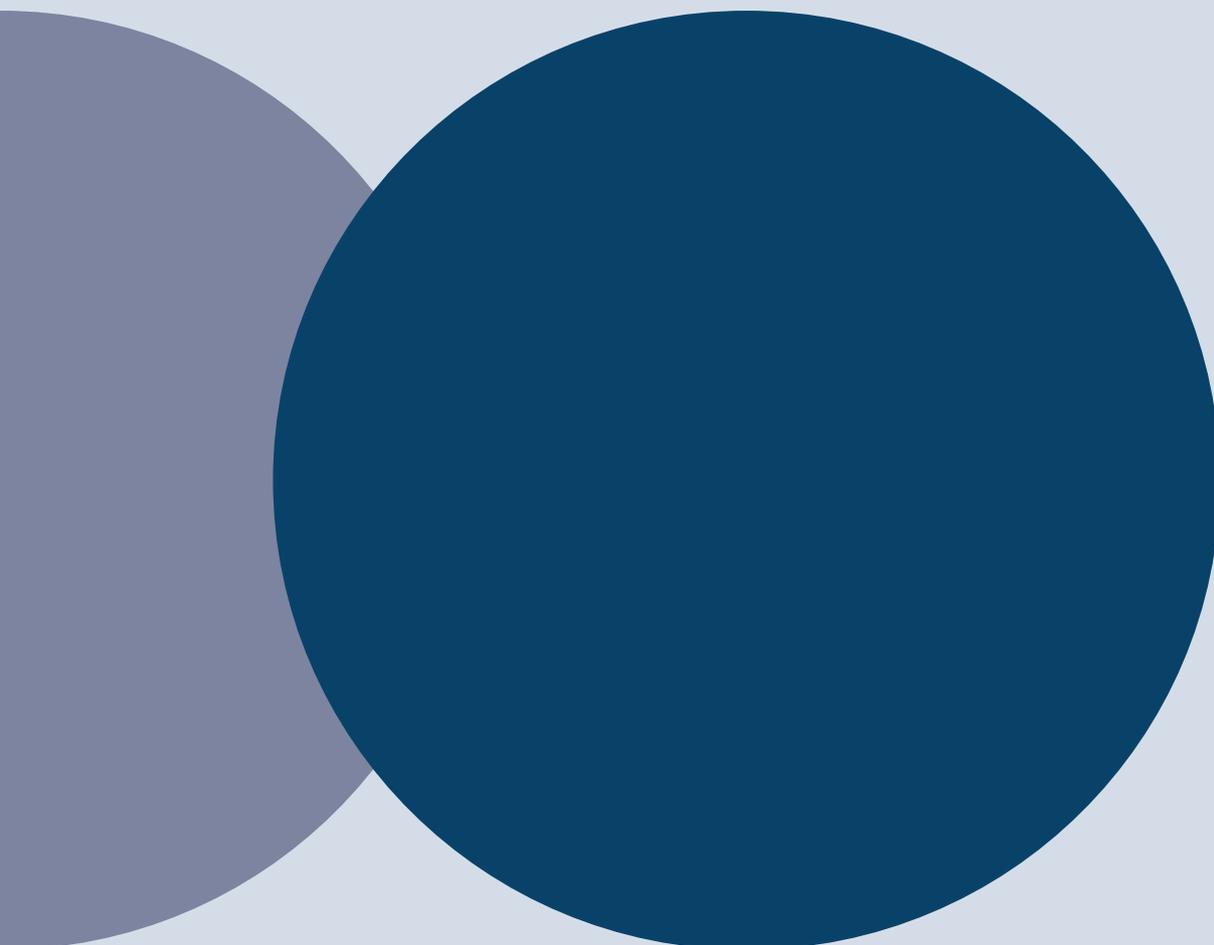


May 2018

CONSULTATION CONCLUSIONS

DELISTING AND OTHER RULE AMENDMENTS



CONTENTS

| | Page No. |
|---|-----------------|
| EXECUTIVE SUMMARY | 1 |
| Chapter 1 : INTRODUCTION | 2 |
| Chapter 2 : PROPOSALS ADOPTED AND DISCUSSION ON SPECIFIC RESPONSES | 5 |

APPENDICES

| | |
|---|--|
| Appendix I : SUMMARY RESULT OF QUANTITATIVE ANALYSIS | |
| Appendix II : AMENDMENTS TO LISTING RULES | |
| Appendix III : LIST OF RESPONDENTS | |

EXECUTIVE SUMMARY

1. This paper presents the results of the consultation conducted by SEHK on proposals to improve the effectiveness of the delisting framework under the Main Board Rules (**MB Rules**) and the GEM Listing Rules (**GEM Rules**), with a view to addressing the issue of prolonged suspension of trading in issuers' listed securities.
2. We received a total of 43 responses from professional parties, market practitioners, listed issuers, industry associations, other entities and individuals. All our proposals received support from a large majority of the respondents (about 70% or above)¹.
3. We will implement the proposals outlined in the Consultation Paper, with minor modifications to the draft Rules in response to market comments as discussed in Chapter 2. To facilitate timely delisting of issuers that no longer meet the continued listing criteria and provide certainty to the market on the delisting process, our proposals include: (i) adding a separate delisting criterion to allow the Exchange to delist an issuer after its continuous suspension for a prescribed period (**fixed period delisting criterion**); and (ii) allowing the Exchange to publish a delisting notice and give the issuer a period of time to remedy the issues or be delisted (**remedial period**).
4. We will adopt the fixed period delisting criterion with fixed periods of 18 months for the Main Board and 12 months for the GEM Board. We have decided not to adopt shorter fixed periods at this stage having regard to the issue of market readiness. However, in the interests of market quality and reputation, we intend to revisit the duration of the fixed periods and may consider shortening these fixed periods at an appropriate time. In any event and under the proposed remedial period arrangement, the Exchange will have the right and will consider imposing shorter remedial periods on individual suspended issuers.
5. The amended MB Rules and the GEM Rules are set out in Appendix II. They will take effect from 1 August 2018.

¹ Please refer to a quantitative analysis of the responses to the consultation questions set out in Appendix I.

CHAPTER 1 : INTRODUCTION

Background

6. On 22 September 2017, the Exchange published a Consultation Paper which sets out proposals relating to the delisting framework under the MB Rules and the GEM Rules (the **Consultation Paper**).
7. The purpose of the consultation was to establish an effective delisting framework which facilitates timely delisting of issuers that no longer meet the continued listing criteria and provide certainty to the market on the delisting process. An effective delisting framework would also incentivize suspended issuers to act promptly towards resumption, and provide a deterrent effect against issuers from committing material breaches of the Rules. This would address the issue of prolonged suspension of trading in issuers' listed securities, and was in the interest of maintaining the quality and reputation of the Hong Kong market.
8. Our proposal included the following major Rule amendments:

For MB Rules

- (1) Add a separate delisting criterion to allow the Exchange to delist an issuer after its continuous suspension for a prescribed period (proposed to be 12, 18 or 24 months).
- (2) Specify a new delisting process that will apply to all the existing delisting criteria in MB Rule 6.01. Under this new process, the Exchange may (i) publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting, or (ii) delist the issuer immediately in appropriate circumstances.
- (3) Remove Practice Note 17 as the new delisting process will also apply to issuers without sufficient operations or assets.

For GEM Rules

- (4) Add a separate delisting criterion to allow the Exchange to delist an issuer after its continuous suspension for a prescribed period (proposed to be 6 or 12 months).

9. For both the MB Rules and the GEM Rules,
- (1) We also proposed transitional arrangements for issuers whose securities are under suspension immediately before the effective date of the above proposed framework, and other minor Rule amendments relating to delisting.
 - (2) Separately, we proposed a number of Rule changes relating to the suspension requirements, in the interests of keeping trading suspension to the shortest duration possible.
10. The consultation period ended on 24 November 2017.

Number of responses and nature of respondents

11. We received 43 responses from a broad range of respondents. 37 responses contained original content, whilst 6 responses were entirely identical, in content, to other responses². All responses are available on the HKEX website, and a list of respondents (other than those who requested anonymity) is set out in Appendix III.

Table 1: Number and percentage of response by category

| RESPONDENT CATEGORY | NUMBER OF RESPONSES | PERCENTAGE OF RESPONSES |
|--------------------------------|---------------------|-------------------------|
| INSTITUTIONS | | |
| Professional Bodies | 9 | 24% |
| Listed Companies | 6 | 16% |
| Market Practitioners | 13 | 35% |
| Law Firms | 4 | 11% |
| Investment Management Firms | 4 | 11% |
| Accountancy Firms | 1 | 3% |
| HKEX Participant | 2 | 5% |
| Corporate Finance Firms | 2 | 5% |
| None of the above | 3 | 8% |
| INDIVIDUALS | | |
| Corporate Finance Staff | 1 | 3% |
| Individual Investors | 2 | 5% |
| Accountant | 1 | 3% |
| HKEX Participant Staff | 1 | 3% |
| None of the above | 1 | 3% |
| TOTAL | 37 | 100% |

² Submissions with entirely identical content were counted as one response.

12. All the proposals in the Consultation Paper received support from a large majority of the respondents, with some further suggestions and comments. Chapter 2 summarizes 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:

<https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/September-2017-Consultation-Paper-on-Delisting-and-Other-Rule-Amendments/Consultation-paper/cp2017091.pdf>

13. The amended Listing Rules are available on the HKEX website at:

http://en-rules.hkex.com.hk/en/display/display_main.html?rbid=4476&element_id=2
(Update No. 121)

http://en-rules.hkex.com.hk/en/display/display_main.html?rbid=4476&element_id=49
(Update No. 56)

They have been approved by the Board of the Exchange and the Board of the SFC. They will become effective on 1 August 2018.

14. 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 views.

CHAPTER 2 : PROPOSALS ADOPTED AND DISCUSSION ON SPECIFIC RESPONSES

15. In this Chapter we set out our proposals and analyze 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 decision whether to adopt (with or without modifications) each of the proposals, as the case may be.

A. PROPOSED DELISTING FRAMEWORK

(1) MB Rules

i) Fixed period delisting criterion

Proposal

16. We proposed to add a fixed period delisting criterion under new MB Rule 6.01A to allow the Exchange to delist an issuer after its continuous suspension for a prescribed fixed period. (See paragraphs 31 to 38 of the Consultation Paper.)

Comments received

17. 89% of the respondents supported the proposal and 11% opposed.
18. Respondents who supported the proposal considered that the proposed fixed period delisting criterion would provide certainty for the delisting process and address the issue of prolonged suspension in the interests of market quality and reputation, while providing reasonable time for suspended issuers to remedy issues and resume trading. Further comments from these respondents included:
- (a) A respondent considered that the Exchange may extend the prescribed fixed period if the issuer can demonstrate that it is taking genuine steps to remedy the issues and resume trading but requires additional time to fully complete the process.
 - (b) Another respondent considered that special arrangements should be made for an issuer in financial distress where a liquidator (provisional or not) has been appointed by the court and is working on a resumption plan for the issuer. This respondent explained that a liquidator is an officer of the court and cannot fully control the time required for a restructuring process which is often complex and likely involves local and/or foreign court proceedings. The prescribed fixed period may not be sufficient to allow the successful completion of a scheme of arrangement.

19. The arguments given by respondents who opposed the proposal included:
- (a) The Exchange should facilitate resumption of trading rather than delisting. After delisting, shareholders and investors would be permanently denied their rights to trade and access the market. Shareholders would be stuck with shares in a private company. Delisting an issuer after a fixed period of suspension would also be unfair to the issuer whose management might be trying to re-comply with the Listing Rules with a view of trading resumption.
 - (b) The market has been functioning well under the current regime which allows corporate rescue to be undertaken while trading in shares is suspended. The market is familiar with this approach. Issuers which resumed trading did create meaningful returns to investors. It is unconvincing to support implementing an arbitrary “drop dead” delisting timeframe to delist issuers that can potentially provide respectable returns to their shareholders.
 - (c) The proposed new MB Rule 6.01A under which the Exchange may delist an issuer suspended continuously for a prescribed fixed period can give the Exchange “unjustified” discretion to decide whether and when to delist an issuer suspended over the prescribed fixed period.
20. A respondent who opposed the proposal considered that the primary purpose of the delisting framework is to promote resumption. Subject to a clear bright line test on delisting criteria, the respondent would agree to a standardized fixed delisting period that is applicable to all types of delisting. For example, the Exchange can provide a bright line test on what constitutes insufficient operations and assets under MB Rule 13.24 being a delisting criterion, and guidance on an issuer’s remedial plan.
21. A respondent who opposed the proposal expressed concerns about the responsibility and burden of securities firms to keep a large quantity of certificates of delisted shares. The respondent explained that these firms have no right to require clients to take back the certificates and, if the delisted issuer no longer retains the service of a share register, are also unable to transfer the shares registered under their names back to clients.
22. A few respondents suggested that an alternative trading arrangement be provided for minority shareholders to dispose of suspended and/or delisted shares. Suggested alternative trading arrangements included trading on a new board or an OTC facility or under appropriate risk warning.

Our responses and conclusion

23. As noted in the Consultation Paper, the fixed period delisting criterion is aimed at delisting issuers which remain unable to resolve the issues requiring their suspensions after a continuous period of suspension. It would give suspended issuers a clear deadline, incentivizing them to look into the issues and to develop a viable action plan to ensure that it will have remedied the relevant issues to the Exchange's satisfaction and resumed trading before the end of the prescribed fixed period.
24. With this additional criterion, the Exchange will be able to delist an issuer where it does not have a clear basis to do so under MB Rule 6.01³. This will provide certainty for the delisting process and address the issue of prolonged suspension in the interests of market quality and reputation, while reasonable opportunities are given to suspended issuers to take remedial actions with a view to resuming trading.
25. The Listing Committee may only extend the prescribed fixed period in exceptional circumstances to ensure the effectiveness and credibility of the delisting framework and prevent undue delay of the delisting process. It may do so where an issuer has substantially implemented the steps that, it has shown with sufficient certainty, will lead to resumption but, due to factors outside its control, it becomes unable to meet its planned timeframe and requires a short extension of time to finalize the matters. Guidance on the circumstances when an extension of time may be given is set out in the new Guidance Letter on Long Suspension and Delisting, which is published together with this consultation conclusions paper.
26. Some respondents who opposed the proposal preferred retaining the current regime. However, as explained in the Consultation Paper, the current delisting Rules rather focus on requiring suspended issuers to take steps to resume trading than facilitate delisting. Without an effective delisting framework, the progress of resumption could be unduly delayed if the issuer is unable or otherwise fails to remedy the issues causing the suspension. This prevents the proper functioning of the market and gives rise to an uncertainty about whether and when the issuer would be relisted or delisted. The existence of long suspended issuers in persistent breach of the Rules in a material manner or suspected of illegal or improper activities also undermines the quality of our market and its reputation. These are issues that the fixed period delisting criterion is intended to address.

³ Also see paragraph 28 of the Consultation Paper on the Exchange's practical difficulties in delisting these issuers on a timely basis under the current Rules.

27. There is no question about the Exchange having “unjustified” discretion to decide whether and when to delist an issuer after a continuous suspension for the prescribed fixed period, as suggested by a respondent who opposed the proposal. An extension of time is to be given only in exceptional circumstances. In addition, all delisting decisions based on the fixed period delisting criterion, as with those based on other delisting criteria, will be subject to the review procedures set out in Chapter 2B of the MB Rules.
28. The Exchange does not agree with a respondent’s view that the primary purpose of a delisting framework is to promote resumption of trading. Instead, an effective delisting framework enables the Exchange to meet its statutory obligation to maintain a fair, orderly and informed market for the trading of securities, by delisting issuers that no longer meet the continuing listing criteria in a timely manner, incentivizing suspended issuers to act promptly towards resumption and deterring issuers from committing material Rule breaches. The Exchange is separately reviewing its regulation relating to continuing listing criteria (including the delisting criteria) and will publish a separate Consultation Paper in due course to set out its proposals. It has provided guidance on suspended issuers’ remedial actions in the new Guidance Letter on Long Suspension and Delisting.
29. The Exchange appreciates the specific concerns of securities firms about their potential responsibility and burden of keeping delisted securities not taken back by their clients. Such concerns are matters relating to the infrastructure and practice of the securities industry, rather than the maintenance of a fair, orderly and informed market for the trading of securities. The Exchange will look into the concerns separately, and will discuss with the relevant bodies or organization as to how best to address them.
30. The Exchange also notes respondents’ comments about alternative trading arrangements. This is not within the scope this consideration, but will be a subject for the Exchange’s future consideration.
31. In conclusion, with the support from a large majority of the respondents, we will adopt the proposal.

Proposal

32. For the purpose of the fixed period delisting criterion, we invited the market to consider a fixed period of 12, 18 or 24 months⁴. (See paragraphs 31 to 38 of the Consultation Paper.)

Comments received

33. Among the proposed periods of 12, 18 and 24 months,
- (a) The periods of 18 months and 24 months were most supported, with 27% of the respondents supporting 18 months and 22% supporting 24 months. Most of these respondents who stated reasons for their choices considered that the periods they chose would strike a balance between giving suspended issuers the necessary time to remedy issues while at the same time incentivizing them to act promptly towards resumption and giving certainty to the market.
 - (b) 16% of the respondents supported a period of 12 months. A respondent explained that this period is extendable and would be sufficient for issuers to resolve issues and that it would, in the interests of efficiency incentivize issuers to act promptly. Another respondent considered that a responsible management should be alert to issues causing the trading suspension and act promptly to resolve them.
34. 25% of the respondents suggested other periods:
- (a) 11% suggested a period of 36 months and 6% a period of 48 months. Some of them stated that sufficient time should be given to suspended issuers to resolve issues and that a period of 36 months or 48 months could serve this purpose.
 - (b) 8% of the respondents suggested 6 months or less.
35. 5% of the respondents considered that multiple time periods be set for issuers suspended for different reasons (for example, 18 to 24 months be given to issuers failing to maintain sufficient operations or assets and 6 to 12 months for other cases).

⁴ In our consultation paper on “A Listing Regime For Companies From Emerging And Innovative Sectors” published in February 2018 (paragraphs 89 to 91), we proposed that where the Exchange considers that a Biotech Company listed under the new Biotech chapter has failed to meet its continuing obligation under MB Rule 13.24 to maintain sufficient operations or assets, the Exchange will give the issuer a period of up to 12 months to re-comply with the requirement. If the issuer fails to do so, the Exchange will cancel its listing.

36. A respondent considered that the fixed period should stop to run when (i) the Exchange is vetting a resumption proposal and/or (ii) the suspended issuers are under regulatory investigation, as both periods are outside the issuer's control.
37. 5% of the respondents did not indicate a view on this proposal.
38. Based on the above, 51% of the respondents supported a period of 18 months or less, and 39% supported a longer period.

Our responses and conclusion

39. While providing reasonable time for suspended issuers to remedy issues and resume trading, the duration of the fixed period should be sufficiently short in order to incentivize suspended issuers to act diligently and promptly to remedy issues and deter issuers from breaching the MB Rules in a material manner. This is in the interest of maintaining market quality and reputation.
40. Respondents supporting a shorter period of 6 to 12 months appeared to give more weight to the need to incentivize issuers to act promptly to resolve issues and resume trading. Those supporting a longer period of 36 to 48 months considered it necessary to give the maximum amount of time for suspended issuers to resolve issues and appeared to put less emphasis on the need to incentivize issuers and deter Rule breaches. The proposed periods of 18 and 24 months are most supported by the respondents, which indicated to have more regard to the balancing factors mentioned in the preceding paragraph.
41. On the suggestion of multiple time periods, this principle is already incorporated into the proposed amendments to new MB Rule 6.10. As explained in the Consultation Paper⁵, the new MB Rule 6.10 will allow the Exchange to impose different specific remedial periods on issuers suspended for different reasons (such as insufficient public float, insufficient operations and assets, or no longer suitability for listing), based on the specific facts and circumstances of individual cases.
42. Regarding a respondent's view that the fixed period should stop to run when the Exchange is vetting a resumption proposal and/or a suspended issuer is under regulatory investigation, the Exchange responds as follows:
 - (a) Our proposed delisting framework changes the deadline for submission of a resumption proposal under the existing delisting Rules to a deadline for resumption, thereby providing certainty of the delisting process to the market. Based on our observations, under the existing delisting framework, the time for the Exchange to process resumption proposals could be prolonged by the substandard documentation submitted by the issuers.

⁵ Paragraphs 39 to 42 of the Consultation Paper.

Under the new delisting Rules, a suspended issuer must have remedied the issues causing its suspension and re-complied with the Rules before the end of the remedial period to avoid delisting. The Exchange will cancel the listing of an issuer which fails to remedy the issues and re-comply with the Rules before the end of the remedial period. Accordingly, instead of submitting a resumption proposal to the Exchange as an issuer would do under the current regime, the issuer must devise its own resumption plan with a timeframe to ensure that the relevant issues are remedied and the Rules are re-complied as soon as practicable and, in any event, before the remedial period ends to avoid delisting. The timeframe should take into account the time required by it to implement the resumption plan and the time that may be required by the Exchange's vetting process. The issuer may consult the Exchange at any stage. Further guidance on the resumption process is set out in the new Guidance Letter on Long Suspension and Delisting.

- (b) Regulatory investigation by itself does not warrant a trading suspension under the MB Rules. Where an issuer under regulatory investigation is suspended, the regulators are concerned with the lack of a fair, orderly and informed market for the trading of securities (for example, due to failure to publish inside information or financial results). Trading can resume after such concerns are addressed while the regulatory investigation may still be on-going. Accordingly, the prescribed fixed period should not stop to run when an issuer is under regulatory investigation.
- 43. We will adopt a period of 18 months. We have decided not to adopt a shorter period for now having recognized that currently, suspended issuers are allowed to take a longer time to remedy issues. The fixed period of 18 months represents a significantly more tightened approach to delisting than the current one.
 - 44. That said, we intend to revisit the duration of the fixed period and may consider shortening this fixed period at an appropriate time after gaining experience with the implementation of the proposals.
 - 45. Under the current proposal, the 18 month period is the maximum time for suspended issuers to remedy issues and resume trading; this period would not normally be extended. In addition, the Exchange may also impose shorter remedial periods on individual suspended issuers under MB Rule 6.10 (also see paragraph 52 below). The implementation is further explained in the Guidance Letter on Long Suspension and Delisting.

ii) Delisting process under MB Rule 6.01

Proposal

46. We proposed an amended MB Rule 6.10 under which the Exchange may delist an issuer under any applicable delisting criteria in MB Rule 6.01 immediately or publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting. (See paragraphs 39 to 42 of the Consultation Paper.)

Comments received

47. 70% of the respondents supported the proposal and 19% did not. The remaining 11% did not indicate a view.
48. The respondents who opposed the proposal are concerned about the Exchange's right to delist an issuer immediately. Their views are summarized below:
- (a) In the interests of minority shareholders, suspended issuers should be given an opportunity to remedy the relevant issues and resume trading.
 - (b) Maintaining the issuer's listing status (as opposed to delisting it immediately) would allow minority shareholders to be updated on the issuer's status under the Rules (for example, the new requirement for suspended issuers to publish quarterly updates as proposed in the Consultation Paper). It is of minimal value to delist an issuer immediately.
 - (c) Although the Exchange envisages to exercise its right to delist an issuer immediately in exceptional circumstances, this expectation is not stated in the MB Rules. What constitutes "exceptional circumstances" was not mentioned in the Consultation Paper. The Exchange should specify in the MB Rules an exhaustive list of grounds that it may consider delisting an issuer immediately, without giving an opportunity to implement any remedial action.
49. A respondent who supported the proposal sought the Exchange's clarification as to when a shorter remedial period under Rule 6.01, as opposed to the fixed period under MB Rule 6.01A, would be applied. This respondent also asked when a resumption plan will be treated as if it were a new listing application under the new MB Rule 6.10 (for example, whether a resumption plan to restore sufficient public float will be so treated).

Our responses and conclusion

50. Under current MB Rule 6.01, the Exchange may delist an issuer at any time. The proposed new MB Rule 6.10 clarifies this position.
51. To address the concerns raised by a minority of the respondents,
- (a) As noted in the Consultation Paper, when applying the new MB Rule 6.10, the Exchange will normally specify a period within which the issuer may take remedial actions to avoid delisting. The Exchange will consider delisting an issuer immediately only in exceptional circumstances where the matters triggering the application of a delisting criterion are fundamental to the general principles for listing and beyond remedy (for example, where an issuer becomes no longer suitable for listing due to a court's findings of its management and controlling shareholder having operated a fraudulent scheme to overstate its business and profits). This position is stated in the new Guidance Letter on Long Suspension and Delisting.
 - (b) Any delisting decisions made under MB Rule 6.01 are subject to the review procedures under Chapter 2B.
52. In response to a respondent's enquires mentioned in paragraph 49, the Exchange clarifies the following:
- (a) While issuers are allowed reasonable opportunity to remedy the relevant issues and resume trading, they are obliged to act diligently to ensure trading to resume as soon as reasonably practicable in order to keep the duration of suspension to the minimum. Accordingly, the Exchange will, based on the facts and circumstances of individual cases, impose a specific remedial period under Rule 6.01 ending earlier than the prescribed remedial period if it considers that an issuer:
 - given the nature of the issue(s) to be remedied, ought to remedy the issue(s) and resume trading within a period shorter than the prescribed remedial period. For example, an issuer suspended for insufficient public float is expected to resolve the matter within a reasonably short period of time; or
 - has failed to take adequate action to remedy the issues and resume trading as soon as reasonably practicable.

Further guidance is given in the new Guidance Letter on Long Suspension and Delisting.

- (b) The Exchange will treat a resumption plan as if it were a new listing application if such plan involves a reverse takeover under MB Rule 14.06(6) or is, in effect, an attempt to achieve the listing of a new business and circumvent the new listing requirements. The Exchange will not treat a resumption plan only for restoring sufficient public float as if it were a new listing application.

- 53. With the support from a large majority of the respondents, we will adopt the proposal.

iii) Removal of Practice Note 17

Proposal

- 54. We proposed to remove Practice Note 17 and allow the Exchange to delist issuers failing to maintain sufficient operations or assets under either the fixed period criterion or the new delisting process for MB Rule 6.01. (See paragraphs 43 to 46 of the Consultation Paper.)

Comments received

- 55. 76% of the respondents supported the proposal and 11% did not. The remaining 14% did not indicate a view.

Our responses and conclusion

- 56. With the support from a large majority of respondents, we will adopt the proposal.

iv) Other minor amendments

Proposal

- 57. We proposed to add a note to MB Rule 13.24 setting out the characteristics of issuers which are unable to comply with MB Rule 13.24. (See paragraph 47 of the Consultation Paper.)

Comments received

- 58. 78% of the respondents supported the proposal and 3% did not. The remaining 19% did not indicate a view.

Our responses and conclusion

59. Given the support from a large majority of the respondents, we will adopt the proposal. As there is a separate consultation exercise concerning continuing listing criteria, Rule 13.24 will be reviewed and proposals will be published in a separate consultation paper in due course.

Proposals

60. We proposed to:
- (a) remove MB Rule 6.01(1) which provides that a material breach of the MB Rules is a specific ground for suspension or cancellation of a listing; and
 - (b) clarify in MB Rule 2B.07(5) that decisions about cancellation of listing under MB Rule 6.01 are to be made and reviewed under the procedures for non-disciplinary matters set out in Chapter 2B, although the reasons for cancellation include or amount to a breach of the MB Rules by the listed issuer.

(See paragraphs 48 to 49 of the Consultation Paper.)

Comments received

- (i) Proposed removal of MB Rule 6.01(1)
61. 70% of the respondents supported the proposal and 8% did not. The remaining 22% did not indicate a view.
62. A respondent commented that where an issuer is suspended due to a material Rule breach, it is not entirely clear if the Exchange wishes to be able to make use of the fixed period criterion or the procedures under Rule 6.10 to delist the issuer.
- (ii) Proposed clarification in MB Rule 2B.07(5)
63. 78% of the respondents supported the proposal and 3% did not. The remaining 19% did not indicate a view.

Our responses and conclusion

64. Where an issuer is suspended under the Rules due to a Rule breach, the Exchange may delist it if (i) it has been continuously suspended for the prescribed fixed period under the new MB Rule 6.01A; or (ii) it is found by the Exchange to be no longer suitable for listing under MB Rule 6.01(4), in which case it may be delisted under MB Rule 6.10.
65. With the support from the large majority of the respondents, we will adopt both proposals.

Proposal

66. We proposed a MB Rule amendment to require suspended issuers to announce quarterly updates of their developments including progress on satisfying resumption conditions. (See paragraphs 50 to 51 of the Consultation Paper.)

Comments received

67. 84% of the respondents supported the proposal and 3% did not. The remaining 13% did not indicate a view.
68. An opposing respondent considered it more appropriate to require monthly updates to maintain an informed market.

Our responses and conclusion

69. Given that a suspended issuer remains required to disclose inside information under the SFO and other specific information required under the MB Rules (for example, details of notifiable and connected transactions under Chapters 14 and 14A respectively), we consider that the proposed requirement to publish quarterly updates is sufficient.
70. With the support from a large majority of respondents, we will adopt the proposal.

v) Transitional arrangements

Proposal

71. We proposed the following transitional arrangements under the MB Rules concerning issuers whose securities have been suspended continuously since a date before the effective date of the fixed period criterion (**Effective Date**):
- (a) For issuers subject to Practice Note 17, this Practice Note will continue to apply.
 - (b) For other issuers, if, as at the Effective Date, trading in an issuer's securities has been continuously suspended:
 - (i) for less than 12 months, the fixed period under the fixed period criterion would commence immediately from the Effective Date; or
 - (ii) for 12 months or more, the fixed period under the fixed period criterion would be deemed to have commenced 12 months before the Effective Date if the fixed period is to be 24 months. If the fixed period is to be 12 or 18 months, it would be deemed to have commenced 6 months before the Effective Date.

(See paragraph 52 of the Consultation Paper.)

Comments received

72. 73% of the respondents supported the proposal and 8% did not. The remaining 19% did not indicate a view.
73. Two respondents considered that all suspended issuers should be subject to the same commencement date of the fixed period criterion, irrespective of the length of their continuous suspensions as at the Effective Date.

Our responses and conclusion

74. The proposed transitional arrangements are consistent with our objective of addressing the issue of prolonged suspension in the interest of maintaining market quality and reputation.

75. With the support from a large majority of the respondents, we will adopt the proposal. As noted above, we will adopt a prescribed fixed period of 18 months. The transitional arrangements will be as follows:
- (a) For issuers that have been put to the first, second or third stage of delisting under Practice Note 17, this Practice Note will continue to apply.
 - (b) For other issuers in respect of which the Exchange has not made a decision to commence the delisting procedures and imposed a notice period for delisting, if, as at the Effective Date, trading in an issuer's securities has been continuously suspended:
 - (i) for less than 12 months, the fixed period under the fixed period criterion would commence immediately from the Effective Date; or
 - (ii) for 12 months or more, the fixed period under the fixed period criterion would be deemed to have commenced 6 months before the Effective Date.
76. For the avoidance of doubt, where the Exchange has made a decision to commence the delisting procedures and imposed a notice period for delisting, such decision and notice period will continue to have effect on the issuer concerned. This is notwithstanding that the actual cancellation of listing has not taken place as at the Effective Date. The draft Rules are amended accordingly.

(2) GEM Rules

i) Fixed period delisting criterion

Proposal

77. We proposed to add a fixed period delisting criterion under new GEM Rule 9.14A(1) to allow the Exchange to delist an issuer after its continuous suspension for a prescribed fixed period. (See paragraph 56 of the Consultation Paper.)

Comments received

78. 73% of the respondents supported the proposal and 11% did not. The remaining 16% did not indicate a view.

79. The respondents who opposed the proposal are those opposing the same proposal for MB Rules and repeated the same reasons for opposition (see paragraphs 19 to 22 above).

Our responses and conclusion

80. We reiterate our responses set out in paragraphs 23 to 31 above. With the support from a large majority of the respondents, we will adopt the proposal.

Proposal

81. For the purpose of the fixed period delisting criterion, we invited the market to consider a fixed period of 6 or 12 months. (See paragraphs 57 to 59 of the Consultation Paper.)

Comments received

82. The respondents' views are divided.
83. On the proposed periods of 6 and 12 months, 22% of the respondents supported 6 months and 19% supported 12 months. A few respondents supporting 6 months considered that issues of GEM issuers are generally less complex and require lesser time for remedy. Some respondents who supported 12 months stated that 12 months would be sufficient for remedying issues.
84. 34% of the respondents considered that periods exceeding 12 months to be sufficient for issuers to remedy issues and resume trading: 5% supported 18 months, 16% supported 24 months, 8% supported 36 months, and 3% supported 48 months. A few of them also considered that the prescribed fixed period for GEM should align with those for the Main Board.
85. 5% of the respondents suggested a multiple time periods for issuers suspended for different reasons.
86. 22% did not indicate a view on this proposal.

Our responses and conclusion

87. We note that the periods of 6 months and 12 months received the largest number of support from the respondents, with the number of respondents who supported 6 months slightly more than those supporting 12 months.

88. On the suggestion to introduce multiple time periods, as with the new MB Rule 6.10, the new GEM Rule 9.15 will allow the Exchange to impose specific remedial periods for issuers suspended for different reasons, based on the facts and circumstances of individual cases.
89. We do not agree that the prescribed fixed period under the GEM Rules should necessarily be aligned with that of the MB Rules. As noted in GEM Rule 2.12, GEM is positioned as a market designed to accommodate small and mid-sized companies to which a higher investment risk may be attached than other companies listed on the Main Board. Hence, under the existing regime, the remedial period that the Exchange can ordinarily impose on a GEM issuer is only 6 months under GEM Rule 9.15, while there is no similar provision in the delisting rules for the Main Board.
90. We will adopt a fixed period of 12 months to allow issuers sufficient time to remedy issues giving rise to the suspensions. We recognize that currently, suspended issuers are allowed a longer period given that the Exchange would generally allow time for issuers to identify the issues before imposing the remedial period of 6 months.
91. As with the fixed period under the MB Rules, we intend to revisit the duration of the fixed period under the GEM Rules and may consider shortening this fixed period at an appropriate time.

Proposal

92. As a transitional arrangement under the GEM Rules, we proposed that for issuers that are suspended as at the effective date of this proposed fixed period criterion, the fixed period will commence from the effective date. (See paragraph 59 of the Consultation Paper.)
93. For the avoidance of doubt, where the Exchange has made a decision to commence the delisting procedures and imposed a notice period for delisting, such decision and notice period will continue to have effect on the issuer concerned. This is notwithstanding that the actual cancellation of listing has not taken place as at the Effective Date. The draft Rules are also amended accordingly.

Comments received

94. 70% of the respondents supported the proposal and 3% did not. The remaining 27% did not indicate a view.

Our responses and conclusion

95. With the support from a large majority of the respondents, we will adopt the proposal.

ii) Other minor amendments

Proposal

96. We proposed to align the wording of GEM Rule 9.15 with the proposed amended MB Rule 6.10 under which the Exchange may delist an issuer under any existing delisting criteria immediately or publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting. (See paragraph 60 of the Consultation Paper.)

Comments received

97. 73% of the respondents supported the proposal and 3% did not. The remaining 24% did not indicate a view.

Our responses and conclusion

98. With the support of the large majority of the respondents, we will adopt the proposal.

Proposal

99. We proposed to:
- (a) remove GEM Rule 9.04(5) which provides that a severe breach of the GEM Rules is a specific ground for suspension and cancellation of listing; and
 - (b) clarify in GEM Rule 4.07(6) that decisions about cancellation of listing under Chapter 9 are to be made and reviewed under the procedures for non-disciplinary matters set out in Chapter 4, notwithstanding that the reasons for the cancellation include or amount to a breach of the GEM Rules by the listed issuer.

(See paragraph 61(a) of the Consultation Paper.)

Comments received

100. On the proposed removal of GEM Rule 9.04(5), 68% of the respondents supported the proposal and 8% did not. The remaining 24% did not indicate a view.
101. On the proposed clarification in GEM Rule 4.07, 73% of the respondents supported the proposal and 3% did not. The remaining 24% did not indicate a view.

Our responses and conclusion

102. With the support from a large majority of the respondents, we will adopt both proposals.

Proposal

103. We propose to specify in the GEM Rules a requirement to announce quarterly updates of developments including progress on satisfying resumption conditions. (See paragraph 61(b) of the Consultation Paper.)

Comments received

104. 73% of the respondents supported the proposal and 3% did not. The remaining 24% did not indicate a view. The only respondent opposing this proposal is the one who opposed the same proposed amendment to the MB Rules, and provided the same reason for opposition (see paragraph 68 above).

Our responses and conclusion

105. In response to the comments given by the respondent who opposed this proposal, the Exchange reiterates its responses set out in paragraph 69 above.
106. With the support from a large majority of the respondents, we will adopt the proposal.

B. TRADING SUSPENSIONS AND RELATED MATTERS

i) Specific suspension requirement – non-publication of notifiable transactions

Proposal

107. We proposed to remove:

- (a) MB Rule 14.37(1) / GEM Rule 19.37(1) which imposes a bright line trading halt requirement on an issuer failing to announce an agreement about a share or a major or (above) transaction; and
- (b) MB Rule 14.37(2) / GEM Rule 19.37(2) which requires an issuer having signed an agreement for a notifiable transaction (which it reasonably believes would require disclosure under Part XIVA of the SFO) to immediately apply for a trading halt (or suspension) pending an announcement of the agreement.

(See paragraphs 63 to 66 of the Consultation Paper.)

Comments received

- (i) Proposed removal of MB Rule 14.37(1) / GEM Rule 19.37(1)

108. 73% of the respondents supported the proposal and 11% opposed. The remaining 16% did not indicate a view.

109. A respondent who opposed the proposal was concerned that the proposed removal would make it unclear as to what transactions would, in any event, oblige an issuer to apply a trading halt if an announcement has not been made. Another respondent opposing the proposal considered that MB Rule 14.37(1) / GEM Rule 19.37(1) should be maintained to inform and remind issuers of the consequence of failure to announce notifiable transactions.

(ii) Proposed removal of MB Rule 14.37(2) / GEM Rule 19.37(2)

110. 70% of the respondents supported the proposal and 11% opposed. The remaining 19% did not indicate a view. The arguments given by respondents who opposed this proposal are similar to those given by respondents opposing the proposed removal of MB Rule 14.37(1) / GEM Rule 19.37(1) (see the preceding paragraphs).

Our responses and conclusion

111. A few respondents opposed the proposals, preferring to retain the more bright-line trading halt requirements concerning notifiable transactions contained in the rules proposed to be removed.

112. As noted in the Consultation Paper, MB Rule 13.10A / GEM Rule 17.11A already requires an issuer to apply for a trading halt if it has, or reasonably believes that it has, inside information that is subject to disclosure under Part XIVA of the SFO and an announcement cannot be promptly made. Given the market having experience in assessing the price sensitivity of information for the purpose of the disclosure requirement under Part XIVA of the SFO (effective since 1 January 2013), the bright-line requirements contained in the rules proposed to be removed are no longer necessary. This view was shared by a large majority of the respondents.

113. Therefore, we will adopt both proposals.

ii) Other proposed amendments – resumption of trading at the direction of the Exchange

Proposal

114. Under MB Rule 6.07 / GEM Rule 9.12, the Exchange can direct the resumption of trading, but under MB Rule 6.08 / GEM Rule 9.13 this power cannot be exercised without first giving the issuer an opportunity of being heard by the Listing Committee.

115. To expedite the process, we proposed to amend the MB Rules and the GEM Rules to (i) delegate authority to the Listing Department to direct resumption of trading, and (ii) require any review application (with written reasons) to be submitted by the issuer within 2 business days of a decision to direct resumption. (See paragraphs 67 to 69 of the Consultation Paper.)

Comments received

116. 76% of the respondents supported the proposal and 8% did not. The remaining 16% did not indicate a view.
117. A respondent who opposed the proposal considered that the Exchange should give issuers an opportunity to be heard by the Listing Committee to explain the situations and the reasons for the suspension of trading. Another respondent opposing the proposal, while agreeing to the proposed delegation of authority to the Listing Department, suggested a period of 5 business days for the issuer to apply for a review of a decision to direct resumption, to be in line with the review period applying to the Listing Department's decision to return a new applicant's listing application to its sponsor.

Our responses and conclusion

118. Under the proposal, any decision of direct resumption will continue to be subject to the procedures of review by the Listing Committee under Chapter 2B before the Exchange executes the decision.
119. Given the support from a large majority of the respondents, we will adopt the proposal modified with the review period being changed to 5 business days.

APPENDIX I : SUMMARY RESULTS OF QUANTITATIVE ANALYSIS

| Proposals in the Consultation Paper | | Agree | Disagree | No indication |
|-------------------------------------|---|--------|----------|---------------|
| 1 | Proposed MB Rule amendment to add a fixed period delisting criterion | 89% | 11% | 0% |
| 2 | Appropriate period under the fixed period delisting criterion (MB) | Note 1 | | |
| 3 | Proposed MB Rule amendment to allow the Exchange to delist an issuer under any applicable delisting criteria in MB Rule 6.01 immediately, or publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting | 70% | 19% | 11% |
| 4 | Remove PN17 and to delist issuers without sufficient operations or assets under either the fixed period criterion or the new delisting process for MB Rule 6.01 | 76% | 11% | 14% |
| 5 | Add a note to MB Rule 13.24 setting out the characteristics of issuers which are unable to comply with MB Rule 13.24 | 78% | 3% | 19% |
| 6 | Remove MB Rule 6.01(1) | 70% | 8% | 22% |
| 7 | Clarify in MB Rule 2B.07(5) the applicable procedures for reviewing decisions to suspend or cancel a listing under MB Rule 6.01 | 78% | 3% | 19% |
| 8 | MB Rule amendment to require suspended issuers to announce quarterly updates | 84% | 3% | 13% |
| 9 | Proposed transitional arrangements described in paragraph 52 of the Consultation Paper and the proposed commencement dates of the fixed period under different situations | 73% | 8% | 19% |
| 10 | Proposed GEM Rule amendment to add a fixed period delisting criterion | 73% | 11% | 16% |
| 11 | Appropriate period under the fixed period delisting criterion (GEM) | Note 2 | | |
| 12 | Proposed transitional arrangements described in paragraph 59 of the Consultation Paper | 70% | 3% | 27% |
| 13 | Align the wording of GEM Rule 9.15 with MB Rule 6.10 on the delisting procedures | 73% | 3% | 24% |
| 14 | Remove GEM Rule 9.04(5) | 68% | 8% | 24% |
| 15 | Clarify in GEM Rule 4.07(6) the applicable procedures for reviewing decisions to suspend or cancel a listing under Chapter 9 of the GEM Rules | 73% | 3% | 24% |
| 16 | GEM Rule amendment to require suspended issuers to announce quarterly updates | 73% | 3% | 24% |
| 17 | Remove MB Rule 14.37(1) / GEM Rule 19.37(1) | 73% | 11% | 16% |
| 18 | Remove MB Rule 14.37(2) / GEM Rule 19.37(2) | 70% | 11% | 19% |

| Proposals in the Consultation Paper | | Agree | Disagree | No indication |
|-------------------------------------|---|-------|----------|---------------|
| 19 | Delegate authority to the Listing Department to direct resumption of trading and to provide for an accelerated review procedure | 76% | 8% | 16% |

Notes:

| Number of months | MB (Note 1) | GEM(Note 2) |
|------------------|-------------|-------------|
| 6 | 8% | 22% |
| 12 | 16% | 19% |
| 18 | 27% | 5% |
| 24 | 22% | 16% |
| 36 | 11% | 8% |
| 48 | 6% | 3% |
| Others | 5% | 5% |
| No reply | 5% | 22% |

APPENDIX II : AMENDMENTS TO THE LISTING RULES

A. Amendments to Main Board Rules**Chapter 2A****GENERAL****COMPOSITION, POWERS, FUNCTIONS AND PROCEDURES OF
THE LISTING COMMITTEE,
THE LISTING APPEALS COMMITTEE AND THE LISTING DIVISION****Functions and Powers of the Listing Appeals Committee**

2A.36 The Listing Appeals Committee shall be the review body in respect of any decision of the Listing Committee on any of the following matters:—

- (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); or
- (7) ~~[Repealed[●]]that trading in the shares of an issuer be restored pursuant to Rule 6.07 of the Listing Rules.~~

Chapter 2B**GENERAL****REVIEW PROCEDURE****Review cases to be considered by the Listing Appeals Committee**

2B.07 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:—

...

- (5) Cancellation of a listing

- (a) ...
- (b) Where the Listing Committee considers it necessary decides 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 again 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 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 Exchange Listing Rules by the listed issuer.

Note: See Practice Note 17 for Delisting Procedures.

(6) ~~[Repealed[●]]~~ Resumption of Trading

- ~~(a) Where the Listing Committee rejects a request by a listed issuer for the suspension, or continued suspension, from trading of its securities or where in appropriate circumstances the Listing Committee intends to direct a resumption following a suspension, the Listing Committee will, if requested, give its reasons in writing and the issuer shall have the right to have that ruling referred to the Listing (Review) Committee for review.~~
- ~~(b) If the Listing (Review) Committee endorses, modifies or varies the ruling of the Listing Committee, it will, if requested, give its reasons in writing and the issuer shall have the right to have that ruling reviewed by the Listing Appeals Committee.~~
- ~~(c) The decision of the Listing Appeals Committee shall be conclusive and binding on the issuer. If requested, the Listing Appeals Committee will give its reasons in writing for the decision on review.~~

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 and 2B.07 must be served on the Secretary within 7 business days of receipt of either the relevant decision, or if the relevant party requests a written decision under rule 2B.13(1), that written decision.
- (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 5 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 5 business days of receipt of the written decision under rule 2B.13(3).

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, the Listing (Review) Committee or the Listing Appeals Committee (as the case may be) a relevant party has 3 business days to request written reasons for the decision. The Listing Division, the Listing Committee, 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.
- (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.

Chapter 6

GENERAL

TRADING HALT, SUSPENSION, CANCELLATION AND WITHDRAWAL OF LISTING

6.01 Listing is always granted subject to the condition that where the Exchange considers it necessary for the protection of the investor or the maintenance of an orderly market, it may at any time direct a trading halt or suspend dealings in any securities or cancel the listing of any securities in such circumstances and subject to such conditions as it thinks fit, whether requested by the issuer or not. The Exchange may also do so where:—

- (1) ~~[Repealed[●]]an issuer fails, in a manner which the Exchange considers material, to comply with the Listing Rules; or~~
- (2) the Exchange considers there are insufficient securities in the hands of the public (see rule 8.08(1)); or
- (3) the Exchange considers that the issuer does not have a sufficient level of operations or sufficient assets to warrant the continued listing of the issuer's securities (see rule 13.24); or
- (4) the Exchange considers that the issuer or its business is no longer suitable for listing.

6.01A (1) Without prejudice to its power under rule 6.01, the Exchange may cancel the listing of any securities that have been suspended from trading for a continuous period of 18 months.

(2) The following transitional provisions apply to listed issuers whose securities have been suspended from trading immediately before the effective date of rule 6.01A(1) (the “Effective Date”):

- (a) For a suspended listed issuer which has been placed in a delisting stage under Practice Note 17 before the Effective Date, Practice Note 17 continues to apply.

- (b) For other issuers which are not subject to a decision to commence the procedures to cancel a listing and a notice period for delisting immediately before the Effective Date, if trading in an issuer's securities has been continuously suspended:
 - (i) for less than 12 months as at the Effective Date, the 18 month period referred to in rule 6.01A(1) commences immediately from the Effective Date; or
 - (ii) for 12 months or more as at the Effective Date, the 18 month period referred to in rule 6.01A(1) commences 6 months before the Effective Date.
- (c) For issuers which are subject to a decision to commence the procedures to cancel a listing and a notice period for delisting immediately before the Effective Date, such decision and notice period continue to have effect on the relevant issuer. This is notwithstanding that the actual cancellation of listing has not taken place as at the Effective Date.

6.07 The Exchange shall have the power to direct the resumption of trading of halted or suspended securities. In particular the Exchange may:

- (1) require an issuer to publish an announcement, in such terms and within such period as the Exchange shall in its discretion direct, notifying the resumption of trading in the issuer's halted or suspended securities, following the publication of which the Exchange may direct resumption of trading; and/or
- (2) direct a resumption of trading following the Exchange's publication of an announcement notifying the resumption of trading in the halted or suspended securities.

Note: The Exchange may set out the issuer's submission for continued suspension in the Exchange's announcement referred to in (2) above.

6.08 The Exchange's power under rule 6.07 shall be subject to the review process set out in rule 2B.06. ~~not be exercised without first giving the issuer the opportunity of being heard in accordance with rule 2B.07(6).~~ At any hearing concerning a direction under rule 6.07, the An issuer opposing the resumption of trading in its securities has the burden of satisfying the Exchange that a continued trading halt or suspension would be appropriate.

Note:

(1) ...

(2) ...

(3) See Practice Note 11.

6.10 There may be cases where a listing is cancelled without a suspension intervening. Where the Exchange considers that any circumstances set out in rule 6.01 arise, ~~an issuer or its business is no longer suitable for listing it will~~ may:

(1) publish an announcement naming the issuer and specifying the period within which the issuer must have remedied those matters which have given rise to such circumstances ~~rendered it unsuitable for listing~~. Where appropriate the Exchange will suspend dealings in the issuer's securities. If the issuer fails to remedy those matters within the specified period, the Exchange will cancel the listing. The Exchange may treat ~~Any proposals to remedy those matters will be treated~~ as if they were an application for listing from a new applicant for all purposes, in which case, the issuer must comply with the requirements for new listing applications as set out in the Listing Rules and the issuer will be required (inter alia) to issue a listing document which contains all of the specific items of information set out in Part A of Appendix 1 and pay the initial listing fee; or

(2) cancel the listing of the issuers' securities following the Exchange's publication of an announcement notifying the cancellation of the listing.

6.10A For the purpose of rule 6.01A(1), the Exchange may cancel the listing of an issuer's securities following the Exchange's publication of an announcement notifying the cancellation of the listing.

Chapter 13

EQUITY SECURITIES

CONTINUING OBLIGATIONS

Sufficient operations

- 13.24 An issuer shall carry out, directly or indirectly, a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to the Exchange to warrant the continued listing of the issuer's securities.

Note: Characteristics of issuers which are unable to comply with rule 13.24 include:

- (i) financial difficulties to an extent which seriously impairs an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or
- (ii) issuers which have net liabilities as at their balance sheet date i.e. issuers whose liabilities exceed their assets.

- 13.24A An issuer must, after trading in its listed securities has been suspended, publish periodic quarterly announcements of its developments.

Chapter 14

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

Requirements for all transactions

Trading halt and suspension of dealings

- 14.37 (1) ~~[Repealed[●]]Where an issuer has signed an agreement in respect of a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover and the required announcement has not been published on a business day, it must apply for a trading halt or a trading suspension pending the announcement.~~

- (2) ~~[Repealed]~~ Without prejudice to rule 14.37(1), an issuer that has signed an agreement in respect of a notifiable transaction which it reasonably believes would require disclosure under the Inside Information Provisions must immediately apply for a trading halt or a trading suspension pending announcement of the agreement.
- (3) ...
- (4) ...
- (5) In the case of a reverse takeover, suspension of dealings in the issuer's securities must continue until the issuer has announced sufficient information. Whether the amount of information disclosed in the announcement is sufficient or not is determined on a case-by-case basis.

Practice Note 17

to the Rules Governing the Listing of Securities (the "Exchange Listing Rules")

Issued pursuant to rule 1.06 of the Exchange Listing Rules

SUFFICIENCY OF OPERATIONS AND DELISTING PROCEDURES

(This practice note applies only to suspended listed issuer subject to this note immediately before the effective date of rule 6.01A(1))

B. Amendments to GEM Rules

Chapter 3

GENERAL

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

Functions and powers of the Listing Appeals Committee

- 3.37 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:—
- (5) ~~[Repealed[●]] that a request by an issuer for the suspension of dealings in its securities has been rejected or where a decision has been made to direct the resumption of dealings in the issuer's securities;~~
 - (6) ...

Chapter 4

GENERAL

REVIEW PROCEDURE

Review cases to be considered by the Listing Appeals Committee

- 4.07 The Listing Appeals Committee shall be the review hearing body in respect of any decision of the GEM Listing Committee or the GEM Listing (Review) Committee on any of the following matters:—
- (5) ~~[Repealed[●]] Rejection of a suspension of dealings or decision to direct a resumption of dealings~~
 - (a) ~~Where the Listing Division rejects an application by a listed issuer for a suspension of dealings in its securities or a decision is made to direct the resumption of dealings in accordance with rule 9.12, 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 the decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on that listed issuer~~

(6) Cancellation of a listing

(a) ...

(b) Where the GEM Listing Committee considers it necessary decides 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 ~~again~~ 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 ~~conclusion~~ 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 of 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 and 4.07 must be served on the Secretary, within 7 business days of receipt of either the relevant decision, or if the relevant party requests a written decision under rule 4.13(1), that written decision.

(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 5 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 5 business days of receipt of the written decision under rule 4.13(3).

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, the GEM Listing (Review) Committee or the Listing Appeals Committee (as the case may be) a relevant party has 3 business days to request written reasons for the decision. The Listing Division, the GEM Listing Committee, 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.
- (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.

Chapter 9

GENERAL

TRADING HALT, SUSPENSION AND RESUMPTION OF DEALINGS, CANCELLATION AND WITHDRAWAL OF LISTING

Trading halt or suspension

- 9.04 Under rule 9.01, the Exchange may direct a trading halt or suspend dealings in an issuer's securities regardless of whether or not the issuer has requested the same and may do so in any circumstances, including:-
- (5) ~~[Repealed[●]] where there is a breach of the GEM Listing Rules, the severity of which, in the opinion of the Exchange, justifies suspension (and without prejudice to any other action which the Exchange may take under the GEM Listing Rules); or~~

Resumption

- 9.12 Under rule 9.01, the Exchange may direct the resumption of dealings in securities. In particular, the Exchange may:-
- (1) without prejudice to rule 9.11, require an issuer to publish an announcement, in such terms and within such period as the Exchange shall, in its discretion, direct, notifying the resumption of dealings in the issuer's securities, following the publication of which the Exchange may direct resumption of dealings; and/or
- (2) direct a resumption of dealings following the publication of an announcement by the Exchange notifying the resumption of dealings in the securities.

Note: The Exchange may set out the issuer's submission for continued suspension in the Exchange's announcement referred to in (2) above.

- 9.13 ~~The power conferred upon the Exchange by rule 9.12 shall be subject to the review process set out in rule 4.06. not be exercised without first giving the issuer of the securities subject to trading halt or suspension the opportunity of having the matter reviewed in accordance with rule 4.07(5). At any hearing in connection with a direction for resumption, ¶The burden shall be on the issuer opposing the resumption to satisfy the Exchange that a continued trading halt or suspension would be appropriate.~~

Cancellation of listing

9.14A (1) Without prejudice to its power under rule 9.14, the Exchange may cancel the listing of any securities that have been suspended from dealings for a continuous period of 12 months.

(2) As a transitional arrangement,

(a) Subject to (b), for an issuer whose securities have been suspended from dealings as at the effective date of rule 9.14A(1) (the "Effective Date"), the 12 month period referred to in rule 9.14A(1) commences from the Effective Date.

(b) For issuers which are subject to a decision to commence the procedures to cancel a listing and a notice period for delisting immediately before the Effective Date, such decision and notice period continue to have effect on the relevant issuer. This is notwithstanding that the actual cancellation of listing has not taken place as at the Effective Date.

9.15 ~~Without prejudice to rules 9.14 and 9.14A(1), in circumstances where the Exchange proposes to exercise its right to cancel a listing, notice of the same will usually be given to the issuer by the Exchange indicating a period (ordinarily, of 6 months) within which the Exchange would expect the issuer to have remedied those matters that gave rise to the Exchange's proposal to cancel the listing (or otherwise to have submitted to the Exchange proposals intended to remedy the same). it may:~~

(1) publish an announcement naming the issuer and specifying the period (ordinarily, of 6 months) within which the issuer must have remedied those matters which have given rise to such circumstances. Where appropriate the Exchange will suspend dealings in the issuer's securities. If the issuer fails to remedy those matters within the specified period, the Exchange will cancel the listing. The Exchange may treat any proposals to remedy those matters as if they were an application for listing from a new applicant for all purposes and, in which case, the issuer must comply with the requirements for new listing applications as set out in the GEM Listing Rules; or

- (2) cancel the listing of the issuers' securities following the Exchange's publication of an announcement notifying the cancellation of the listing.

9.15A For the purpose of rule 9.14A(1), the Exchange may cancel the listing of an issuer's securities following the Exchange's publication of an announcement notifying the cancellation of the listing.

Chapter 17

EQUITY SECURITIES

CONTINUING OBLIGATIONS

Sufficient operations

17.26 An issuer shall carry out, directly or indirectly, a sufficient level of operations or have tangible assets of sufficient value and/or intangible assets for which a sufficient potential value can be demonstrated to the Exchange to warrant the continued listing of the issuer's securities.

Note: Characteristics of issuers which are unable to comply with rule 17.26 include:

- (i) financial difficulties to an extent which seriously impairs an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or
- (ii) issuers which have net liabilities as at their balance sheet date i.e. issuers whose liabilities exceed their assets.

17.26A An issuer must, after trading in its listed securities has been suspended, publish periodic quarterly announcements of its developments.

Chapter 19

EQUITY SECURITIES

NOTIFIABLE TRANSACTIONS

Requirements for all transactions

Trading halt and suspension of dealings

- 19.37 (1) ~~[Repealed[●]] Where an issuer has signed an agreement in respect of a share transaction, major transaction, very substantial disposal, very substantial acquisition or reverse takeover and the required announcement has not been published on a business day, it must apply for a trading halt or a trading suspension pending the announcement.~~
- (2) ~~[Repealed[●]] Without prejudice to rule 19.37(1), an issuer that has signed an agreement in respect of a notifiable transaction which it reasonably believes would require disclosure under the Inside Information Provisions must immediately apply for a trading halt or a trading suspension pending announcement of the agreement.~~
- (3) ...
- (4) ...
- (5) In the case of a reverse takeover, suspension of dealings in the issuer's securities must continue until the issuer has announced sufficient information. Whether the amount of information disclosed in the announcement is sufficient or not is determined on a case-by-case basis.

APPENDIX III: LIST OF RESPONDENTS

INSTITUTIONS

Professional Bodies

1. Alternative Investment Management Association Limited, The
2. Asia Securities Industry & Financial Markets Association
3. Association of Chartered Certified Accountants
4. Chamber of Hong Kong Listed Companies, The
5. Hong Kong Institute of Certified Public Accountants
6. Hong Kong Institute of Chartered Secretaries, The
7. Hong Kong Securities Association
8. Hong Kong Securities Professionals Association
9. Law Society of Hong Kong, The
10. 1 professional body (name not disclosed at respondents' request)

Listed Companies

11. Cathay Pacific Airways Limited
12. Henderson Investment Limited
13. Henderson Land Development Company Limited
14. Hong Kong Aircraft Engineering Company Limited
15. Hong Kong Ferry (Holdings) Company Limited
16. Swire Pacific Limited
17. Swire Properties Limited
18. to 20. 3 listed companies (name not disclosed at respondents' request)

Market Practitioners

21. Asian Capital (Corporate Finance) Limited
22. BlackRock
23. Cleary Gottlieb Steen & Hamilton (Hong Kong)
24. KPMG
25. Pan Asia Securities Lending Association
26. Proton Capital Limited
27. Slaughter and May
28. Tybourne Capital Management (HK) Limited
29. to 31. 3 market practitioners (name not disclosed at respondents' request)

HKEX Participant

- 32. ABN AMRO Clearing Hong Kong Limited
- 33. Howard Trading

None of the above

- 34. China Securities (International) Financial Holding Company Limited
- 35. SHINEWING Risk Services Limited
- 36. SW Corporate Services Group Ltd

INDIVIDUALS

Individual investor

- 37. Tsz-wang Tang
- 38. 1 individual investor (name not disclosed at respondent's request)

Accountant

- 39. Kong Chi Wong

Corporate Finance Staff

- 40. Alvin H. Y. Leung
- 41. 1 corporate finance staff (name not disclosed at respondent's request)

Exchange Participant Staff

- 42. 1 Exchange participant staff (name not disclosed at respondent's request)

None of the above

- 43. Christopher Cheung Wah-fung

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