



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Report on the Securities and Futures Commission's review of the Exchange's performance in its regulation of listing matters

December 2021

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Section 1

Introduction

1. This report summarises the key findings and recommendations of the Securities and Futures Commission's (**SFC**) 2021 review of the performance of The Stock Exchange of Hong Kong Limited (**Exchange**¹ or **SEHK** as the case may be) in its regulation of listing matters during 2019 and 2020.
2. SEHK is a wholly owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**).

Objectives of our review

3. The SFC has a statutory duty under section 5(1)(b) of the Securities and Futures Ordinance (**SFO**) to supervise, monitor and regulate the activities carried on by the Exchange. Under the Listing MOU², it was agreed that the SFC would conduct periodic audits or reviews of the Exchange's performance in its regulation of listing-related matters as a means to discharge the SFC's statutory function to supervise and monitor the Exchange.
4. The First Addendum to the Listing MOU dated 9 March 2018 provides that in conducting these periodic audits or reviews the SFC will focus on:
 - (a) whether the Exchange, in carrying out its listing regulatory function, has discharged and is discharging its duties under the SFO; this will include assessing its work in developing, administering and implementing its Listing Rules³ as well as the monitoring and enforcement of compliance with those rules;
 - (b) the adequacy of the Exchange's systems, processes, procedures and resources for performing its listing function; and
 - (c) the effective management of conflicts of interest within the Exchange as a regulator and as part of a for-profit organisation, including the supervisory functions performed by the Listing Committee.

Scope of the 2021 review

5. Our 2021 review covered the Exchange's regulation of listing matters in 2019 and 2020 (**review period**) and focused on the following areas:
 - (a) the Exchange's handling of review hearings for non-disciplinary listing matters;
 - (b) the Exchange's monitoring of newly-listed issuers' disclosure of their use of listing proceeds; and
 - (c) the Exchange's handling of reverse takeover (**RTO**) transactions under the amended RTO rules.

¹ The use of the term "Exchange" in this report refers to the listing regulatory function within SEHK which is a recognized exchange company under the SFO.

² The Memorandum of Understanding between the Exchange and the SFC dated 28 January 2003 (**Listing MOU**).

³ Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited.

How we conducted the assessment

6. In conducting our assessment, we considered:
- (a) HKEX's 2019 and 2020 annual reports, the Listing Committee Reports for 2019 and 2020 and the 2019 and 2020 Reports on the Exchange's Review of Issuers' Annual Report Disclosure;
 - (b) the Exchange's published disciplinary procedures, listing decisions, rejection letters, guidance letters and other related documents on the HKEX website;
 - (c) relevant internal documents, written policies, procedures and processes of the Listing Division's operational teams;
 - (d) information received from the Listing Division in the ordinary course of our supervisory work, including its monthly reports and case data;
 - (e) case files of sample cases;
 - (f) minutes of meetings of the Listing Committee, excerpts of minutes of meetings of the respective boards of directors of SEHK and HKEX and other relevant internal documents relating to the activities of the Listing Committee and the Listing Division;
 - (g) relevant internal documents submitted to the Listing Committee by the Listing Division in relation to the activities of the Listing Division;
 - (h) our discussions with the Chairman and Deputy Chairmen of the Listing Committee; and
 - (i) our discussions with the Head of Listing⁴, the heads of the operational teams, the Acting Secretary to the Listing Review Committee and other senior personnel of the Listing Division.

Our findings

7. Below is a summary of our findings and recommendations following the 2021 review. In arriving at our recommendations, we have taken into account the Exchange's initiatives and proposals undertaken after the completion of the review period. Our findings and recommendations are set out in more detail in Section 2 of this report. We also noted that the Exchange has taken steps in response to the recommendations set out in our 2019 review report.
8. The Head of Listing and the Chairman of the Listing Committee have reviewed this report. The Exchange's responses are also set out in this report. We wish to thank members of the Listing Committee and the staff of the Listing Division for their assistance in the review process.

⁴ The incumbent Head of Listing took up the role in January 2020 after the former Head of Listing retired at the end of 2019.

Summary of recommendations

9. The SFC's recommendations are as follows:

The Exchange's handling of review hearings for non-disciplinary listing matters

Following a market consultation by the Exchange, a new Listing Review Committee (**LRC**) was established on 5 July 2019 as an independent and final review body for Listing Committee decisions. The Listing Committee continues to review decisions made by the Listing Division. We reviewed a sample of cases and noted that the Exchange's procedures for review hearings were adhered to. In addition, after the review period, the Exchange enhanced its approach in relation to the LRC's consideration of new information and listing policy (see (c) and (e) below). Our observations and recommendations are set out below.

Management of the review hearing process

- (a) In respect of time extensions sought by review applicants to make their written submissions, we recommend that the LRC and the Listing Committee review their policies and procedures to include more guidance for members to evaluate and decide these requests in a more consistent manner (paragraph 44). In particular:
- i. to support the operation of the time-based delisting rules, these time extensions should not be granted if the request is made mainly for the purpose of giving a listed issuer additional time beyond the prescribed remedial period to improve its business or the underlying matters to avoid a trading suspension or delisting, or mainly to mitigate the risk of a challenge by judicial review (paragraph 45);
 - ii. review applicants requesting time extensions on the ground of external circumstances should be asked to provide specific details to justify the request and the length of the extension should be proportionate to the amount of time required to prepare and submit a written submission (which is generally expected to be 30 days or less save in exceptional circumstances) (paragraph 45).
- (b) We recommend that the Exchange consider whether the conflicts check procedures should be conformed for the LRC and the Listing Committee (paragraph 47), and improved for LRC members (paragraph 48).

Admission and consideration of new information

- (c) We were informed by the Exchange that since 2021, a new approach has been adopted in respect of the LRC's consideration of new information submitted whereby the case would be remitted to the Listing Committee under certain circumstances (paragraphs 65 to 67).
- (d) To further enhance the process, we recommend that the Listing Division should vet new information submitted to the review committee by a review applicant shortly before the review hearing and, when appropriate, consider requesting the hearing to be adjourned to allow it sufficient time to make a submission in response for the review committee's consideration (paragraph 69).

Consideration of listing policy in LRC review cases

- (e) We were informed by the Exchange that since 2021, the Exchange has adopted a policy whereby the LRC would remit a case to the Listing Committee (which is the decision-making body for listing policies) if it considers that the facts and circumstances of the case might justify a deviation from existing listing policies or give rise to a new policy consideration that may apply to other issuers (paragraph 75).
- (f) We recommend that when the LRC overturns a delisting decision by the Listing Committee, it should give clear directions either for trading to be resumed (if it is satisfied that all resumption conditions have been met), or for the issuer to satisfy the resumption conditions and resume trading by a stipulated date or face delisting (paragraph 77).

Decisions of the LRC

- (g) To enhance transparency and help the market understand the rationale behind the differences in the opinions of the two decision-making bodies, we recommend that when the LRC overturns a decision made by the Listing Committee, the LRC decision should address the prior decision and explain the basis for the reversal with sufficient specificity (paragraph 83).

The Exchange's monitoring of newly-listed issuers' disclosure of their use of listing proceeds

Post-vetting of issuers' announcements

- (h) During the review period, we noted that the Listing Division vetted issuers' announcements relating to changes in the use of listing proceeds in accordance with its internal procedures. The Division identified irregularities in three cases and took prompt follow-up regulatory action. We recommend that the Exchange review its policy and procedures for vetting issuers' disclosure and compliance surrounding the use of listing proceeds to enable the Exchange to enhance its detection of misconduct which is not as apparent on the face of the announcement but for which there are notable red flags (paragraphs 102 and 106).

Review of disclosures in issuers' annual reports

- (i) In reviewing the disclosure of the use of listing proceeds in issuers' annual reports, we noted that in some cases there was a long time lapse between the date the annual report was published and the time the annual report was reviewed by the Exchange, as issuers have different reporting deadlines. We recommend that the Exchange consider ways to better align its review process with issuers' different reporting deadlines, for example, by reviewing the annual reports of issuers with the same reporting year-end dates in the same batch soon after they are published so that follow-up action could be taken promptly (paragraph 114).
- (j) The Exchange should also consider enhancing its internal guidelines and procedures for vetting issuers' annual reports and provide appropriate training to Listing Division staff (paragraph 119).

The Exchange's handling of reverse takeover transactions under the amended RTO rules

The new RTO rules came into effect on 1 October 2019. We noted that the Listing Division has generally applied the new rules and guidance in a consistent manner and maintained appropriate records of its rationale for reaching a conclusion. Set out below are some observations and recommendations in relation to the Listing Division's handling of RTO transactions.

Other transactions or arrangements which form a series

- (k) The new RTO rules aim to address, amongst other things, a phenomenon whereby business injections were broken up into a series of smaller transactions or arrangements in order to circumvent otherwise applicable listing requirements. In two similar cases involving an acquisition of a new business followed by a disposal of the original business, the Listing Division reached different conclusions as to whether the transactions formed part of a series and were therefore subject to the RTO rules. We recommend that, in respect of these re-sequenced transactions, the Exchange should enhance its internal training programme and guidance materials to promote more consistency in applying the anti-avoidance principle of the new RTO regime (paragraph 159).

Acquisitions by newly-listed issuers

- (l) In cases involving an injection of a business into a newly-listed issuer by a controlling shareholder, the Listing Division should exercise heightened scrutiny as to whether IPO-standard due diligence and disclosure should be required. When the percentage ratios submitted by the issuer (for the purpose of determining the size of the acquisition) have been calculated based on financial figures that are more than six months old, the Listing Division should consider requesting the issuer to also provide updated financial statements and most recent management accounts and, if necessary, relevant financial forecasts to facilitate the assessment (paragraph 166).

Section 2

The Exchange's handling of review hearings for non-disciplinary listing matters

Introduction

10. To mitigate actual, potential and perceived conflicts of interests, the board of the Exchange (**SEHK Board**) has delegated all of its powers and functions in respect of all listing matters to the Listing Committee, subject to the review procedures set out in the Listing Rules⁵. The Listing Committee has in turn delegated most of these powers and functions to the Listing Division, subject to the reservations and review procedures set out in the Listing Rules⁶.
11. Amongst other things, the Listing Committee acts as a review body for decisions made by the Listing Division such as returns of listing applications and suspensions of trading. Reviews of listing decisions are conducted upon request by a listed issuer or listing applicant (or if the SFC exercises its discretion to request a review⁷).

Implementation of the 2019 review structure

12. Prior to July 2019, the Listing Committee's decisions (whether they were decisions in the first instance or reviews of the Listing Division's decisions) were subject to review by the Listing (Review) Committee and the Listing Appeals Committee.
13. The conclusions⁸ to the 2016 SFC-HKEX joint consultation on listing regulation contemplated that the Exchange would conduct a consultation to enhance the structure for reviewing Listing Committee decisions and promote transparency, accountability and consistency in decision-making. Following a market consultation⁹ by the Exchange in 2018 (**2018 consultation**), a new review structure became effective on 6 July 2019.
14. Under the new review structure, a new LRC was established as an independent and final review body for Listing Committee decisions, replacing the previous Listing (Review) Committee and Listing Appeals Committee. Decisions made by the Listing Committee would be subject to only one level of review by the LRC, whereas decisions of the Listing Division would continue to be subject to review by the Listing Committee and the LRC.
15. The LRC consists of a minimum of 20 market participants comprising at least six investor representatives, with the remaining members representing listed issuers and other market constituents (eg, lawyers, accountants or corporate finance advisers)

⁵ Main Board rule 2A.01. The equivalent GEM rule is rule 3.01. For simplicity, references are made to a particular rule or chapter in the Main Board Listing Rules only. The GEM Listing Rules contain broadly equivalent rules.

⁶ Rule 2A.01. The Listing Committee has reserved the power to make decisions on matters of material significance for new applicants, listed issuers and the individuals concerned, which mainly include approvals of listing applications, cancellations of listings and disciplinary matters.

⁷ Pursuant to rules 2A.16A(1) and 2B.16(1), the SFC has the right to request a review of any decision of the Listing Division or the Listing Committee.

⁸ [Joint Consultation Conclusions on Proposed Enhancements to The Stock Exchange of Hong Kong Limited's Decision-making and Governance Structure For Listing Regulation \(September 2017\)](#).

⁹ [Consultation Paper on Review Structure in relation to Listing Committee Decisions \(August 2018\)](#).

who have experience and expertise in Listing Rules matters or are familiar with the work of the Listing Committee¹⁰.

Review hearings

16. The following table sets out a breakdown of the respective number of non-disciplinary review cases during the review period that were reviewed by (i) the LRC and (ii) the Listing Committee which were subject to further review by the LRC (cases reviewed by the Listing Committee during the review period under the old review regime or which were subject to the transitional arrangements under rule 2B.17 are not included in the table):

Type of cases	First decision-making body	Review body	
		Listing Committee	LRC
Rejection of listing application	Listing Committee	N/A	4
Return of listing application	Listing Division	2	1
Suspension of trading for failure to comply with rule 13.24 ¹¹	Listing Division	12	5*
Cancellation of listing	Listing Committee	N/A	27
Reverse takeover	Listing Division	3	0*
Rule interpretation	Listing Division	1	0
Total		18	37

** Five suspension of trading cases and one reverse takeover case reviewed by the Listing Committee during the review period were further reviewed by the LRC in 2021. As the LRC reviews of these cases took place outside of the review period, they are not included in the LRC statistics above.*

Cases reviewed

17. During the review period, the LRC reviewed 37 decisions on non-disciplinary listing matters made by the Listing Committee, and the Listing Committee reviewed 18 decisions on non-disciplinary listing matters made by the Listing Division. We selected a sample from these cases for detailed review, which, for the avoidance of doubt, may not be representative of all LRC or Listing Committee cases during the review period.
18. Amongst the 37 cases reviewed by the LRC, we examined all five cases involving IPO applications, and 14 out of 32 post-IPO cases involving notable features such as a relatively long lapse of time between the Listing Committee decision and the LRC hearing.
19. Amongst the 18 cases reviewed by the Listing Committee, 12 were subsequently further reviewed by the LRC upon the request of the listing applicants or listed issuers. We examined the Listing Committee's review process in respect of three of these cases which have been selected for our LRC review (see paragraph 18). We also reviewed five other cases that were reviewed by the Listing Committee but not the

¹⁰ Rules 2A.37A and 2A. 37B. The LRC will not consist of current Listing Committee members or representatives of the SFC or HKEX.

¹¹ Rule 13.24 requires an issuer to carry out a business with a sufficient level of operations and assets of sufficient value to support its operations to warrant the continued listing of the issuer's securities.

LRC during the review period.

20. In the cases reviewed by us, we noted that the procedures laid down by the Exchange for review hearings were in general duly adhered to. We have a number of observations as discussed below.

Management of the review hearing process

21. A listing applicant or listed issuer may request a review of any decision of the Listing Division or the Listing Committee¹². A review request must be submitted to the Secretary to the LRC or the Listing Committee (**Secretary**¹³), as the case may be, within seven business days of the receipt of the relevant decision¹⁴.
22. On receipt of the application, the Secretary will send an initial letter to the review applicant and the Listing Division (together, **review parties**) with the review procedures and timetable for making written submissions.
23. The LRC and the Listing Committee each has its own procedures for review hearings, which are largely similar except for a few aspects as noted below.

Scheduling of review hearings and the conflicts check process

24. The Secretary is responsible for coordinating the conflicts checks, selecting committee members for the case and scheduling the review hearing. According to the LRC's written procedures, a typical LRC review hearing is contemplated to take place within three months from the date of the review application. On the other hand, a Listing Committee review hearing is normally scheduled to be held within two months after the initial letter.
25. The quorum necessary for a review hearing by the LRC or the Listing Committee is five members present in person¹⁵.
26. During the review period, the LRC had a chairman pool of four members appointed by the SEHK Board¹⁶. The LRC Chairmen chair review cases in turn by rotation¹⁷,

¹² In the event that the SFC initiates a review of any decision on non-disciplinary matters and the review body overturns, modifies or varies the decision subject to review, the listing applicant or listed issuer has a further and final right to seek a review of the decision by the LRC. If the review body for the SFC-initiated review was the LRC, the further and final review shall be heard by LRC members who were not present at the earlier hearing of the SFC-initiated review. See rule 2B.16(7).

¹³ Pursuant to the Procedures Governing the Proceedings of the Listing Review Committee and the Rules Governing the Proceedings of the Listing Committee, the Secretary for each of the LRC and the Listing Committee shall be the Head of Listing. In practice, when the Head of Listing is unavailable to act as the secretary for a matter, a member of the Policy and Secretariat Services Team of the Listing Division who has had no previous involvement in the matter will act as the acting secretary for the matter. References herein to "Secretary" include the acting secretary.

¹⁴ Rule 2B.08(1). Under rule 2B.13(1), a relevant party may request written reasons for a decision by the Listing Division, the Listing Committee or the LRC within three business days of receipt of the decision. The Exchange will provide the written reasons within 14 business days. The review application must be made within seven business days of the receipt of those written reasons.

¹⁵ Rule 2B.11(2).

¹⁶ A fifth chairman was appointed in July 2021. See paragraph 51.

¹⁷ A hearing will ordinarily be chaired by a member from the chairmen pool on a rotation basis, unless no member from the chairmen pool is able to act as chairman, in which case an acting chairman will be identified from the other members on an *ad hoc* basis.

subject to clearance of conflicts of interest¹⁸ and availability.

27. For Listing Committee review hearings, the Listing Committee Chairman and the two Deputy Chairmen are invited to attend every review case unless they have conflicts of interest and/or have attended the Listing Committee meeting which provided guidance to the Listing Division on the matter(s) under review (**LC guidance meeting**).
28. Non-chairman members of the LRC and the Listing Committee are split into two pools based on their backgrounds and expertise. Invitations to hear each review case will be sent to members from one pool and then the other pool on an alternating basis.
29. According to the LRC procedures, within five business days of the initial letter, the review applicant is required to submit to the LRC Secretary the information (in respect of its substantial shareholders, directors and subsidiaries and other information)¹⁹ required to conduct conflicts checks for LRC members. During the review period, an LRC hearing date would only be fixed when all conflicts checks were cleared and members' availability confirmed for a quorum. We noted that LRC hearings sometimes had to be scheduled outside the three-month timeframe²⁰ to accommodate members' availability.
30. In contrast, in respect of Listing Committee review cases, the Listing Division (not the review applicant) will provide the conflicts check information²¹ based on public filings made by the review applicant and whether the committee member attended the LC guidance meeting. The hearing date is typically fixed (for a date within a two-month timeframe²²) by the Secretary upon receipt of the review application (even before Listing Committee members' availability is confirmed) and the date is specified in the initial letter to the review parties. If sufficient members from the pool invited first²³ are not available for the scheduled date, the Secretary will approach members in the other pool in an effort to adhere to the scheduled hearing date.
31. A scheduled hearing date may be postponed due to reasons such as time extensions sought by the review applicant to file its written submissions²⁴ or unexpected

¹⁸ A member of the LRC or the Listing Committee will be regarded as being conflicted in the following circumstances:

- where a member or his/her family members has a shareholding or economic interests of 5% or more in companies or other entities which have or will have dealings with HKEX or its subsidiaries;
- where a company, firm or entity that he is associated with derives a financial benefit from his being a member;
- where a member, in his professional capacity, advises a company, firm or individual on any dealing with the committee; and
- where a member is (and for the twelve months after ceasing to be) a director or employee of a company, or a partner in or proprietor of a firm, which proposes to have any dealing with the committee.

A member may also be regarded as being conflicted if he or she has a substantial interest in a significant competitor to a listing applicant or listed company with a matter before the committee.

¹⁹ Including: (1) the issuer's substantial shareholders; (2) directors of the issuer for the past five years; (3) the issuer's subsidiaries for the past five years; (4) the issuer's professional advisers; and (5) other listed companies' directorships held by the directors of the issuer.

²⁰ See paragraph 24.

²¹ Including: (1) current directors and senior management (and biographies) of the issuer, and directors or senior management involved in the matter; (2) major shareholders and major subsidiaries of the issuer; (3) list of advisers involved in the matter or stated in the annual report; and (4) any other key parties involved in the matter, including counterparties to the subject transactions.

²² See paragraph 24.

²³ See paragraph 28.

²⁴ See paragraphs 39 to 43.

unavailability of committee members. During 2020, the COVID-19 pandemic also delayed a large number of cases (for example, the average time lapse between the Listing Committee and LRC hearings was 5.1 months in 2020, as compared to 3.3 months in 2019). No hearings were scheduled or conducted from late March to early May 2020 and from mid-July to early September 2020, with the result that a large number of hearings were postponed or remained unscheduled for an extended period of time. The Exchange informed us that the backlog of non-disciplinary review cases was largely cleared by early 2021.

32. Starting from May 2020, the Exchange began to conduct hearings via Webex. The Exchange informed us that this was rolled out by the Exchanges for all hearings from September 2020. Representatives of the review applicants may choose to attend the hearings either in person at the Exchange's premise in separate rooms with Webex facilities, or via Webex or telephone conference at their own locations (especially for those residing outside of Hong Kong). Committee members and representatives from the Listing Division are seated in other separate rooms at the Exchange.

Submissions by review parties

33. The written procedures for LRC hearings contemplate two rounds of submissions from each of the review applicant and the Listing Division, and specify that the first round of written submissions should to be made by the review parties within one month after the initial letter, and any supplemental written submissions should be filed within two weeks thereafter²⁵.
34. For Listing Committee review hearings, only one round of written submissions is expected, which should normally be filed by the review parties within two weeks after the initial letter²⁶.
35. If a review party requests to extend the deadline for making its written submission, the request would be referred to the Chairman for the hearing for decision²⁷. The internal manuals for both committees require the Secretary to provide a summary of the request to the Chairman setting out the background of the matter and the relevant rules, procedures and principles of administrative law. In considering the request, the committees need to ensure the process is and can be seen to have been conducted in a fair and proper manner, and a balance must be struck between ensuring that the applicant is given a reasonable opportunity to put forward its case and that the process moves expeditiously and without being gamed.

²⁵ Where the LRC review is sought in relation to a suspension of trading or other matters where the initial decision was made by the Listing Division and the applicant (i) has already had a full hearing before the Listing Committee and (ii) has been served an opportunity to respond to the Listing Division's submissions or reports produced to the Listing Committee, the procedures contemplate only *one* round of submissions to the LRC. Nonetheless, in practice, particularly where new information was produced in the submissions, the review parties were invited to make supplementary submissions in response.

²⁶ If a review party wishes to make a supplementary written submission, an application must be made in writing at the earliest opportunity and supported with reasons.

²⁷ According to rule 2B.12(5), the Secretary shall refer any pre-review hearing enquiry or matter to the Chairman, or, if directed by the Chairman, the Listing Committee or the LRC, as the case may be, for confirmation or decision. For Listing Committee review hearings, the Secretary has been delegated the power to grant extensions of up to two weeks; any further requests for extensions must be referred to the Chairman.

SFC observations

Time gap between initial decision and review hearing

36. In the cases reviewed by the LRC and the Listing Committee during the review period, we noted a long lapse of time between the initial decision and the review hearing in a substantial number of cases in particular those involving suspension of trading²⁸ or cancellation of listing²⁹. **Appendix A** sets out the timeline for (i) 12 suspension of trading cases reviewed by the Listing Committee and LRC and (ii) 27 cancellation of listing cases reviewed by the LRC, during the review period. As a result of the review process, the actual suspension or delisting was typically delayed for several months after the initial decision by the Listing Division or the Listing Committee, as the case may be. In some cases, the delay was aggravated by the outbreak of COVID-19 or judicial review sought by the review applicants.

The Exchange's response: with respect to cases not subject to judicial review, where there were longer periods between the date of the initial hearing and LRC or Listing Committee hearings during the review period, this was primarily due to the impact of the pandemic directly or indirectly. This included the fact that hearings were not heard in the period from mid-July to early September 2020 due to the severity of the pandemic at the time. There was also the fact that review applicants sought extensions as a matter of course, there were less LRC members available for hearings (being abroad or otherwise unavailable) and more allowance was given to review applicants in view of the pandemic.

Time extensions for written submissions

37. Although written submissions are normally required to be made to the LRC within one month of the initial letter, and to the Listing Committee within two weeks of the initial letter³⁰, review applicants frequently sought extensions of these deadlines. The policies and procedures for reviews by the LRC and the Listing Committee set out different factors for considering these requests. According to the LRC Members' Handbook, the following non-exhaustive factors would be taken into account when considering an application for time extension:
- (a) what opportunity the parties have already had for making written submissions;
 - (b) what reasons have been given to support the request; and
 - (c) whether extension would cause prejudice or put at risk the hearing date.
38. On the other hand, for Listing Committee review hearings, a different set of non-exhaustive factors are considered when deciding whether to grant time extensions for

²⁸ The Listing Division may decide to suspend trading in an issuer's shares when, amongst others, the issuer (i) does not carry on a business as required under rule 13.24 (rule 6.01); (ii) fails to publish periodic financial information required under the Listing Rules (rule 13.50); or (iii) publishes a preliminary results announcement for a financial year and the auditor has issued, or has indicated that it will issue, a disclaimer of opinion or an adverse opinion (rule 13.50A). The Listing Division's decision to suspend trading is subject to review by the Listing Committee and the LRC.

²⁹ After a trading suspension, the issuer is required to meet the resumption conditions imposed by the Listing Division within the prescribed remedial period of 18 months for Main Board issuers (rule 6.01A(1)) and 12 months for GEM issuers (GEM rule 9.14A(1)). If the issuer fails to meet the conditions before the deadline, the Listing Committee can decide to cancel its listing. The Listing Committee's decision to cancel a listing is subject to review by the LRC.

³⁰ See paragraphs 33 and 34.

making written submissions (the Exchange informed us that the factors were drawn up by the Secretariat based on applicable principles of natural justice and procedural fairness):

- (a) the importance of the proceedings and the likely adverse consequences on the party;
 - (b) the risk that the party making the request would be prejudiced;
 - (c) the risk of prejudice to the opposing party if the request is granted;
 - (d) the convenience of the Listing Committee and the interests of justice in ensuring the efficient conduct of business; and
 - (e) the extent to which the party making the request has been responsible for the circumstances leading to the request.
39. We found that extensions were frequently granted to review applicants to allow them additional time to make written submissions, resulting in postponement of the hearings. Amongst the 19 LRC cases and eight Listing Committee cases we reviewed, the issuers in all 14 post-IPO LRC cases and seven Listing Committee cases requested time extensions for making written submissions, and the committees granted the extensions in all these cases. In eight LRC cases, the length of the extensions granted was more than two months; in several cases amongst these, successive extensions were granted and in one case the extensions added up to six months.
40. In a number of cases reviewed, the review applicants sought, and were granted, extensions on the grounds that more time was needed to, amongst others, (i) negotiate a new contract, (ii) complete the audit or (iii) implement a restructuring plan. In some of these cases, while the Chairmen recognised that the requests were not supported by compelling justification, they nonetheless granted the extensions because the hearing dates had not been scheduled due to COVID-19³¹. Some other applicants claimed generally that social distancing and travel restrictions under the pandemic had impeded the preparation of their submissions without providing specific details, but they were nonetheless granted extensions.
41. In contrast, the Chairmen in some other cases rejected applications for extensions on the basis that an extension of time was intended to enable the applicant to prepare its written submissions and should not be used to “buy time” to address the underlying issues which were the subject of the review. In some cases where the applicants requested extensions on the basis of COVID-19 but failed to explain specifically how the preparation of their submissions was affected, their requests were declined³².
42. The analysis provided by the Secretary to the Chairman³³ also varied from case to case. In some LRC cases the Secretary provided the Chairman with a detailed analysis of the appropriateness of the request, while in other cases the Secretary did

³¹ See paragraph 31.

³² In one case, the Listing Committee Chairman noted that issuers had had plenty of time to get used to working remotely and discussion of submissions could be conducted with board members by video conference or teleconference. The Chairman also pointed out that although the hearing date would likely be delayed due to COVID-19, that should not stop the applicant from making its submissions on time since it had not provided any compelling reason for delaying the submissions.

³³ See paragraph 35.

not provide an analysis. In Listing Committee review cases, the summary provided by the Secretary to the Chairman routinely reminded the Chairman that it would be “safer” to allow the additional extension.

The Exchange’s response: the summary was prepared in the context of all the factors and guidance provided to the Listing Committee Chairmen by the Secretary as assessed on a case-by-case basis and with the consideration of whether there was deprivation of natural justice.

43. In review hearings relating to trading suspensions or cancellations of listings, by delaying the review hearings with requests for extensions, the issuers in some cases were able to substantially postpone their trading suspension or effectively gain extra time to meet the resumption conditions after the prescribed 18-month (or 12-month for GEM issuers) remedial period³⁴ for a potential delisting had expired.
44. We note that the LRC and the Listing Committee have different guidance for considering requests for time extensions for making submissions³⁵, and some of the factors set out in the current guidance (for example, the risk of prejudice to the opposing party) can be better tailored for the type of hearings conducted by the committees. We recommend that the two committees review their policies and procedures to include sufficient guidance for members to evaluate and decide requests for extensions in a more consistent manner. The Secretary should provide the Chairmen with a reminder of the relevant principles and policies and an analysis of whether sufficient reasons have been given to support the request.
45. It should be emphasised that these time extensions should not be granted when the request is made mainly for the purpose of giving a listed issuer additional time beyond the prescribed remedial period to improve its business or the underlying matters to avoid a trading suspension or delisting, or mainly to mitigate the risk of a challenge by judicial review, as this would undermine the time-based delisting rules³⁶. When an applicant requests a time extension to prepare its submission on the ground of external circumstances (such as COVID-19), it should be asked to provide specific details to justify the request and the length of the extension should be proportionate to the time required to prepare and submit a written submission. We expect these time extensions to be 30 days or less save in exceptional circumstances.

The Exchange’s response: the decisions of the LRC and Listing Committee Chairmen to grant extensions for submissions in the review period were based upon the particular circumstances of the relevant application having regard to procedural fairness and the principles of natural justice in order to ensure that review applicants were afforded a reasonable opportunity to be heard and ensure a fair hearing. A by-product of a fair procedure and hearing that is held in accordance with principles of natural justice is that a decision may be less amenable to judicial review. Relevant background information concerning submission extension applications was provided by the Secretary to the Chairmen.

³⁴ See footnote 29.

³⁵ See paragraphs 37 and 38.

³⁶ See footnotes 28 and 29. The delisting rules were amended in 2018 to facilitate timely delisting of issuers that no longer meet the continued listing criteria and provide certainty to the market on the delisting process. See [Consultation Conclusions on Delisting and Other Rule Amendments \(May 2018\)](#).

Scheduling of LRC hearings and conflicts checks

46. In some post-IPO cases heard by the LRC, we noted that the scheduling of review hearings was held up due to a prolonged conflicts check process which delayed the selection of the Chairman and other members. These delays were usually caused by (i) the review applicant's failure to provide the relevant conflicts check information within the prescribed five days³⁷; (ii) delay on the part of the Secretary to initiate the check with the members, or on the part of some members to respond; or (iii) members, including the Chairmen, reporting conflicts or unavailability³⁸. In nine out of the 14 post-IPO cases reviewed, the first round of conflicts checks was completed and a quorum formed more than three weeks after the review application was filed, and in two of these cases the time taken amounted to more than six weeks. The delays affected the Exchange's ability to meet the target LRC review period of three months³⁹.

The Exchange's response: prolonged conflicts checks were only a cause of delay in holding hearings in a few cases during the review period. Exchange of submissions and other procedural matters continued in parallel with the conflict check process. It is to be noted that in 2020, the availability for hearing and responsiveness of LRC members were impacted by the pandemic.

47. To reduce delays, we recommend that the Exchange require review applicants to provide the conflicts check information in their review applications and take a more robust stance to ensure that the applicants adhere to the deadline to avoid an abuse of the procedures. Once the information is available, the Secretary should promptly commence the conflicts checks and closely follow up with members who do not respond on time. The members should normally be requested to respond to the request within five business days. We also noted certain differences in the conflicts check procedures for the LRC and the Listing Committee⁴⁰, and recommend that the Exchange consider whether these procedures for the two committees should be conformed.

The Exchange's response: in regular internal monitoring review, the Exchange conducted a review on conflict check procedures for LRC and Listing Committee hearings. As noted in paragraph 51, alignments of certain checking steps were made after that. The Exchange will continue to assess the need to further conform these procedures. Where appropriate, the Exchange will discuss the changes with the SFC.

48. Another cause of delay was the fact that LRC members were divided into two pools, similar to the arrangement for Listing Committee members. The LRC Secretary would normally perform conflicts and availability checks for LRC members from one pool

³⁷ See paragraph 29. In one case, the information was not submitted until three weeks after the initial letter requesting the information.

³⁸ In two cases during the review period, the Secretary spent three to four weeks to approach all four Chairmen one after another, as all or most of them reported conflicts or unavailability. In another case (see paragraph 148), the issuer applied for a review of a Listing Committee decision in respect of a potential RTO issued in November 2020, and the LRC hearing remained unscheduled until the target company was delisted and the issuer withdrew the review request in August 2021 because most LRC members were either conflicted or unavailable and hence a quorum could not be formed.

³⁹ See paragraph 24.

⁴⁰ See paragraphs 29 and 30.

before considering members from the other pool⁴¹. In view of the frequent difficulty in forming a quorum from a single pool due to conflicts of interest or member's unavailability, the Exchange is recommended to perform conflicts checks on all LRC members for each case, although the priority for final selection can be according to the pooling arrangement.

Subsequent developments

49. The Exchange informed us that in 2021, a number of changes were made to the LRC procedures.
50. A new process for written submissions has been implemented. Unlike the old practice which required the review parties to make their submissions simultaneously⁴², the new process contemplates that the review applicant and the Listing Division will make their submissions in a sequential manner and can therefore respond to the other party's submission more efficiently. Immediately after a review application is filed, the applicant is provided with the Listing Division's report to the Listing Committee for the previous decision (under the old practice, the review applicant was required to provide the first round of submissions before receiving the Division's report⁴³). The applicant should file its written submission to the LRC within 15 business days of receipt of the Listing Division's report, and thereafter the Listing Division has seven business days to make a submission in response. If the Listing Division elects to make a submission, the applicant may file a supplemental submission within seven business days of receipt of the Listing Division's submission. In most cases, the hearing took place within three months after the review application was received.
51. To alleviate the difficulty in scheduling hearings due to members' conflicts of interest or unavailability, the Exchange appointed a fifth Chairman and five new members⁴⁴ in July 2021. In addition, the practice for scheduling LRC hearings has been aligned with that for Listing Committee hearings, so that the hearing date is fixed before the conflicts check is completed. If members from the first pool cannot form a quorum, the Secretary will approach members in the other pool in an effort not to postpone the scheduled hearing date. This new approach has facilitated the scheduling of hearings in a more timely manner.

Admission and consideration of new information

52. Pursuant to rule 2B.11(1), review hearings by the Listing Committee or the LRC are conducted *de novo*. The review committee will rehear the case and decide it afresh, after considering all the evidence and arguments made at the earlier hearings and any additional evidence or information submitted for the review hearings.
53. To ensure procedural fairness and protect the review applicants' right to be heard, the Exchange's policies and procedures generally require the review committees to

⁴¹ During the review period, a delay in conflicts check was more likely to affect the scheduling of LRC hearings (which would not be scheduled until a Chairman and a quorum confirmed their attendance for a proposed date) than Listing Committee hearings (which would be scheduled before a conflicts check was conducted) (see paragraphs 29 and 30).

⁴² See paragraph 33.

⁴³ Under the process in place during the review period, the review applicant would not receive the Listing Division's previous report to the Listing Committee until the review parties' first written submissions to the LRC were exchanged (see paragraph 33). The Listing Division's submission to the LRC would include its previous report to the Listing Committee.

⁴⁴ At the same time three members have stepped down.

accept and consider additional evidence or information submitted by the applicants, regardless of whether such evidence or information was available at the time of the original decision. According to the policies, such information is to be rejected only in exceptional circumstances such as when the applicant has been seriously culpable in not submitting it earlier.

54. According to the policies and procedures in effect during the review period, if new information is submitted during the hearing, the review committee may consider it necessary to adjourn the hearing while the information is considered by the other party or the committee. The procedures provided that if the new information is highly material or critical or fundamentally changes the case, the review committee has the discretion to either accept and consider the new information and make its decision, or refer the case back to the first instance decision-making body. The policies and procedures did not provide specific guidance as to under what circumstances a case should be referred back to the first instance decision-making body⁴⁵, and no case was remitted during the review period.
55. In the cases reviewed by us, we noted that most review applicants submitted new information at the review hearing stage and in all of these cases, the new information was admitted and considered by the review committee. A number of notable cases are discussed below.

SFC observations

Review of rejections of IPO applications

56. During the review period, the LRC reviewed four Listing Committee decisions to reject IPO applications and in all four cases the LRC overturned the Listing Committee's decisions. In two of these cases, the review applicants submitted materially new financial information to the LRC which was not available when the cases were considered by the Listing Division and the Listing Committee three months earlier.
57. In both cases, the Listing Committee rejected the listing applications as it considered the applicants had not demonstrated a commercial rationale for listing. After considering the new information, the LRC overturned the Listing Committee's decisions and allowed the applicants to proceed with their listing applications⁴⁶.
58. Under the Listing Rules, the IPO application proof is required to be *substantially complete* at the time the listing application is submitted⁴⁷. As such, we question whether it is procedurally correct for a review case with materially different information to be treated as part of the same application and for the LRC to consider its merit on that basis. In addition, it is unclear whether the new information submitted to the LRC had been subjected to the same standard of due diligence⁴⁸ by the sponsor(s) and scrutinized by the Listing Division as other parts of the prospectus.

⁴⁵ After the review period, the Exchange amended the policies and procedures to specify the circumstances under which the LRC may remit a case back to the Listing Committee. See paragraphs 65 to 68.

⁴⁶ The rejected IPO applications would be sent back to the Listing Division for re-evaluation.

⁴⁷ See rule 9.03(3).

⁴⁸ See Practice Note 21.

Review of cancellations of listings or trading suspensions

59. When significant time has elapsed between the original decision and the review hearing, particularly in cases involving cancellations of listings or suspensions of trading, new information is sometimes provided by a review applicant in an effort to demonstrate an improvement in its business, operations or financial condition. While in the interest of fairness issuers should be afforded the opportunity to present new information that is relevant to the review case⁴⁹, the process for admitting new information should be carefully managed so as not to undermine the regulatory intent of the delisting regime⁵⁰.
60. During the review period, the LRC overturned the Listing Committee's decisions in three cancellation of listing cases, and the Listing Committee overturned the Listing Division's decision in one case involving suspension of trading for failure to comply with rule 13.24⁵¹.
61. In each of these cases, the review committee arrived at its decision taking into account new information submitted by the review applicant to support its assertion that the issues leading to the trading suspension decision had been resolved or that an extension of the remedial period⁵² should be granted. Examples of new information submitted included new contracts signed, a new legal opinion obtained to confirm the legality of the business, new business development and updated financial information and forecasts.
62. We noted that certain new information was relied upon by the LRC without independent vetting or inquiry, despite the fact that such information appeared inconsistent with prior submissions to the Listing Committee or was of questionable authenticity or validity⁵³.
63. In the one case where the Listing Committee overturned the Listing Division's decision to suspend trading in the issuer's shares, *two days* before the review hearing, the review applicant submitted information about its development of a new business and updated financial information and forecast. The Listing Division did not object to the submission, nor did it request that the hearing be adjourned to enable it to review the new information and make a submission in response.
64. At the review hearing, the Listing Committee members spent considerable time questioning the review applicant on the newly-submitted information relating to its new business and financial forecast which appeared to be a critical factor influencing the committee's final decision. The Listing Division stated during its final oral submission that since the new information was received late, it still had questions as to whether the applicant could realistically develop the new business to substantially improve its profitability. The Listing Division subsequently clarified to us that after considering the applicant's oral response to the questions raised by the committee members, the

⁴⁹ See paragraphs 52 to 53.

⁵⁰ See footnote 36.

⁵¹ See footnotes 28 and 29.

⁵² See footnote 29.

⁵³ In one case, the review applicant submitted a new legal opinion in respect of the legality of its business, which was inconsistent with an earlier legal opinion submitted to the Listing Committee. The applicant also submitted a new agreement entered into shortly after the Listing Committee's decision purporting to address an issue concerning the sustainability of its business. It was questionable whether the agreement was an artificial construct to avoid delisting as the counterparty apparently had no commercial rationale to enter into the agreement.

Listing Division agreed that the applicant had demonstrated re-compliance with rule 13.24.

Subsequent developments – enhanced approach to new information

65. We discussed with the Exchange the issues associated with the review committee being asked to consider cases based on materially different facts and circumstances. We were informed by the Exchange that since early 2021, a new approach has been adopted in respect of LRC's consideration of new information.
66. For IPO applications, in the event new information submitted in an LRC case casts doubt on whether the Listing Committee's rejection of the IPO application should stand and the LRC considers that the case requires the benefit of the Listing Committee's analysis and views on the application of the policy, the case would be remitted to the Listing Committee.
67. For post-IPO cases, the LRC would remit the case to the Listing Committee for re-consideration if the development subsequent to the Listing Committee decision or the new information submitted for the LRC's consideration raises a new substantive issue under the Listing Rules which was not considered by the Listing Committee and an assessment of that issue could materially affect the LRC's consideration as to whether to uphold the Listing Committee's decision⁵⁴. The LRC would also remit the case if it considers that the facts and circumstances of the case might justify a deviation from established policies or give rise to a new policy consideration that may apply to other issuers⁵⁵.
68. As of the date of this report, the LRC has remitted two cases to the Listing Committee for re-consideration, without first deciding the cases itself.
69. To further enhance the process for considering new information, we suggest that, when faced with a late submission of new information by the review applicant, the Listing Division should vet the new information and, when appropriate, consider requesting that the hearing be adjourned to allow it sufficient time to make a submission in response for the review committee's consideration.

The Exchange's response: the Listing Division to date has assessed and vetted new information submitted at a late stage in these circumstances and carefully considered whether it is necessary to adjourn a hearing to allow it time to make a submission in response.

Consideration of listing policy in LRC review cases

70. Under the decision-making structure of the Exchange, the Listing Committee is the body authorised by the SEHK Board to set and approve listing policies⁵⁶. As a review body, the LRC derives its authority from the Listing Committee and is bound by the

⁵⁴ A rule 13.24 case (see footnote 11) would generally not be remitted if (i) the issuer seeks to demonstrate material improvement in its financial performance by virtue of developments subsequent to the Listing Committee decision, but no new issue arises under the Listing Rules, or (ii) if new information submitted by the issuer presents a new Listing Rule issue, but due to other regulatory issues LRC would uphold the Listing Committee's delisting decision irrespective of the assessment of the new issue. If the issuer substantially changes its business plan subsequent to the Listing Committee decision, the LRC would have discretion to either consider the new business plan and decide the case, or remit the case back to the Listing Committee.

⁵⁵ See paragraphs 70 to 75.

⁵⁶ See paragraph 10.

Listing Rules and published policies set by the Listing Committee which should be interpreted in a consistent manner. The policies of the LRC state that it is critical for the LRC to apply the relevant policies of the Exchange and the LRC should ensure that it remains aware of current policies as they evolve over time.

71. LRC members are apprised of current listing policies through induction training and continuous updates by the Listing Division through the Secretary. For example, during the review period, induction training was given to LRC members in respect of major developments in the IPO area (such as the regimes for issuers with weighted voting rights, biotech companies and secondary listings), suitability for listing, the requirements under rule 13.24 and the delisting framework (including when an extension to the resumption deadline may be granted⁵⁷).
72. In August 2020, to ensure the effectiveness of the delisting framework and prevent undue delay in the delisting process, the Listing Committee endorsed the Listing Division's proposed approach to time extensions to the remedial period for meeting the resumption conditions⁵⁸ sought by issuers for reasons related to the COVID-19 pandemic⁵⁹. The next day, the related policy paper together with a summary was circulated to LRC members by the Secretary. In September 2020, the Secretary provided further guidance to the LRC Chairmen setting out case examples of extension requests, the factors to be considered and the proposed approach for each type of cases.

SFC observations

73. Under the new delisting regime, long-suspended issuers are required to fulfill all resumption conditions and resume trading, instead of merely submitting a resumption proposal, before the resumption deadline⁶⁰. The "exceptional circumstances" for extending the resumption deadline under the published guidance require the demonstration of the steps that would lead to trading resumption with *sufficient certainty*⁶¹. In addition, the Listing Committee determined that issuers seeking extensions of resumption deadlines on the ground of the impact of the pandemic must provide an action plan with a detailed timetable showing the expected time to comply with rule 13.24 (which is to demonstrate that it is carrying out a business with sufficient level of operations and assets of sufficient value to warrant its continued listing). No extension will be given if the business is not considered viable or sustainable⁶².

⁵⁷ See paragraph 6 in Appendix B.

⁵⁸ See footnote 29.

⁵⁹ The principles endorsed by the Listing Committee included: (i) requests for extensions should be considered case by case on the specific facts and circumstances of each case; (ii) for an extension to be granted, an issuer must establish that its failure to meet the resumption deadline is caused by COVID-19; (iii) an issuer is not regarded to have established the case if there is another reason unrelated to COVID-19 which in itself causes the issuer's failure to meet the resumption deadline; (iv) the issuer must request a specific extension and provide a concrete action plan with a detailed timetable showing the expected time for resumption of trading, with an explanation of the factors in arriving at the timetable; no extension will be given if the business model has been considered not viable or sustainable; (v) to discourage shell activities, an extension would not be given to facilitate a reverse takeover or a development of a new business unrelated to the issuer's current business; and (vi) an extension is normally not more than six months, which may be further extended by the Listing Committee as it considers appropriate having regard to, amongst others, whether the issuer is able to meet the progress or forecast and, if not, the reason for that.

⁶⁰ See paragraph 4 in Appendix B.

⁶¹ See paragraph 6 in Appendix B.

⁶² See paragraph 72 and footnote 59.

74. In the cases we reviewed, we noted three instances where the LRC overturned the Listing Committee's delisting decisions despite the fact that the issuers had not demonstrated their compliance with rule 13.24, and the LRC's approach appeared to deviate from the new delisting rule that requires issuers to meet all resumption conditions before the resumption deadline. In these cases, the LRC extended the 18-month or 12-month remedial period⁶³ for the issuers to re-comply with rule 13.24 on bases that were not contemplated by the new delisting policy, when the issuer either had been unable to provide projections of its future performance, or there was uncertainty as to whether the performance target submitted by the issuer could be achieved, or there was no clear indication as to when the issuer could complete the proposed restructuring and resume trading. In doing so the LRC appeared to be applying a different interpretation of "exceptional circumstances" under the guidance letter or creating a new policy that the circumstances present in these cases warrant a special time extension. A summary of our findings from these cases is set out in **Appendix B**.
75. As a review body, the LRC should not appear to be deviating from or modifying the Listing Rules or published policies in *ad hoc* or arbitrary ways. As mentioned above⁶⁴, we discussed this issue with the Exchange and since 2021, the Exchange has adopted a policy whereby the LRC would remit a case to the Listing Committee if it considers that the facts and circumstances of the case might justify a deviation from established policies or give rise to a new policy consideration that may apply to other issuers.
76. We also noted that, in one case (Case 1 in [Appendix B](#)), while the LRC overturned the Listing Committee's delisting decision, the LRC instructed that trading in the issuer's shares should remain suspended until resumption has been approved by the Listing Division and/or the Listing Committee, without specifying any date by which the issuer must complete the proposed restructuring and resume trading. This effectively allows the issuer to extend its resumption deadline without limit, which undermines the policy intention of the delisting regime. As of the date of this report, 14 months after the LRC decision and 28 months after the expiration of the initial resumption deadline, trading in the issuer's shares remained suspended.
77. To avoid undue delay in the delisting process, we recommend that when the LRC overturns a delisting decision by the Listing Committee, it should give clear directions to the parties involved. The LRC should either direct trading to be resumed (if it is satisfied that all resumption conditions have been met), or stipulate a date by which the issuer needs to satisfy the resumption conditions and resume trading or face delisting.

Decisions of the LRC

78. After the conclusion of an LRC hearing, the Secretary will circulate draft minutes (including the minutes of the pre-hearing discussion, the transcript of the hearing and the minutes of the post-hearing deliberation) and the written decision amongst the LRC members for comment and approval. The approved minutes will be signed by the Chairman and filed for record. The decisions of the LRC will be published.
79. Under the old review regime, some concerns were noted regarding the process and procedure for the review of listing decisions. Those concerns, which were summarised

⁶³ See footnote 29.

⁶⁴ See paragraphs 65 to 68.

in the 2018 consultation and the ensuing consultation conclusions issued in 2019, amongst other things, included:

- (a) under the *de novo*⁶⁵ regime, the review committees at times arrived at different decisions without addressing or referring to the decisions made and the reasons given by the previous decision-making body. This made the decision-making process seem arbitrary and provided an opportunity for a listing applicant or listed issuer to “take a second bite of the cherry” after receiving an unfavourable decision; and
 - (b) the review committees used to be drawn from the same pool of members as the Listing Committee, and at times consisted of fewer members than the committee that made the original listing decision. In a number of cases, the members of the review committees had fewer years of experience both professionally and on the Listing Committee than the members of the first decision-making body. It was therefore unclear why the subjective decision of the review committee should be more authoritative than the first decision-maker.
80. Under the new review regime, the Exchange decided to retain the *de novo* approach for review hearings by the LRC and the Listing Committee. To address the concerns about the old review system, the Exchange decided that the LRC would, amongst others, (i) publish the LRC’s non-disciplinary decisions and the rationale for the decisions; and (ii) consider and address the decision of the previous decision-making body in its own decision, whether it is upholding or overturning the prior decision⁶⁶.
81. The LRC’s written procedures state that the LRC should not approach a case from the perspective of considering whether the Listing Committee was right or wrong. Instead, the focus should be on a fresh consideration of all relevant submissions and evidence, and not on whether fault can be found in the earlier decision.

SFC observations

82. The LRC’s published decisions are in general well-reasoned and contain sufficient details to facilitate the public’s understanding of the basis for its decision. In two cases reviewed by us where the LRC overturned the Listing Committee’s decisions, although the LRC’s decision letters set out the reasons for its view, we consider that the decisions did not adequately address the prior Listing Committee decisions and their bases.
83. A balance can and should be struck between deciding a case afresh and properly addressing the prior decision. Although the focus of LRC’s review is not on finding faults in the earlier decision, if the LRC reaches a different conclusion from that of the Listing Committee without sufficiently explaining the reasons for the difference, the LRC would appear to be simply substituting its own discretion for that of the Listing Committee, and the Exchange’s decision-making process as a whole may be perceived as non-transparent or random and encourage the filing of review applications as a forum-shopping practice. When the LRC overturns a decision made by the Listing Committee, we recommend that the LRC decision should address the prior decision and explain the basis for the reversal with sufficient specificity for the market to understand the rationale behind the differences in the opinions of the two decision-making bodies.

⁶⁵ See paragraph 52.

⁶⁶ Rule 2B.11(1).

The Exchange's monitoring of newly-listed issuers' disclosure of their use of listing proceeds

Introduction

84. In 2020, the SFC and the Exchange noted that a significant number of newly-listed issuers used their listing proceeds for purposes that were different from those stated in their listing prospectuses and, in some cases, there were signs of potential misconduct. We have therefore undertaken a review of the Exchange's processes and procedures for monitoring newly-listed issuers' disclosure of their use of listing proceeds.
85. To review the use of listing proceeds announced by newly-listed issuers for the years ended 31 December 2019 and 2020, we considered the applicants that were listed in the two preceding years. For the years ended 31 December 2018 and 2019, there were a total of 371 newly-listed issuers⁶⁷. Set out below is an analysis compiled by the Exchange of the change in issuers' use of listing proceeds within two years of listing.

	Issuers listed in the year to 31 Dec 2018	Issuers listed in the year to 31 Dec 2019	Total
Number of issuers that changed their use of listing proceeds	32 15.4%	19 11.7%	51 13.8%
Number of issuers that changed the <i>allocation</i> of listing proceeds amongst the categories of uses disclosed in the prospectus	32 15.4%	10 6.1%	42 11.3%
Number of issuers that did not change their use of listing proceeds	144 69.2%	134 82.2%	278 74.9%
Total number of newly-listed issuers	208 100%	163 100%	371 100%
<i>Note: Percentages are calculated based on the total number of newly-listed issuers in the respective years.</i>			

86. Of the 371 newly-listed issuers, the Exchange reviewed and followed up with 93 (25%) which have announced a change in their use of listing proceeds within two years of listing. 51 of these issuers applied their listing proceeds to uses that were entirely different from the intended uses stated in the listing prospectus. For the remaining 42 issuers, the change mainly related to the proportions allocated to the categories of uses disclosed in the prospectus.

Cases reviewed

87. We reviewed the Listing Division's case files for 31 cases selected based on the nature and magnitude of the change in the use of listing proceeds.

⁶⁷ Source: Page 28 of the Exchange's report "Review of Issuers' Annual Report Disclosure – Report 2020"

Relevant Listing Rule requirements

88. Rule 2.03 sets out the general principles which are relevant:
- (a) "...potential investors are given sufficient information to enable them to make a properly informed assessment of an issuer..." (rule 2.03(2)); and
 - (b) "investors and the public are kept fully informed by listed issuers...of material factors which might affect their interests..." (rule 2.03(3)).
89. Under paragraph 48 of Appendix 1-A to the Listing Rules, listing applicants are required to disclose details of their intended use of the listing proceeds in the prospectus.
90. Appendix 16⁶⁸ to the Listing Rules also requires newly-listed issuers to disclose in their interim reports and annual reports the details of how the listing proceeds have been applied, which should include:
- (a) a detailed breakdown and description of the proceeds and the purposes for which they are used during the financial period or year;
 - (b) a detailed breakdown and description of the intended use of any unutilised amount, the purposes for which it is to be used and the expected timeline; and
 - (c) whether the proceeds were used, or are proposed to be used, according to the intentions previously disclosed by the issuer, and the reasons for any material change or delay in the use of proceeds.
91. According to rule 2.03⁶⁹, if there is any material change in the use of listing proceeds subsequent to listing, the listed issuer is required to issue an announcement as soon as possible to inform the market of the details of and the reasons for the change.
92. The Exchange monitors newly-listed issuers' disclosure of their use of listing proceeds through post-vetting issuers' announcements (including preliminary interim and final results announcements) and reviewing disclosures in issuers' annual reports.

Post-vetting of issuers' announcements

93. According to the Listed Issuer Regulation (LIR) Manual⁷⁰, the LIR team performs a preliminary review of an announcement as soon as it is published on the HKEX news website to ascertain whether any immediate regulatory action (eg, trading suspension) is required, followed by a more detailed review.
94. The LIR Manual contains general guidance on the review of an announcement and the types of follow-up action to be taken.

⁶⁸ Paragraphs 11(8), 11A and 41A of Appendix 16 to the Listing Rules.

⁶⁹ See paragraph 88.

⁷⁰ The LIR manual for professional staff which sets out the processes and procedures in respect of the work of the LIR team.

95. The LIR Manual states that when performing a detailed review of an issuer's announcement, the LIR team will consider the following:
- (a) whether the issuer has complied with the general principles of disclosure. The information must be clearly presented, in plain language, accurate and complete in all material respects and not be misleading (see rule 2.13);
 - (b) whether the issuer has complied with the specific disclosure requirements applicable to the particular type of announcements. In respect of the disclosure of use of proceeds by newly-listed issuers, the LIR Manual provides that the LIR team should consider whether the subject transaction or use of proceeds is in line with the business objectives disclosed in the prospectus⁷¹; and
 - (c) any trading arrangements and corporate actions, such as closure of books for shareholder actions, that may affect an orderly market for trading in the securities.
96. The LIR team will contact the issuer to clarify substantive issues by the next business day. If appropriate, the LIR team may require the issuer to publish a clarification announcement or undertake appropriate remedial actions. Below are examples of follow-up actions the LIR team may take:
- (a) if the LIR team has identified issues which raise concerns as to whether trading of an issuer's securities can be conducted in a fair and orderly manner, a trading halt or trading suspension may be required;
 - (b) the issuer may be required to undertake appropriate remedial action to re-comply with the Listing Rules;
 - (c) the issuer may be required to publish a further announcement to address any non-compliance with the disclosure requirements; and
 - (d) depending on the nature of the breach, the LIR team may issue a guidance or warning letter to the issuer or refer the case to Listing Enforcement for further investigation.

SFC observations

97. We noted that, with the exception of one case (see paragraph 116), all of the newly-listed issuers reviewed duly published announcements to inform the market of the change in their use of listing proceeds on a timely basis as required under the Listing Rules. In 18 out of the 31 cases reviewed, although the listing proceeds had been applied to uses that were different from the original purpose stated in the prospectus, the new uses were still in line with the companies' principal businesses.
98. The LIR team vetted announcements of changes in uses of proceeds in accordance with the internal procedures and, if appropriate, promptly made follow-up enquiries. The LIR team does not use a vetting checklist for this purpose as these announcements are relatively straightforward.

⁷¹ Paragraph 28(b) of Appendix 2 to B2.2 "Post-vetting announcements and handling trading arrangements before announcement publication" of the LIR Manual.

99. Any follow-up work by the LIR team, such as requiring the issuer to publish supplemental or clarification announcements or referring a case to Listing Enforcement for further investigation, was evidenced by the LIR team's enquiry letters, the issuers' responses and follow-up actions taken by the LIR team. A brief description of the LIR team's findings, follow-up actions and the reasons therefor were documented in a summary table for record purposes.

Cases with possible misuse of listing proceeds

100. We noted in three cases reviewed, the newly-listed issuers invested a substantial portion of the proceeds in certain financial products associated with one of the joint global coordinators. The size of the investments was equivalent to the amount of listing proceeds raised through the same joint global coordinator.
101. The LIR team also came across these cases through its regular monitoring of issuers' announcements. The LIR team considered that the investment in financial products in these cases did not conform with the originally stated uses for idle listing proceeds. The LIR team noted that in making these investment decisions the issuers relied on the information provided by the joint global coordinator without conducting independent due diligence.
102. These cases were referred to Listing Enforcement and the SFC to consider if any enforcement action was warranted. The Exchange's monitoring of changes in the use of listing proceeds enabled it to take prompt action in a few cases which involved possible misuse of listing proceeds.

Cases with dubious features

103. In five cases reviewed, we noted that a large portion of the listing proceeds were reallocated from the originally stated uses to general working capital or new uses which were unrelated to the company's existing businesses. In four of these cases, the LIR team promptly made enquiries with the issuers and required them to provide full details of the change in supplemental announcements or circulars. In one case, the LIR team was concerned that the proposed change in the use of listing proceeds would lead to a fundamental change in the issuer's principal business and therefore issued "show cause" letters to the issuer. The transaction subsequently lapsed.
104. Whilst more detailed information about an issuer's change in its use of listing proceeds is important to enable potential investors to appraise the issuer's business developments and make informed decisions⁷², the fact patterns of some of these cases might warrant further regulatory consideration. For example:
- (a) In one case, the issuer announced that it had reallocated 43% (ie, \$17 million) and 30% (ie, \$12 million) of its listing proceeds from its original stated uses to general working capital about 12 months and 30 months after listing, respectively. About 24 months after listing, the issuer underwent significant corporate changes, for instance, the chief executive officer resigned⁷³, a couple of executive directors who did not appear to have any experience in the issuer's

⁷² See paragraph 91 and paragraph 95(a).

⁷³ The chief executive officer role was assumed by the chairman, who is the brother of the outgoing chief executive officer and a controlling shareholder with experience in the industry.

business were appointed and the issuer disposed of one of its business segments 30 months after listing.

- (b) In another case, there was a change in control of the issuer within 18 months of listing. Six months after the change in control, in July 2020, the issuer issued an announcement that 86% (ie, \$22 million) of its listing proceeds, which were originally designated for expanding its existing business, was reassigned to the development of new businesses and for general working capital purposes. In addition, the new board of directors did not appear to have any experience in the issuer's existing business.
- (c) In the third case, about eight months after listing, the issuer issued an announcement that 41% (ie, \$35 million) of the listing proceeds (which was originally designated for expanding the issuer's business) were utilised to acquire a residential property jointly owned by the controlling shareholder's spouse and mother. This was a discloseable and connected transaction.

105. In response to our enquiry as to the appropriate regulatory approach to these cases with dubious features, the LIR team informed us that it had considered these cases but there was insufficient basis to take further action in respect of them.

106. We believe that these cases raise potential concerns and may warrant further consideration as to whether there had been any breach of the Listing Rules. For example, questions arise as to whether the directors concerned have properly discharged their fiduciary duties under rule 3.08 in relation to the use of listing proceeds and, in the case described in paragraph 104(b), given the short period of time between the change in control and the announcement of the change in use of listing proceeds, whether the change in use of proceeds had been contemplated before the July 2020 announcement and whether the information contained in the issuer's announcements or circulars was complete as required under rule 2.13. We recommend that the Exchange review its policy and procedures for vetting issuers' disclosures and compliance surrounding the use of listing proceeds to enhance its detection of misconduct which is not as apparent on the face of the announcement but for which there are notable red flags.

The Exchange's response: the Exchange appreciates the importance for issuers and their directors to fulfil obligations under the Listing Rules, including rule 3.08. For the above cases, the Exchange reviewed the issuers' public announcements and circulars and also sought responses from the issuers or their directors to substantiate that the changes in use of proceeds were executed in the interest of these issuers and their shareholders. The Exchange concluded that there was insufficient ground to commence immediate action upon breach of any Listing Rules.

Backdoor listings and shell related activities were often conducted through a series of transactions and arrangements. The Exchange monitors these types of development through ongoing systematic vetting and monitoring programme. Since July 2021, the Exchange further enhanced its vetting programme focusing on specific issuer profile monitoring including risks related to shell activities. Going forward, as set out in the Joint Statement on IPO-related misconduct issued by the Exchange and the SFC in May 2021, for IPO cases that display red flags, the Exchange will continue to closely monitor their uses of IPO proceeds after listing. To heighten the scrutiny of these cases, the Exchange may, as a condition for listing, require the issuers to provide periodic updates to their compliance advisers and the Exchange to account for the use of IPO proceeds.

Review of disclosures in issuers' annual reports

107. The Exchange performs a thematic review of issuers' annual reports on an annual basis as part of its ongoing monitoring of listing-related activities. The Exchange publishes an annual report of its review on the HKEX's website⁷⁴.
108. Since 2012, the Exchange has been reviewing newly-listed issuers' disclosure of changes in their use of listing proceeds as part of its annual report review programme. The scope of the Exchange's 2020 review of issuers' annual report disclosure covers all issuers listed in 2018 and 2019 with financial years ending between January and December 2019.
109. The LIR case team recorded the findings of its annual report review in a document entitled "Annual Report Review Program – Review Note 2020" (**Review Note**), which lists the disclosure requirements relating to issuers' use of listing proceeds. If any issue is identified, the LIR team would record in the Review Note the case team's assessment of the issue and any follow-up action taken.
110. We were informed by the LIR team that its staff receive annual training on how to review issuers' annual reports. Staff were given a briefing in February 2020 on the findings of the 2019 annual report review (including those related to newly-listed issuers' disclosure of their use of listing proceeds) and a training in April 2020. We noted that the only training material provided to staff was the Review Note itself (see paragraph 109) without any other information, for instance written guidance (with examples) on the issues that the LIR staff might expect to see and how to deal with them. The training materials have been enhanced since 2020. For example, the materials for the training in May 2021 included written guidance and examples of the issues previously noted by the LIR team when reviewing the disclosure of issuers' use of listing proceeds.
111. We were also informed by the LIR team that in performing the 2020 annual report review, they would ascertain whether the disclosure of an issuer's use of listing proceeds in the annual report is consistent with the disclosure in the prospectus and any subsequent announcements and complies with the Listing Rules⁷⁵. If any non-compliance is identified, the LIR team would take appropriate follow-up action, such as making enquiries with the issuers or issuing guidance letters to them.
112. Out of 371 issuers reviewed in the 2020 annual report review, the LIR team identified 119 cases (representing 32% of the issuers reviewed) where the issuer did not properly disclose whether their listing proceeds were used, or would be used, in accordance with the intentions and timeline as stated in the prospectus. The LIR team followed up on these cases and required the issuers concerned to publish a supplemental announcement to inform the market accordingly. Where appropriate, the LIR team issued guidance letters to remind the issuers of their obligations under the Listing Rules.

SFC observations

113. We noted that the LIR team performed the 2020 annual report review (covering annual reports with financial years ending between January and December 2019) between June and November 2020. Therefore, in some cases, there might be a long

⁷⁴ [Review of Issuers' Annual Report Disclosure](#).

⁷⁵ See paragraph 90.

time lapse between the date the annual report was published and the time the LIR team conducted the review. For example, for an issuer with a financial year end in March, there would be a gap of at least 10 months.

114. In a few cases reviewed, we noted that the LIR team reviewed the 2019 annual reports and made enquires with the issuers relating to possible non-compliance with the disclosure requirements 12 to 14 months after the reports were published. Given the lapse of time, most of these issuers repeated the same disclosure non-compliance in their 2020 annual reports. We recommend that the Exchange consider ways to better align its review process with issuers' different reporting deadlines, for example, by reviewing the annual reports of issuers with the same reporting year-end dates in the same batch soon after they are published so that follow-up action could be taken more promptly.
115. Other than reviewing annual reports for consistency and to identify possible non-compliance with the rule requirements⁷⁶, we noted that the LIR team would not cross-check other parts of the annual reports to substantiate whether the issuers had in fact used their listing proceeds as described in the annual reports.
116. For example, in one case, the issuer changed its use of proceeds between March and September 2018 (ie, two to eight months after listing) by allocating 44% of the proceeds to acquire raw materials (a new use). However, this change in use of proceeds was not announced until March 2019 (ie, about 14 months after listing) in a voluntary announcement and in the issuer's annual results announcement for the year ended 31 December 2018. In response to LIR team's enquiries, the issuer submitted that its chief financial officer (who was also an executive director and compliance officer) deposited part of the listing proceeds in a "pledged deposit account" for the purpose of sourcing raw materials. As the chief financial officer regarded this deposit as a movement of funds between the issuer's bank accounts and not a change in the use of proceeds, he did not inform the board of directors. The board of directors only became aware of the change in use of proceeds when the issue was uncovered by the issuer's audit committee shortly before the 2018 annual results were announced.
117. The LIR team requested the issuer to publish a clarification announcement with details of when the issuer first contemplated changing its use of listing proceeds. The LIR team also referred the case to Listing Enforcement to investigate, amongst others, whether the issuer's 2018 interim announcement and report contained inaccurate, incomplete and misleading information⁷⁷ and whether the issuer had consulted its compliance adviser regarding the matter on a timely basis⁷⁸. After investigating the matter, the Exchange issued a warning letter to the issuer and its directors in respect of the above-mentioned breaches and the directors' breach of their undertakings to use their best endeavours to procure the issuer's compliance with the Listing Rules.
118. In this case, although the issuer failed to promptly disclose the change in the use of its listing proceeds, a review of the issuer's cash balance as at 30 June 2018 might have alerted the LIR team to make enquiries about the shortfall and take appropriate regulatory action more promptly.

⁷⁶ See paragraph 111.

⁷⁷ GEM rule 17.56(2).

⁷⁸ GEM rule 6A.23(3) requires an issuer to consult with and seek advice from its compliance adviser on a timely basis where the issuer proposes to use the listing proceeds in a manner that is different from that disclosed in the listing document.

119. We recognise that the effectiveness of the annual report review will, to some extent, depend on the experience and skill of individual staff. That said, it would be useful to have some general procedures and guidelines for staff and appropriate training to ensure the consistency and effectiveness of the review process. We recommend that the Exchange consider enhancing its internal guidelines and procedures for vetting issuers' annual reports and provide appropriate training to LIR staff.
120. We also noted in a few cases the Review Note only recorded that the LIR team would take follow-up actions without stating what actions were eventually taken. We were informed by the LIR team that follow-up action is not normally recorded in the Review Notes. If follow-up action is required, a case would be opened in the Exchange's workflow system to record any action taken.

The Exchange's handling of reverse takeover transactions under the amended rules

Introduction

121. In 2018, we reviewed the Listing Division's assessment of potential RTO cases under the principle-based test under the RTO rules⁷⁹.
122. We suggested, amongst others, that the Listing Division should develop written guidelines on how RTO cases should be assessed and staff training should be given more regularly. In cases where the issuer makes representations or provides information in respect of its business or prospects, we suggested that the Division should critically assess all relevant information and make follow-up enquiries before relying on the representations given.
123. In July 2019, the Exchange issued conclusions⁸⁰ to its consultation on proposed rule amendments to tackle the problem associated with backdoor listings and shell activities, adopting all proposals with a few modifications. The new rules came into effect on 1 October 2019.
124. A new RTO guidance letter⁸¹ (**new RTO Guidance Letter**) was issued to clarify how the Exchange would interpret the rules and make its assessment. In response to our suggestions, the LIR team has developed written guidelines and provided training for LIR staff on the new RTO rules. The LIR manual has also been updated to provide guidance on the preparation of meeting notes and the requirements for maintaining appropriate records of LIR staff's assessments and decisions.

Relevant Listing Rule requirements

125. New rule 14.06B defines an RTO as an acquisition or a series of acquisitions of assets by a listed issuer which, in the opinion of the Exchange, constitutes, or is part of a transaction or arrangement or series of transactions or arrangements which constitute, an attempt to achieve a listing of the acquisition targets and a means to circumvent the requirements for new applicants. This is a principle-based test.

⁷⁹ [Report on the Securities and Futures Commission's review of the Exchange's performance in its regulation of listing matters \(December 2018\)](#).

⁸⁰ [Consultation Conclusions on Backdoor Listing, Continuing Listing Criteria and Other Rule Amendments \(July 2019\)](#).

⁸¹ GL104-19 Guidance on application of the reverse takeover Rules (October 2019).

126. As part of the rule amendments, the Exchange also codified the six criteria it would take into account under the principle-based test to assess whether an acquisition constitutes an attempt to achieve a listing of the assets to be acquired and a means to circumvent the requirements for a new listing. These criteria as set out in Note 1 to rule 14.06B are:

- (a) the size of the acquisition or series of acquisitions relative to the size of the issuer;
- (b) any fundamental change in the issuer's principal business;
- (c) the nature and scale of the issuer's business before the acquisition or series of acquisitions;
- (d) the quality of the acquisition targets;
- (e) a change in control (as defined in the Takeovers Code⁸²) or de facto control of the listed issuer⁸³; and
- (f) other transactions or arrangements which, together with the acquisition or series of acquisitions, form a series of transactions or arrangements to list the acquisition targets.

127. Separately, Note 2 to rule 14.06B sets out the bright-line tests which apply to two specific forms of RTOs involving a change of control of the listed issuer. They are:

- (a) an acquisition or a series of acquisitions of assets constituting a very substantial acquisition (**VSA**)⁸⁴ where there is, or which will result in, a change in control of the issuer; or
- (b) an acquisition or a series of acquisitions of assets, which individually or together constitute a VSA, from the incoming controlling shareholder within 36 months after the change in control.

128. A transaction would be treated as an RTO under the principle-based test if the Exchange considers it an "extreme" case taking into account the six criteria, unless the issuer can demonstrate that it is not an attempt to circumvent the new listing requirements, in which case the transaction would be treated as an extreme transaction (**Extreme Transaction**). Pursuant to rule 14.06(C)⁸⁵, for an acquisition to qualify as an Extreme Transaction, the issuer has to satisfy one of the following additional requirements:

⁸² Under the Codes on Takeovers and Mergers and Share Buy-backs (**Takeovers Code**) "control" is defined as a holding of 30% or more of the voting rights of a company. RTOs may also include transactions involving an injection of assets into an issuer to achieve a listing of assets which do not involve a change of control of the issuer.

⁸³ This criterion is new and replaces the criterion under the old RTO rules which was whether there was any issue of restricted convertible securities to the vendor which would provide it with de facto control of the issuer.

⁸⁴ Rule 14.08 provides that a transaction is regarded as a VSA if any of the percentage ratios (ie, assets ratio, consideration ratio, profits ratio, revenue ratio or equity capital ratio) is 100% or more.

⁸⁵ Rule 14.06(C) further requires that (i) the acquisition target must meet the trading record requirements for listing and is suitable for listing; and (ii) the enlarged group must meet all the new listing requirements (except the trading record requirements).

- (a) the issuer has been under the control or de facto control of the same person for a long period (normally not less than 36 months) prior to the proposed transaction, and the transaction would not result in a change in control or de facto control of the issuer; or
 - (b) the issuer has been operating a principal business of substantial size⁸⁶, which will continue after the transaction.
129. If a transaction is regarded as an RTO under the Listing Rules, the Exchange will treat the issuer as if it were a new listing applicant⁸⁷ and the issuer will be required to comply with the requirements⁸⁸ applicable to a new listing applicant. Transactions that the Listing Division considers to be RTOs are not required to be presented to the Listing Committee.
130. Potential Extreme Transactions, on the other hand, are presented to the Listing Committee for its decision as to whether the RTO rules apply. If the Committee considers that the RTO rules apply, the issuer will be treated as if it were a new listing applicant (see paragraph 129). However, if the Committee considers that the RTO rules do not apply to the Extreme Transaction, the issuer will instead be required to prepare a transaction circular under an enhanced disclosure and vetting approach, and appoint a financial adviser to conduct due diligence on the acquisition.

Guidance on the application of the RTO rules

131. The RTO rules are anti-avoidance provisions to prevent the circumvention of new listing requirements and as such, they involve an application of judgement. In determining whether a transaction is an RTO, the Exchange considers it important to strike a balance between not restricting legitimate business activities (such as business combinations and expansions) and the need to maintain market quality.
132. Together with the amendments to the RTO rules, the Exchange published the new RTO Guidance Letter to clarify how it would apply the six criteria in assessing a transaction under the principle-based test in practice.
133. To facilitate the market's understanding, the Exchange also provided examples of its approach to assessing transactions that display certain dubious features, for example: (i) the structuring of an RTO transaction as a series of smaller acquisitions, or re-sequencing transactions to acquire a new business before disposing of the original business; and (ii) arrangements involving a change in control of an issuer and using the issuer to acquire new businesses that may have no connection with the issuer's original business and, following the disposal, cessation or curtailment of the original business operation, become the major operation of the issuer.

The Exchange's review of potential RTOs

134. The Exchange identifies potential RTO cases through (i) post-vetting of announcements relating to transactions below the VSA threshold; (ii) vetting of draft

⁸⁶ This may include an issuer with annual revenue or total asset value of \$1 billion or more.

⁸⁷ Rule 14.54.

⁸⁸ Including that the acquisition targets must meet the requirements of rules 8.04 and 8.05 (or rule 8.05A or 8.05B) and the enlarged group must meet all the new listing requirements under Chapter 8 (except rule 8.05). Where the RTO is proposed by an issuer that has failed to comply with rule 13.24, the acquisition targets must also meet the requirements of rule 8.07.

announcements relating to VSAs; and (iii) handling inquiries relating to potential RTOs.

135. During the period from 1 October 2019 (ie, the effective date of the amended rules) to 31 December 2020, the Listing Division vetted 48 draft announcements relating to VSAs and handled 50 inquiries relating to potential RTOs. 39 cases were discussed at the LIR team's management meetings or daily team meetings (collectively **LIR meetings**), to consider whether they would be regarded as RTOs or Extreme Transactions. Cases that were not discussed at the LIR meetings were considered and decided by the relevant case officers at the case team level.
136. Out of 39 cases, the Division determined that nine (23%) cases were RTOs and six cases (15%) were Extreme Transactions.
137. Set out below is a summary of the number of potential RTOs vetted by the LIR team during the review period since the adoption of the new RTO rules:

	1 October 2019 to 31 December 2020	1 October 2018 to 30 September 2019 <i>(Note 3)</i>
Number of VSA announcements vetted	48	41
Number of enquiries received with potential RTO issues	50	16
Total	98	57
Number of potential RTO cases discussed at the LIR meetings <i>(Note 1)</i>	39 <i>(39.8%)</i>	10 <i>(17.5%)</i>
- Determined as RTOs ⁸⁹ <i>(Note 2)</i>	9 <i>(23.1%)</i>	1 <i>(10.0%)</i>
- Determined as Extreme Transactions <i>(Note 2)</i>	6 <i>(15.4%)</i>	3 <i>(30.0%)</i>
<p><i>Note 1: Percentages are calculated based on the total number of VSA announcements vetted and enquiries received with potential RTO issues during the period.</i></p> <p><i>Note 2: Percentages are calculated based on the number of potential RTO cases discussed at the LIR meetings during the period.</i></p> <p><i>Note 3: The statistics for the 12 months ended 30 September 2019 are to indicate the volume of transactions before and after the new RTO rules came into effect and are not directly comparable with the statistics for the 15 months ended 31 December 2020.</i></p>		

Cases reviewed

138. We reviewed the meeting notes for all 39 potential RTO cases discussed at the LIR meetings. We selected 18 cases that had one or more notable features for more detailed review, for example, cases that were ruled as RTOs by the Listing Division, whose decisions were appealed by the issuers to the Listing Committee, cases which were ruled as Extreme Transactions and cases which involved unusual or complicated issues when applying the principle-based test. For the avoidance of doubt, these selected cases may not be representative of all potential RTO cases.

⁸⁹ Not including cases which were voluntarily treated as RTOs by the issuers and did not require discussion or ruling by the Exchange.

139. We reviewed the 18 cases to understand the Listing Division's experience in applying the new RTO rules, taking into account the observations and recommendations in our 2018 review. We also considered whether the Listing Division's application of the criteria had been consistent with the guidance contained in the new RTO Guidance Letter and the anti-avoidance nature of the principle-based test.

SFC observations

140. The cases selected for discussion below illustrate some of the issues that we consider the Exchange should be mindful of when reviewing potential RTO cases.

141. We noted that the Listing Division has generally applied the new RTO rules and guidance in a consistent manner and explained the rationale for reaching a conclusion in the LIR meeting notes, in particular in its assessment of the size of the transaction, fundamental change in business and the quality of the acquisition target. We consider that the Listing Division could further improve the consistency of its approach when reviewing disposals of original businesses preceded by acquisitions of new businesses and exercise more comprehensive scrutiny when vetting announcements relating to the injection of business by a controlling shareholder into a newly-listed issuer.

Transaction size

142. Compared to the cases surveyed in our last review in 2018, the Listing Division has been critically assessing the calculation submitted by issuers to ascertain whether the size of a transaction is extreme relative to the size of the issuer. For example, in one case, the Listing Division noted that in the issuer's calculation of the revenue ratio, the issuer's revenue used as the denominator included a large non-recurring item. If that non-recurring item were excluded, the revenue ratio would increase from the 88% as submitted by the issuer to 967%, which would be considered significant.

Fundamental change in business

143. The new RTO Guidance Letter clarifies that when assessing whether there is a fundamental change in business, (i) the Exchange will have regard to the size of the acquisition targets (at the time of their respective acquisitions), compared to the size of the original business (at the time of the last transaction in the series), and (ii) the original business refers to the business operated by the issuer at the commencement of the series of transactions. This guidance clarifies the Exchange's approach in response to some of the issues⁹⁰ noted in our 2018 review.

144. In our review of the cases, we noted that the Listing Division has generally adhered to the principles under the new guidance. For example, in a number of cases, the Listing Division found with good basis that the proposed acquisition of a substantially larger new business would result in a fundamental change in business despite the fact that the issuer had a sizeable existing business. The rationale for these decisions was well explained in the case files.

145. In one case, the issuer acquired a new business unrelated to its original business from its new controlling shareholder and 18 months later proposed another acquisition of a similar size in the same industry. In making its assessment, the Listing Division

⁹⁰ In respect of the Listing Division's assessment of this criterion relating to comparing the relative sizes of the new and existing businesses and defining the scope of "existing business".

disagreed with the issuer's argument that the subsequent acquisition was merely an expansion of the newly-commenced "existing" business, and instead deemed the two acquisitions as a series to achieve a listing of the new business, taking into account relevant factors such as the deteriorating original business and the issuer's interest in making further acquisitions in the new business.

Quality of the business to be acquired

146. When the Listing Division assessed the quality of the target business under the old RTO regime, it mainly focused on whether the business could satisfy the minimum profit requirement under the Listing Rules. The new RTO Guidance Letter emphasises that in addition to the eligibility criteria, the Exchange would also consider the target's suitability for listing⁹¹. We noted that, in keeping with the new RTO Guidance Letter, the Listing Division has tightened its vetting practices towards the target's suitability for listing.
147. In two cases involving proposed acquisitions of targets which were previously unsuccessful in their own applications for listing on the Exchange, the Listing Division noted that the targets' listing applications were rejected or lapsed due to unresolved issues on suitability. In each case, the Listing Division raised a concern with the issuer as to whether the proposed acquisition was in substance an attempt to achieve a listing of the target and a means to circumvent the new listing requirements.
148. Another case concerned the proposed acquisition by a GEM issuer engaging in the entertainment business of a Main Board issuer in the financial services business. Trading in the target's shares had been suspended since 2017, and the Listing Committee decided to cancel its listing in May 2020 as it failed to meet the conditions for resumption of trading imposed by the Listing Division. In June 2020, when the target's application to review the Listing Committee's delisting decision was pending a hearing by the LRC, the GEM issuer proposed to acquire the target arguing that the RTO rules, which aimed to prevent circumvention of the *new listing requirements*, should not apply to the acquisition of a target that is *already listed*. Having regard to the amended rules, the Listing Division concluded that the proposed transaction constituted an RTO and the rationale was clearly explained in the decision letter. The Division noted that the target had yet to resolve all the regulatory issues that had led to its continued trading suspension and the Exchange's concerns about its suitability for continued listing, in particular its failure to publish outstanding financial statements and address any audit modifications. In addition, the size of the target was substantially larger than that of the GEM issuer and hence the acquisition would result in a fundamental change in business. The Listing Division's decision was subsequently upheld by the Listing Committee.

Other transactions or arrangements which form a series

149. The amended RTO rules also address a phenomenon under the old RTO regime whereby business injections were broken up into a series of smaller transactions or arrangements in order to circumvent otherwise applicable listing requirements. The Exchange may regard these transactions and arrangements as part of a series⁹² (ie, they will be treated as one transaction) if they take place in reasonable proximity to each other (*normally* within a 36-month period). The RTO rules will apply to all the

⁹¹ Paragraph 18 of the new RTO Guidance Letter.

⁹² Examples include acquisitions of businesses from the same or related party.

transactions in the series.

150. Pursuant to the new RTO Guidance Letter, where the proposed series of transactions or arrangements involve a disposal that is preceded by an acquisition, the RTO Rules may apply to the acquired business(es) that is part of the series of transactions or arrangements⁹³.
151. In our review of the cases, we noted that in two cases involving similar facts, the Listing Division took different approaches in considering whether an acquisition of a new business followed by a disposal of the original business formed part of a series and therefore were subject to the RTO rules.
152. In one case:
- (a) the issuer, which engaged in the restaurant business, was listed on GEM in December 2013 and transferred to the Main Board in August 2015. In September 2016, the issuer underwent a change in control.
 - (b) From October 2018 to 2019, the issuer (i) acquired a new environmental-related business in a major transaction, (ii) disposed of two restaurants to a purchaser claimed to be an independent third party⁹⁴ in a disclosable transaction and (iii) closed five other restaurants.
 - (c) In April 2020, the issuer conducted another major transaction to dispose of its remaining two restaurants to the same purchaser. After the disposal, the issuer's business completely changed from the original restaurant business to the environmental-related business.
153. When the Listing Division was vetting the second disposal of the restaurant business in April 2020, it assessed whether the multiple transactions should be deemed to be a series and therefore the RTO rules would apply to the major acquisition of the environmental-related business in 2018. The Division considered that this acquisition and the disposals in 2019 and 2020 should not be viewed as part of a series of transactions because the disposal in 2020 would take place more than 36 months after the change in control. The Division also noted that the disposal of the restaurants and the complete change in business was driven by the adverse market environment. Further, the Division noted that the environmental-related business could satisfy the minimum profit requirement under rule 8.05.
154. This case appears to fall within the types of re-sequenced transactions intended to be addressed by the new RTO regime⁹⁵. The major acquisition of the environmental-related business and the two subsequent disposals of the restaurants took place within a period of 18 months and should be deemed to be a series pursuant to the new RTO Guidance Letter, which does not require all transactions in the series to be conducted within 36 months after the change in control.

⁹³ Paragraph 37 of the new RTO Guidance Letter.

⁹⁴ We noted, however, that the issuer's original controlling shareholder, chairman and CEO who sold his controlling stake in 2016 remains the director of the issuer's disposed subsidiaries holding the restaurant business, and he has been widely reported by the media as the "chairman" of the restaurant group after the disposal.

⁹⁵ See paragraph 150.

155. We understand from the Listing Division that its decision was primarily driven by two considerations. First, the issuer submitted that the restaurants were sold due to adverse market conditions and poor performance, and the Listing Division considered that the RTO rules were not intended to restrict disposals of non-performing businesses. We noted, however, that the issuer's restaurant business was not terminated, but rather appeared to have been sold back to, and continue to be operated by, the original controlling shareholder.
156. Secondly, the Listing Division considered that the environmental-related business was able to meet the minimum profit requirement. However, we noted that there was no analysis as to whether the business could satisfy other new listing requirements such as suitability for listing, which is required to be assessed pursuant to the new RTO Guidance Letter⁹⁶.
157. In contrast, in another case involving similar facts, the Listing Division concluded that the transaction should be considered as an RTO. In this case:
- (a) the issuer originally engaged in the personal care products business. It underwent a change in control in 2016.
 - (b) In 2016 and 2017, the issuer disposed of part of its original business, and it later acquired a food and beverage business through two acquisitions in 2018 and 2019.
 - (c) In 2020, the issuer proposed to dispose of the remaining personal care products business.
158. Although the last disposal was proposed more than 36 months after the change in control and the issuer also submitted that the decision was driven by the unsatisfactory performance of the personal care products business, the Listing Division concluded that the previous acquisitions and the disposal formed part of a series of arrangements to achieve a listing of the food and beverage business in circumvention of the new listing requirements⁹⁷. The Listing Committee upheld the Listing Division's decision on review.
159. We recommend that in respect of re-sequenced transactions (such as those mentioned above), the Exchange should enhance its internal training programme and guidance materials to promote consistency in applying the anti-avoidance principle of the new RTO regime.

The Exchange's response: in December 2020, the Exchange issued an internal guidance to relevant staff members. The guidance provides a summary of cases under the new RTO rules and illustrates how the amended RTO rules were applied in those circumstances. In July 2021, the Exchange issued two listing decisions on RTO rules.

⁹⁶ See paragraph 146.

⁹⁷ At the review hearing, in response to the issuer's argument that there were commercial reasons for the acquisition and disposal, the Listing Division responded that this argument was not relevant for the RTO assessment because the RTO rules are anti-avoidance provisions to prevent the circumvention of the new listing requirements. In respect of the issuer's argument that there had been no change in control over the past 36 months, the Listing Committee noted that after the proposed disposal within approximately one year from the previous acquisitions, the issuer's primary business would be swapped to the food and beverage business.

Acquisitions by newly-listed issuers

160. When a newly-listed issuer proposes to acquire a business from its controlling shareholder shortly after listing but that business was specifically excluded from the listing group at the time of listing, a question arises as to whether the transactions are designed to achieve the listing of the target in circumvention of the new listing requirements.
161. During the review period, we noted two proposed acquisitions of this nature vetted by the Listing Division. In each case, the target engaged in a different but related business from that of the issuer's. At the time of listing the target was excluded from the listing group on the grounds that the two businesses were independent from each other and their combination would not generate additional synergy. However, within 20 months of listing, the issuer in each case claimed that certain events subsequent to listing⁹⁸ had prompted it to decide to acquire the target. Both cases raised concerns that the IPO and the proposed acquisition formed a series of arrangements as an attempt to achieve a listing of the target and a means to circumvent the new listing requirements.
162. In one case, the Listing Division considered that the issuer's explanation for its change in intention shortly after listing was unconvincing. In addition, the Listing Division noted that the target would account for 56% of the enlarged group's revenue and assets, and treating the transaction as a VSA would mean that a majority of the enlarged group would not be subject to due diligence and the new listing process. The transaction was therefore classified as an Extreme Transaction (based on Listing Division's consideration that the target appeared to be able to meet the new listing requirements and circumvention of the new listing requirements was not a material concern), which would require the issuer to prepare a transaction circular under an enhanced disclosure and vetting approach and appoint a financial adviser to conduct due diligence on the acquisition⁹⁹.
163. In the other case, the Listing Division had some reservations about the issuer's explanation for its change of business plan shortly after listing, but on balance, the Listing Division considered that the size of the acquisition was not extreme¹⁰⁰ and there would not be a fundamental change in business, and therefore treated the transaction as a major and connected transaction.
164. The decision was primarily driven by a consideration of the size of the acquisition. The Listing Division reviewed the proposed acquisition in November 2019, using the size ratios calculated based on the issuer's and the target's revenues, profits and assets in 2018. The Listing Division also considered the financial results of the issuer's original business for the first six months of 2019 (which showed no material change from the same period in 2018) and the results of the target for the first eight months of 2019 (which showed an increase in revenue of 35% as compared to the same period in 2018). The acquisition was completed in December the same year and the issuer's annual results released three months later revealed that the target's revenue in 2019 had actually exceeded that of the original business, due to a significant decline in the issuer's original business in the second half of 2019 and continued growth of the

⁹⁸ These events claimed by the issuers included, amongst others, the US-China trade war, the development of technology and the discovery of new business opportunities.

⁹⁹ See paragraphs 128 and 130.

¹⁰⁰ The largest size ratio, the assets ratio, was around 70%, as calculated on the basis of the previous year's financial information.

target's business during the same period. This information was not made available to the Listing Division when the acquisition was vetted. In 2020, the target's revenue grew further to nearly three times that of the original business, which had been decreasing since listing. This suggests that the acquisition had effectively resulted in a fundamental change in business.

165. We further noted that during the vetting of the case, the Listing Division made inquiries with the issuer's IPO sponsor, who submitted that it was not common in the market for an issuer to acquire a business not directly in line with its primary business shortly after listing, and it had advised the issuer to consider the relevance of the target's business to the issuer's primary business and related Listing Rule issues.
166. The Listing Division should exercise heightened scrutiny as to whether IPO-standard due diligence and disclosure should be required for such an acquisition. The Listing Rules provide that the profits and revenue ratios should be calculated on the basis of the *last* audited accounts¹⁰¹, but these figures may not necessarily reflect the issuer's *current* financial position. When those ratios submitted by the issuer have been calculated using financial figures that are more than six months old (as in the case above), the Listing Division should consider requesting the issuer to also provide updated financial statements and most recent management accounts and, if necessary, relevant financial forecasts to facilitate the assessment¹⁰².

Internal guidance and recordkeeping

167. Following the recommendations in our 2018 review, we noted that the LIR team developed written guidelines for its staff on RTO assessment, which summarise, amongst others, the changes to the RTO rules and the continuing listing criteria regarding the sufficiency of operations and assets¹⁰³, the purposes of the amended rules and key points to note when applying the rules¹⁰⁴. The internal guidelines also contain a summary of significant cases under the new RTO rules as useful examples of how the bright-line test and the factors under the principle-based test have been applied in practice.

¹⁰¹ Rule 14.17.

¹⁰² We noted that in another case, although a proposed acquisition by an issuer of a new business would only constitute a major transaction based on the current size ratio, the Exchange considered the expected change in the scale of the issuer's existing business to be relevant to the assessment as to whether there would be a fundamental change in business. The Exchange requested that the issuer provide financial forecasts for the next two years, taking into account the proposed acquisition.

¹⁰³ Rule 13.24.

¹⁰⁴ Examples include (i) when applying the factor on change in control or de facto control under the principle-based test, the staff should consider changes to the personnel and the executive functions of directors; and (ii) simplified examples elaborating what constitutes a series of acquisitions.

Section 3

Follow-up from the 2019 review

168. In 2019, we reviewed the Exchange’s performance in its regulation of listing matters during 2018. We identified a number of areas for potential improvement and suggested recommendations for the Exchange to consider. This section discusses the steps taken by the Exchange in response to our recommendations in the 2019 review report.

HKEX’s management of potential conflicts of interest and the interactions between the Listing Division and HKEX business units in pre-IPO enquiries

169. We reviewed the implementation of the “Chinese Wall” protocol which aims to manage the Listing Division’s actual, potential and perceived conflicts of interest with HKEX and SEHK. We also examined the interactions between the Listing Division and the HKEX business side on pre-IPO enquiries about regulatory issues made by potential listing applicants.

170. Our key recommendations were:

- (a) Listing Division personnel should not attend business meetings with prospective listing applicants alongside HKEX business executives and HKEX business executives should avoid responding to specific regulatory-related questions raised by prospective listing applicants;
- (b) the Exchange should tighten the protocols to enhance the independence of its regulatory function regarding (i) the sharing of non-public, non-case specific information by the Listing Division with the HKEX business side, (ii) the Listing Division primarily relying on market data and views provided by the HKEX business side to develop listing policies, (iii) comments made by the HKEX business side on the development of listing rules and policies, taking into account section 21 of the SFO, and (iv) HKEX business staff providing input in the “360^o” performance review of any Listing Division staff;
- (c) the Exchange should promptly conduct a thorough and comprehensive study to clarify and develop written rules, practices, policies, guidelines and procedures that are necessary and appropriate to give effect to the Chinese Wall, taking into account the listing regulatory function’s role as a public authority and its statutory duty under section 21 of the SFO. The Chinese Wall protocol should be reviewed and approved by the Listing Committee and the boards of HKEX and SEHK; and
- (d) HKEX should introduce systems or procedures to better monitor compliance with the Chinese Wall and develop more comprehensive and regular Chinese Wall training for the Listing Division and HKEX business executives who interact with the Listing Division.

SFC observations

171. In July 2020, the Exchange established a new Listing Compliance function within the Listing Division headed by a senior vice president. The Head of Listing Compliance is responsible for overseeing the Listing Division’s compliance, internal controls and risk management matters, including staff conflicts of interest and complaints against

Listing Division staff. HKEX appointed a new Group Chief Compliance Officer in June 2021. The Head of Listing Compliance reports to the Head of Listing, the HKEX Group Chief Compliance Officer and the Listing Operation Governance Committee (see paragraphs 177 and 178).

172. We were informed by the Listing Division that:

- (a) Listing Division personnel no longer attend business meetings with prospective listing applicants alongside HKEX business executives and meetings between listing applicants and the Listing Division are now arranged separately from meetings between listing applicants and the HKEX business side;
- (b) the Listing Division would conduct its own research in developing listing rules and policies and where input was sought from the HKEX business side (for example, where the policy matters are relevant to HKEX group's policies on major strategic, regulatory, risk management, commercial and operational issues or corporate governance, or may give rise to potential liability issues for HKEX), both the HKEX business staff and the Listing Division staff were mindful of their obligations under section 21 of the SFO; and
- (c) except for the Head of Listing (who as a member of the HKEX management committee receives feedback from other committee members), HKEX business staff no longer provide input in the "360°" performance review of any Listing Division staff.

173. As of the date of this report, the review of the Chinese Wall protocol between HKEX and the Listing Division including in respect of the sharing of listing-related information is underway.

The oversight of the Listing Division and the Listing Committee's supervisory role

174. We reviewed the oversight of the Listing Division by the Listing Committee and the HKEX Board.

175. Our key recommendations were:

- (a) in respect of the administration and interpretation of the Listing Rules, the Listing Committee should explore further avenues to supervise the Listing Division's exercise of the powers and functions delegated to it by the Listing Committee. In particular, we recommended that the Listing Division should expand the scope of matters covered in its regular reporting to the Listing Committee, and the Listing Committee should review the process for pre-IPO consultations to consider when pre-IPO enquiries should be referred to it for guidance; and
- (b) in respect of the management and operations of the listing regulatory function, the Exchange should review the existing organisational structure and reporting lines for the listing regulatory function to enhance oversight by the HKEX Board or its delegates, while maintaining the independence required pursuant to the SFO.

SFC observations

Administration and interpretation of the Listing Rules

176. The Exchange adopted new protocols to govern the Listing Division's escalation and reporting to the Listing Committee of (i) pre-IPO enquiries, (ii) complaints against listing applicants, listed issuers and Listing Division staff, (iii) approved and rejected waiver applications, and (iv) enforcement cases and decisions. The Listing Division and the Listing Liaison Forum have agreed on the criteria for escalating pre-IPO enquiries and complaints against IPO listing applicants to the Listing Committee under these protocols. Complaints against listed issuers, waivers granted and enforcement cases and decisions will be added to the monthly report to the Listing Committee.

Management and operations of the listing regulatory function

177. In June 2021, the HKEX Board established the Listing Operation Governance Committee (**LOG**) to assist the Board in overseeing the operation and management of the Listing Division. According to its terms of reference, the LOG shall consist of at least five members comprising (i) at least three non-executive directors appointed by the HKEX Board, and (ii) the Chairman of the Listing Committee and at least one Deputy Chairman of the Listing Committee. The LOG shall meet at least four times every year, and its chairman shall report regularly and formally to the HKEX Board. The first meeting of the LOG was held in August 2021.

178. The LOG supervises and oversees the operation and management of the Listing Division through receiving and discussing monthly reports provided by the Listing Division on matters including regulatory activities, listing policy projects, structural changes to the Listing Division such as appointments and removals of the Head of Listing and Listing Division department heads, human resources, training, Listing Division staff conduct issues or incidents and division-specific risk and policy matters.

The Exchange's handling of share option schemes under Chapter 17

179. Following our review of the Exchange's handling of share option schemes under Chapter 17 of the Listing Rules, the Exchange issued a consultation paper¹⁰⁵ in October 2021 on proposals to amend Chapter 17 to, amongst other things:

- (a) regulate share award schemes under the Chapter 17 regime;
- (b) regulate the scope of eligible participants who may be granted share awards or share options;
- (c) impose a minimum vesting period; and
- (d) regulate the grant of share awards or share options to connected persons.

¹⁰⁵ [Consultation Paper on Proposed Amendments to Listing Rules relating to Share Schemes of Listed Issuers \(October 2021\)](#).

The Exchange's handling of complaints relating to listing applicants and listed issuers

180. We reviewed the Exchange's handling of complaints made against listing applicants and listed issuers.
181. Our key recommendations were:
- (a) in handling complaints against listing applicants, the Listing Division should amend its protocol that no further regulatory action is required when the relevant listing application has been withdrawn or terminated. Instead, the IPO Vetting team should evaluate on a case-by-case basis whether further regulatory action (eg, a referral to the SFC) is called for;
 - (b) for complaints received against a listing applicant after the Listing Committee hearing, all decisions by the Listing Division not to report these complaints to the Listing Committee should be properly recorded along with the reasons and the Committee should be regularly provided with a summary of complaints of this nature;
 - (c) in the cases where the Listing Division found that no breach of the Listing Rules occurred, we suggested that the Exchange revise its replies to complainants to accurately reflect its findings and avoid misunderstanding; and
 - (d) the Exchange should continue to promote staff compliance with the complaint handling policy and procedures.

SFC observations

182. Beginning in February 2021, a new division-wide complaint handling guideline was adopted. Each of the IPO Vetting team and the LIR team updated its complaint handling procedures to supplement the division-wide guideline.
183. The new guidelines provide that Listing Division staff should make referrals to other authorities (including the SFC) when necessary, and the previous protocol described in paragraph 181(a) has been deleted.
184. Under the new IPO complaint handling procedures and the new escalation protocol, if a complaint is received against a listing applicant after the Listing Committee hearing, the IPO Vetting team should consult the co-heads for IPO Vetting on the need to report the matter back to the Listing Committee. The complaint should be reported to the Listing Committee if it relates to the applicant's suitability or eligibility for listing, is supported with facts and evidence with a substantiated basis and, if true, would have a material impact on the applicant's business operations or financial performance. The decision and its basis, the team's assessment and reasons for resolution and the guidance from the co-heads for IPO Vetting should be recorded on file. In addition, the Listing Division will provide the Listing Committee with a monthly summary of the number of complaints received during the month with a breakdown by nature and those closed during the month with a breakdown by nature and resolution.
185. In addition, the standard replies to complainants have been amended in response to our recommendations.

Follow-up from the 2018 review

Analysis of suitability issues

186. We recommended that the Listing Division continue to take steps to enhance the analysis of suitability issues included in its reports to the Listing Committee and its recording of the related discussions at Listing Committee meetings, and the minutes of Listing Committee meetings should fully, accurately and fairly reflect these discussions.

SFC observations

187. We were informed by the Listing Division that internal training is provided to the IPO Vetting staff to update their knowledge and increase their awareness of key issues (including suitability issues). The training materials presented to staff in July 2019 included written guidance and examples of the issues previously noted by the IPO Vetting team in its review of listing applicants' suitability. In addition, a "minute taking guideline" was issued to all Listing Division staff in mid-2021 to provide guidance on preparing meeting minutes.

Review of a referral case

188. We recommended that the Listing Enforcement team review its handling of a case referred to it by the LIR team (which was rejected notwithstanding information provided by the issuer indicating possible deficiencies on the part of the issuer and its directors) and consider whether any changes to its procedures are required to avoid a recurrence.

SFC observations

189. We were informed by the Exchange that Listing Enforcement has undertaken a review of the case and considered that the appropriate process was followed and the decision to reject was reasonable.

Section 4

Review of the operations of the Listing Division in 2019 and 2020

Overview

190. The following table summarises the operational activity reported by the Exchange in its listing regulation for 2016, 2017, 2018, 2019 and 2020¹⁰⁶.

	2016	2017	2018	2019	2020
Number of listing applications accepted for vetting by the IPO Vetting team	275	310	372	300	231
Number of listing applications vetted by the IPO Vetting team ¹⁰⁷	349	412	511	467	357
Number of applications for which approval was granted in principle	181	216	245	209	179
Number of compliance and monitoring actions handled by the LIR team ¹⁰⁸	64,932	66,368	70,293	73,704	82,228
Number of investigations handled by the Enforcement team	71	86	111	112	128
Number of Listing Decisions published	11	14	3	3	6
Number of Guidance Letters published	5	0	10	7	3
Number of FAQs published	1 series	3 series	5 series	7 series	2 series
Number of other guidance materials published	3	2	2	2	7
Number of listing applications processed by the Structured Products and Fixed Income Department ¹⁰⁹	13,771	21,224	38,472	33,671	50,167
- Derivative warrants	4,875	7,989	11,794	8,939	12,128
- Callable Bull/Bear Contracts (more commonly known as CBBCs)	8,896	13,235	26,678	24,732	38,039

IPOs

191. The number of listing applications accepted for vetting by the Exchange was 231 in 2020, representing a decrease of 69 (or 23%) from the 300 accepted in 2019.

¹⁰⁶ Source: HKEX 2020 Annual Report, pages 54-56.

¹⁰⁷ The number comprises new listing applications accepted in the current year and listing applications brought forward from the previous year.

¹⁰⁸ Compliance and monitoring actions include announcements and circulars vetted, share price and trading volume monitoring actions undertaken and complaints handled.

¹⁰⁹ The figures refer to issues of new structured products and do not include further issues.

192. The number of listing applications vetted by the Exchange was 357 in 2020, down by 110 (or 23.6%) from the 467 vetted in 2019¹¹⁰.
193. The average time between the acceptance of a case for vetting and the issue of the first comment letter in 2020 was 13 business day (2019: 14 business days)¹¹¹. In 2020, the Exchange received 170% more listing applications under the new chapters (Chapter 18A and 19C) compared to 2019. The Exchange reported that in spite of the significant increase in the number of applications under the new chapters, the Division was able to issue the first round comments within 20 business days from the date of acceptance for 99% of the listing applications received in 2020 (2019: 97%).
194. In 2020, the percentage of listing applications presented to the Listing Committee for hearing within 120 days was 33.8% (2019: 52.9%). The number of listing applications approved in principle for listing by the Exchange was 179 in 2020 (2019: 209), down by 30 (or 14.4%). The decrease is in line with the decrease in the number of listing applications vetted by the Exchange.
195. In 2020, the IPO Vetting team published two guidance letters (2019: four) and two listing decisions¹¹² (2019: one).

Listed issuer regulation

196. The number of LIR actions handled by the Exchange was 82,228 in 2020 (2019: 73,704), representing an increase of 8,524 (or 11.6%) in 2020. The increase in LIR actions handled is consistent with the increase in the number of listed issuers in 2020 (2020: 2,538; 2019: 2,449). The following is a breakdown of the announcements handled by the LIR team in 2019 and 2020.

	Post-vetted	% of total	Pre-vetted	% of total	Total
2019	62,889	99.86	88	0.14	62,977
2020	68,416	99.85	106	0.15	68,522

¹¹⁰ The number of applications vetted comprises applications accepted for vetting in the current year and “in-progress” applications brought forward from the previous year. The difference between the number of applications vetted and the number of applications accepted represents the number of cases brought forward from the previous year, which is affected by different factors including the number of applications received, the complexity of the cases and when the applications were received.

¹¹¹ Based on the Detailed Vetting and Administrative Procedures for IPO applications, the first comment letter is expected to be issued as soon as practicable from the date of acknowledgement of receipt of a new listing application. We noted that the shortest time and the longest time between the date of application and the date of the first comment letter was one business day and 32 business days, respectively.

¹¹² Guidance Letters: “Guidance on competition between the businesses of a new applicant and its controlling shareholder” (March 2019), “Guidance on sanction risks” (March 2019), “Guidance on accounting policies and stock-taking procedures performed by the reporting accountants” (April 2019), “Guidance for applicants on the representation of the non-GAAP financial measures in a listing document and any relevant documents pursuant to the Exchange’s listing rules” (April 2019), “Disclosure in listing documents for biotech companies” (April 2020) and “Experience and qualification requirements of a company secretary” (August 2020). Two of these guidance letters (the fourth and the last) were published jointly by the IPO Vetting team and the LIR team.

Listing Decisions: “To provide guidance on why the Exchange rejected certain listing applications” (March 2019), “To provide guidance on why the Exchange rejected certain applications” (June 2020) and “To provide guidance on why the Exchange returned certain applications” (June 2020).



197. In 2020, remedial follow-up action by the issuer was required in 2,176 (or 3.2%) of the posted-vetted cases (2019: 1,682 or 2.7%).
198. The LIR team referred 78 cases to Listing Enforcement in 2020, representing a slight increase from 74 referral cases in 2019. Referrals to external regulatory bodies¹¹³ slightly decreased from 47 cases in 2019 to 42 cases in 2020.
199. In terms of turnaround time, the Exchange:
- (a) post-vetted results announcements within three business days of publication in 97% of the cases in 2020 (2019: 98%);
 - (b) post-vetted other announcements within one business day of publication in 99% of the cases in 2020 (2019: 98%); and
 - (c) pre-vetted announcements¹¹⁴ within the same day in 98% of the cases in 2020 (2019: 96%).
200. In 2020, the LIR team issued two guidance letters (2019: four) and four listing decision (2019: two)¹¹⁵.
201. The Exchange reported that, in 2020, it continued its initiative to promote self-compliance by listed issuers with the Listing Rules. This initiative was pursued primarily through issuing guidance letters and listing decisions, publishing semi-annual Listing Division Newsletters, Listed Issuer Regulation Newsletters and Enforcement Bulletins, publishing ESG guidance materials and corporate governance materials, and launching e-training modules.

SFC observations

Operational matters

202. As noted above, the caseload of the IPO Vetting team decreased by 23.6% in 2020 (see paragraph 192) while the number of LIR actions handled by the LIR team increased by 11.6% (see paragraph 196).

¹¹³ The Securities and Futures Commission, the Financial Reporting Council and other regulatory bodies.

¹¹⁴ These primarily comprised announcements made in relation to very substantial acquisitions, very substantial disposals, reverse takeovers and cash companies, which are required to be pre-vetted by the Exchange under the Listing Rules.

¹¹⁵ Guidance Letters: "Guidance for applicants on the representation of the non-GAAP financial measures in a listing document and any relevant documents pursuant to the Exchange's listing rules" (April 2019), "Guidance on application of the reverse takeover rules" (October 2019), "Guidance on large scale issuance of securities" (October 2019), "Guidance on sufficiency of operations" (October 2019), "Experience and qualification requirements of a company secretary" (August 2020) and "Guidance on continuing obligations of authorised collective investment schemes ("CISs") listed under Chapter 20 of the Main Board Listing Rules" (November 2020). Two of these guidance letters (the first and the fifth) were published jointly by the IPO Vetting team and the LIR team.

Listing Decisions: "Whether the Exchange would impose additional requirements under rule 2.04 on Company A's proposed termination of a lease agreement relating to its original entertainment business" (July 2019), "Whether the Exchange would impose additional requirements under rule 2.04 on Company A's proposed continuing transaction with Company B" (July 2019), "Whether the remaining group could meet the minimum market capitalisation requirement under rule 8.09(2)" (April 2020), "Whether the remaining group could meet the minimum market capitalisation requirement under rule 8.09(2)" (April 2020), "Whether Company X can seek a prior mandate from its shareholders on a one-off basis to issue new shares over a period of time under a share issuance proposal under GEM rule 17.39" (September 2020) and "Whether Company A's proposal to grant options to a discretionary trust under a share option scheme would meet the requirements under Chapter 17 of the Main Board rules" (September 2020).

203. During the same period:

- (a) the processing time for listing applications decreased (see paragraph 193) and the Listing Division was more efficient in terms of issuing the first comment letter and presenting the case to the Listing Committee in 2020; and
- (b) the proportion of results announcements vetted within three business days fell slightly in 2020, and the proportion of post-vetting other announcements within one business day and pre-vetting announcements within the same day increased slightly in 2020 (see paragraph 199).

204. The IPO Vetting team issued a total of two guidance letters and two listing decisions during 2020 (see paragraph 195); while the LIR team issued a total of two guidance letters¹¹⁶ and four listing decision (see paragraph 200). We noted that in 2020, the Exchange continued its ongoing exercise to streamline guidance materials published on the HKEX website¹¹⁷ in response to market feedback.

Investigation and enforcement

205. The Exchange adopts a thematic approach in its enforcement work. In 2020, its investigation and enforcement activities focused on the following themes¹¹⁸:

- (a) director's performance of fiduciary duties;
- (b) financial reporting – delays, or internal controls and corporate governance issues;
- (c) delayed trading resumption;
- (d) failure of issuers and directors to cooperate with the Exchange's investigation;
- (e) inaccurate, incomplete or misleading disclosure in corporate communication;
- (f) failure to comply with procedural requirements in respect of notifiable or connected transactions; and
- (g) repeated breaches of the Listing Rules.

206. The Exchange reported that it handled 128 investigations in 2020 (2019: 112), representing an increase of 14.3% from 2019, 121 or 94.5% (2019: 104 or 92.9%) of which related to one or more of the seven enforcement themes.

207. The Exchange completed 13 disciplinary cases in 2020 (2019: 13). All of them were concluded with public sanctions imposed by the Exchange (2019: 13).

¹¹⁶ Two of the guidance letters were jointly published by the IPO Vetting team and the LIR team. See footnotes 112 and 115.

¹¹⁷ As a result of the exercise to update and streamline its guidance materials, the Exchange updated three guidance letters and eight FAQs and withdrew 15 guidance materials.

¹¹⁸ In 2021, these themes were replaced by a set of enforcement priorities announced in the Exchange's [new Policy Statement on Enforcement](#).

208. Apart from disciplinary actions, the Exchange issued:

- (a) prejudice statements¹¹⁹ against eight individuals in 2020 (2019: five);
- (b) eight directions¹²⁰ (2019: 14); and
- (c) nine regulatory letters (2019: 15).

209. In 2020, the Exchange also took action against 59 directors¹²¹, representing a slight decrease from 2019 (63 directors).

210. Below is a summary of the number of investigations handled by the Exchange and the enforcement outcomes from 2016 to 2020:

	Investigations*	Regulatory letters (ie, warning/caution letters) issued	Cases closed by way of “no further action”	Disciplinary cases
2016	71	15	8	8
2017	86	9	11	9
2018	111	14	13	21
2019	112	15	21	13
2020	128	9	6	13

*The numbers represent cases concluded in the year and cases which remained active at year-end. The number of outstanding investigations at the end of 2020 was 54 (2019: 28). The number of cases pending disposal or disciplinary action at the end of 2020 was 45 (2019: 32).

211. The average time taken to complete an investigation was 8.7 months in 2020 and 9.6 months in 2019.

SFC observations

212. The number of listed issuers increased by 3.5% from 2019 to 2020¹²² and the number of investigations of Listing Rule breaches handled by the Exchange also increased¹²³. The number of outstanding investigations also increased from 28 in 2019 to 54 in 2020.

Debts and derivatives

213. The total number of derivative warrants and CBBCs listing applications processed by the Structured Products and Fixed Income Department in 2020 (50,167) increased by 49% from 2019 (33,671).

¹¹⁹“Prejudice statements” includes sanctions in which, in addition to a public censure, the Exchange makes a statement of opinion under Chapter 2A (GEM: Chapter 3) that the retention of office by that director is or would have been prejudicial to the interests of investors.

¹²⁰ These represented directions requiring listed issuers and directors to take proactive remedial actions to rectify breaches, improve internal controls and overall corporate governance. In 2020, the Exchange issued two internal control review directions (2019: two), one retention of compliance adviser directions (2019: three) and five training of directors directions (2019: nine).

¹²¹ Directors are required to provide a personal undertaking to procure compliance with the Listing Rules by listed issuers.

¹²² The number of listed issuers increased from 2,449 in 2019 to 2,538 in 2020 representing an increase of 89 (or 3.5%).

¹²³ See paragraphs 206 to 210.

Appendix A

Review of suspension of trading cases

Issuer (stock code)	Date of Listing Division suspension decision	Date of Listing Committee hearing	Date and result of Listing Committee decision	Date of LRC hearing	Date and result of LRC decision	Suspension date	Time lapse between Listing Division suspension decision and final suspension
Momentum Financial Holdings Limited (1152)	20/12/2019	26/05/2020 28/06/2021	09/06/2020 Upheld 23/07/2021 Upheld	03/03/2021 30/09/2021	24/03/2021 Remitted to LC 03/11/2021 Upheld ¹²⁴	04/11/2021	22 months
Shenzhen Mingwah Aohan High Technology Corporation Limited (8301)	20/12/2019	20/10/2020	02/11/2020 Upheld	N/A	N/A	12/11/2020	11 months
Inno-Tech Holdings Limited (8202)	26/07/2019	10/10/2019	23/10/2019 Upheld	29/05/2020	17/06/2020 Upheld	18/06/2020	11 months
Chinese Food and Beverage Group Limited (8272)	16/08/2019	14/01/2020	13/02/2020 Upheld	08/05/2020	02/06/2020 Upheld	03/06/2020	10 months
South China Assets Holdings Limited (8155)	03/04/2020	09/09/2020	24/09/2020 Upheld	12/01/2021	27/01/2021 Upheld	28/01/2021	10 months
SFund International Holdings Limited (1367)	24/04/2020	22/09/2020	09/10/2020 Upheld	26/01/2021	05/02/2021 Upheld	08/02/2021	10 months
Thiz Technology Group Limited (8119)	28/02/2020	02/06/2020	12/06/2020 Upheld	22/09/2020	14/10/2020 Upheld	15/10/2020	8 months
Huiyin Holdings Group Limited (1178)	14/02/2020	15/06/2020	23/06/2020 Upheld	16/12/2020	07/01/2021 Upheld	05/10/2020 (trading had been suspended before LRC hearing due to failure to publish 2020 annual results)	8 months

¹²⁴After the case was remitted by the LRC to the Listing Committee, the Listing Committee heard the case again and decided to uphold the Listing Division's decision to suspend trading in the issuer's shares. The issuer sought a review of the Listing Committee's decision by the LRC. The LRC heard the case again and decided to uphold the Listing Committee's decision.

Orient Securities International Holdings Limited (8001)	20/12/2019	10/03/2020	18/03/2020 Upheld	10/07/2020	29/07/2020 Upheld with conditions imposed	30/07/2020	7 months
CIL Holdings Limited (479)	15/05/2020	16/09/2020	18/09/2020 Upheld	19/01/2021	29/01/2021 Upheld	05/10/2020 (trading had been suspended before LRC hearing due to failure to publish 2020 annual results)	5 months
Shuanghua Holdings Limited (1241)	07/02/2020	15/07/2020	20/07/2020 Overturned	N/A	N/A	N/A	N/A
Sheng Yuan Holdings Limited (851)	12/05/2020	29/09/2020	27/10/2020 Upheld	02/02/2021	27/07/2021 Overturned	N/A	N/A

Review of cancellation of listing cases

Issuer (stock code)	Date of Listing Committee delisting decision	Date of LRC hearing	Date and result of LRC decision	Delisting date	Time lapse between Listing Committee delisting decision and final delisting
Longrun Tea Group Company Limited (2898)	23/08/2019	29/11/2019	09/12/2019 Upheld	21/07/2021 ¹²⁵	23 months
Long Well International Holdings Limited (850)	20/03/2020	05/10/2020	10/12/2020 Upheld	28/05/2021 ¹²⁶	14 months
Blockchain Group Company Limited (364)	12/06/2020	28/10/2020	16/11/2020 Upheld	10/08/2021 ¹²⁷	14 months
China Huiyuan Juice Group Limited (1886)	14/02/2020	09/12/2020	05/01/2021 Upheld	18/01/2021	11 months
Bolina Holding Co., Ltd. (1190)	08/05/2020	30/09/2020	04/11/2020 Upheld	10/03/2021 ¹²⁸	10 months
Wuzhou International Holdings Limited (1369)	13/03/2020	21/10/2020	25/11/2020 Upheld	08/12/2020	9 months
CW Group Holdings Limited (1322)	07/02/2020	21/09/2020	05/10/2020 Upheld	12/10/2020	8 months
Brightoil Petroleum (Holdings) Limited (933)	28/02/2020	18/09/2020	07/10/2020 Upheld	20/10/2020	7 months
SMI Holdings Group Limited (198)	08/05/2020	12/11/2020	01/12/2020 Upheld	14/12/2020	7 months

¹²⁵ The issuer filed a notice of application for leave to apply for judicial review to the High Court of Hong Kong to challenge the LRC decision. The application was dismissed by the court on 9 July 2021.

¹²⁶ The issuer filed a notice of application for leave to apply for judicial review to the High Court of Hong Kong to challenge the LRC decision. The application was withdrawn by the issuer on 10 May 2021.

¹²⁷ The substantial shareholder of the issuer filed a notice of application for leave to apply for judicial review to the High Court of Hong Kong to challenge the LRC decision. The application was dismissed by the court on 9 July 2021.

¹²⁸ The issuer filed a notice of application for leave to apply for judicial review to the High Court of Hong Kong to challenge the LRC decision. The application was dismissed by the court on 26 February 2021.

Superb Summit International Group Limited (1228)	08/11/2019	23/01/2020	24/01/2020 Upheld	04/06/2020 ¹²⁹	6 months
Tenwow International Holdings Limited (1219)	08/05/2020	16/10/2020	02/11/2020 Upheld	13/11/2020	6 months
Combest Holdings Limited (8190)	12/06/2020	25/11/2020	11/12/2020 Upheld	24/12/2020	6 months
Mingyuan Medicare Development Company Limited (233)	16/08/2019	18/12/2019	10/01/2020 Upheld	23/01/2020	5 months
Tianhe Chemicals Group Limited (1619)	20/12/2019	15/05/2020	29/05/2020 Upheld	11/06/2020	5 months
China Yu Tian Holdings Limited (8230)	08/05/2020	28/09/2020	15/10/2020 Upheld	29/10/2020	5 months
Peace Map Holding Limited (402)	27/03/2020	06/07/2020	21/07/2020 Upheld	03/08/2020	4 months
Shenzhou Space Park Group Limited (692)	09/08/2019	27/11/2019	04/12/2019 Upheld	10/12/2019	4 months
Hsin Chong Group Holdings Limited (404)	09/08/2019	11/12/2019	17/12/2019 Upheld	31/12/2019	4 months
China Candy Holdings Limited (8182)	16/08/2019	12/12/2019	17/12/2019 Upheld	31/12/2019	4 months
Yorkshine Holdings Limited (1048)	23/08/2019	04/12/2019	16/12/2019 Upheld	27/12/2019	4 months
Real Gold Mining Limited (246)	08/11/2019	11/03/2020	20/03/2020 Upheld	02/04/2020	4 months
Baytacare Pharmaceutical Co., Ltd. (8197)	15/11/2019	25/02/2020	05/03/2020 Upheld	18/03/2020	4 months
Fuguiniao Co., Ltd. (1819)	09/08/2019	06/11/2019	18/11/2019 Upheld	25/11/2019	3 months

¹²⁹ The issuer filed a notice of application for leave to apply for judicial review to the High Court of Hong Kong to challenge the LRC decision. The application was dismissed by the court on 27 May 2020.



National Agricultural Holdings Limited (1236)	09/08/2019	13/11/2019	15/11/2019 Upheld	22/11/2019	3 months
China Fortune Investments (Holding) Limited (8116)	12/06/2020	02/11/2020	19/11/2020 Overturned ¹³⁰	28/09/2021	15 months
Asian Citrus Holdings Limited (73)	13/09/2019	02/03/2020	27/03/2020 Overturned	N/A	N/A
National United Resources Holdings Limited (254)	30/08/2019	15/01/2020 and 09/09/2020	16/09/2020 Overturned	N/A	N/A

¹³⁰ The LRC overturned the Listing Committee's delisting decision and extended the resumption deadline. Upon the expiry of the extended deadline, the issuer was still unable to fulfil the resumption conditions. On 10 September 2021, the Listing Committee decided to cancel the issuer's listing.

Appendix B

LRC review cases involving policy considerations

Case 1

Extension to resumption deadline on the basis that the resumption conditions could be satisfied upon successful restructuring

1. Trading in the issuer's shares had been suspended since August 2016. In August 2019 the Listing Committee decided to delist the issuer as it had failed to address the audit disclaimers and demonstrate compliance with rule 13.24 before the resumption deadline of 31 July 2019¹³¹.
2. The LRC heard the case in January and September 2020¹³².
3. After considering certain new information submitted by the issuer¹³³, the LRC concluded that the issuer *could* satisfactorily address the matters leading to the audit disclaimers and *could* have a viable and sustainable business and improve its assets position from significant net liabilities to net assets, *all upon* successful completion of a proposed subscription, open offer and debt restructuring. The LRC overturned the delisting decision.
4. According to the Exchange's guidance¹³⁴ published under the new delisting regime adopted in 2018¹³⁵, the Exchange would cancel the listing of a long-suspended issuer upon the expiry of the remedial period if the issuer has not remedied the issues causing the suspension and re-complied with the Listing Rules. This remedial period sets a deadline for the issuer to meet all resumption conditions and resume trading, as opposed to the mere submission of a resumption proposal as under the previous regime. The LRC failed to adhere to this principle when it overturned the delisting decision on the basis that the issuer *could* satisfy the resumption conditions upon completion of the proposed fundraising and restructuring.

Case 2

Extension to resumption deadline on the basis of "exceptional circumstances"

5. The Listing Committee decided to delist the issuer as it considered that the issuer had failed to re-comply with the requirements of rule 13.24 within the prescribed 18-month remedial period¹³⁶, and the case did not fall within the situations where a time extension may be granted.

¹³¹ See rule 6.01A(2)(b)(ii).

¹³² The LRC raised a number of questions subsequent to the January 2020 hearing and requested the issuer to submit its response by written submission. A further hearing was then scheduled in March 2020 but, due to COVID-19, postponed a few times until September 2020.

¹³³ See footnote 53.

¹³⁴ GL95-18 Guidance on long-suspension and delisting (May 2018).

¹³⁵ See footnote 36.

¹³⁶ See footnote 29.

6. According to the Exchange's guidance, the Listing Committee may only extend the remedial period in exceptional circumstances where:
 - (a) an issuer has substantially implemented the steps that, it has shown *sufficient certainty*, will lead to resumption of trading; but
 - (b) due to *factors outside its control*, it becomes unable to meet its planned timeframe and requires a short extension of time to finalise the matters. The factors outside the issuer's control are generally expected to be *procedural in nature only* (emphasis added)¹³⁷.
7. Although the LRC, upon reviewing the issuer's updated financial forecasts and new sales contracts, agreed that the issuer had not demonstrated compliance with rule 13.24 and there was uncertainty as to whether the financial forecast could be achieved, it nonetheless overturned the Listing Committee's decision and granted an additional six months to the issuer to demonstrate the viability and sustainability of its business on the basis that the issuer had produced sufficient evidence to show that there *could* be a material improvement in its financial performance which may enable it to demonstrate compliance with rule 13.24 in the *reasonably short term*. The standard applied by the LRC appeared to be a deviation from the standard for extending the remedial period under the Exchange's published policy.

Case 3

Extension to resumption deadline on the bases of "exceptional circumstances" and COVID-19

8. The Listing Committee decided to delist the issuer for (i) its failure to address the audit qualification relating to going concerns on its 2019 annual results and (ii) its failure to re-comply with GEM rule 17.26 (the equivalent of rule 13.24), before the resumption deadline.
9. The issuer had submitted to the Listing Committee that it had commenced legal proceedings to rescind an acquisition of a business (which had resulted in a total loss) on the ground that the vendors had made false misrepresentations. The issuer claimed that a favourable judgment would enable it to discharge its liability to pay further consideration in connection with the acquisition, which would increase its net assets position and resolve the going concern qualification. It also asserted that its other businesses had been adversely affected by "temporary non-recurring incidents" including, among other things, the social unrest in Hong Kong and COVID-19.
10. In arriving at its delisting decision, the Listing Committee noted (i) that the auditor was not satisfied because the outcome of the legal proceedings was uncertain, and (ii) that the businesses had deteriorated since 2018, well before the social unrest and COVID-19 outbreak and that the issuer failed to demonstrate that but for these incidents, its businesses would be viable and sustainable. Therefore, the Listing Committee decided to delist the issuer.
11. In reviewing the Listing Committee's decision, the LRC noted that the issuer had obtained a legal opinion indicating that the outcome of the legal proceedings would be favourable. Without seeking the views of the auditor, the LRC concluded that should

¹³⁷ GL95-18 Guidance on long-suspension and delisting (May 2018).

the issuer be successful in obtaining the legal remedies, it would be able to address the audit qualifications. The LRC considered that the fraud by the vendors and the possibility of successful legal actions made this case “exceptional”, and therefore the issuer should be granted additional time to obtain a court hearing of its case.

12. In respect of the failure to comply with GEM rule 17.26, the LRC recognised that the issuer had been unable to provide projections of its future performance, the businesses had deteriorated before 2019, its cash flows were inadequate and its sources of funding were extremely limited. Nonetheless, the LRC had some sympathy with the issuer as it felt that under the current trading conditions the issuer was in no position to demonstrate the viability of its business. The LRC then proceeded to conclude that, given that the case was “exceptional” due to the fraud and the issuer should be given an extension to obtain the court hearing in the legal proceedings, the issuer could also use the additional time to establish whether it has sufficient operations and assets.
13. The LRC’s decision appeared to have ignored the fact that addressing the audit qualification and re-complying with GEM rule 17.26 (ie, the issuer must have sufficient operations and assets) were two separate resumption conditions that the issuer must meet before the resumption deadline to avoid delisting.
14. Even if the LRC was minded to grant an extension for the issuer to obtain the court hearing to address the audit qualification, the issuer’s failure to re-comply with GEM rule 17.26 was in itself a sufficient ground for delisting, and the circumstances of the case (decided in November 2020) did not appear to justify an extension of the remedial period for re-compliance with GEM rule 17.26 on the ground of COVID-19 under the Exchange’s policies adopted in August 2020¹³⁸.
15. Upon the expiry of the extended resumption deadline, the issuer was still unable to meet all resumption conditions. Its listing was subsequently cancelled by the Listing Committee.

¹³⁸ See paragraph 72 and footnote 59.