

**CONSULTATION PAPER**  
**ON**  
**NEW STRUCTURE FOR**  
**LISTING DECISION-MAKING**

**February 2005**



**Hong Kong Exchanges and Clearing Limited**

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## **WHAT THIS CONSULTATION PAPER IS ABOUT**

1. The Stock Exchange of Hong Kong Limited (the Exchange), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (HKEx) proposes to implement a new decision-making structure for listing matters.
2. This consultation paper explains the new structure the Exchange is considering and sets out the draft amendments to the Listing Rules (Main Board and GEM) (together, the Rules) that would implement such a structure.
3. The Exchange's aim in developing the proposed new structure has been to put in place a simpler administrative framework for listing decision-making whilst also ensuring the checks and balances necessary to minimise and manage regulatory risk including real or potential conflicts of interest within HKEx.
4. The consultation proposals and draft Rule amendments have been prepared in consultation with the Securities and Futures Commission (the SFC).

### **Why Reform Now?**

5. Since July 1997, the Exchange has been considering the scope for improvement to its administrative structure for making decisions about listing applications and breaches of the Rules.
6. In news releases dated 6 May 2002 (the May Release) and 24 July 2002 (the July Release) the Exchange set out a proposed new structure. At about the same time the Exchange, in consultation with the SFC, prepared draft Rule amendments to implement the then proposed structure (the 2002 Draft Rules).
7. However, development of the proposed new structure was put on hold in light of the recommendations of the Expert Group and the subsequent consultation on the Regulation of Listing.
8. With the determination of the issues relating to the Regulation of Listing it is now appropriate to recommence the consultation process regarding the Exchange's listing decision-making structure.

9. The proposals set out in this consultation paper are informed by developments since 2002 including the Government's March 2004 Consultation Conclusions on Proposals to Enhance the Regulation of Listing (the Regulation of Listing Conclusions).
10. Similarly, the draft Rule amendments proposed in this consultation paper are a version of the 2002 Draft Rules amended to reflect latest developments and implement the current proposals.

## **CONSULTATION PROCESS**

### **How to Comment**

11. The Exchange welcomes all comment on the proposals and issues for consideration in this paper. Parties interested in making comment might include listed issuers, market practitioners, investors and the general public.
12. To facilitate interested parties making comment, the Exchange has highlighted specific questions relating to the proposals. To the extent possible, comments should address the questions.
13. Comments are due on or before 22 April 2005 and should be sent to:

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### **Next Steps**

14. After April 2005, the Exchange will analyse all comments received and issue a report setting out its conclusions. (For information regarding how the Exchange will deal with comments received, please refer to Appendix 2 of this consultation paper, which sets out HKEx's policy on privacy.)
15. Subject to obtaining approvals as appropriate from the Exchange and HKEx Boards and the SFC, the Exchange plans to implement the proposed structure in 2005.

## **BACKGROUND**

### **The Three-tier Regulatory Framework**

16. Improving the quality of the Hong Kong financial market has been and continues to be a priority of HKEEx.
17. In 1986 the then four exchanges were merged to form The Stock Exchange of Hong Kong Limited.
18. In 1991, following the report of the Securities Review Committee (the SRC Report), a three-tier regulatory framework comprising the Government, the SFC and the Exchange was established. The Exchange was assigned the frontline regulatory responsibility for listing matters.
19. In implementing the frontline regulatory arrangement, the Exchange's Council, through Chapter 2A of the Main Board Rules, delegated all of its powers and functions relating to listing matters to the Listing Committee. One general objective for the delegation was to provide for practitioner-based regulation.
20. Pursuant to the SRC Report, the SFC was required to supervise closely and audit regularly the Exchange's performance of its listing responsibilities. The SFC and Exchange were also required to jointly develop policies to upgrade standards and address emerging issues.
21. To facilitate such supervision and co-operation and complete the three-tier regulatory structure, the first memorandum of understanding between the SFC and the Exchange was signed in 1991.

### **Mergers and Demutualisation**

22. In March 1999, the Government determined that it would be in Hong Kong's best interest to see that the Hong Kong Futures Exchange Limited and the Exchange (together with their respective clearing houses) as well as the Hong Kong Securities Clearing Company Limited merged, demutualised and listed. The new entity would be called Hong Kong Exchanges and Clearing Limited (that is, HKEEx).

## **Government's Proposed Reform in 1999**

23. In May 1999, a co-ordinating Committee on Market Structure Reform was established to advise the Government on policy matters related to the proposed merger and demutualisation.
24. In July 1999, the Government published a policy paper entitled *Hong Kong Exchanges and Clearing Limited: Reinforcing Hong Kong as a Global Financial Centre* (the 1999 Policy Paper). In that paper the Government made recommendations for the structural reform of the Listing Committee, aimed at strengthening the existing structure, to separate the commercial interests and the public regulatory functions of HKEx.
25. In the 1999 Policy Paper, the Government proposed a number of governance committees and consultative panels aimed at improving HKEx's policy formulation and decision-making process. Specifically, the Government recommended that the Listing Committee be abolished and replaced with a new User Appeal Committee (the UAC) and a new Listing Matters Committee (LMC) that would provide the market input previously provided by the Listing Committee.
26. The UAC would adjudicate on appeals relating to disciplinary matters and the LMC would hear appeals on listing decisions and other non-disciplinary listing matters.
27. It was proposed that each committee would have seven to nine external members including two to three public interest representatives and five to six market professionals such as lawyers and accountants. Each committee would also include one HKEx Board member.

## **Implementation of the Government's Proposals**

28. In 2002, the Exchange, in consultation with the SFC, took steps to implement the Government's proposals. On 6 May 2002, the Exchange published the May Release announcing a new decision-making structure for listing matters. The proposed structure was designed to implement the Government's proposals to abolish the Listing Committee and establish the UAC and LMC.

29. It was proposed that non-disciplinary listing matters would be handled by the Exchange's Listing Division and a new Adjudication Division would be established to make first instance decisions on all disciplinary matters referred to it by the Listing Division.
30. Having considered public comment in response to the May Release, the Secretary for Financial Services and the Treasury (the SFST) informed a press conference on 24 July 2002 that a restructured listing framework with a new integrated Listing Committee (the NLC) with responsibility for decisions on Main Board and GEM listings and delistings would be established.<sup>1</sup> The SFST advised that the NLC would commence in operation on 1 January 2003.
31. On the same day, the Exchange announced (in the July Release) the detail of the proposed new structure referred to by the SFST.
32. In the July Release it was proposed that in respect of new listing applications and cancellation of listing status, the Listing Division would make recommendations to the NLC for determination by the NLC.
33. The July Release also announced that the LMC originally proposed by the Government would be renamed the Listing Policy and Appeals Committee (LPAC). The new name was aimed at better reflecting the committee's function of hearing appeals from the initial decisions of the Listing Committee and the Listing Division. The new name would also reflect the committee's advisory role on listing policy matters.
34. In view of the proposed establishment of the NLC, the composition of the LPAC had been changed to include members from the NLC. That was intended to ensure that when policies would be discussed, external members involved in the listing approval and cancellation process would also take part.

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<sup>1</sup> See Financial Services and Treasury press release dated 24 July 2002 and entitled *New Listing Package to Enhance Competitiveness of HK Financial Market*.

35. The July Release also proposed that:
- (a) including the members from the NLC, the LPAC would consist of two non-executive directors of HKEx and 10 to 13 independent members with representation from issuers, financial intermediaries and the investing public;
  - (b) as regards disciplinary matters, the UAC would be renamed and referred to as the Disciplinary Appeals Committee (the DAC) so as to better reflect its role as a review body for disciplinary decisions of the Adjudication Division;
  - (c) the composition of the DAC would be identical to that proposed for the LPAC; and
  - (d) the review process would be streamlined in that initial decisions would be subject to only one review.

36. The objectives of the May 2002 proposals (referred to at paragraphs 28 to 29 above) and the July 2002 proposals (referred to at paragraphs 30 to 35 above) were the same. As with the Exchange's current objectives as set out at paragraph 3 above, they were designed to provide a simpler administrative framework along with the necessary checks and balances to ensure regulatory risk would be minimised and managed.

## **Subsequent Events and Policy Development**

37. After the exposure of the Exchange's proposals through the July Release, the Exchange, in consultation with the SFC, prepared draft amended Rules (the 2002 Draft Rules, referred to at paragraphs 6 and 10 above) and procedures to give effect to the structure set out in the July Release.
38. The 2002 Draft Rules consisted of new Rules to replace Chapters 2A and 2B of the Main Board Listing Rules and Chapters 3 and 4 of the GEM Listing Rules. Amongst other things, the 2002 Draft Rules sought to implement the Government's intention that the Exchange should establish several new governance committees including the NLC, LPAC and DAC as well as a new division, the Adjudication Division.

39. However, publication of the July Release was followed on 26 September 2002 by the Government's appointment of the Expert Group to review the operation of the securities and futures market regulatory structure and, on 10 April 2003, by the Financial Secretary's announcement that the Government would consult publicly on the recommendations of the Expert Group.
40. Further consultation regarding, and development of, the proposals and 2002 Draft Rules was put on hold pending conclusion of the Government's consultation.

## **Regulation of Listing Conclusions**

41. On 26 March 2004, the Government released its policy paper entitled *Consultation Conclusions on Proposals to Enhance the Regulation of Listing* (the Regulation of Listing Conclusions).
42. A number of the Regulation of Listing Conclusions impact on earlier proposals regarding the structure for listing decision-making. Some of the key issues are set out in paragraphs 43 to 49 below.

### ***Statutory backing of Rules***

43. The Government's main concern as expressed in the Regulation of Listing Conclusions was how to raise and improve the quality of Hong Kong's financial market. Apart from improving the gate-keeping mechanism of the listing regime, the Government was also concerned with raising the standards of corporate governance and adding regulatory teeth to the Rules. These concerns were addressed by concluding that relevant parts of the Rules should be statutorily codified, that is, given statutory backing.<sup>2</sup>
44. The Exchange supports the general direction of the Government's proposals to give statutory backing to some of the Rules. Administratively, the development of these proposals will impact on the earlier proposal that the Exchange establish an Adjudication Division. In particular, there is an element of uncertainty about the scope and scale of the Exchange's future enforcement work. The Exchange has been mindful of these issues in revising the proposals in the May and July Releases and settling the

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<sup>2</sup> See the Regulation of Listing Conclusions including at paragraphs 5 and 6 on page 6.

proposals set out in this consultation paper. For example, one objective of the current proposals is to create a structure that retains sufficient flexibility to enhance the efficiency and timeliness of decision-making but also be able to adjust quickly to a change in the pattern and number of disciplinary cases managed by the Exchange from time to time. (The detail of proposals relating to the listing decision-making structure for disciplinary matters is set out in the Proposals Part B of this consultation paper.)

### ***Role of the Listing Committee***

45. The Government specifically addressed the role of the Listing Committee in the Regulation of Listing Conclusions. Amongst other things, it referred to submissions acknowledging the contributions made by the Listing Committee.<sup>3</sup> It also affirmed that the frontline regulatory role of the Exchange should continue and required that no securities would be listed on the Exchange unless approved by the Listing Committee.
46. In this way the Government expressed satisfaction that the independent Listing Committee represents an adequate safeguard against any conflicts of interest. The Government observed that from the market users' point of view, any conflicts of interest are perceived rather than real.<sup>4</sup>
47. The Regulation of Listing Conclusions recorded a number of respondents' suggestions for improving the operation of the Listing Committee; the most notable was to include in the membership of the Listing Committee more investors and other public interest members.<sup>5</sup>
48. However, the Government also highlighted that respondents were concerned members of the Listing Committee, who are volunteers, could be overburdened by existing responsibilities. The Regulation of Listing Conclusions noted some respondents' suggestions that the Listing Committee should be restructured to enhance operational efficiency with one such suggestion echoing the proposals in the July Release.<sup>6</sup>

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<sup>3</sup> See, for example, paragraph 10, page 7 and paragraph 4.30, page 48 of the Regulation of Listing Conclusions.

<sup>4</sup> See paragraph 4.21, page 45 of the Regulation of Listing Conclusions.

<sup>5</sup> See paragraph 4.31, page 48 of the Regulation of Listing Conclusions.

<sup>6</sup> See paragraph 4.32, page 48 of the Regulation of Listing Conclusions.

### ***Government's invitation to propose reforms***

49. In the Regulation of Listing Conclusions, the Government extended an invitation to the Exchange and the SFC to consider how the above suggestions concerning the composition and operation of the Listing Committee could be implemented. This consultation paper sets out the Exchange's proposals.

## PROPOSALS

50. The consultation proposals are set out in three parts. In each part the Exchange describes the proposals we are considering, the questions we would like your comment on and, where necessary, some explanation about the proposals.
51. **Part A** deals with the proposals in relation to non-disciplinary matters – both policy matters and non-disciplinary matters that are not policy matters such as applications for listing and cancellations of listing.
52. **Part B** deals with the proposals in relation to disciplinary matters.
53. **Part C** deals with the draft amended Rules that would implement the proposed structural reforms.

## **Part A: Non-Disciplinary Matters**

54. The following proposals are explained at paragraphs 55 to 92 below. Before preparing your feedback we recommend you read the explanation in order to understand the thinking behind the proposals.

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>A1</b> A new Listing Policy Committee would be established with responsibility for:</p> <ul style="list-style-type: none"><li>(a) advising on and, as necessary, approving policy concerning listing matters including disciplinary listing matters;</li><li>(b) considering and approving Rule amendments; and</li><li>(c) approving material Rule waivers or modifications that are intended to have general effect.</li></ul> <p>(Refer draft Rule 2A.04)</p>	<p><b>A1Q1</b> Do you agree with the proposed establishment of the Listing Policy Committee including the scope of its role? Please explain your views.</p>
<p><b>A2</b> The Listing Policy Committee would have up to 28 members and a quorum of 12 members would be required for the transaction of any business by the Committee.</p> <p>(Refer draft Rules 2A.18 and 2A.29)</p>	<p><b>A2Q1</b> Do you agree with the proposed size of the Listing Policy Committee? Please explain your views.</p> <p><b>A2Q2</b> Do you agree with the proposed quorum of the Listing Policy Committee? Please explain your views.</p>

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>A3</b> All members of the Listing Policy Committee would be nominated by a Listing Nomination Committee but include:</p> <ul style="list-style-type: none"> <li>(a) one chairman and two deputy chairmen, who between them would chair all Listing Policy Committee meetings;</li> <li>(b) the HKEx Chief Executive; and</li> <li>(c) at least eight investor representatives.</li> </ul> <p>The Listing Nomination Committee's mandate would be to ensure the non-prescribed members of the Listing Policy Committee are a suitable balance of listed issuers and market practitioners including lawyers, accountants, corporate finance advisers and brokers.</p> <p>(Refer draft Rule 2A.18)</p>	<p><b>A3Q1</b> Do you agree with the proposed composition of the Listing Policy Committee? Please explain your views.</p> <p><b>A3Q2</b> Do you think eight investor representatives ensures appropriate investor representation on the Listing Policy Committee? Please explain your views.</p>
<p><b>A4</b> The Listing Nomination Committee would be composed as it is under the current Rules. (It is currently called the Listing Nominating Committee. Refer current Rule 2A.21.) That is, it would consist of:</p> <ul style="list-style-type: none"> <li>(a) the Chief Executive of the Exchange;</li> <li>(b) two members of the HKEx Board;</li> <li>(c) the Chairman of the SFC; and</li> <li>(d) two Executive Directors of the SFC.</li> </ul> <p>(Refer draft Rule 2A.17)</p>	<p><b>A4Q1</b> Do you agree with the proposal to retain the current composition of the Listing Nomination Committee (currently called the Listing Nominating Committee)? Please explain your views.</p>

Policy proposal	Your feedback
<p><b>A5</b> A new Listing Decisions Panel would be established with responsibility for significant first instance listing application and delisting decisions, specifically:</p> <ul style="list-style-type: none"> <li>(a) approval of applications for listing by new equity and new non-structured product issuers (including all related waivers);</li> <li>(b) approval of new issuers of structured products;</li> <li>(c) approval of new guarantors of guaranteed structured products; and</li> <li>(d) cancellation of any listing (except the cancellation of listing of securities with an expiry date or event specified at the time of listing upon their expiry).</li> </ul> <p>The Listing Division would make all other first instance listing-related decisions. For example, the approval of applications for listing by a listed issuer and applications for listing in respect of debt securities issued or guaranteed by certain issuers or guarantors, and waiver applications by listed issuers excluding material waivers that are intended to have general effect. The Listing Division may also decide whether to reject applications for listing by new equity and new non-structured product issuers.</p> <p>(Refer draft Rules 2A.05, 2A.07 and 2A.08)</p>	<p><b>A5Q1</b> Do you agree with the proposed role of the Listing Decisions Panel? Please explain your views.</p> <p><b>A5Q2</b> Do you agree with the proposed role of the Listing Division including that it should make certain first instance listing decisions? Please explain your views.</p> <p><b>A5Q3</b> To the extent you have not already answered this, do you agree with the proposed division of responsibilities between the Listing Decisions Panel and the Listing Division? Please explain your views.</p>

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>A6</b> Under the current structure, the Board delegates its listing decision-making powers to the Listing Committee and the Listing Committee has sub-delegated those powers to the Listing Division.</p> <p>Furthermore, the Rules provide for the Listing Committee to have an oversight role in relation to the Listing Division.</p> <p>To address reservations expressed by the Listing Committee and more appropriately reflect the arrangements currently in place, it is proposed that the Rules be amended so that the Board delegates decision-making power directly to the Listing Division and to remove reference to any of the Listing Policy Committee, Listing Decisions Panel or Listing Review Panel undertaking a formal oversight role in relation to the Listing Division.</p> <p>However, it is proposed that the Listing Policy Committee may, on its own initiative, request that the Listing Division prepare and present to the Committee, analysis or other information in relation to the Listing Division's exercise of its decision-making power.</p> <p>(Refer draft Rules 2A.02 and 2A.30)</p>	<p><b>A6Q1</b> Do you agree the Rules should be amended as proposed with respect to delegation of decision-making power from the Board directly to the Listing Division? Please explain your views.</p> <p><b>A6Q2</b> Do you agree the Rules should be amended as proposed with respect to the Listing Committee's oversight of the Listing Division? Please explain your views.</p>

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>A7</b> Each Listing Decisions Panel would be drawn from the pool of members of the Listing Policy Committee excluding the chairman and two deputy chairmen of the Listing Policy Committee and the HKEx Chief Executive (the Listing Decisions Panel pool).</p> <p>The Listing Decisions Panel pool would be divided into three sub-pools, which would generally form Listing Decisions Panels on a rotating basis.</p> <p>(The HKEx Chief Executive (or his alternate) would not form part of the Listing Decisions Panel pool because he would be entitled to attend all meetings of the Listing Decisions Panel.)</p> <p>A quorum of five members would be required for each matter discussed at Listing Decisions Panel meetings. The HKEx Chief Executive (or his alternate) would be entitled to be counted in the quorum for any meeting.</p> <p>(Refer draft Rules 2A.31 and 2A.35)</p>	<p><b>A7Q1</b> Do you agree each Listing Decisions Panel should be drawn from the pool of members of the Listing Policy Committee excluding the chairman and two deputy chairmen of the Listing Policy Committee and the HKEx Chief Executive? Please explain your views.</p> <p><b>A7Q2</b> Do you agree it is appropriate for the HKEx Chief Executive to be entitled to attend every Listing Decisions Panel meeting? Please explain your views.</p> <p><b>A7Q3</b> Do you agree the Listing Decisions Panel pool should be divided into three sub-pools, which would form Listing Decisions Panels on a rotating basis? Please explain your views.</p> <p><b>A7Q4</b> Do you consider the quorum for the Listing Decisions Panel is set at an appropriate level? Please explain your views.</p>
<p><b>A8</b> All first instance non-disciplinary decisions would be reviewable by a new Listing Review Panel.</p> <p>The Listing Review Panel would be the sole review body for all non-disciplinary decisions.</p> <p>(Refer draft Rules 2A.02(2) and 2A.09)</p>	<p><b>A8Q1</b> Do you agree with the establishment of the new Listing Review Panel to decide on the reviews of all first instance non-disciplinary decisions? Please explain your views.</p> <p><b>A8Q2</b> Do you agree there should be only one review of any first instance non-disciplinary decision? Please explain your views.</p>

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>A9</b> Each review hearing by the Listing Review Panel would be formed by:</p> <ul style="list-style-type: none"> <li>(a) a chairman, who would be either the chairman or one of the deputy chairmen of the Listing Policy Committee; and</li> <li>(b) four members from the Listing Decisions Panel pool.</li> </ul> <p>Except, in the case of review of a decision of the Listing Decisions Panel, the members of the Listing Decisions Panel pool who were members of the Listing Decisions Panel that made the relevant decision could not be members of that Listing Review Panel.</p> <p>The membership for each Panel (including the chairman) would be selected according to a system that would distribute participation evenly and in which the Committee Secretary would not have discretion. The system would be set out in internal procedures established by the Exchange from time to time pursuant to draft Rule 2A.14.</p> <p>A quorum of three members would be required for the transaction of business at each hearing of the Listing Review Panel.</p> <p>(Refer draft Rules 2A.14 and 2A.48 to 2A.52)</p>	<p><b>A9Q1</b> Do you agree with the size and composition of the Listing Review Panel including that the members should be drawn from the Listing Policy Committee? Please explain your views.</p> <p><b>A9Q2</b> Do you consider the quorum for the Listing Review Panel is set at an appropriate level? Please explain your views.</p>

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>A10</b> As under the current structure, seeking a review of a decision would involve payment of a review fee. Otherwise, the draft Rules provide for each party to bear its own costs in preparation for the hearing.</p> <p>(Refer draft Rules 2A.62 to 2A.65)</p>	<p><b>A10Q1</b> Do you agree a review of decisions should incur payment of a review fee? Please explain your views.</p> <p><b>A10Q2</b> Do you agree each party should otherwise bear its own costs, for example, in preparation for the review hearing? Please explain your views.</p> <p><b>A10Q3</b> Do you consider the Listing Review Panel should have discretion to refund a review fee in certain limited circumstances? If so, then what should be those circumstances? Please explain your views.</p>
<p><b>A11</b> All members of the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel would be eligible for a daily (or per diem) allowance for time spent, for example, preparing for and in the conduct of meetings or hearings.</p>	<p><b>A11Q1</b> Do you agree the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel members should be compensated on a per diem basis? Please explain your views.</p>
<p><b>A12</b> Any application for listing or other non-disciplinary matter commenced prior to commencement of the amended Rules would be dealt with under the current Rules unless the affected person, for example, new applicant, elects otherwise.</p> <p>(Refer draft Rule 2A.72)</p>	<p><b>A12Q1</b> Do you agree with the proposed transitional arrangements and consider they will not give rise to any unintended effects? Please explain your views.</p>

### **Current Arrangements for Decision-Making**

55. Under the current structure regarding non-disciplinary matters, the Board of the Exchange has arranged for all of its powers and functions in respect of Main Board and GEM listing matters to be discharged by the Listing Committee and the GEM Listing Committee, respectively. (The Listing Committee and GEM Listing Committee have operated as an integrated committee since 2003. References in this part of the consultation paper to the Listing Committee include references to the GEM Listing Committee, as relevant.)
56. In turn, subject to the reservations of powers and review procedures set out in Chapter 2A of the Main Board Rules and Chapter 3 of the GEM Rules, the Listing Committee has most of its powers and functions discharged by the Listing Division. (Such reservations of power include in relation to deciding on approvals for listing and cancellations of listing. Refer Main Board Rule 2A.05 and GEM Rule 3.05.)
57. As noted in the Listing Committee's 2004 Annual Report<sup>7</sup>, the arrangements currently in place recognise as a practical matter that it is not possible for formal decision-making to be taken by the Listing Committee on the very substantial number of matters arising from the day-to-day administration of the Rules. Equally, to avoid jeopardising the independence of the Listing Committee, it is not desirable for the Committee to become involved in an executive role directing the day-to-day affairs of the Listing Division.
58. Accordingly, the Listing Committee has reserved the power to take those decisions that are of material significance for listed companies, sponsor firms and individuals concerned.<sup>8</sup>

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<sup>7</sup> The Listing Committee's 2004 Annual Report is available at <http://www.hkex.com.hk/listing/listcomrpt/annualrpt.doc>

<sup>8</sup> The Listing Committee 2004 Annual Report at paragraph 17

59. The relevant non-disciplinary decisions include: granting approval for the listing of new equity applicants; approval of the cancellation of listing; approval of GEM Sponsor firms and their supervisory staff; the endorsement, variation or modification of decisions made by the Listing Division and in some circumstances the Listing Committee on application for review; the approval of a specified category of waiver; approval of significant policies and Rule amendments.<sup>9</sup>
60. In all other non-disciplinary areas (including, for example, the approval of waivers not required to be approved by the Listing Committee and approval or rejection of applications for listing by listed issuers) the Listing Division interprets and administers the Rules, subject to the review of the Listing Committee under procedures set out in the Rules.<sup>10</sup>
61. The Listing Committee, formed as the Listing (Review) Committee, also acts as a review body for non-disciplinary decisions made by the Listing Committee acting as first instance decision-maker.
62. Appeals from decisions of the Listing (Review) Committee are made to the Listing Appeals Committee in certain but not all circumstances. That is, Main Board Rule 2B.07 and GEM Rule 4.07 provide that the Listing Appeals Committee shall be the final review hearing body in respect of decisions relating to rejection of a new applicant on grounds of unsuitability for listing, rejection of a sponsor or authorised representative, rejection of a lifting of suspension of trading, cancellation of a listing, and resumption of trading.

### **Detail of Proposed Structure**

63. The most significant changes proposed are in relation to the allocation of decision-making responsibilities amongst the proposed new committees and panels and establishing only one level of review, consistent with the July 2002 proposals. Otherwise, the Exchange's intention has been to preserve as far as possible the existing processes and procedures but also clarify certain practices and implicit standards.

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<sup>9</sup> The Listing Committee 2004 Annual Report at paragraph 18

<sup>10</sup> The Listing Committee 2004 Annual Report at paragraph 19

64. The Exchange's general approach to representation at meetings, handling conflicts of interest, and the provision of decisions and their rationale in writing, remain largely unaltered. (As usual, the Exchange will address detailed conflict management arrangements in internal procedures. Those procedures will apply to the Listing Division, Listing Policy Committee, Listing Decisions Panel and Listing Review Panel. They will address the management of both actual and perceived conflict.)
65. Similarly, the proposed restructuring of non-disciplinary decision-making processes would have no effect on the standards that must be met including, for example, for the approval of listing applications.
66. The balance of decision-making responsibilities between the Listing Division and the Listing Decisions Panel in first instance non-disciplinary matters would not be significantly different to that as between the Listing Division and the current Listing Committee. For example, key non-disciplinary decisions currently decided by the Listing Committee (as set out at paragraph 59 above) would be dealt with as follows:
  - (a) approval of significant policies and proposed Rule amendments would be the responsibility of the Listing Policy Committee;
  - (b) granting approval for the listing of new equity applicants would be the responsibility of the Listing Decisions Panel;
  - (c) approvals of the cancellation of listing (except cancellation of listing of securities with an expiry date or event specified at the time of listing upon their expiry) would be the responsibility of the Listing Decisions Panel;
  - (d) in relation to approval of waivers: material waivers that are intended to have general effect would be approved by the Listing Policy Committee; waivers related to new listing applications by new equity and new non-structured product issuers would be approved by the Listing Decisions Panel; other waivers would be dealt with by the Listing Division; and
  - (e) approval and the periodic review of GEM Sponsor firms and their supervisory staff (including annual reviews) would be the responsibility of the Listing Division.

## ***Policy***

### *Role of Listing Policy Committee*

67. The proposed new Listing Policy Committee would serve the same purpose and generally achieve the same objective as the LMC that was proposed in the May Release (and referred to in the July Release as the Listing Policy and Appeals Committee, that is, LPAC). That is, the Listing Policy Committee would consider proposals from the Listing Division for review of or amendment to the Rules as well as proposed policies regarding listing matters. The Listing Division would seek guidance from and expose proposals to the Listing Policy Committee from the early stages in the policy formulation process through to, for example, the final text of proposed Rule amendments. (After the Listing Policy Committee has approved proposed Rule amendments, as usual, the proposed amendments would also require adoption by the Exchange Board and approval, subsequently, by the SFC.)
68. On its own initiative, the Listing Policy Committee would also be able to advise the Listing Division to initiate projects relating to the Rules and to report back on the progress of those projects. In addition and in part to facilitate the Listing Policy Committee's role in that regard, it would be able to request that the Listing Division prepare and present to the Listing Policy Committee analysis or other information in relation to the Listing Division's exercise of its decision-making power.

### *Pool of members*

69. A challenge lies in ensuring that the membership of the Listing Policy Committee achieves the right balance in public interest representation, knowledge, experience and technical skills appropriate for the role the Committee is to play.
70. The Exchange's proposal regarding the composition of the Listing Policy Committee referred to at proposal A3 above retains flexibility by having the members of the Listing Policy Committee nominated by a high-level Listing Nomination Committee. The proposal is also consistent with suggestions referred to in the Regulation of Listing Conclusions to expand the Listing Committee to include more representatives of the investing public.<sup>11</sup>

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<sup>11</sup> See paragraph 4.31, page 48 of the Regulation of Listing Conclusions.

71. The quorum of 12 members required for the transaction of any business by the Listing Policy Committee should also ensure that policy decisions affecting listing matters would be taken only after significant input from the Committee's membership. This reduces the risk of decisions being overly influenced by one segment of the market represented on the Committee, which is a concern voiced by market commentators about the current structure.

### *Compensation*

72. The Exchange recognizes that serving as a member of the Listing Policy Committee and the other decision-making panels would place a burden on the valuable time of members. Accordingly, it is proposed that the Exchange have discretion to compensate members for their time through payment of a daily (or per diem) allowance. Such compensation payment is usual practice for statutory-administrative decision-makers. For example, in Hong Kong, it is not unusual for Tribunal members to be paid a fee, for example, the *Securities and Futures Ordinance* provides that a fee may be paid to the members of the Market Misconduct Tribunal. In Australia, the Australian Stock Exchange Ltd also compensates its committee members including the ASX National Listing Committee (for listing decisions and discipline) and the National Adjudicatory Tribunal (for disciplining participants) on a per diem basis.

### ***Listing decisions and reviews***

#### *Role of Listing Division, Listing Decisions Panel and Listing Review Panel*

73. It is proposed that the Listing Decisions Panel would be responsible for first instance significant listing application and delisting decisions, with the Listing Division responsible for other first instance listing decisions. That is, the Listing Division would be responsible for decisions which are not of such a fundamental nature that they warrant a greater degree of market practitioner involvement in the decision-making process. For example, decisions about interpretation and application of the Rules, which can generally be resolved between the Listing Division and the relevant issuer or market practitioner.

74. In that regard it is relevant to note that under the current arrangements, the Listing Committee has delegated responsibility to the Listing Division to approve applications for listing in respect of specified categories of debt securities and structured products and applications for waivers from certain Rule requirements.
75. All first instance non-disciplinary decisions would be reviewable by a new panel, the Listing Review Panel. This proposal is consistent with the July 2002 proposals.
76. Earlier, the Exchange had suggested there should be limited grounds for the review of the initial decisions made by the Listing Committee, now replaced by the Listing Decisions Panel. However, given the fundamental nature of the decisions to be made by the Listing Decisions Panel as a gate-keeper to the equity market, the Exchange took and retains the view that it is not appropriate to restrict affected parties' rights of review.
77. Consistent with the approach proposed in the July Release, the proposals set out in this consultation paper have the effect that the members of the Listing Committee would no longer be required to form and serve as the Listing (Review) Committee and the present Listing Appeals Committee (referred to at paragraph 62 above) would be rendered redundant. That is, the Listing Review Panel would be the sole review body for all non-disciplinary decisions.

*Pool of members*

78. The July Release contemplated that there would be a hierarchy of committees to deal with non-disciplinary matters. It anticipated that the LPAC, which would have been separately constituted from the Listing Committee, would supervise and review the decisions of the Listing Committee. However, in further considering the structure set out in the July Release, the Exchange was mindful of how small the pool of suitable and willing candidates to serve in this capacity is. From our experience in relation to the current Listing Committee, the Exchange believes it would be difficult to fill both proposed committees.

79. Accordingly, instead of the proposals set out in the July Release, the Exchange has recommended that both the initial decision-making body and the review body be drawn from the same pool of persons. However, to ensure it is clear that the Listing Review Panel is a superior tribunal we have proposed that the chairman and deputy chairmen of the Listing Policy Committee be excluded from being members of the Listing Decisions Panel. We have also mandated that one of the chairman or deputy chairmen of the Listing Policy Committee act as the chairman of each Listing Review Panel.
80. Although this creates the risk that the chairman and deputy chairmen of the Listing Policy Committee, by not participating in the Listing Decisions Panel, may lose touch with the routine listing and delisting decisions, the Exchange is confident this can be managed. It will be managed by choosing a chairman and deputy chairmen who have already served on the current Listing Committee or, once established, the Listing Decisions Panel. This experience would be supplemented by their participation in the Listing Policy Committee as well as input from the other members of the Listing Review Panel who would all be current pool members of the Listing Decisions Panel.
81. The Exchange also recognises that as a consequence of excluding the chairman and deputy chairmen of the Listing Policy Committee from the Listing Decisions Panel, the Panel will not benefit from the experience of these persons. However, the Exchange considers that the benefit in reserving the chairman and deputy chairmen of the Listing Policy Committee to involvement in only the Committee and the Listing Review Panel outweighs the benefit their experience would bring to first instance listing application and delisting decisions to be decided by the Listing Decisions Panel.
82. Also, in light of our experience with the current Listing Committee, the Exchange has reviewed the structure of the decision-making bodies. Under the current arrangements the Main Board Listing Committee comprises 25 members and the GEM Listing Committee comprises 21 members. Both Committees have a quorum of five members. However, because the Rules require that Committee members who participate in a first instance decision, not participate in a review of that decision, administrative arrangements ensure that only half of the Committee's members are invited to regular Listing Committee meetings.

83. Then, due to unavailability and conflicts of interest, it is usually the case that between five and eight members participate in the decision-making in relation to any particular matter coming before the Committee.
84. These current arrangements create uncertainty about the extent to which Committee members, who are not invited to attend, would still have the right to attend and receive the relevant papers. More importantly, it also creates uncertainty as to whether the members who do not participate in decisions are still responsible for the decision that is made.
85. To remove this uncertainty the Exchange proposes that making decisions and reviewing decisions be done by panels formed from a pool and that only empanelled members would participate in and be responsible for the decision.

*Compensation*

86. As with the Listing Policy Committee, the Exchange proposes to compensate members of the Listing Decisions Panel and Listing Review Panel for their time through payment of a daily (or per diem) allowance. Refer to paragraph 72 above for further discussion about this proposal.

***Delegation of decision-making power and oversight***

*Delegation*

87. As set out at proposal A6 above, under the current structure, the Board delegates its listing decision-making powers to the Listing Committee and the Listing Committee, in turn, delegates powers to the Listing Division.
88. It is proposed that the Rules be amended so that the Board delegates decision-making power directly to the Listing Division, subject to the oversight mechanisms described at paragraphs 89 to 92 below.

### *Oversight*

89. In relation to the current Listing Committee role regarding oversight of the Listing Division, as set out at paragraph 57 above, currently, the Rules describe the Listing Committee's oversight of the Listing Division in absolute terms to ensure that it exercises those powers and carries out its day-to-day functions in a professional and impartial manner. The current Listing Committee has expressed reservations about its capacity to perform this oversight role entrusted to it under the existing Rules and, in practice, the current drafting does not describe the arrangements in place.
90. As a result, it is proposed that the Listing Committee's existing oversight role be modified. Considering the proposals provide for the most important non-disciplinary decisions to be made by the Listing Decisions Panel, for any decisions made by the Listing Division to be reviewable by the Listing Review Panel, and for the Listing Policy Committee to have a central role in policy formulation and approval, such changes should not have an adverse effect on the substance of arrangements to manage regulatory risk including real or potential conflicts of interest within HKEx.
91. In addition to the oversight mechanisms noted above, it is proposed that the Listing Policy Committee may, on its own initiative, request that the Listing Division prepare and present to the Committee, analysis or other information in relation to the Listing Division's decision-making.
92. Such a provision ensures that the Listing Policy Committee would be able to obtain information about, for example, what decisions and interpretations have been made by the Listing Division in a particular area of the application of the Rules, whether the decisions complied with existing policy or resulted in a modification and whether any policy implications arose which might indicate the need for new or revised policy.

## Part B: Disciplinary Matters

93. The following proposals are explained at paragraphs 94 to 110 below. Before preparing your feedback we recommend you read the explanation in order to understand the thinking behind the proposals.

Policy proposal	Your feedback
<p><b>B1</b> An adjudicator would be appointed as a full time staff member of the Exchange. The appointment would be on the recommendation of the Exchange's Head of Listing to the Exchange Board.</p> <p>To retain flexibility the Exchange may appoint a consultant to perform this role at some time in the future, if the shape and character of the enforcement workload alters significantly. (Such change in circumstances may come about as a result of the implementation of statutory backing of some of the Rules.)</p> <p>Subject to budgetary control applied by the Exchange's Head of Listing, the Adjudicator may employ or second staff to assist him.</p> <p>The Listing Division would be responsible for investigating and referring suspected breaches of the Rules to the Adjudicator. To ensure any conflict of interest is appropriately managed, there would be an information barrier (Chinese wall) between the Adjudicator and the Listing Division.</p> <p>(Refer draft Rules 2B.02(1), 2B.02(2), 2B.04, 2B.05 and 2B.13 to 2B.16)</p>	<p><b>B1Q1</b> Do you support the proposals for the handling of first instance decisions for disciplinary matters by an adjudicator retained by the Exchange? Please explain your views.</p>

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>B2</b> The Adjudicator's decision-making processes, including the submissions of the affected parties, would, save for exceptional circumstances, only be in writing. That is, there would not be an opportunity for the parties to make oral submissions.</p> <p>(Refer draft Rule 2B.15)</p>	<p><b>B2Q1</b> Do you support the proposal that, save for exceptional circumstances, the Adjudicator's processes would only be in writing? Please explain your views.</p>
<p><b>B3</b> Reviews of first instance disciplinary decisions would be de novo reviews. That is, the issues would be considered afresh rather than limited to specific factual or legal issues identified as giving rise to a need for review.</p> <p>(Refer draft Rule 2B.35)</p>	<p><b>B3Q1</b> Do you agree the review should be a de novo review? Please explain your views.</p>

Policy proposal	Your feedback
<p><b>B4</b> Each review would be decided by a separately constituted panel.</p> <p>The individual panels, to be known as the Disciplinary Review Panel, would be drawn from a pool. The Disciplinary Review Panel pool would have a minimum 20 members. The members would be nominated by the Listing Nomination Committee, referred to at proposal A4 above, in the same way as for the Listing Policy Committee (as set out at proposal A3 above).</p> <p>The pool members would include at least seven investor representatives and four legally qualified persons. In addition to the seven investor representatives and four legally qualified persons, the Listing Nomination Committee would be required to ensure the pool consists of a balance of market and professional experience. There would be no requirement for directors of listed issuers or other representatives of listed issuers to be members of the pool.</p> <p>There would be no restriction on the number of members of the Disciplinary Review Panel who may also be members of the Listing Policy Committee (and thereby the pool for the Listing Decisions Panel and the Listing Review Panel referred to at proposals A7 and A9 above).</p> <p>(Refer draft Rule 2B.17)</p>	<p><b>B4Q1</b> Do you agree with the establishment of the new Disciplinary Review Panel to decide on the review of all first instance disciplinary decisions? Please explain your views.</p> <p><b>B4Q2</b> Do you agree with the size and composition of the Disciplinary Review Panel pool including that there should be no restriction on the number of members of the Disciplinary Review Panel who may also be members of the Listing Policy Committee? Please explain your views.</p> <p><b>B4Q3</b> Do you think it is better to forego some flexibility by prescribing the number of representatives of each market category, rather than just the investor representatives? Please explain your views.</p> <p><b>B4Q4</b> Do you think seven investor representatives ensure appropriate investor representation in the Disciplinary Review Panel pool? Please explain your views.</p> <p><b>B4Q5</b> Do you agree it is appropriate for the Listing Nomination Committee to appoint Disciplinary Review Panel pool members? Please explain your views.</p> <p><b>B4Q6</b> Do you agree it is sufficient for the Disciplinary Review Panel to be the sole Exchange review body for all disciplinary decisions? Please explain your views.</p>

Policy proposal	Your feedback
<p><b>B5</b> For each review, five members of the Disciplinary Review Panel pool would be empanelled. Each Disciplinary Review Panel would have a quorum of three members.</p> <p>The chairman of every Disciplinary Review Panel would be legally qualified.</p> <p>The chairman would be responsible for writing up the Disciplinary Review Panel's decision and reasons for its decision.</p> <p>The chairmanship and membership of the Disciplinary Review Panel would be determined on a rotating basis. The membership for each Panel (including the chairman) would be selected according to a system that would distribute participation evenly and in which the Committee Secretary would not have discretion as to which chairman is selected and which other persons are selected from the pool save for urgent cases or when insufficient Panel members from the respective pools are available. The system would be set out in internal procedures established by the Exchange from time to time pursuant to draft Rule 2B.10.</p> <p>(Refer draft Rules 2B.10, 2B.24 and 2B.25)</p>	<p><b>B5Q1</b> Do you agree with the size of each Disciplinary Review Panel? Please explain your views.</p> <p><b>B5Q2</b> Do you consider the quorum for all meetings of the Disciplinary Review Panel is set at an appropriate level? Please explain your views.</p> <p><b>B5Q3</b> Do you support the proposal that the chairman of every Disciplinary Review Panel would be legally qualified and responsible for writing up the Disciplinary Review Panel's decision and reasons for its decision? Please explain your views.</p>

<b>Policy proposal</b>	<b>Your feedback</b>
<p><b>B6</b> The procedures would provide for the Committee Secretary to co-opt members from the Listing Policy Committee to the Disciplinary Review Panel if, due to unavailability or conflict, the Committee Secretary is unable to select a Disciplinary Review Panel chairman and four other Disciplinary Review Panel members.</p>	<p><b>B6Q1</b> Do you agree it is appropriate that the Committee Secretary be able to co-opt members from the Listing Policy Committee to the Disciplinary Review Panel if necessary? Please explain your views.</p>
<p><b>B7</b> All members of the Disciplinary Review Panel would be eligible for a daily (or per diem) allowance for time spent, for example, preparing for and in the conduct of hearings.</p>	<p><b>B7Q1</b> Do you agree the Disciplinary Review Panel members should be compensated on a per diem basis (as with the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel)? Please explain your views.</p>
<p><b>B8</b> As with non-disciplinary reviews, the Rules would provide for a fee to be paid for a review application. The fee is to compensate the Exchange for costs it incurs in reviewing a decision.</p> <p>In addition, the proposed sanctions available to be made by the Adjudicator or Disciplinary Review Panel would include an order requiring parties to the proceedings to pay the reasonable investigation costs of the Exchange.</p> <p>(Refer draft Rules 2B.12(9) and 2B.38 to 2B.41)</p>	<p><b>B8Q1</b> Do you agree a review of decisions should incur payment of a review fee? Please explain your views.</p> <p><b>B8Q2</b> Do you agree it is appropriate for the Adjudicator and the Disciplinary Review Panel to have the option of ordering recovery of the Exchange's reasonable investigation costs? Please explain your views.</p>

Policy proposal	Your feedback
<p><b>B9</b> Any matter in relation to which the Listing Division has sent a report to the Listing Committee prior to the commencement of the amended Rules would be dealt with under the current Rules. All other matters would be subject to the amended Rules (and procedures).</p> <p>The Disciplinary Review Panel would only review decisions made under the amended Rules. Consequently, any disciplinary decisions made by the Listing Committee under the current Rules would be subject to the review procedures under the current Rules.</p> <p>(Refer draft Rule 2B.50)</p>	<p><b>B9Q1</b> Do you agree with the proposed transitional arrangements for disciplinary matters and consider they will not give rise to any unintended effects? Please explain your views.</p>

### **Current Arrangements for Decision-Making**

94. Under the current Rules (Main Board Rules 2A.09 to 2A.16 and GEM Rules 3.10 to 3.17), the Listing Committee is responsible for making initial decisions in relation to Rule breaches and the imposition of sanctions. That is, the Listing Division investigates suspected breaches of the Rules and commences disciplinary action by sending a report concerning the alleged breaches to the Listing Committee. The Listing Committee determines whether there is a breach and, if so, what the sanction should be. That determination is made after a meeting of the Committee at which the affected persons appear and make written and oral submissions. Oral submissions are limited to 10 minutes.
  
95. An affected party may seek a review of a decision of the Listing Committee. Such a review is considered by the Listing Committee constituted by members who did not participate in making the initial decision. The review is by way of rehearing.

96. The affected party can also appeal the second decision of the Listing Committee. That appeal is conducted by the Listing Appeals Committee and is also by way of rehearing. The Listing Appeals Committee comprises the Chairman of HKEx, who is an ex officio member, and two other members of the Board of HKEx. (Usually that is the Deputy Chairman of HKEx and one other Board member appointed on a case by case basis.) A decision of the Listing Appeals Committee is final.
97. The Listing Division acts as prosecutor in all disciplinary proceedings before the Listing Committee and Listing Appeals Committee. (The Listing Division is not an affected party and thus has no right of appeal against any decision of the Listing Committee.)

### **Detail of Proposed Structure**

98. In summary, the Exchange proposes that for disciplinary matters:
  - (a) investigation be conducted by the Listing Division;
  - (b) first instance decision-making be conducted by an adjudicator; and
  - (c) at the instigation of parties to first instance disciplinary decisions, reviews be conducted by a new panel, the Disciplinary Review Panel.

### ***Investigation and first instance decision-making***

99. The proposed first instance decision-making process involving the Adjudicator would preserve many of the features of the current Listing Committee structure such as the absence of legal formalism and the non-applicability of the rules of evidence. Also, it would be procedurally simpler than the current arrangements in that, in most cases, there would be only one round of written submissions and no oral hearing.
100. These proposals develop on those set out in the May and July Releases, which anticipated a new Exchange Adjudication Division rather than a single adjudicator. The revised proposal takes account of the Regulation of Listing Conclusions, in particular, the Government's intention to give statutory backing to certain Rules.

101. The Exchange believes that the revised proposal, enabling an adjudicator to employ or second staff to assist in the performance of his function depending on workload from time to time would create more flexibility than a dedicated Adjudication Division.

*Investigation costs*

102. Currently, the Rules do not enable the Exchange to recover its costs of investigating suspected breaches of the Rules. Consistent with user-pays principles, it is proposed that the Rules be amended to include, as a sanction available to be made by the Adjudicator and the Disciplinary Review Panel, an order requiring parties to the proceedings to pay the reasonable investigation costs of the Exchange. Such a sanction is available to statutory-administrative decision-makers such as the Market Misconduct Tribunal (refer section 257 of the *Securities and Futures Ordinance*).

***Review***

103. It is proposed that the review be conducted by a panel rather than a committee.
104. The rationale for using a panel rather than a committee is similar to that for non-disciplinary matters as set out in paragraphs 82 to 85 above.
105. The proposals would also reduce the hearing burden on individual members as they would not be invited to participate as frequently as they are under the existing arrangements.
106. It is proposed that there be a quorum of three members to cater for the possibility that up to two of the members may become unavailable at the last minute. A quorum of three is not unusual for disciplinary tribunals, and the Exchange thinks it is appropriate for a panel with five members. For example, each of the Securities and Futures Appeals Tribunal and Market Misconduct Tribunal has a membership and quorum of three.

107. It is proposed that the chairman of every Disciplinary Review Panel would be legally qualified and that the chairman would be responsible for writing up the Disciplinary Review Panel's decision and reasons for decision. The reason for this proposal is that the Exchange considers persons who are legally qualified are most appropriate to take the lead role in articulating the Disciplinary Review Panel's analyses of facts and legal issues including challenges relating to procedures.
108. It is proposed that the Disciplinary Review Panel would be the only review body for disciplinary decisions. Consequently, and as with the structure relating to non-disciplinary decisions, this arrangement would render redundant the present Listing Appeals Committee.
109. As with the non-disciplinary proposals the Exchange's approach to handling conflicts of interest would remain largely unaltered under the revised regime. For example, procedures established by the Exchange would provide that parties to any disciplinary proceedings must raise any actual or potential conflicts of interest at the earliest opportunity and in accordance with the procedures and that members of the Disciplinary Review Panel who have an actual interest in the outcome of a review disqualify themselves from participation in the review.

#### *Compensation*

110. Also consistent with the proposed non-disciplinary structure, it is proposed that the Exchange have discretion to compensate members of the Disciplinary Review Panel for their time through payment of a daily (or per diem) allowance, for example, preparing for and in the conduct of hearings.

## Part C: Rule Amendments

Policy proposal	Your feedback
<b>C1</b> Subject to approval from the HKEx and Exchange Boards and the Commission, the Exchange proposes to amend the Main Board Rules as set out in Appendix 1.	<b>C1Q1</b> Do you support the proposed Rule amendments? Please explain any comment you have on any of the proposed amendments including any unintended effect you consider the amendments may give rise to.
<b>C2</b> Subject to approval from the HKEx and Exchange Boards and the Commission, the Exchange proposes to amend the GEM Rules in a manner consistent with the amendments proposed for the Main Board Rules.	<b>C2Q1</b> Do you support the proposed approach to amending the GEM Rules? If not, please explain your views.

**APPENDIX 1:**

**DRAFT MAIN BOARD RULE AMENDMENTS**

**Chapter 2A**

**GENERAL**

**FUNCTIONS AND POWERS OF THE LISTING POLICY  
COMMITTEE, LISTING DECISIONS PANEL AND LISTING  
REVIEW PANEL**

**Scope of Chapter**

2A.01 This Chapter contains rules regarding the powers and functions of the Listing Division, Listing Policy Committee, Listing Decisions Panel, Listing Review Panel, Secretary to the Committee and Panels, and Listing Nomination Committee in non-disciplinary matters.

**Functions and powers of the Listing Division, Listing Policy Committee,  
Listing Decisions Panel, Listing Review Panel, Secretary to the  
Committee and Panels and Listing Nomination Committee**

2A.02 The Board has arranged for its powers and functions in relation to non-disciplinary matters to be discharged by certain persons and groups of persons. Specifically, the Board has arranged for:

- (1) its initial decision-making powers and functions in non-disciplinary matters to be discharged by the Listing Division and the Listing Decisions Panel;
- (2) its powers and functions to review non-disciplinary initial decisions to be discharged by the Listing Review Panel;
- (3) its powers and functions to consider and approve amendments to the Exchange Listing Rules, to be discharged by the Listing Policy Committee;
- (4) its powers and functions to nominate the members of the Listing Policy Committee to be discharged by the Listing Nomination Committee; and

- (5) its powers and functions to select Listing Decisions Panel members and Listing Review Panel members from the pool of potential Panel members to be discharged by the Secretary to the Committee and Panels,

subject to and in accordance with the provisions of this Chapter.

2A.03 Insofar as powers and functions have been delegated by the Board to the Listing Division, Listing Policy Committee, Listing Decisions Panel, Listing Review Panel and Secretary to the Committee and Panels, the relevant delegate will discharge and exercise such powers and functions to the exclusion of the Board, unless and until the Board revokes such delegation.

2A.04 The Listing Policy Committee is responsible for:

- (1) advising on and, as necessary, approval of policy concerning listing matters;
- (2) considering and approval of amendments to the Exchange Listing Rules; and
- (3) approval of material waivers or modifications of the Exchange Listing Rules that are intended to have general effect (i.e. to affect more than one issuer and its subsidiaries at the same time).

2A.05 The Listing Decisions Panel is responsible for:

- (1) approval of initial applications for listing by new equity and new non-structured product issuers (including all related waivers);
- (2) approval of new issuers of structured products;
- (3) approval of new guarantors of guaranteed structured products; and
- (4) cancellation of any listing (except the cancellation of listing of securities with an expiry date or event specified at the time of listing upon their expiry).

2A.06 The Secretary to the Listing Decisions Panel is responsible for selecting the members of the Panel for each hearing of the Listing Decisions Panel in accordance with procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.

### **Approvals and Cancellations of Listing by the Listing Division**

2A.07 The Listing Division is responsible for:

- (1) approval of initial applications for listing (with or without conditions) in respect of debt securities issued or guaranteed (in the case of guaranteed issues) by the following issuers or (in the case of guaranteed issues) guarantors:
  - (a) States;
  - (b) Supranationals;
  - (c) State corporations;
  - (d) banks and corporations having an investment grade credit rating (and the term “investment grade” has the same meaning as in note (2) to rule 15.13 of the Exchange Listing Rules); and
  - (e) issuers whose equity securities are listed on the Exchange and which have a market capitalisation, at the time of the application, of not less than HK\$5,000,000,000;
- (2) approval of initial applications for listing (with or without conditions) for issues of structured products where the issuer (and, in the case of guaranteed issues, the guarantor) has been approved by the Listing Decisions Panel;
- (3) cancellations of listing of securities with an expiry date specified at the time of listing, upon their expiry or, in the case of an expiry event, on the occurrence of that event;
- (4) approval of applications for listing by a listed issuer;

- (5) approval of applications for listing of interests in any Collective Investment Scheme which has been authorised by the Commission pursuant to the Securities and Futures Ordinance and the respective codes applicable to Collective Investment Schemes issued by the Commission from time to time; and
- (6) any other matters under the Exchange Listing Rules not the responsibility of the Listing Decisions Panel and not covered in Chapter 2B of the Exchange Listing Rules.

2A.08 Without limiting rule 2A.07 of the Exchange Listing Rules:

- (1) the Listing Division may, in its absolute discretion, reject any application for listing by new equity and new non-structured product issuers (including all related waivers) without presenting the application (or waivers) to the Listing Decisions Panel; and
- (2) if the Listing Division presents an application for listing to the Listing Decisions Panel, then the Listing Division will make recommendations to the Listing Decisions Panel regarding the application.

2A.09 The Listing Review Panel is the review body for non-disciplinary initial decisions whether made by the Listing Division or the Listing Decisions Panel. The Secretary to the Listing Review Panel is responsible for selecting the members of the Panel for each review hearing according to procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.

2A.10 In discharging their respective functions, the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel may receive such assistance from the Listing Division as each considers appropriate.

2A.11 The Listing Nomination Committee is responsible for nominating members to the Listing Policy Committee including a chairman and two deputy chairmen. The Chief Executive of HKEC is an ex-officio member of the Listing Policy Committee.

- 2A.12 Each member of the Listing Policy Committee excluding the chairman and two deputy chairmen of the Listing Policy Committee is also a member of a pool of potential members of the Listing Decisions Panel. Each member of the Listing Policy Committee excluding the Chief Executive of HKEC is also a member of a pool of potential members of the Listing Review Panel.
- 2A.13 In discharging their respective functions and powers, the Listing Division, Listing Policy Committee, Listing Decisions Panel, Listing Review Panel, Secretary to the Committee and Panels, and Listing Nomination Committee are required to administer the Exchange Listing Rules, and otherwise to act, in the best interests of the market as a whole and in the interests of the public.

### **Non-Disciplinary Procedures**

- 2A.14 The Board may from time to time establish procedures governing the meetings and proceedings referred to in this Chapter, including in relation to the management of conflicts of interest and other matters.

### **Consultation with the Listing Division**

- 2A.15 Applicants for listing may consult the Listing Division in advance to seek its informal and confidential guidance on the applicant's eligibility for listing. Any views expressed by the Listing Division in such consultations, whether verbally or in writing, are preliminary and do not bind the Listing Division or the Listing Decisions Panel and are therefore not eligible for review by the Listing Review Panel.
- 2A.16 Listed issuers may consult the Listing Division to seek its informal and confidential guidance on any issues affecting the listed issuer's listing. Any views expressed by the Listing Division in such consultations, whether verbally or in writing, do not bind the Listing Division or the Listing Decisions Panel and are therefore not eligible for review by the Listing Review Panel.

### **Listing Nomination Committee**

2A.17 The Listing Nomination Committee consists of six members comprising:

- (1) the Chief Executive of the Exchange;
- (2) two members of the board of HKEC;
- (3) the Chairman of the Commission; and
- (4) two Executive Directors of the Commission.

### **Listing Policy Committee**

2A.18 The Listing Policy Committee consists of up to 28 members including the chairman and two deputy chairmen of the Committee. The membership comprises:

- (1) the Chief Executive of HKEC, who will be an ex-officio member, or his alternate, the Chief Executive of the Exchange;
- (2) 8 persons representing retail and institutional investors; and
- (3) 19 other external members with representation from issuers and market practitioners such as investment bankers, lawyers and accountants.

2A.19 The Board appoints members of the Listing Policy Committee including the chairman and deputy chairmen of the Committee every year on the recommendation of the Listing Nomination Committee. (The Chief Executive of HKEC, or his alternate, may not be the chairman or deputy chairman of the Listing Policy Committee.)

2A.20 All members of the Listing Policy Committee will vacate office every year, unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment.

2A.21 Any member of the Listing Policy Committee may remain in office for a maximum of four consecutive years. A member who has served a maximum term permitted by this rule will generally not be eligible for re-appointment for at least one year from the date on which he last vacates office.

2A.22 A member may resign at any time on the giving of reasonable written notice to the Board and the Commission. The Board may remove a member of the Listing Policy Committee in the event of the member's misconduct or incapacity.

2A.23 Without limiting rule 2A.22 of the Exchange Listing Rules, the office of a member of the Listing Policy Committee shall be vacated if any one of the following events occurs:

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

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

2A.24 The Board may fill any casual vacancies that may occur in the Listing Policy Committee. The Listing Nomination Committee will nominate an eligible person to fill any such casual vacancy. The member who fills the casual vacancy will vacate office at the expiry of the term for which the casual vacancy existed, unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment.

- 2A.25 A nominated member of the Listing Policy Committee may also be a member of the pool of potential members of the Disciplinary Review Panel.
- 2A.26 The Secretary to the Listing Policy Committee will normally be a member of staff from the Exchange. The Secretary will refer any procedural matter to the chairman or, if necessary, a deputy chairman of the Listing Policy Committee for decision.
- 2A.27 The Listing Policy Committee or the chairman or a deputy chairman (as the case may be) of the Listing Policy Committee may appoint any person to advise on any matter they consider appropriate.
- 2A.28 The chairman or a deputy chairman of the Listing Policy Committee, or the chairman of each meeting of the Listing Policy Committee, may give any procedural directions he considers appropriate.
- 2A.29 The quorum necessary for the transaction of any business by the Listing Policy Committee is 12 members. All members, including the Chief Executive of HKEC (or his alternate), may be counted in the quorum for any meeting.

### **Review by the Listing Policy Committee**

- 2A.30 The Listing Policy Committee may, from time to time and on its own initiative, request that the Listing Division prepare and present to the Listing Policy Committee analysis or other information in relation to the Listing Division's decision-making.

### **Listing Decisions Panel**

- 2A.31 The Chief Executive of HKEC (or his alternate) is entitled to be a member of all Listing Decisions Panels. The other members of every Listing Decisions Panel will be selected by the Secretary to the Listing Decisions Panel according to procedures established from time to time under rule 2A.14 of the Exchange Listing Rules. The other members of the Panel will be selected from the members of the Listing Policy Committee excluding the chairman and two deputy chairmen of the Listing Policy Committee.

2A.32 The chairman of each meeting of the Listing Decisions Panel may appoint any person to advise on any matter he considers appropriate.

2A.33 The chairman of each meeting of the Listing Decisions Panel may give any procedural directions as he considers appropriate.

2A.34 The Secretary to the Listing Decisions Panel will refer any procedural matter to the chairman of each meeting of the Listing Decisions Panel, for decision.

2A.35 The quorum necessary for the transaction of any business at each meeting of the Listing Decisions Panel is five members. All members, including the Chief Executive of HKEC (or his alternate), may be counted in the quorum for any meeting.

### **Applications for Listing**

2A.36 Rules 2A.37 to 2A.41 of the Exchange Listing Rules apply to applications for listing.

2A.37 Applicants must provide to the Listing Decisions Panel within such period as it may specify all the information and explanations that it may reasonably require to decide whether to approve an application for listing.

2A.38 The Listing Decisions Panel may approve an application for listing unconditionally or subject to such conditions as it considers appropriate, and may take such steps as it considers appropriate to implement such a determination.

2A.39 The Listing Decisions Panel will inform the applicant of its decision in writing as soon as practicable. A decision to refuse an application for listing, or to impose conditions on a listing, will include written reasons.

2A.40 For the avoidance of doubt, differently constituted Listing Decisions Panels may enquire into, consider and decide an application for listing.

- 2A.41 (1) Notwithstanding rule 2A.14 and provisions in the Exchange Listing Rules in respect of the advanced booking Form A1, a listed issuer or new applicant shall submit to the Listing Division or Listing Decisions Panel, information for an application for listing pursuant to each advanced booking Form A1 no more than two times subject always to:
- (a) the Listing Division or Listing Decisions Panel, as the case may be, permitting otherwise if it considers necessary;
  - (b) only one right of review by the listed issuer or new applicant against the latest decision made by the Listing Division or Listing Decisions Panel as at the date of the application for review referred to in rule 2A.53 of the Exchange Listing Rules and pursuant to rule 2A.61; and
  - (c) procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.
- (2) The Listing Division or Listing Decisions Panel shall only consider a revised application for listing if the listed issuer or the new applicant provides new information for the consideration by the Listing Division or Listing Decisions Panel, as the case may be.
- (3) Subject to rule 2A.41(1), the listed issuer or the new applicant may, if it considers necessary, submit its application for listing together with a new advanced booking Form A1 again for the consideration by the Listing Division or Listing Decisions Panel.

### **Cancellations of Listing**

2A.42 Rules 2A.43 to 2A.47 of the Exchange Listing Rules apply to cancellations of listing to be considered by the Listing Decisions Panel.

2A.43 The Listing Division will make recommendations to the Listing Decisions Panel regarding a cancellation of listing.

2A.44 In considering the Listing Division's recommendations in relation to a cancellation of listing, the Listing Decisions Panel may make any enquiries that it considers appropriate.

2A.45 Listed issuers applying for a cancellation of listing must provide to the Listing Decisions Panel within such time period as the Listing Decisions Panel may specify all the information and explanations that it may reasonably require for the purpose of deciding whether to cancel a listing.

2A.46 The Listing Decisions Panel will determine whether it is appropriate for a listing to be cancelled, and take such steps as it considers appropriate to implement such a determination.

2A.47 The Listing Decisions Panel will inform the listed issuer of its decision in writing as soon as practicable. A decision to cancel a listing (except where such cancellation results from a voluntary withdrawal of listing by the listed issuer) or to refuse an issuer's voluntary withdrawal of listing will include written reasons.

### **Listing Review Panel**

2A.48 The Secretary to the Listing Review Panel will select the chairman of a Listing Review Panel from the chairman and two deputy chairmen of the Listing Policy Committee according to procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.

2A.49 The Secretary to the Listing Review Panel will select the other Panel members according to procedures established from time to time under rule 2A.14 of the Exchange Listing Rules. The Panel members will be selected from the members of the Listing Policy Committee but excluding:

- (1) the Chief Executive of HKEC; and
- (2) the chairman and two deputy chairmen of the Listing Policy Committee.

2A.50 The chairman of the Listing Review Panel may appoint any person to advise on any matter he considers appropriate.

2A.51 The Secretary to the Listing Review Panel will refer any procedural matter to the chairman of each meeting of the Listing Decisions Panel, for decision.

2A.52 The quorum necessary for the transaction of any business at each hearing of the Listing Review Panel is three members.

**Review by the Listing Review Panel of Decisions of the Listing Division or Listing Decisions Panel**

2A.53 A party who is the subject of a decision by the Listing Division or the Listing Decisions Panel under the Exchange Listing Rules may apply to the Secretary to the Listing Review Panel to review that decision in accordance with the procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.

2A.54 The application for review referred to in rule 2A.53 of the Exchange Listing Rules must be made in writing to the Secretary to the Listing Review Panel within:

- (1) 10 business days after the date on which the decision is sent to the party seeking review; or
- (2) such shorter reasonable time as the Listing Division or Listing Decisions Panel, as relevant, may stipulate.

2A.55 Anyone else who is aggrieved by a decision of the Listing Division or the Listing Decisions Panel may express his views in writing to the chairman of the Listing Policy Committee or if he is unavailable or conflicted, one of the deputy chairmen. The chairman or deputy chairman, as applicable, of the Listing Policy Committee may in his sole discretion decide to allow the aggrieved person to have the relevant decision reviewed, having regard to the rights of any third parties which may have been created in reliance upon the relevant decision of the Listing Division or the Listing Decisions Panel. If the chairman or deputy chairman, as applicable, of the Listing Policy Committee decides to allow the review of the decision, he will give such directions as he considers appropriate for such review.

2A.56 Any decision of the Listing Division or the Listing Decisions Panel is final unless it is the subject of a review pursuant to rule 2A.53 of the Exchange Listing Rules. If a decision is the subject of a review, then it is stayed pending a decision by the Listing Review Panel, unless the chairman of the Listing Review Panel otherwise orders.

*Note: To be clear, if a decision is stayed, then, for the length of the stay, the status quo of the subject of the decision is preserved. Consequently, if, for example, the subject decision was that an issuer should not take a certain course of action, then, for the length of the stay, the issuer should not take that action.*

### **Proceedings before the Listing Review Panel**

- 2A.57 The parties to a review, namely the review applicant, the Listing Division and any aggrieved party to whom the Listing Review Panel has given permission to attend, may attend the relevant Listing Review Panel hearing and make submission in such manner and with the assistance of such persons as are permitted under the procedures relating to this Chapter. The Listing Review Panel may, in its discretion, refuse to allow a particular person to assist a party if it is satisfied that it is appropriate to do so.
- 2A.58 The Listing Review Panel may proceed with a hearing in the absence of any party who has been duly notified of the time and place of the hearing, or their professional advisers or assistants, unless it is satisfied there is a good reason for their failure to attend.

### **Decisions of the Listing Review Panel**

- 2A.59 Following a review of a decision of the Listing Division or the Listing Decisions Panel, the Listing Review Panel may:
- (1) confirm, change or set aside the decision; or
  - (2) substitute any other decision which it considers appropriate.
- 2A.60 The Listing Review Panel will inform the parties to the review in writing of its decision and the reasons for that decision, as soon as practicable.
- 2A.61 A decision of the Listing Review Panel is final.

## **Fees and Costs**

2A.62 Where a party requests a review by the Listing Review Panel, its application for review must be accompanied by such fee as is payable to the Exchange pursuant to the procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.

*Note: If the prescribed fee is not paid at the appropriate time, the application for review will not be valid.*

2A.63 If the Listing Review Panel meets for the purpose of a review for more than two days, then the party referred to in rule 2A.62 as seeking the review must pay to the Exchange such additional fee as is prescribed by the procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.

2A.64 The further fee referred to in rule 2A.63 of the Exchange Listing Rules is payable within 30 days of the date of the Listing Review Panel's decision. Where a fee is not paid in accordance with this rule, the Exchange may recover it as a debt due from the party by whom the fee is payable.

2A.65 Each party involved in a review by the Listing Review Panel will bear its own costs.

## **Publicity**

2A.66 The Listing Division, Listing Policy Committee, Listing Decisions Panel and Listing Review Panel may in their sole discretion direct that their decisions be published in any manner they consider appropriate. If the Listing Division, Listing Policy Committee, Listing Decisions Panel or Listing Review Panel decides that its decision will not be published, it may direct the extent to which the parties may refer to the decision publicly.

2A.67 No one may disclose any information concerning a listing matter under this Chapter which has not been published under rule 2A.66 of the Exchange Listing Rules, unless the Listing Division, Listing Policy Committee, Listing Decisions Panel or Listing Review Panel (as the case may be) otherwise allows.

## **Standard of proof**

2A.68 The rules of evidence are not applicable to proceedings under this Chapter. The Listing Division, Listing Decisions Panel and Listing Review Panel:

- (1) may consider any information and give such weight to such information as they consider appropriate, regardless of whether that information would be admissible in a court of law; and
- (2) will determine questions of fact on the standard of proof applicable to civil proceedings.

## **Irregularities**

2A.69 Any subsequent discovery of an inadvertent failure to comply with the Exchange Listing Rules or any procedures established from time to time under rule 2A.14 of the Exchange Listing Rules will not, of itself, be sufficient to invalidate a decision of the Listing Division, Listing Policy Committee, Listing Decisions Panel or Listing Review Panel.

## **Conflicts of Interest**

2A.70 The Board has adopted procedures relating to conflicts of interest to ensure that the Exchange including the staff of the Listing Division, and the members of the Listing Policy Committee, Listing Decisions Panel and Listing Review Panel discharge, and are seen to discharge, their functions in an independent manner. Parties to any proceedings under this Chapter must raise any actual or perceived conflicts of interest at the earliest opportunity and in accordance with the procedures established from time to time under rule 2A.14 of the Exchange Listing Rules.

## **Multiple Cases**

2A.71 The Listing Policy Committee, Listing Decisions Panel and Listing Review Panel may, on such basis and in such manner as the chairman of the relevant hearing or meeting considers appropriate, consider and determine questions in respect of one or more parties, applications or matters in the same hearing or meeting.

## **Transitional**

2A.72 All non-disciplinary matters or proceedings commenced before the implementation of this Chapter will be conducted under the Exchange Listing Rules then in force, save and except if all parties to the non-disciplinary matters or proceedings agree. (Non-disciplinary matters or proceedings commenced before the implementation of this Chapter but which have not been determined at the date of implementation and for which the parties have not agreed to be subject to this Chapter shall be referred to as the “Legacy Matters”.) For the purposes of this rule:

- (1) a matter or proceeding will be deemed to have commenced when a document seeking a decision or review of the matter or proceeding is despatched to the relevant decision-making or review body for decision or review under the Exchange Listing Rules;
- (2) any application for listing which has not been put before the Listing Committee in existence before the implementation of this Chapter, when this Chapter is implemented, will proceed under this Chapter; and
- (3) the non-disciplinary bodies and committee in existence before the implementation of this Chapter will continue in existence until all Legacy Matters have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of the Legacy Matters.

## **Chapter 2B**

### **GENERAL**

#### **DISCIPLINARY MATTERS**

##### **Scope of Chapter**

2B.01 This Chapter contains rules regarding the functions and powers of the Listing Division, Adjudicator, Disciplinary Review Panel, Listing Nomination Committee, and Secretary to the Disciplinary Review Panel in disciplinary matters.

##### **Functions and powers of the Listing Division, Adjudicator, Disciplinary Review Panel, Listing Nomination Committee, and Secretary to the Disciplinary Review Panel**

2B.02 The Board has arranged for its powers and functions in relation to disciplinary matters to be discharged by certain persons and groups of persons. Specifically, the Board has arranged for:

- (1) its investigation powers and functions to be discharged by the Listing Division;
- (2) its initial decision-making powers and functions in disciplinary matters to be discharged by the Adjudicator;
- (3) its powers and functions to review disciplinary initial decisions to be discharged by the Disciplinary Review Panel;
- (4) its powers and functions to nominate persons to the pool of potential members of the Disciplinary Review Panel to be discharged by the Listing Nomination Committee; and
- (5) its powers and functions to select Disciplinary Review Panel members from the pool of potential Panel members to be discharged by the Secretary to the Disciplinary Review Panel,

subject to and in accordance with the provisions of this Chapter.

- 2B.03 Insofar as powers and functions have been delegated by the Board to the Listing Division, Adjudicator, Disciplinary Review Panel, Listing Nomination Committee, and Secretary to the Disciplinary Review Panel, the relevant delegate will discharge and exercise such powers and functions to the exclusion of the Board, unless and until the Board revokes such delegation.
- 2B.04 The Listing Division is responsible for investigating suspected breaches of the Exchange Listing Rules.
- 2B.05 The Adjudicator is responsible for determining whether a breach of the Exchange Listing Rules has taken place and, if so, those who are responsible for the breach and the appropriate sanction(s) to impose on them (if any).
- 2B.06 The Disciplinary Review Panel is the review body for disciplinary decisions made by the Adjudicator.
- 2B.07 The Listing Nomination Committee is responsible for nominating the pool of persons from whom the members of the Disciplinary Review Panel are selected, as set out in this Chapter. The Listing Nomination Committee is also responsible for nominating four persons from the Disciplinary Review Panel pool that may be selected to act as chairman of the Disciplinary Review Panel.
- 2B.08 The Secretary to the Disciplinary Review Panel is responsible for selecting from the relevant pools of persons the Panel chairman and other members of the Panel for each review matter in accordance with this Chapter and the procedures established from time to time pursuant to rule 2B.10 of the Exchange Listing Rules.
- 2B.09 In discharging their respective functions and powers, the Listing Division, Adjudicator, Disciplinary Review Panel, Listing Nomination Committee, and Secretary to the Disciplinary Review Panel are required to administer the Exchange Listing Rules, and otherwise to act in the best interests of the market as a whole and in the interests of the public.

## **Disciplinary procedures**

2B.10 The Board may from time to time establish procedures governing the proceedings referred to in this Chapter, including in relation to the management of conflicts of interest and other matters.

### **Those against whom disciplinary proceedings may be instigated**

2B.11 The Adjudicator may instigate disciplinary proceedings under this Chapter against any of the following alleging that they have breached the Exchange Listing Rules or knowingly, negligently or recklessly caused, facilitated or participated in a breach of the Exchange Listing Rules:

- (1) a listed issuer and/or any of its subsidiaries;
- (2) any director of a listed issuer and/or any of its subsidiaries and/or any alternate of such director;
- (3) any member of the senior management of a listed issuer and/or any of its subsidiaries;
- (4) any substantial shareholder of a listed issuer;
- (5) any professional adviser of a listed issuer and/or any of its subsidiaries (including any member of that adviser's staff), subject to any arrangements agreed from time to time between the Exchange and the professional body of which the adviser is a member or by whom that adviser is regulated;
- (6) any sponsor of an issuer;
- (7) any authorised representative of an issuer;
- (8) any guarantor of any guaranteed structured product or guaranteed debt securities listed on the Exchange;
- (9) any supervisor of a PRC issuer.

The term “professional adviser” includes any sponsor, Compliance Adviser, independent financial adviser, other financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer or any of its subsidiaries to provide professional advice in relation to a matter governed by the Exchange Listing Rules.

- Notes:* (1) *Any disciplinary action will be limited to matters governed by or arising out of the Exchange Listing Rules. In determining responsibility for a breach and in exercising its powers of sanction, the Adjudicator and Disciplinary Review Panel will recognise the differing roles and levels of responsibility of those against whom disciplinary action may be taken under this Chapter.*
- (2) *Professional advisers are subject to any relevant requirements of professional conduct, as set and enforced by any professional body of which that adviser is a member or by whom that adviser is regulated. The Exchange expects professional advisers to comply with those requirements when they act or advise in relation to a matter governed by the Exchange Listing Rules and to take all reasonable efforts to ensure that their clients are advised about and understand how the Exchange Listing Rules apply to them.*
- (3) *Companies will be responsible for the acts and omissions of their directors, officers and employees. Partners in a partnership will be responsible for the acts and omissions of their partners and employees of the partnership.*

## **Sanctions**

2B.12 If the Adjudicator or the Disciplinary Review Panel determines that any of the parties named in rule 2B.11 of the Exchange Listing Rules has breached the Exchange Listing Rules or has knowingly, negligently or recklessly caused, facilitated or participated in a breach of the Exchange Listing Rules including a failure to take any steps previously ordered under this rule, the Adjudicator or the Disciplinary Review Panel may take one or more of the following steps against the party:

- (1) cancel a listing;
- (2) suspend a listing;

- (3) issue a public censure;
- (4) if a professional adviser to an issuer negligently, knowingly or recklessly causes an issuer to breach the Exchange Listing Rules or facilitates or participates in such a breach, state publicly that the Exchange has concerns about the ability of that adviser (and/or any members of its staff) to perform its role as a professional adviser to the standard expected by the Exchange when assisting an issuer to comply with its obligations under the Exchange Listing Rules;
- (5) if a director, or an authorised representative of a listed issuer, deliberately, egregiously or persistently breaches or fails to discharge their responsibilities under the Exchange Listing Rules, state publicly that, in the Exchange's opinion, that person's holding of office with an issuer, including the listed issuer, is prejudicial to the interests of the investing public either permanently or for a specified period;
- (6) if a director against whom a public statement has been made under paragraph (5) above remains in office, recommend that the Listing Decisions Panel suspend or cancel the listing of the issuer's securities;
- (7) require rectification of a breach, the adoption of such steps as the Adjudicator or Disciplinary Review Panel, as applicable, considers appropriate to avoid future breaches of the Exchange Listing Rules, including the implementation or upgrade of any compliance programme or internal controls within a specified period, or other remedial action;
- (8) if a listed issuer deliberately, egregiously or persistently fails to discharge its responsibilities under the Exchange Listing Rules, order that in relation to any future issues of specified classes of securities, the facilities of the markets operated by the Exchange be denied to that issuer either permanently or for a specified period; and/or
- (9) make such other orders as it thinks fit, including requiring parties to proceedings before the Adjudicator or the Disciplinary Review Panel to pay the reasonable investigation costs of the Exchange.

## **Listing Division**

2B.13 The Listing Division may investigate any suspected breach of the Exchange Listing Rules. If it believes that there may have been a breach of the Exchange Listing Rules, it may refer the suspected breach to the Adjudicator.

## **The Adjudicator**

2B.14 The Board will appoint the Adjudicator.

2B.15 Before determining whether a breach of the Exchange Listing Rules has taken place and those who are responsible for any such breach, the Adjudicator will give the affected parties (referred to in this Chapter as “the Respondents”) a reasonable opportunity to respond in writing to the Adjudicator’s preliminary views.

2B.16 The Adjudicator will inform the Respondents in writing of its decision and, if the Adjudicator determines that a breach of the Exchange Listing Rules has taken place, the Adjudicator will give written reasons for its decision.

## **Disciplinary Review Panel**

2B.17 The pool of potential members of the Disciplinary Review Panel consists of at least 20 members including:

- (1) seven persons representing retail and institutional investors; and
- (2) four legally qualified persons who may be appointed as the chairman of a Disciplinary Review Panel.

*Note: There is no restriction on the number of members of the Disciplinary Review Panel who may also be members of the Listing Policy Committee referred to in rule 2A.18 of the Exchange Listing Rules and thereby the pool for the Listing Decisions Panel and Listing Review Panel referred to in rules 2A.31 and 2A.48 of the Exchange Listing Rules. However, the Chief Executive of HKEC will not be a member of the pool of potential members of the Disciplinary Review Panel.*

- 2B.18 The Board appoints members of the pool of potential members of the Disciplinary Review Panel every year on the recommendation of the Listing Nomination Committee.
- 2B.19 All members of the Disciplinary Review Panel will vacate office every year, unless they are reappointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of reappointment.
- 2B.20 Any member of the pool of potential members of the Disciplinary Review Panel may remain in the pool for a maximum of four consecutive years. A member who has served a maximum term permitted by this rule will generally not be eligible for re-appointment for at least one year after the date on which he last vacates office.
- 2B.21 A member of the pool of potential members of the Disciplinary Review Panel may resign at any time on the giving of reasonable written notice to the Board and the Commission. The Board may remove a member of the pool of potential members of the Disciplinary Review Panel in the event of the member's misconduct or incapacity.
- 2B.22 The Board may fill any casual vacancies that may occur in the Disciplinary Review Panel pool. The Listing Nomination Committee will nominate an eligible person to fill any such casual vacancy. The member who fills the casual vacancy will vacate office at the expiry of the term for which the casual vacancy existed, unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment.
- 2B.23 The Secretary to the Disciplinary Review Panel will normally be a member of staff from the Exchange. The Secretary will refer any procedural matter to the chairman of the Disciplinary Review Panel for decision.
- 2B.24 The Secretary to the Disciplinary Review Panel will select the Panel from the pool of potential members of the Disciplinary Review Panel according to procedures established from time to time under rule 2B.10 of the Exchange Listing Rules.

- 2B.25 The quorum necessary for the transaction of business at each hearing of the Disciplinary Review Panel is three members including the chairman.
- 2B.26 The chairman of the Disciplinary Review Panel may appoint any person to advise on any matter he considers appropriate.
- 2B.27 The chairman of the Disciplinary Review Panel may give any procedural directions he considers appropriate.

### **Listing Nomination Committee**

- 2B.28 The composition of the Listing Nomination Committee is as set out in rule 2A.17 of the Exchange Listing Rules.

### **Review by the Disciplinary Review Panel of Decisions of the Adjudicator**

- 2B.29 Where the Adjudicator makes a determination in respect of a party named in rule 2B.11 of the Exchange Listing Rules, the party may apply to the Disciplinary Review Panel to review the determination in accordance with the procedures established from time to time under rule 2B.10 of the Exchange Listing Rules.
- 2B.30 The application for review referred to in rule 2B.29 of the Exchange Listing Rules must be made in writing to the Secretary to the Disciplinary Review Panel within 10 business days after the date on which the decision is sent to the party seeking review.
- 2B.31 Any determination made by the Adjudicator that is under review will not take effect until the completion of the review and subject to the outcome of the review.
- 2B.32 Upon receipt of an application for review made pursuant to rule 2B.29 of the Exchange Listing Rules, the Secretary to the Disciplinary Review Panel shall select a Disciplinary Review Panel chairman and four other Disciplinary Review Panel members to conduct the review in accordance with the procedures established under rule 2B.10 of the Exchange Listing Rules.

## **Proceedings before the Disciplinary Review Panel**

- 2B.33 The parties to the review, namely the review applicant and the Adjudicator may attend the review and make submissions in such manner and with the assistance of such persons as are permitted under the procedures made under rule 2B.10 of the Exchange Listing Rules. The Disciplinary Review Panel may, at its discretion, refuse to allow a person to assist a party if the Panel is satisfied that it is appropriate to do so.
- 2B.34 The Disciplinary Review Panel may proceed with a hearing in the absence of any party who has been duly notified of the time and place of the hearing unless the Panel is satisfied there is a good reason for the party's failure to attend. A party will be taken to be duly notified if the party's professional advisers or assistants have been so notified.

## **Decisions by the Disciplinary Review Panel**

- 2B.35 The Disciplinary Review Panel will conduct a de novo hearing and may:
- (1) confirm, change or set aside the relevant ruling; or
  - (2) substitute any other ruling which it considers appropriate.
- 2B.36 The Disciplinary Review Panel will inform the parties to the review in writing of its decision and the reasons for that decision, as soon as practicable following the review hearing.
- 2B.37 A determination of the Disciplinary Review Panel is final.

## **Fees and Costs**

- 2B.38 Where a party requests a review by the Disciplinary Review Panel pursuant to rule 2B.29 of the Exchange Listing Rules, its application for review must be accompanied by such fee as is payable to the Exchange pursuant to the procedures established from time to time pursuant to rule 2B.10 of the Exchange Listing Rules.

*Note: If the prescribed fee is not paid at the appropriate time, the application for review will not be valid.*

2B.39 If the Disciplinary Review Panel meets for the purpose of a review for more than two days, then the party referred to in rule 2B.29 as seeking the review must pay to the Exchange such additional fee as is prescribed by the procedures established from time to time under rule 2B.10 of the Exchange Listing Rules.

2B.40 The further fee referred to in rule 2B.39 of the Exchange Listing Rules is payable within 30 days of the date of the Disciplinary Review Panel's decision. Where a fee is not paid in accordance with this rule, the Exchange may recover it as a debt due from the party by whom the fee is payable.

2B.41 Subject to rule 2B.12(9) of the Exchange Listing Rules, each party involved in a review by the Disciplinary Review Panel will bear its own costs.

### **Publicity**

2B.42 The Adjudicator or Disciplinary Review Panel, as relevant, will make public any sanction ordered under rule 2B.12 of the Exchange Listing Rules.

2B.43 The Adjudicator and Disciplinary Review Panel may, at their sole discretion, direct that their decisions be published in any manner they consider appropriate.

2B.44 Any party who is, or has been, subject to disciplinary action brought under this Chapter, must not disclose any information concerning the disciplinary action which information has not been published under rules 2B.42 and 2B.43 of the Exchange Listing Rules, save and except if the Adjudicator or Disciplinary Review Panel, as applicable, so permits.

### **Settlement**

2B.45 The Adjudicator may agree with the Respondent or review applicant the manner in which any disciplinary matter may be settled, and impose such sanctions as may be agreed in accordance with any such settlement, subject to approval as required by any procedures established from time to time under rule 2B.10 of the Exchange Listing Rules.

## **Standard of Proof**

2B.46 The rules of evidence are not applicable to proceedings brought under this Chapter. The Adjudicator and Disciplinary Review Panel:

- (1) may consider any information and give such weight to such information as they consider appropriate, regardless of whether that information would be admissible in a court of law; and
- (2) will determine questions of fact on the standard of proof applicable to civil proceedings.

## **Irregularities**

2B.47 Any subsequent discovery of an inadvertent failure to comply with the Exchange Listing Rules or any procedures established from time to time under rule 2B.10 of the Exchange Listing Rules will not of itself be sufficient to invalidate a decision of the Adjudicator or Disciplinary Review Panel.

## **Conflicts of Interest**

2B.48 The Board has adopted procedures relating to conflicts of interest to ensure that the Exchange, including the Adjudicator, the Secretary to the Disciplinary Review Panel, the Listing Division staff and the members of the Disciplinary Review Panel discharge, and are seen to discharge, their functions in an independent manner. Parties to any proceedings under this Chapter must raise any actual or perceived conflicts of interest at the earliest opportunity and in accordance with the procedures established from time to time under rule 2B.10 of the Exchange Listing Rules.

## **Multiple Cases**

2B.49 Every time the Disciplinary Review Panel convenes under this Chapter, it may, on such basis and in such manner as the chairman of the relevant Disciplinary Review Panel considers appropriate, consider and determine questions in respect of one or more parties or matters in the same meeting.

## **Transitional**

2B.50 All disciplinary matters or proceedings commenced before the commencement of this Chapter will be conducted under the Exchange Listing Rules then in force, save and except if all parties to the disciplinary matters or proceedings agree. For the purposes of this rule:

- (1) a disciplinary matter or proceeding will be deemed to have commenced when the Listing Division sends the Listing Committee a report recommending the commencement of disciplinary action, or when the Adjudicator is referred a suspected breach of the Exchange Listing Rules; and
- (2) the disciplinary bodies and committees in existence before the implementation of this Chapter will continue in existence until all relevant disciplinary proceedings have been concluded.

## **APPENDIX 2:**

### **PROVISION OF PERSONAL DATA AND PRIVACY POLICY STATEMENT**

#### **Provision of Personal Data**

1. Personal Data<sup>12</sup> is collected on a voluntary basis.
2. Please note that HKEx will make the original of all submissions to this consultation exercise available for public inspection at the HKEx offices at 11th Floor, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong for a period of 14 days from the date of publication of the consultation results. To that end, please read the Personal Information Collection Statement below.
3. If you do not wish your name to be disclosed along with your submission, please state that you wish your name to be withheld when you make your submission, in which case HKEx will make available a copy of your submission for public inspection and any references to your name will be blanked out.

#### **Personal Information Collection Statement**

4. This Personal Information Collection Statement (the PICS) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which the Personal Data of respondents will be used after collection, what these respondents are agreeing to in respect of HKEx's use of their Personal Data and their rights under the Personal Data (Privacy) Ordinance.

#### **Purpose of Collection**

5. HKEx may use the Personal Data of respondents collected by HKEx in connection with this consultation paper for one or more of the following purposes:
  - for performing HKEx's functions and those of its subsidiaries under the relevant laws, rules and regulations;

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<sup>12</sup> Personal data as defined in the Personal Data (Privacy) Ordinance, Cap 486.

- for research and statistical purposes;
- for any other lawful purposes

## **Transfer of Personal Data**

6. Personal Data collected may be disclosed by HKEx to members of the public in Hong Kong and elsewhere, as part of the public consultation on this consultation paper.

## **Access to or Correction of Data**

7. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the Personal Data (Privacy) Ordinance. HKEx has the right to charge a reasonable fee for processing any data access request. If you wish to request access to and/or correction of your Personal Data provided in your submission on this consultation paper, you may do so in writing addressed to:

Personal Data Privacy Officer  
 Hong Kong Exchanges and Clearing Limited  
 11th Floor, One International Finance Centre  
 1 Harbour View Street  
 Central  
 Hong Kong  
 cvw@hkex.com.hk

## **Privacy Policy Statement**

8. HKEx is firmly committed to preserving the privacy of respondents in relation to Personal Data supplied to HKEx on a voluntary basis. Personal Data may include names, addresses, e-mail addresses, login names etc. HKEx uses the information for the stated purposes when your Personal Data is collected. The Personal Data will not be used for any other purposes without your consent unless such use is permitted or required by law.
9. HKEx has security measures in place to protect the loss, misuse and alteration of the Personal Data of respondents. HKEx will strive to maintain Personal Data as accurately as reasonably possible and Personal Data will be retained for such period as may be necessary for the proper discharge of the function of HKEx and those of its subsidiaries.