

ACUMINOUS

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NEW RULES ON REVIEW STRUCTURE OF LISTING COMMITTEE DECISIONS

In January 2019, the Stock Exchange of Hong Kong Limited (the “**Exchange**”) published its conclusions on its proposals to enhance governance within the Exchange’s structure for reviewing Listing Committee decisions and to promote transparency, accountability and consistency in decision-making. In this issue, we will go through the key changes in the rules.

Executive Summary

The current review structure will be streamlined and simplified; decisions of Material Significance made by the Listing Committee will now be subjected to only one level of review after mid-2019 (“**Effective Date**”). The new rule changes include:

- The existing Listing Appeals Committee (“**LAC**”) will be abolished. Decisions of Material Significance (e.g. (i) rejection of a new applicant’s listing application solely on the ground of unsuitability for listing; (ii) cancellation of listing; and (iii) imposition of certain disciplinary sanctions) made by the Listing Committee will be subject to one level of review;
- A new independent Listing Review Committee of at least 20 members will consist entirely of outside market participants with no current Listing Committee members or representatives of the SFC or HKEX will be established. This will replace the existing Listing (Review) Committee (“**LRC**”) and the Listing (Disciplinary Review) Committee (“**LD(R)C**”) to hear reviews currently conducted by them. The Listing Review Committee shall comprise: (a) at least six individuals representing the interest of investors and (b) the remaining members will represent issuers and market practitioners.
- The Exchange will routinely publish decisions of the new Listing Review Committee for non-disciplinary matters to enhance transparency and provide guidance to the market.
- The Exchange will make provisions in the Listing Rules to codify SFC’s power to request for a consideration or review of any matter, including a decision of the Listing Committee.

Moving forward with the single level review system

Under the new structure, the current two-level review structure for decisions of Material Significance made by the Listing Committee will be abolished.

The general view was that the existing review structure was not expeditious and an ineffective use of market resources. It was alleged that the current regime is one of the main reasons why unsuitable or problematic companies (e.g. long suspended companies) cannot be delisted within a few years.

However, decisions of Material Significance, especially delisting decisions, should naturally be afforded more opportunities to be reviewed as a safeguard for protecting shareholders from any possible faults and errors on the Exchange’s part. As the Listing Rules allow the Exchange to exercise its own judgement with the high level of autonomy, it is critical for checks and balances to be in place to ensure that such discretion is properly and fairly exercised.

Whilst the Exchange acknowledges the importance that decision-making and review processes should afford adequate opportunities to correct any incorrect or inequitable decisions, the Exchange concluded the two-level review structure is not, by itself, essential to a fair and due process and will go ahead with the proposed single level review system.

Establishment of Independent Review Committee

The Exchange will establish a new independent review committee of at least 20 members, i.e. the Listing Review Committee, to replace the LRC and the LD(R)C. The new Listing Review Committee will be a committee of the Exchange and all review hearings of the new Listing Review Committee will take the form of a hearing de novo.

In order to ensure that the new Listing Review Committee achieves a right balance between public interest representation, knowledge, experience and technical skills appropriate for their role, the new Listing Review Committee will comprise at least six investor representatives and the remaining members being representatives of listed issuers and market practitioners (including lawyers, accountants, corporate finance advisers and Exchange participants (or their officers)), and who have experience and expertise in Listing Rule matters, or are familiar with the work of the Listing Committee.

Any review hearing by the new Listing Review Committee will ordinarily be chaired by a member from the chairmen pool consisting at least four members of the Listing Review Committee (nominated by the Listing Nominating Committee and appointed by the Board of the Exchange).

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

Under the new rules, decisions of the new Listing Review Committee for non-disciplinary matters will be routinely published. The Listing Review Committee will consider and address the decisions of the previous decision making bodies and state the reasons for its own decision.

A summary of the new Listing Review Committee's analysis containing essential facts, issues and reasoning of the new Listing Review Committee in reaching its decision will be included in these publications to enhance transparency and accountability in the Exchange's decision-making. There will be no requirement for members of the new Listing Review Committee to add dissenting views where they have dissented from a decision.

However, these published decisions of the new Listing Review Committee do not represent binding precedents on other committees and do not constrain the discretion of the Exchange in the future.

With the new decision publication system, the market is likely to gain a better understand the Exchange's interpretation and application of the Listing Rules and promotes a more efficient review system.

Codification of the SFC's power to request for review of decisions

Provisions will be added to the Listing Rules so that the SFC's right to request for a consideration or review of any matter would be codified, including a decision of the Listing Committee by the new Listing Review Committee. However, The SFC will not request a consideration or review of any decisions of the Listing Review Committee. The provisions in the Listing Rules will also provide that, where the review body in an SFC-initiated review overturns, modifies or varies the decision subject to review, the relevant party will have a further and final opportunity to seek a review by the another panel of the Listing Review Committee. Where the SFC had requested a review by the new Listing Review Committee of a decision made by the Listing Committee, any further and final review requested by the relevant parties will be heard by a second group of members from the new Listing Review Committee, who do not have any conflict of interest in the case and did not participate in the earlier review hearing by the first Listing Review Committee.

Written reasons for a decision of the Listing Committee or the new Listing Review Committee may be requested by the relevant party within the time stipulated in the Listing Rules.

Transition Period

The new Rules and the new review regime will become effective around mid-2019. The following transitional arrangements will be adopted.

All disciplinary review hearings for disciplinary proceedings commenced before the Effective Date will be conducted under the Listing Rules then in force. Disciplinary proceedings are commenced upon the Department submitting a report to the Secretary setting out its case and all material facts and submissions upon which it intends to rely on. The LD(R)C and the LAC in existence before the Effective Date will continue in existence 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 the conduct of such proceedings.

All non-disciplinary review hearings in respect of the following decisions will be conducted under the Listing Rules in force immediately before the Effective Date:

- (a) any first instance decision made before the Effective Date and their respective review decision(s);
- (b) any decision made under Practice Note 17 and their respective review decision(s);
- (c) any decision under Rule 6.10(1) made before the Effective Date and any follow on or further decision made in relation to those decisions (including a decision to cancel the listing if an issuer fails to remedy the specified matters within the specified period) and their respective review decision(s).

The LRC and the LAC in existence before the Effective Date will continue in existence until all relevant non-disciplinary review proceedings have been concluded, and the rules and procedures then in force will continue to apply for the purpose of the conduct of such proceedings. For the avoidance of doubt, for listed issuers whose securities have been suspended from trading before the Effective Date and which may be delisted under Rule 6.01A(1), the new review regime applies if the delisting decision under Rule 6.01A(1) is made after the Effective Date.

Conclusion

Decisions of Material Significance will be become final within a shorter timespan with the streamlined review structure. The new Rules also effectively shorten the time allowed to attempt any corporate rescue. Issuers seeking a review of Decisions of Material Significance should seek to consult experienced professionals at an earlier stage.

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