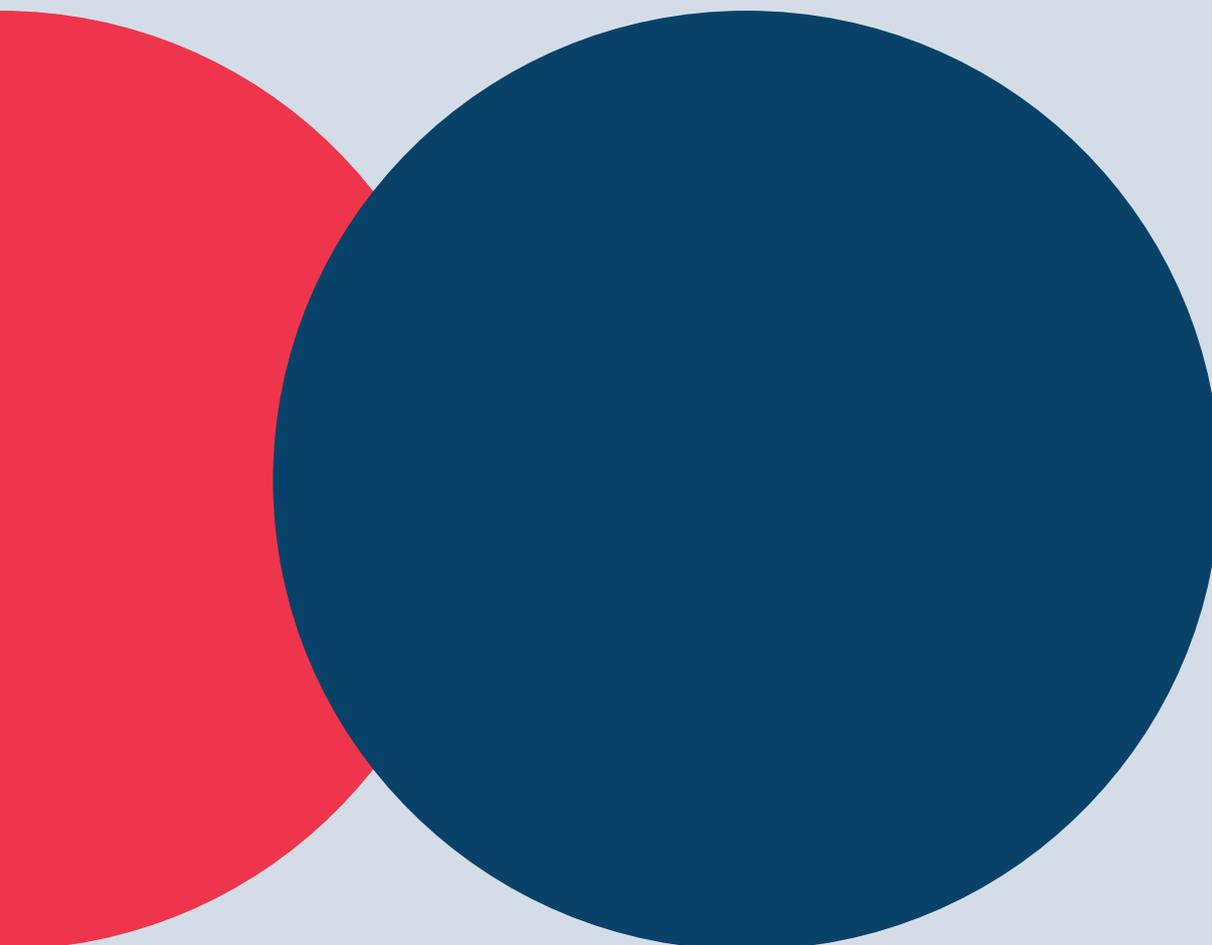


September 2017



CONSULTATION PAPER

DELISTING AND OTHER RULE AMENDMENTS



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Written comments may be sent:

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12th Floor, One International Finance Centre  
1 Harbour View Street, Central  
Hong Kong  
**Re: Consultation Paper on Delisting and other Rule Amendments**

By fax to: (852) 2524 0149

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Please mark in the subject line:  
**Re: Consultation Paper on Delisting and other Rule Amendments**

Our submission enquiry number is (852) 2840 3844.

Respondents are reminded that the Exchange will publish responses on a named basis. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper. Our policy on handling personal data is set out in Appendix III.

Submissions received during the consultation period by **24 November 2017** will be taken into account before the Exchange decides upon any appropriate further action and a consultation conclusions paper will be published in due course.

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## EXECUTIVE SUMMARY

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1. This paper presents our proposals to improve the effectiveness of the delisting framework under the Main Board Listing Rules (**MB Rules**) and the Rules for the Growth Enterprise Market (**GEM Rules**), with a view to addressing the issue of prolonged suspension of trading in issuers' listed securities. This is in the interest of maintaining market quality and reputation.

2. Our proposal includes the following major Rule amendments:

### For MB Rules

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

### For GEM Rules

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

3. For both the MB Rules and the GEM Rules,

- (1) We also propose transitional arrangements for issuers whose securities are under suspension immediately before the effective date of the above proposed framework, and other minor Rule amendments relating to delisting.
- (2) Separately, we propose a number of Rule changes relating to the suspension requirements, in the interests of keeping trading suspension to the shortest duration possible.

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## CHAPTER 1: INTRODUCTION

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4. The Exchange reviews the Rules from time to time to ensure that they address developments in the market and international best practices, and also represent acceptable standards that help ensure investor confidence.
5. As at 30 June 2017, there were 56 issuers<sup>1</sup> whose securities had been suspended for three months or more. They included 25 issuers that did not have sufficient operations or assets of sufficient value to meet the continued listing criteria (PN17 companies), 3 issuers that did not have sufficient public float, and 28 issuers that failed to announce financial results and/or inside information (a majority of which had alleged accounting irregularities or corporate misconduct issues). 40 issuers had been suspended for over a year.
6. Whilst trading suspension gives an issuer the opportunity to remedy the issues causing the suspension with a view towards trading resumption, a prolonged suspension prevents the proper functioning of the market.
7. In 2015, the Listing Committee reviewed the delisting policy and considered it necessary to adopt a more robust delisting policy in the interest of maintaining the reputation of the Hong Kong market<sup>2</sup>. The existence of long suspended issuers in persistent breach of the Rules in a material manner, or suspected of illegal or improper activities, undermines the quality of our market and its reputation. A robust delisting policy with an effective delisting procedure will facilitate an orderly exit of poor quality issuers, incentivize suspended issuers to act promptly towards resumption and provide a deterrent effect against issuers committing material breaches of the Rules. This will also provide more certainty to the market on how the Exchange handles suspended issuers and brings its practice more in line with other major markets.

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<sup>1</sup> Including 53 Main Board issuers and 3 GEM issuers

<sup>2</sup> Since the Listing Committee's review, the Exchange has adopted a more robust delisting approach. For example, it has exercised its right under Rule 6.01(4) to commence procedures to delist suspended issuers on the ground that they were no longer suitable for listing due to their continued failures to address issues relating to false accounting, management integrity, material internal control failures and/or delinquency in accounts and resume trading.

## **Purpose of this paper**

8. This paper proposes Listing Rule amendments to improve the effectiveness of the delisting framework applicable to Main Board issuers and GEM issuers (Chapter 2). Separately, with a view to improving market quality, the Exchange has been conducting a holistic review of its regulation relating to backdoor listings, continuing listing criteria and capital raisings by listed issuers, which are outside the scope of this paper. A consultation paper on issues and proposals relating to capital raisings has been separately published. We are continuing discussions relating to backdoor listings and continuing listing criteria and plan to publish separate consultation papers in due course to set out our proposals.
9. Chapter 3 consults the market on certain suspension requirements and related MB Rules and GEM Rules, with a view to keeping trading suspensions to the shortest duration possible.

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## CHAPTER 2: LONG SUSPENSION, DELISTING FRAMEWORK AND PROPOSED RULE AMENDMENTS

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### A. BACKGROUND

#### Regulatory framework for listed issuers

10. The Exchange, as frontline regulator of listed issuers, has a statutory duty under the Securities and Futures Ordinance (**SFO**) to, so far as reasonably practicable, maintain a fair, orderly and informed market for the trading of securities. It fulfills its duty through the administration of the Listing Rules, which set out continued listing criteria and obligations concerning disclosure of information and other actions for protecting shareholders' interests (such as shareholder approval for material transactions, requirements for connected transactions, and corporate governance measures). While being listed, issuers must comply with the Rules.
11. The Securities and Futures Commission (**SFC**) is the principal regulator of Hong Kong securities market. Under the SFO, it may investigate potential breaches of the SFO or other misconduct relating to a listed issuer or its management (for example, misappropriation of corporate assets). To safeguard shareholders' interests, it may also seek remedies from courts for shareholders suffering damages resulting from such misconduct. These powers address the concern about the business or affairs of an issuer being conducted in a manner which prejudices shareholders' interests and protect minority shareholders, particularly where the issuer is suspected of illegal or improper activities which involve its management (usually with the controlling shareholder).
12. Whereas the Exchanges and the SFC act as gatekeeper of market quality and integrity for the protection of investors, the directors of an issuer have the primary responsibility for the issuer's management and operations and play the primary role in safeguarding the interests of the issuer and its shareholders.

#### Trading suspension

13. To maintain a fair, orderly and informed market or protect investors, the Exchange may suspend trading in any securities. Trading suspension is a tool to address both potential and actual false, unfair or disorderly market. By creating a break in trading, suspension aims to avert the risk of a false, unfair or disorderly market.

14. In practice, issuers are suspended as they have triggered specific suspension requirements under the Rules. Common examples include failures to publish financial statements or inside information, maintain a sufficient public float, or maintain sufficient operations or assets. Trading suspension gives the issuer an opportunity to remedy the issues causing the suspension and thereafter resume trading.
15. Other jurisdictions have trading suspension procedures in place based on broadly similar objectives. However, the detail of the arrangements is usually tailored to local circumstances and may vary considerably. For example,
  - Australia and the UK adopt suspension frameworks similar to that in Hong Kong. The Australian Securities Exchange or the UK Financial Conduct Authority, as the case may be, may suspend trading in an issuer's listed securities for non-compliance with the listing rules or other reasons for the purpose of maintaining an orderly and informed market or the smooth operation of the market. Trading would resume after the issue causing the suspension is remedied.
  - The US implements a different approach, and places primary importance on the provision of a liquid market. Where a listed issuer falls below a continuing listing criterion, it is obliged to remedy the situation within a prescribed period<sup>3</sup>. Trading in the issuer's securities can generally continue while it is taking remedial action. If the issuer fails to remedy within the prescribed period, it will be delisted. Trading suspension forms part of the delisting process, and would take place after the exchange makes a delisting decision. The duration of suspension is short, normally two weeks.

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<sup>3</sup> Generally, the prescribed period for re-complying with a qualitative criterion under the rules of the New York Stock Exchange is 18 months. Issuers failing to publish financial reports will have 6 months (extendable by the exchange for additional 6 months) for issuing the outstanding reports. For quantitative criteria, an US listed issuer may be delisted promptly if its market capitalization falls below the required minimum over a consecutive 30 trading days. In addition, an issuer with an average closing price of less than US\$1.00 for a consecutive 30 trading days may also be delisted if its share price and average share price remain less than US\$1.00 for another 6 months.

- The A-share markets on the Mainland adopt a \*ST arrangement with specific suspension requirements. Under this arrangement, trading in shares of issuers subject to a risk of delisting is allowed to take place on a Risk Alert Board. These issuers include, for example, those recording a net loss in the latest two financial years or revenue of less than RMB10 million in the latest financial year or those delinquent in publishing financial reports. The Mainland exchange prefixes a “\*ST” to the short name of the relevant stock as a warning of the risk of delisting to investors and imposes a five percent limit on any share price increase or decrease. If the issuer is unable to remedy the issue causing it to be subject to the risk of delisting within a specified period, trading will be suspended. If the issuer remains unable to remedy within a further period, it will be delisted.
16. The suspension regime in Hong Kong is different from that in the US and the PRC. In Hong Kong, the suspension requirements support the Exchange in meeting its obligation to maintain a fair, orderly and informed market<sup>4</sup>. As noted in paragraph 5 above, issuers are long suspended due to failures to publish accounts or other material information or failures to maintain sufficient operations or public float. Trading in their shares would unlikely be on a fair, orderly or informed basis. In these circumstances, the Exchange would not be able to meet its statutory duty if it were to allow the trading of these shares albeit with a trading risk warning.
  17. In the interest of maintaining the reputation and efficiency of our market, the Exchange took measures in recent years to try and keep any necessary trading suspension to the minimum. For example, it issued Guidance Letter GL83-15 in December 2015 on good practices about trading suspension pending listed issuers’ disclosures of material information and reminded issuers of their obligations to use their best efforts to plan their affairs to avoid trading suspension. It issued Guidance Letter GL87-16 in April 2016 and advised issuers subject to rumors or market commentaries with allegations of material irregularities to issue a clarification announcement on their position and, if trading is suspended due to the allegations, resume trading. This approach allows issuers to conduct appropriate investigations into the allegations when trading in their shares continues.

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<sup>4</sup> The SFC also has the power to direct the Exchange to suspend all dealings in an issuer’s shares under Rule 8 of the Securities and Futures (Stock Market Listing) Rules.

## Delisting

18. To ensure the proper functioning of the market, any trading suspension should be kept to a period that is absolutely necessary to ensure that shareholders and other investors are not denied reasonable access to the market. The directors of a suspended issuer are obliged to take adequate action for the issuer to remedy the issues causing the suspension and resume trading as soon as practicable. This is to fulfil their undertakings given to the Exchange to procure the issuer to comply with the Rules.
19. If the issuer fails to remedy the issues, the trading suspension can be prolonged. Prolonged suspension can deprive shareholders and investors of the ability to trade in the securities and prevents the proper functioning of the market. In these circumstances, it is appropriate for the Exchange to delist the issuer to fulfil its statutory duty to maintain a fair, orderly and informed market for the trading of securities. As mentioned in paragraph 7, the Listing Committee considers it necessary to adopt a more robust delisting policy in the interest of maintaining the reputation of the Hong Kong market.
20. Upon delisting, an issuer ceases to be regulated by the Exchange under the Rules. However, delisting would not preclude the SFC from exercising its power of investigating the issuer or seeking remedies from courts for shareholders, provided that the conduct or incident in question occurs before delisting. In addition, the directors of a delisted issuer continue to have the primary responsibility for the issuer's management and operations and play the primary role in safeguarding the interests of the issuer and its shareholders.

## **B. MB RULES**

### **CURRENT DELISTING FRAMEWORK AND PRACTICAL ISSUES**

#### Current delisting framework

21. Under MB Rule 6.01 the Exchange may at any time cancel the listing of any securities for the purpose of protecting investors or maintaining an orderly market. The rule specifies four circumstances under which the Exchange may cancel a listing, including where an issuer (a) is in material breach of the Rules; (b) fails to maintain sufficient public float; (c) fails to maintain sufficient operations or assets; and (d) is no longer suitable for listing.

22. The criterion of “no longer suitable for listing” provides considerable discretion for the Exchange to delist an issuer for the purpose of fulfilling its statutory duty to maintain an orderly, informed and fair market and protecting investors. The Exchange has a broad discretion to decide what is required by way of the suitability requirement to reflect currently acceptable standards in the market place and ensure that investors have and can maintain confidence in the market. Non-exhaustive examples of situations that may bring an issuer’s suitability into question include issues relating to management integrity, material internal control failures, material non-compliance with laws and regulations, and inability or failure to disclose material information or provide the Exchange with information for protecting investors or maintaining an orderly, informed and fair market.
23. The MB Rules set out delisting procedures applicable only in two specific circumstances:
- For issuers without sufficient operations or assets (**PN17 companies**), Practice Note 17 sets out a 3 stage delisting procedure (of at least six months each). At the end of each stage, the Exchange must assess whether it is appropriate to proceed to the next stage, depending on whether the issuer has submitted a viable resumption proposal to the Exchange; and
  - For issuers that are no longer suitable for listing, the Exchange may, under MB Rule 6.10, publish a delisting notice specifying a period within which the issuers must remedy the issues to avoid delisting.
24. For delisting under the other criteria in MB Rule 6.01, the Rules do not provide a delisting process. MB Rule 6.04 sets out the general principle that the continuation of a suspension for a prolonged period without the issuer taking adequate action to obtain restoration of listing may lead to the Exchange cancelling the listing.
25. A decision to delist an issuer is made by the Listing Committee, it may decide to delist an issuer, or to allow additional time for the issuer to remedy matters giving rise to trading suspension.

#### Practical issues

26. The current delisting Rules focus on requiring the issuers to take steps to resume trading, rather than facilitating delisting. This takes into account that in the event of delisting, minority shareholders might end up holding shares in an unlisted vehicle with no exit.

27. However, without an effective delisting framework, the progress of resumption could drag on for a long time if the issuer is unable or otherwise fails to remedy the issues causing the suspension. This prevents the proper functioning of the market and gives rise to an uncertainty about whether and when the issuer would be relisted (or delisted).
28. The Exchange has found it difficult in practical terms to delist issuers on a timely basis under the existing delisting framework:
- (a) Where an issuer is suspended for a prolonged period and yet taking steps to remedy issues giving rise to the suspension, the current Rules do not provide a clear benchmark to support a delisting decision. This is because MB Rule 6.04 does not specify what amounts to a “*prolonged period*” or “*adequate action*”. Consequently, issuers that have committed material breaches of the MB Rules (e.g. failed to maintain the public float) may not be incentivized to take active steps to rectify matters.
  - (b) The Exchange may not have sufficient basis to support a delisting decision under any delisting criteria in MB Rule 6.01. For example, where an issuer fails to publish financial results due to allegations about accounting or other corporate irregularities, the Exchange is unlikely to have evidence to conclude whether the issuer is unsuitable for continued listing before the outcome of the relevant investigation. Such investigation (which may be conducted by other regulators) could take a considerable period of time, thereby prolonging the period of suspension.
  - (c) For PN17 companies, the three-stage delisting procedure (of at least six months each) is cumbersome and, as noted in paragraph 26, focuses on requiring the issuers to take steps to resume trading, rather than facilitating delisting. In many cases, the process takes more than 18 months because the entry into each stage is a decision of the Exchange which requires an assessment of the viability of any resumption proposal that may be submitted by the issuer. In addition, each decision is subject to two levels of review and, therefore, the delisting process will be further prolonged if a PN17 company decides to review the Exchange’s decision to put it into each of the three delisting stages.

There were cases where issuers had been suspended for long periods due to failures to publish periodic accounts or to address allegations of material irregularities. These issuers substantially wound down their operations during the suspension period, causing the PN17 delisting process to commence and further delaying the delisting.

19 PN17 companies resumed trading between 2012 and 2016. The suspension periods of all (except one) of them were over 36 months, far exceeding the 18 months contemplated in Practice Note 17.

## **PROPOSALS**

### ***(1) Proposed delisting framework***

29. To provide more certainty to the market on the Exchange's handling of long suspended issuers, the delisting framework should also provide a delisting time frame for these issuers.
30. We propose:
  - Add a separate delisting criterion under new MB Rule 6.01A to allow the Exchange to delist an issuer after its continuous suspension for a prescribed fixed period.
  - For delisting based on a delisting criterion in MB Rule 6.01, the Exchange may publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting, or delist an issuer immediately. This process is similar to the current MB Rule 6.10<sup>5</sup> applicable to issuers that are no longer suitable for listing.
  - Remove Practice Note 17 as the new delisting process above will apply to issuers without maintaining sufficient operations or assets.

The Exchange has the discretion to invoke a delisting criterion under MB Rule 6.01 or the fixed period criterion as it considers appropriate, despite that more than one delisting criterion may be applicable based on the facts and circumstances of a particular case.

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<sup>5</sup> See paragraph 23

*i) Fixed period delisting criterion*

31. The fixed period delisting criterion is aimed at delisting issuers which fail to resolve the issues requiring their suspensions after continuous suspension for a prescribed fixed period. It would give suspended issuers a clear deadline, incentivizing them to act promptly towards resumption. With this additional criterion, the Exchange will be able to delist an issuer where it does not have a clear basis to do so under MB Rule 6.01 (see paragraph 28(b)).
32. Similar fixed period delisting criteria are adopted in Australia and the UK, whose suspension and delisting frameworks are similar to that in Hong Kong.

Appropriate period under the fixed period delisting criterion

33. The duration of the fixed period should strike a balance between:
  - providing sufficient time for issuers generally to remedy issues, thus allowing minority shareholders a chance to regain access to the market; and
  - incentivizing suspended issuers to act diligently and promptly to remedy issues and providing an appropriate deterrent against issuers committing material breaches of the MB Rules. This is in the interest of maintaining the quality of our market and its reputation.
34. There were 50 long suspended issuers whose securities resumed trading between 2012 and 2016 (excluding PN17 companies which are subject to a delisting process<sup>6</sup>). 26 (52%), 33 (66%), 39 (78%) and 46 (92%) of them resumed trading within 12, 18, 24 and 36 months of their initial suspensions respectively.

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<sup>6</sup> For an analysis on PN17 companies, see paragraph 43 onwards.

35. In comparison, the Australian Securities Exchange may delist issuers whose securities were suspended continuously for 36 months<sup>7</sup>. The UK Financial Conduct Authority may delist issuers after a six month suspension period<sup>8</sup>. The New York Stock Exchange generally requires an issuer falling below a continued listing criterion to re-comply with the criterion within 18 months<sup>9</sup> to avoid delisting.
36. We invite respondents to consider fixed periods of 12, 18 or 24 months:
- In our experience a 24 month period would allow a large majority of issuers to remedy the suspension issues. This is despite the lack of a deadline for resumption under current rules.
  - Alternatively, a shorter period such as 12 months would provide a greater incentive for early resumption and a stronger deterrent effect, thus supporting a more robust delisting policy. The shorter the period, the greater the incentive for an issuer to act promptly towards trading resumption and the stronger the deterrent effect against material breaches of the MB Rules.
  - An 18 month period is a “middle ground” and is broadly aligned with the intention of the 3 stage delisting process under PN17.
37. It is a balancing exercise to fix the duration of the fixed period (as noted above). For the fixed period criterion to be effective and credible, the duration should be reasonably long enough for issuers to remedy issues so as to avoid the need of the Exchange to grant an extension frequently.
38. The Listing Committee has the discretion to extend this period in individual cases. We envisage an extension would be given only in exceptional circumstances, for example where an issuer has substantially implemented the steps that, it has shown with sufficient certainty, will lead to resumption but requires an extension of time to finalize the matters.

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<sup>7</sup> In January 2014, the ASX adopted a fixed delisting criterion based on continuous suspension for 36 months to address a similar issue of prolonged suspensions. According to ASX public consultation paper of September 2013, at that time over 100 ASX-listed companies had their securities suspended from trading (e.g. for failure to lodge periodic reports). About 70% of the suspensions had lasted for 12 months or more and a small number for about a decade. This issue was attributed to ASX's then policy to allow issuers to remain listed while pursuing a proposal likely to lead to the resumption of trading.

<sup>8</sup> In the UK, FCA may under the UK listing rules delist an issuer whose securities have been suspended continuously for more than 6 months. In practice, FCA appears to allow suspended issuers more time to resolve issues and resume trading before exercising its delisting power.

<sup>9</sup> Also see paragraph 15 above.

Q1: *Do you agree with our proposed MB Rule amendment to add a fixed period delisting criterion? If not, why?*

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

- *12 months*
- *18 months*
- *24 months*
- *Other \_\_\_\_ (please state)*

*Please also explain why.*

*ii) Delisting process under MB Rule 6.01*

39. For delisting based on a delisting criterion in MB Rule 6.01, the Exchange may under the new process either give the issuer a specific remedial period or delist the issuer immediately.
40. The Exchange will normally specify a remedial period before delisting. The length of the remedial period will depend on the matters required to be remedied, thereby providing sufficient flexibility to address the particular circumstances of an issuer. For example, the Exchange will expect an issuer without sufficient public float to restore the minimum public float within a reasonably short period of time<sup>10</sup>.
41. While retaining the power to delist an issuer immediately<sup>11</sup>, we envisage to exercise it in exceptional circumstances where the matters triggering the application of a delisting criterion are so fundamental to the general principles for listing and are beyond remedy. For example, the Exchange may immediately delist an issuer on the ground that it is unsuitable for continued listing after it is found by the court that its management and controlling shareholder have operated a fraudulent scheme to overstate its business and profits.
42. Our delisting decisions made under MB Rule 6.01 are subject to the review procedures set out in Chapter 2B.

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<sup>10</sup> In the past, we specified a remedial period of six months for an issuer to restore the required minimum public float.

<sup>11</sup> The Exchange already has the power to delist an issuer at any time under the current MB Rule 6.01

iii) *Remove Practice Note 17*

43. Practice Note 17 will be removed. The Exchange may delist issuers without sufficient operations or assets under either the fixed period criterion or the new delisting process for MB Rule 6.01.
  44. The Exchange envisages that initially, it would normally apply the fixed period criterion which provides a reasonably long period of time for issuers to remedy issues and resume trading. Where appropriate, the Exchange may give the issuer a specific remedial period under MB Rule 6.01.
  45. We expect issuers to properly plan their actions to meet the timeframe for resumption. An extension of time, if often given, could undermine the certainty for delisting and the issuer's incentive to act promptly towards resumption. Therefore, we envisage that an extension of time will be given only in exceptional circumstances, for example where an A1 application has been approved by the Exchange and the issuer requires additional time for implementation.
  46. If an issuer has questions about their resumption proposals, they can always seek our non-binding guidance. We will also publish a guidance letter on our expected standard for re-compliance with MB Rule 13.24.
  47. As a consequential amendment of the removal of Practice Note 17, we will add a note to MB Rule 13.24 setting out the characteristics of issuers which are unable to comply with MB Rule 13.24 (which are now set out in paragraph 2.2 of Practice Note 17).
- Q3: *Do you agree with our proposed MB Rule amendment expressly to allow the Exchange to delist an issuer under any applicable delisting criteria in MB Rule 6.01 immediately, or publish a delisting notice and give the issuer a period of time to remedy the relevant issues to avoid delisting. If not, why?*
- Q4: *Do you agree with our proposal to remove Practice Note 17 and to delist issuers without sufficient operations or assets under either the fixed period criterion or the new delisting process for MB Rule 6.01? If not, why?*
- Q5: *Do you agree with our proposal to add a note to MB Rule 13.24 setting out the characteristics of issuers which are unable to comply with MB Rule 13.24. If not, why?*

**(2) Other minor amendments**

*i) Material breach of the MB Rules as reason for suspension or delisting*

48. Suspension or cancellation of a listing due to a breach of the MB Rules is a disciplinary decision of the Listing Committee under MB Rule 2A.09, which is subject to the review procedures in Chapter 2A. MB Rule 6.01(1) also provides that a material breach of the MB Rules is a specific ground for suspension or cancellation of a listing. This provision may create ambiguity as to whether a suspension or cancellation decision due to a material breach of the MB Rules should be treated as a disciplinary decision under Chapter 2A or a non-disciplinary decision which will be subject to the Chapter 2B review procedure. Accordingly, we propose to remove MB Rule 6.01(1).
49. We also propose to clarify in MB Rule 2B.07(5) that decisions about cancellation of listing under MB Rule 6.01 are to be made and reviewed under the procedures for non-disciplinary matters set out in Chapter 2B, notwithstanding that the reasons for the cancellation include or amount to a breach of the MB Rules by the listed issuer.

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

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

*ii) Quarterly updates by suspended issuers*

50. Currently a suspended issuer must publish periodic announcements of its developments. To ensure that updates are given to the market at regular intervals and that the Exchange may give appropriate guidance, we propose to specify in the MB Rules a requirement to announce quarterly updates on the issuer's developments and its progress on satisfying resumption conditions.
51. In any event, a suspended issuer remains obliged to disclose inside information under the SFO and the listing rules.

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

### **(3) Transitional arrangements**

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

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

## **C. GEM RULES**

### **CURRENT DELISTING FRAMEWORK AND PRACTICAL ISSUES**

53. The GEM delisting framework, set out in Chapter 9 of the GEM Rules, is similar to that of the Main Board subject to the following two key differences:
- GEM Rule 9.15 sets out a delisting procedure applicable to all the existing delisting criteria under GEM Rules 9.01 and 9.04 (which are similar to that set out in MB Rule 6.01). Under this procedure, the Exchange may publish a delisting notice specifying a period (ordinarily, of 6 months) within which the issuer must remedy the issues to avoid delisting<sup>12</sup>.

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<sup>12</sup> In comparison, the MB Rules specify delisting procedures for PN17 companies and issuers no longer suitable for listing only.

- As this delisting procedure also applies to issuers without sufficient operations or assets, there is no equivalent of current Main Board Practice Note 17 in the GEM Rules.
54. Given these differences, the main practical issue encountered by the Exchange arises from the situation where it does not have a clear basis to timely delist an issuer under GEM Rules 9.01 or 9.04. This is one of the practical issues that may arise from the current Main Board delisting framework (see paragraph 28(b) above).

## **PROPOSALS**

55. We do not propose fundamental changes to the delisting mechanism for GEM, as noted in our Consultation Paper on Review of the GEM and Changes to the GEM and Main Board Listing Rules<sup>13</sup>. We propose the following to improve the effectiveness of the delisting framework under the GEM Rules.

(1) Proposed fixed period delisting criterion

56. We propose to add a fixed period delisting criterion to allow the Exchange to delist an issuer after its continuous suspension for a prescribed fixed period. This is consistent with our proposal to deal with same practical issues in the case of Main Board issuers (see paragraph 31 above).
57. There were 13 long suspended GEM issuers whose securities resumed trading between 2012 and 2016 (excluding those given a remedial notice under GEM Rule 9.15), 3 (23%), 5(38%), 8 (62%) and 11 (85%) of them resumed trading within 6, 12, 24 and 36 months of their initial suspensions respectively. These figures are indicative only as these issuers acted in the absence of a resumption deadline.
58. We invite respondents to consider a fixed period of 6 months or 12 months.
- A 6 month period is benchmarked to the period that the Exchange will ordinarily specify in a remedial period under GEM Rule 9.15.

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<sup>13</sup> Part F of Chapter 3 of the Consultation Paper.

- A 12 month period would give additional time for an issuer to identify the underlying issues and prepare its remedial action. In most cases where the Exchange invoked an existing delisting criterion and imposed a remedial period, the issuer had been suspended for a period in which it had had the opportunity to identify the underlying issues and develop its remedial plan.

59. As a transitional arrangement, we propose that for issuers that are suspended as at the effective date of this proposed fixed period criterion, the fixed period will commence from the effective date.

*Q10: Do you agree with our proposed GEM Rule amendment to add a fixed period delisting criterion? If not, why?*

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

- *6 months*
- *12 months*
- *Other \_\_\_ (please state)*

*Please also explain why.*

*Q12: Do you agree with the proposed transitional arrangement described above? If not, why?*

(2) Other minor amendments

60. Under current GEM Rule 9.15, the Exchange may delist an issuer at any time or if the issuer fails to remedy the relevant issues within a remedial period specified by the Exchange. The effect is essentially the same as our proposed amendments to MB Rule 6.10 (see paragraphs 30 and 40 above). As set out in Appendix 2, we propose to align the wording of GEM Rule 9.15 with the proposed amendments to MB Rule 6.10.

61. We also propose the following minor amendments, to be consistent with our proposals to the MB Rules (see paragraphs 48 to 51 above):

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

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

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

*Q15: Do you agree with our proposal to clarify in GEM Rule 4.07(6) the applicable procedures for reviewing decisions to suspend or cancel a listing under Chapter 9 of the GEM Rules? If not, why?*

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

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## CHAPTER 3: TRADING SUSPENSIONS AND RELATED MATTERS

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62. This Chapter discusses our views and proposals to amend certain suspension and related requirements, in the interest of keeping trading suspension to the shortest duration possible.

**(I) Specific suspension requirement - non-publication of notifiable transactions**

63. MB Rule 6.01 / GEM Rules 9.01 and 9.04 set out circumstances where trading suspension (and cancellation of listing) may be necessary for the protection of investors. In addition, under MB Rule 13.10A / GEM Rule 17.11A, an issuer must apply for a trading halt<sup>14</sup> if it has, or reasonably believes that it has, inside information that is subject to disclosure under Part XIVA of the SFO. A trading halt provides a short break to allow an issuer time to announce inside information, so that investors may trade on an informed basis.

64. The Listing Rules also set out specific suspension requirements related to the disclosure of information, including failure to announce an agreement about a share or a major (or above) transaction under MB Rule 14.37(1) / GEM Rule 19.37(1). In effect, MB Rule 14.37 / GEM Rule 19.37 assume that a share or major (or above) transaction is inside information.

65. We propose to remove this bright line trading halt requirement. With the market having experience in gauging the price sensitivity of information for the purposes of complying with the requirement to disclose inside information under the SFO, we consider that it is no longer necessary to retain MB Rule 14.37(1) / GEM Rule 19.37(1).

66. We also propose to remove MB Rule 14.37(2) / GEM Rule 19.37(2) which states that an issuer having signed an agreement for a notifiable transaction (which it reasonably believes would require disclosure under Part XIVA of the SFO) must immediately apply for a trading halt or suspension pending announcement of the agreement. We believe that MB Rule 13.10A / GEM Rule 17.11A already provides sufficient clarity that a trading halt or suspension is required when the announcement cannot be promptly made in this situation. MB Rule 14.37(2) / GEM Rule 19.37(2) should be deleted.

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<sup>14</sup> In this paper, the terms trading halt and trading suspension are used interchangeably.

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

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

**(I) Other proposed amendments - resumption of trading at the direction of the Exchange**

67. The Exchange has an obligation to maintain an orderly and fair market for the trading of listed securities. Under MB Rule 6.07 / GEM Rule 9.12, the Exchange can direct the resumption of trading, but under MB Rule 6.08 / GEM Rule 9.13 this power cannot be exercised without first giving the issuer an opportunity of being heard by the Listing Committee.
68. To expedite the process, we propose to delegate authority to the Listing Department to direct resumption of trading. While this decision may be reviewed by the issuer, we also propose to expedite the review procedures, including requiring any review application (with written reasons) to be submitted by the issuer within 2 days of a decision to direct resumption. This expedited review procedure is similar to that applying to the Listing Department's decision to return a new applicant's listing application to its sponsor. See the proposed amendments to MB Rules 2B.08 and 6.08 / GEM Rules 4B.08 and 9.13.
69. This proposal would simplify the relevant process with a view to expediting a directed resumption of trading. An issuer will continue to have two levels of review of the decision to direct resumption.

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

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# APPENDIX I : DRAFT AMENDMENTS TO THE MAIN BOARD RULES

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## Chapter 2A

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

#### Functions and Powers of the Listing Appeals Committee

- 2A.36. The Listing Appeals Committee shall be the review body in respect of any decision of the Listing Committee on any of the following matters:—
- (5) that the listing of a listed issuer be cancelled; or
  - (6) any decision pursuant to rule 2A.09(2), (3), (5), (7), (8) or (9); ~~or~~
  - (7) ~~[Repealed] that trading in the shares of an issuer be restored pursuant to Rule 6.07 of the Listing Rules.~~

## Chapter 2B

### GENERAL

#### REVIEW PROCEDURE

##### Review cases to be considered by the Listing Appeals Committee

- 2B.07 The Listing Appeals Committee shall be the review hearing body in respect of any decision of the Listing Committee or the Listing (Review) Committee on any of the following matters:—
- ...
- (5) Cancellation of a listing
    - (a) ...

- (b) Where the Listing Committee considers it necessary decides to cancel the listing of a listed issuer for the protection of investors or the maintenance of an orderly market pursuant to rule 6.01, or in any of the circumstances set out in rule 6.01(2), (3) or (4) or rule 6.01A(1), the listed issuer shall have the right to have that decision referred to the Listing (Review) Committee ~~again~~ for review.
- (c) Where the Listing (Review) Committee endorses, modifies or varies the earlier decision of the Listing Committee, the listed issuer shall have a right to further and final review of that decision by the Listing Appeals Committee, whose decision shall be conclusive and binding on the listed issuer.
- (d) For the avoidance of doubt, any decision to cancel a listing within sub-paragraph (b) above is subject to the procedures set out in this Chapter, notwithstanding that the reasons for the cancellation include or amount to a breach of the Exchange Listing Rules by the listed issuer.

*Note: See Practice Note 17 for Delisting Procedures.*

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

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

- 2B.08 (1) Subject to (3) below, Aa Review Request for reviewing any decision of the Listing Division, the Listing Committee or the Listing (Review) Committee (as the case may be) under rules 2B.05(1), 2B.06 and 2B.07 must be served on the Secretary within 7 business days of receipt of either the relevant decision, or if the relevant party requests a written decision under rule 2B.13(1), that written decision.
- (2) A Review Request for reviewing a Return Decision or a Listing Committee's decision to endorse a Return Decision must include the grounds for the review together with reasons and be served on the Secretary within 5 business days of receipt of the written decision under rule 2B.13(2).
- (3) A Review Request made under rule 2B.06 for reviewing a decision of the Listing Division to direct the resumption of trading or, if such decision has been referred to the Listing Committee for review, the Listing Committee's decision on such review, must include the grounds for the review together with reasons and be served on the Secretary within 2 business days of receipt of the written decision under rule 2B.13(3).

#### **Request for written reasons**

- 2B.13 (1) Except for a review relating to a Return Decision or a decision to direct the resumption of trading, on receipt of a decision by the Listing Division, the Listing Committee, the Listing (Review) Committee or the Listing Appeals Committee (as the case may be) a relevant party has 3 business days to request written reasons for the decision. The Listing Division, the Listing Committee, the Listing (Review) Committee or the Listing Appeals Committee (as the case may be) will provide written reasons within 14 business days of receipt of the request.
- (2) The Listing Division, the Listing Committee or the Listing (Review) Committee (as the case may be) will provide written reasons for its Return Decision or decision to endorse a Return Decision.
- (3) The Listing Division, the Listing Committee or the Listing (Review) Committee (as the case may be) will provide written reasons for its decision to direct the resumption of trading under rule 6.07 or decision to endorse such a decision.

## Chapter 6

### GENERAL

#### TRADING HALT, SUSPENSION, CANCELLATION AND WITHDRAWAL OF LISTING

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

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

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

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

- (a) For a suspended listed issuer who has been subject to Practice Note 17 immediately before the Effective Date, Practice Note 17 continues to apply.

- (b) Subject to (a), if, as at the Effective Date, trading in an issuer's securities has been continuously suspended:
  - (i) for less than 12 months, the [ ] month period referred to in rule 6.01A(1) commences immediately from the Effective Date; or
  - (ii) for 12 months or more, the [ ] month period referred to in rule 6.01A(1) commences [ ] months before the Effective Date.<sup>15</sup>

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

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

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

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

*Note:*

- (1) ... .
- (2) ... .
- (3) See Practice Note 11.

<sup>15</sup> The number of months to be inserted to [ ] is subject to the length of the period under this fixed period delisting criterion. See paragraph 52 of the consultation paper.

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

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

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

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

## Chapter 13

### Continuing Obligations

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

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

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

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

## Chapter 14

### Requirements for all transactions

#### *Trading halt and suspension of dealings*

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

## **Practice Note 17**

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

Issued pursuant to rule 1.06 of the Exchange Listing Rules

### **SUFFICIENCY OF OPERATIONS AND DELISTING PROCEDURES**

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

#### **1. Definition**

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## APPENDIX II : DRAFT AMENDMENTS TO THE GEM RULES

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### Chapter 3

#### GENERAL

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

##### Functions and powers of the Listing Appeals Committee

- 3.37. Listing Appeals Committee shall be the review body in respect of any decision of the GEM Listing Committee on any of the following matters:—
- (5) ~~[Repealed] that a request by an issuer for the suspension of dealings in its securities has been rejected or where a decision has been made to direct the resumption of dealings in the issuer's securities;~~
  - (6) ...

### Chapter 4

#### GENERAL

#### REVIEW PROCEDURE

Review cases to be considered by the Listing Appeals Committee

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

~~(b) Where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision, that listed issuer shall have the right to have the decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on that listed issuer~~

(6) Cancellation of a listing

(a) ...

(b) Where the GEM Listing Committee considers it necessary decides to cancel the listing of a listed issuer in any of the circumstances set out in rule 9.14 or rule 9.14A(1), the listed issuer shall have the right to have that decision referred to the GEM Listing (Review) Committee again for review.

(c) Where the GEM Listing (Review) Committee endorses, modifies or varies the earlier decision of the GEM Listing Committee, the listed issuer shall have a right to further and final review of that decision by the Listing Appeals Committee, whose decision shall be conclusive and binding on the listed issuer.

(d) For the avoidance of doubt, any decision to cancel a listing within sub-paragraph (b) above is subject to the procedures set out in this Chapter, notwithstanding that the reasons for the cancellation include or amount to a breach of the GEM Listing Rules by the listed issuer.

### **Time of application**

4.08 (1) Subject to (3) below, Aa Review Request for reviewing any decision of the Listing Division, the GEM Listing Committee or the GEM Listing (Review) Committee (as the case may be) under rules 4.05(1), 4.06 and 4.07 must be served on the Secretary, within 7 business days of receipt of either the relevant decision, or if the relevant party requests a written decision under rule 4.13(1), that written decision.

- (2) A Review Request for reviewing a Return Decision or a GEM Listing Committee's decision to endorse a Return Decision must include the grounds for the review together with reasons and be served on the Secretary within 5 business days of receipt of the written decision under rule 4.13(2).
- (3) A Review Request made under rule 4.06 for reviewing a decision of the Listing Division to direct the resumption of dealings or, if such decision has been referred to the GEM Listing Committee for review, the GEM Listing Committee's decision on such review, must include the grounds for the review together with reasons and be served on the Secretary within 2 business days of receipt of the written decision under rule 4.13(3).

### **Request for written reasons**

- 4.13
- (1) Except for a review relating to a Return Decision or a decision to direct the resumption of dealings, on receipt of a decision by the Listing Division, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee (as the case may be) a relevant party has 3 business days to request written reasons for the decision. The Listing Division, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee (as the case may be) will provide written reasons within 14 business days of receipt of the request.
  - (2) The Listing Division, the GEM Listing Committee or the GEM Listing (Review) Committee (as the case may be) will provide written reasons for its Return Decision or decision to endorse a Return Decision.
  - (3) The Listing Division, the GEM Listing Committee or the GEM Listing (Review) Committee (as the case may be) will provide written reasons for its decision to direct the resumption of trading under rule 9.12 or decision to endorse such a decision.

## Chapter 9

### Trading Halt, Suspension and Resumption of Dealings, Cancellation and

#### Trading halt or suspension

9.04. Under rule 9.01, the Exchange may direct a trading halt or suspend dealings in an issuer's securities regardless of whether or not the issuer has requested the same and may do so in any circumstances, including:-

- (5) ~~[Repealed] where there is a breach of the GEM Listing Rules, the severity of which, in the opinion of the Exchange, justifies suspension (and, without prejudice to any other action which the Exchange may take under the GEM Listing Rules); or~~

#### Withdrawal of Listing

#### Resumption

9.12 Under rule 9.01, the Exchange may direct the resumption of dealings in securities. In particular the Exchange may:

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

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

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

### **Cancellation of listing**

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

(2) As a transitional arrangement, for an issuer whose securities have been suspended from dealings as at the effective date of rule 9.14A(1) (the "Effective Date"), the [ ] month period referred to in rule 9.14A(1) commences from the Effective Date.

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

- (1) publish an announcement naming the issuer and specifying the period (ordinarily, of 6 months) within which the issuer must have remedied those matters which have given rise to such circumstances. Where appropriate the Exchange will suspend dealings in the issuer's securities. If the issuer fails to remedy those matters within the specified period, the Exchange will cancel the listing. The Exchange may treat any proposals to remedy those matters as if they were an application for listing from a new applicant for all purposes and, in which case, the issuer must comply with the requirements for new listing applications as set out in the GEM Listing Rules will be required (inter alia) to issue a listing document which contains all of the specific items of information set out in Part A of Appendix 1 and pay the initial listing fee; or
- (2) cancel the listing of the issuers' securities following the Exchange's publication of an announcement notifying the cancellation of the listing.

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

## Chapter 17

### CONTINUING OBLIGATIONS

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

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

(i) financial difficulties to an extent which seriously impairs an issuer's ability to continue its business or which has led to the suspension of some or all of its operations; and/or

(ii) issuers which have net liabilities as at their balance sheet date i.e. issuers whose liabilities exceed their assets.

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

## Chapter 19

### NOTIFIABLE TRANSACTIONS

#### Requirements for all transactions

##### *Trading halt and suspension of dealings*

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

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

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## APPENDIX III : PERSONAL INFORMATION COLLECTION AND PRIVACY POLICY

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Hong Kong Exchanges and Clearing Limited and from time to time, its subsidiaries, affiliated companies controlling it or under common control with it and its joint ventures (each such entity, from time to time, being “HKEX”, “we”, “us” or an “affiliate” for the purposes of this Privacy Policy Statement as appropriate) recognises its responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by HKEX is accurate. HKEX will use your personal data in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, as required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website, continued use by you of the HKEX website shall be deemed to be your acceptance of and consent to this Privacy Policy Statement.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels below.

HKEX will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorized personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your request.

## **Purpose**

From time to time we may collect your personal data such as your name, mailing address, telephone number, email address and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571));
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis; and
5. other purposes directly relating to any of the above.

## **Direct marketing**

Except to the extent you have already opted out or in future opt out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to our financial services and information services, and related financial services and information services offered by our affiliates.

If you do not wish to receive any promotional and direct marketing materials from HKEX or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels below.

## **Identity Card Number**

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

## **Transfers of personal data for direct marketing purposes**

Except to the extent you have already opted out or in future opt out, we may transfer your name, mailing address, telephone number and email address to our affiliates for the purpose of enabling our affiliates to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

## **Other transfers of personal data**

For one or more of the purposes specified above, the personal data may be:

1. transferred to our affiliates and made available to appropriate persons in our affiliates, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong; and
2. supplied to any agent, contractor or third party who provides administrative or other services to HKEX and/or any of our affiliates in Hong Kong or elsewhere.

## **How we use cookies**

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

**Session Cookies:** temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

**Persistent Cookies:** cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

## **Compliance with laws and regulations**

You agree that HKEX and its affiliates may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations, or in order to comply with a court order, subpoena or other legal process, or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere). You also agree that HKEX and its affiliates may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Corporate reorganisation**

As HKEX continues to develop its business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

## **Access and correction of personal data**

Under the PDPO, you have the right to ascertain whether HKEX holds your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request HKEX to inform you of the type of personal data held by it. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner.

Requests for access and correction or for information regarding policies and practices and kinds of data held by HKEX should be addressed in writing and sent by post to us (see contact details below).

A reasonable fee may be charged to offset HKEX's administrative and actual costs incurred in complying with your data access requests.

## **Termination or cancellation**

Should your account with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our affiliates and employees.

## **Contact us**

By Post:

Personal Data Privacy Officer  
Hong Kong Exchanges and Clearing Limited  
12/F., One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

By Email:

[pdpo@hkex.com.hk](mailto:pdpo@hkex.com.hk)

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