THE LAW SOCIETY OF HONG KONG
香港律師會

CONSULTATION PAPER ON DELISTING AND OTHER RULE AMENDMENTS

The Law Society's Submissions

The Stock Exchange of Hong Kong Limited ("the Exchange") had on 22 September 2017 launched a public consultation on "Delisting And Other Rule Amendments". In response thereto, the Law Society provides the following submissions on the consultation questions posed.

Q1: Do you agree with the proposed Main Board Listing Rule ("MB Rule") amendment to add a fixed period delisting criterion? If not, why?

Law Society's response:

Yes, we believe it is appropriate to provide for a fixed period delisting criterion.

Q2: Do you think the appropriate period under the fixed period delisting criterion should be:

- ☐ ***12 months***
- ☐ ***18 months***
- ☐ ***24 months***
- ☐ ***Other ___ (please state)***

Please also explain why.

Law Society's response:

We believe the key to determining the appropriate period is to strike a balance between two objectives, namely giving order and certainty to the market on the one hand, and giving the listed issuer sufficient time to put its house in order on the other.

The Exchange mentioned in the Consultation Paper that 18 months is the expected suspension period under the PN17 3-staged delisting procedure. In contrast, we believe a period of 24 months would be appropriate. We note from paragraph 34 of the Consultation Paper, of the 50 long suspended issuers during 2012 and 2016, 39 had resumed trading during a period of 24 months. A period of 24 months appears to be able to strike a fair balance between providing certainty to the market and protecting the interests of the minority shareholders whose investments would otherwise be rendered valueless.

Q3: Do you agree with the proposed MB Rule amendment expressly 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. If not, why?

Law Society's response:

We are in support of giving the Exchange an option to delist immediately or to adopt a notice period approach, as circumstances require. However, to ensure certainty and transparency, it would be appropriate to clearly specify the circumstances in which the Exchange is likely to exercise the power of immediate delisting. We are mindful that this power is more drastic than the PN17 delisting procedure that the market is familiar with. Articulating the approach clearly in the rules can also reduce the risk of the Exchange's decision being challenged as procedurally unreasonable.

Q4: Do you agree with the proposal to remove Practice Note 17 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? If not, why?

Law Society's response:

We agree with this proposal.

Q5: Do you agree with the proposal 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. If not, why?

Law Society's response:

We agree with this proposal.

Q6: Do you agree with the proposal to remove MB Rule 6.01(1)? If not, why?

Law Society's response:

We agree with this proposal. Suspension or cancellation of a listing determined by the Listing Committee due to a breach of the Listing Rules should be a disciplinary decision subject to the Chapter 2A review (Listing Appeals Committee) procedure.

Q7: Do you agree with the proposal to clarify in MB Rule 2B.07(5) the applicable procedures for reviewing decisions to suspend or cancel a listing under MB Rule 6.01? If not, why?

Law Society's response:

We agree with this proposal.

Q8: Do you agree with the proposed MB Rule amendment to require suspended issuers to announce quarterly updates? If not, why?

Law Society's response:

We agree with this proposal.

Q9: Do you agree with the proposed transitional arrangements described above, and the proposed commencement dates of the fixed period under different situations? If not, why?

Law Society's response:

We agree with this proposal.

Q10: Do you agree with the proposed Rule for Growth Enterprise Market ("GEM Rule") amendment to add a fixed period delisting criterion? If not, why?

Law Society's response:

We agree with this proposal.

Q11: Do you think the appropriate period under the fixed period delisting criterion should be:

☐ *6 months*
☐ *12 months*
☐ *Other ___ (please state)*

Please also explain why.

Law Society's response:

Whilst we have no strong views on the length of the fixed period, we believe it should be the same as that applicable to Main Board listed issuers.

Q12: Do you agree with the proposed transitional arrangement described in paragraph 59 of the Consultation Paper? If not, why?

Law Society's response:

We agree with this proposal.

Q13: Do you agree with the proposal to align the wording of GEM Rule 9.15 with MB Rule 6.10? If not, why?

Law Society's response:

We agree with this proposal.

Q14: Do you agree with the proposal to remove GEM Rule 9.04(5)? If not, why?

Law Society's response:

We agree with this proposal.

Q15: Do you agree with the proposal to 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? If not, why?

Law Society's response:

We agree with this proposal.

Q16: Do you agree with the proposed GEM Rule amendment to require suspended issuers to announce quarterly updates? If not, why?

Law Society's response:

We agree with this proposal.

Q17: Do you agree with the proposal to remove MB Rule 14.37(1) / GEM Rule 19.37(1)? If not, why?

Law Society's response:

We agree with this proposal. In light of the overarching requirement to disclose insider information under MB Rule 13.09/GEM Rule 17.10 and the consequences of delay in disclosure under MB Rule 13.10A/ GEM Rule 17.11A, MB Rule 14.37(1) / GEM Rule 19.37(1) are superfluous.

Q18: Do you agree with the proposal to remove MB Rule 14.37(2) / GEM Rule 19.37(2)? If not, why?

Law Society's response:

We agree with this proposal. In light of the overarching requirement to disclose insider information under MB Rule 13.09 / GEM Rule 17.10 and the consequences of delay in disclosure under MB Rule 13.10A / GEM Rule 17.11A, MB Rule 14.37(2) / GEM Rule 19.37(2) are superfluous.

Q19: Do you agree with the proposed MB / GEM Rule amendment to delegate authority to the Listing Department to direct resumption of trading and to provide for an accelerated review procedure? If not, why?

Law Society's response:

We agree with this proposal.

The Law Society of Hong Kong
22 November 2017