



By email (response@hkex.com.hk) and by post

12 October 2018

Our Ref.: [REDACTED]

Hong Kong Exchanges and Clearing Limited
10th Floor, One International Finance Centre
1 Harbour View Street, Central
Hong Kong

Dear Sirs,

Re: Consultation Paper on Review Structure in relation to Listing Committee Decisions

— Please find attached a submission from the Hong Kong Institute of Certified Public Accountants on the above consultation paper.

In general, we agree with the Exchange's proposals to streamline the review process for listing matters and enhance transparency in decision-making. However, we have some concerns about the perceived independence and competence of the proposed new independent review committee (ILRC) based on the composition proposed in the consultation paper.

More specifically, if the ILRC comprises mainly former Listing Committee members, there may be a perception that this is not sufficiently different from the present arrangement, particularly if the members are recent Listing Committee members, and that the ILRC would tend to uphold the decisions of the Listing Committee. Therefore, we suggest also inviting qualified senior and experienced market participants and professionals who are eligible to serve, but have not served, on the Listing Committee, to be the members of the ILRC. This would provide a stronger justification for the proposal in the consultation paper to establish the ILRC to replace the existing two-level review process.

In addition, we support the proposal to routinely publish the decisions of the ILRC for non-disciplinary matters, on the basis explained in the consultation paper. To further enhance transparency, the Exchange should consider indicating whether there were dissenting views and, if so, the number of any dissenting views.

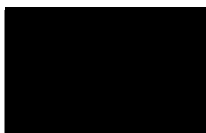
Lastly, it would seem that, in cases where the Securities and Futures Commission (SFC) requests a review of a Listing Committee decision, and the ILRC makes a different decision, the applicant/ issuer can seek a further review by a second group of members of the ILRC. In substance, therefore, this would amount to retaining a form of two-level review process, and also the perceived disadvantages of having a second-level review conducted by a committee drawn from the same pool of people as the first-level review, notwithstanding the Exchange's proposal to do away with this arrangement. For this reason, provided that the ILRC is formed from independent and suitably qualified members, there is a case for saying that decisions of the ILRC should be treated as final and conclusive. This assumes that the applicant/issuer will be fully informed of the SFC's grounds for seeking a review and will also be invited to make submissions to the ILRC.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Should you have any questions on this submission, please feel free to contact me at the Institute.

Yours faithfully,



Peter Tisman
Director, Advocacy & Practice Development

PMT/NCL/pk

Encl.

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.

We agree, in principle, as adopting one level of review should provide for a more efficient and streamlined process. However, we note that the existing second level of review "has been frequently utilised by the market" (as indicated in paragraph 66 of the consultation paper) and, therefore, if it is to be replaced, it will be important that the market has confidence in the independence and competence of the proposed independent review committee (ILRC). Hence the composition and qualifications of the IRC will be key issues.

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.

We agree, in principle. One of the reasons that the existing system may not be ideal, as indicated in paragraph 53(b), is the fact that the LRC and the LD(R)C comprise members of the Listing Committee, which may give rise to the perception that these committees are not as independent as they can or should be. Even though Listing Committee members who sit on the LRC or the LD(R)C must not have any conflict of interest in the case, or have participated in either the initial decision or the first review by the Listing Committee, conceptually, there may still appear to be an element of "self-review" within the existing procedures. This could foster a perception that the review committees would tend to uphold the decisions of the Listing Committee, because the members are drawn from the same pool, and there are no additional requirements of experience or expertise required for LRC or LD(R)C members.

Under the circumstances, to ensure that listing applicants/ issuers will not feel disadvantaged by moving a new single-level review process, the ILRC must give them confidence that it will be unbiased and capable of reviewing decisions of the Listing Committee fairly and objectively.

- (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.

The proposed size and make up of the ILRC seem to be reasonable. However, we have some reservations about the emphasis on forming the membership from former Listing Committee members, as suggested in paragraph 84 and elsewhere. Establishing an ILRC of e.g., recently retired Listing Committee members runs the risk of replicating the disadvantages of the current system, referred to above (and at paragraph 76(b) of the consultation paper). While it may be acceptable to include some former Listing Committee members, preferably they should not be members who have just stood down. Furthermore, establishing an ILRC would seem to be an opportunity to broaden horizons and identify a pool of, for example, fairly senior and experienced market participants and professionals who would be eligible to serve, but who have never served, on the Listing Committee. A more mixed composition of this kind would be more likely to be seen as independent and a suitable replacement for the existing two-level review process.

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.

In our view, this could compound the disadvantages of the existing review system, by having three levels of decision making and reviews conducted, essentially, by Listing Committee and former Listing Committee members - if the composition proposed for the ILRC in the consultation paper were to be adopted.

If the alternative composition that we have suggested in response to question 2(b) were to be adopted, this would be preferable, but concerns similar to those referred to above, and in paragraphs 76(b) and 76(d) of the consultation paper, might still arise; i.e., (i) the perception that there is an element of "self review" within in the procedures and a lack of independence, and (ii) that ILRC members who sit on a second-level review could appear to be no more, or perhaps even less, qualified to consider the issues than those participating in the first-level review. These perceptions may engender the view that the ILRC members in the second-level review would be inclined to uphold the decision of their peers at the first level.

If the second-level review were to be chaired by a member of a separate chairperson panel, this could go some way towards mitigating the perception referred to above. However, as the chairmen would also be drawn from the same pool as each other, any doubts would not be completely dispelled .

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 support the proposal for the reasons explained in the consultation paper regarding the importance of transparency.

We agree that, to avoid any misinterpretation by the market, the Exchange should make clear that the decisions do not represent binding precedents and do not constrain the discretion of the Exchange in the future. Also that decisions of the new ILRC should be sufficiently detailed to enable readers who were not involved in the review proceedings to understand the issues, essential facts and the reasoning of the ILRC in reaching its decision, albeit the decisions will necessarily represent only a summary of the ILRC's analysis (as explained in paragraphs 104-105 of the consultation paper).

While it is proposed that there be no requirement for dissenting views from a decision to be included in the analysis, for maximum transparency, we would suggest that it be indicated whether there were dissenting views and, if so, the number of any dissenting views.

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.

Further clarification may be needed but, prima facie, it would seem that:

(i) if it is agreed, as a result of this consultation, that there will be only one level of review, the SFC will consider requesting a review of Listing Committee decisions only and will accept any decision of the ILRC; and

(ii) where the SFC requests a review of a Listing Committee decision, the procedure may then revert to two levels of review, because, if the ILRC overturns, modifies or varies the decision of the Listing Committee, the applicant or issuer will have the right to seek a further review by a second group of members of the ILRC (as indicated in paragraph 117 of the consultation paper).

If this is correct, the effect of (ii) will be that the potential disadvantages mentioned in our response to question 3, which exist within the current system, i.e., the perception of "self review" by the ILRC of its own decisions, albeit by a different group of members, will re-emerge. It will perpetuate in some form the existence of a procedure involving two levels of review, which the Exchange is proposing to remove, and it will not address the argument raised, in paragraph 69 of the consultation paper, that the two-level review system is loaded in favour of the applicant or issuer.

Under the circumstances, assuming the ILRC 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 applicant or issuer will be invited to make submissions to the ILRC and will, presumably, also be informed of the grounds on which the SFC has requested the review.

- End -