

Hong Kong Capital Markets Update

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HKEX's consultation conclusions on the review structure of Listing Committee decisions

On 18 January 2019, the Stock Exchange of Hong Kong Limited (the Exchange) published the conclusions of its consultation on proposed changes to the review structure of Listing Committee decisions. The amended Listing Rules will become effective around mid-2019.

Key amendments

- Decisions of material significance made by the Listing Committee (LC) will be subject to only one level of review (instead of the current two levels of review) and the Listing Appeals Committee (LAC) will be discontinued;
- A new independent review committee, the Listing Review Committee, consisting of 20 or more external market participants with no current LC members or representatives from the Securities and Futures Commission (SFC) or Hong Kong Exchange and Clearing Limited (HKEX) will be established to replace the Listing (Review) Committee (LRC) and the Listing (Disciplinary Review) Committee (LD(R)C);
- Decisions of the new Listing Review Committee for non-disciplinary matters will be routinely published; and
- Codification of the SFC's power to request a consideration or review of any matter, including a decision of the LC by the new Listing Review Committee.

Background

In August 2018, the Exchange published a consultation paper (Consultation) to seek market feedback on the proposed changes to the review structure of Listing Committee decisions. The Consultation was widely supported by respondents. The Exchange, having considered the responses, decided to adopt the proposals in the Consultation, with minor modifications to the size of the new Listing Review Committee.

Key amendments

Reduce the levels of review for decisions of material significance

Currently, decisions of material significance – including rejection of a new listing application solely on the ground of unsuitability for listing, cancellation of listing and imposition of certain disciplinary sanctions – made by the LC are subject to two levels of review: first review by the LRC or LD(R)C and final review by the LAC.

The Exchange will adopt the proposal in the Consultation to reduce the levels of review of decisions of material significance to only **one level**. Consequently, the LAC will be discontinued and not replaced.

Establishment of an independent review committee

The Exchange will adopt the proposal in the Consultation to establish an independent new Listing Review Committee consisting entirely of external market participants to replace the LRC and the LD(R)C. In response to market comments, the Exchange modified the proposal to expand the size of the Listing Review Committee from 15 to 20 members, with at least six investor representatives (instead of four, as proposed in the Consultation). The remaining members represent a suitable balance of representatives of

listed issuers and market practitioners. No current LC members or representatives of the SFC or HKEX shall be members of the Listing Review Committee. However, former LC members are eligible to be appointed as Listing Review Committee members, subject to a cooling-off period of two years. The chairmen pool of the Listing Review Committee will have at least four members, and any review hearing will be chaired by a member of the chairmen pool.

Publication of decisions of the new Listing Review Committee for non-disciplinary matters

To enhance transparency and accountability, the Exchange will adopt the proposal in the Consultation to routinely publish the decisions made by the new Listing Review Committee for non-disciplinary matters. The Exchange has the discretion to publish a review decision on a “no-names” basis or delayed basis if disclosure of the review applicants’ identity may be unduly prejudicial to a party’s interests or the decision contains price-sensitive information.

Codification of the SFC’s power to request review of decisions

Currently, the SFC’s right to request the LC and the LAC to consider or review any matter is stated in paragraph 10.6 of the Memorandum of Understanding Governing Listing Matters between the SFC and the Exchange dated 28 January 2003. The Exchange will adopt the codification proposal in the Consultation so that provisions will be made in the Listing Rules for the SFC to have a right to request a consideration or review of any matter, including a decision of the LC by the new Listing Review Committee. However, the SFC will not request a consideration or review of any decisions of the new Listing Review Committee, as the new Listing Review Committee will serve as the final review body.

Transitional arrangements

The amended Listing Rules will take effect around mid-2019, subject to the establishment of the Listing Review Committee. There will be transitional arrangements, with the LAC, the LRC, the LD(R)C and the new Listing Review Committee operating concurrently for a certain period. For disciplinary review hearings, the LD(R)C and LAC will continue to operate until all relevant disciplinary review proceedings have been concluded, and the rules and procedures then in force will continue to apply for the purpose of carrying out those proceedings. The same principle will also apply to non-disciplinary review hearings.

If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

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