give reasons for your views.

If the decisions of the new Listing Review Committee are subject to review by the SFC, the members of the Committee should number more than fifteen. Although the quorum for the new Listing Review Committee is five, for practical purposes the starting number for any hearing should be at least seven to avoid the possibility that the new Review Committee's hearings will be delayed or invalidated for want of a quorum.

The preponderance of the members of the Listing Review Committee should be market practitioners both for the new Listing Review Committee as a whole and each new Listing Review Committee formed to hear a particular matter.

The panel of chairmen of the new Listing Review Committee will need to be capable of drafting the first draft of any decision of this committee, which will be subsequently subject to the comments of other committee members. This is likely to narrow the selection of chairman to market practitioners.

Selection of members of the new Listing Review Committee by the Listing Nominating Committee should be by invitation as well as application and should not be confined to past members of the Listing Committee. In practice the pool of available talent, given the demands of other committees of the Exchange and SFC, is likely to be quite small.

We are not convinced that strict term limits are necessary for the new Listing Review Committee. It is more important that it reaches consistent decisions than it is seen to rotate regularly. This is a problem with the Listing Committee which has a limited collective memory of no longer than 6 years. This is not helped by it not publishing its decisions so it has not developed any historical precedents through its decision-making.

3. If the Exchange decides to retain 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?

Yes

No

Please give reasons for your views.

This would require a much larger membership of the new Listing Review Committee which is likely to give rise to problems in finding suitable candidates for it, which is a compelling reason not to retain a second review procedure.

4. 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?

Yes

No

Please give reasons for your views.

We believe it is absolutely essential that the new Listing Review Committee publish its decisions in a timely manner. It would be helpful if the Listing Committee published its decisions on the interpretation of the Listing Rules. The Takeovers and Mergers Panel provides a useful model for this both in the format of its published decisions and in the time in which they are published which is generally less than two weeks. The format of written decisions is generally a summary of the facts, a discussion of the relevant principles and rules and their underlying purpose, a summary of the arguments advanced by each party, the decision and the reasons for it, and the parties to the hearing. Generally a written decision runs to less than 10 pages.

We also support the suggestion that the written decision confines itself to the decision of a majority of the members of the new Listing Committee hearing a particular matter and that dissenting views are not published. Again, this is consistent with the policy adopted by the Takeovers and Mergers Panel.

The requirement to publish the decision and the reasons for it are likely to improve the quality of the decision-making. While we agree that past decisions should not become binding precedents, the objective of the publication of decisions of the new Listing Review Committee should be to provide useful precedent so that rulings are, as far as possible, consistent and comprehensible. The need for the Exchange to be able to react to new developments should not be affected by this. Old precedents are unlikely to be a constraint to addressing new circumstances. However, diminishing the value of past precedent as the Consultation Paper appears to do, is an invitation to inconsistent decision-making. Past precedent should be informative in reaching a decision and the reasons for any departures from past precedent should be explained in the decision itself. The objective of decisions relating to Listing Rules and their applications whether by the Listing Committee or the new Listing Review Committee should be to achieved as far as it is possible a high degree of certainty for issuers and their advisers.

We believe it is essential that decisions of the new Listing Review Committee be made public and that only in the most exceptional circumstances should publication be delayed or that the identity of parties be concealed. A useful parallel would be in the Hong Kong Code on Takeovers and Mergers (Introduction, para 16.1) where publication is a matter of policy and the decision to delay is entirely at the discretion of the Takeovers and Mergers Panel.

5. The Exchange does not consider that specific consultation is required in relation to the provisions for the SFC's power to request review of decisions as set out in Chapter 5 of the Consultation Paper (as they reflect the MOU and administrative procedures) but would be pleased to receive any comments from respondents.

No comment.

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