
AMENDMENTS TO THE GEM LISTING RULES

Chapter 1

GENERAL

INTERPRETATION

1.01 Throughout these Rules, the following terms, except where the context otherwise requires, have the following meanings:

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“GEM”	GEM operated by the Exchange
<u>“GEM Listing Committee”</u>	<u>the GEM listing sub-committee of the Board</u>
<u>“GEM Listing Review Committee”</u>	<u>the GEM listing review sub-committee of the Board</u>
...	
“Listing Appeals Committee”	the listing appeals sub-committee of the Board
“Listing Committee”	the listing sub-committee of the Board
“Listing Division”	the Listing Department of the Exchange
“listing document”	a prospectus, circular or any equivalent document (including the composite document in relation to a scheme of arrangement and/or an introduction document) issued or proposed to be issued in connection with an application for listing
<u>“Listing Nominating Committee”</u>	<u>the listing nominating sub-committee of the Board</u>
...	
<u>“Main Board Listing Committee”</u>	<u>the Listing Committee as defined in the Main Board Listing Rules</u>
...	

Chapter 3

GENERAL

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

General

3.01 The Board has arranged for all of its powers and functions in respect of all listing matters in relation to GEM to be discharged by the GEM Listing Committee and/or its delegates, subject to the review procedures set out in this Chapter and Chapter 4. Any function which under the GEM Listing Rules may be performed by the Exchange or any power which under the GEM Listing Rules may be exercised by the Exchange may, therefore, be performed or exercised by the GEM Listing Committee and/or its delegates. Accordingly, the GEM Listing Committee and, in relation to certain powers of review, the ~~Listing Appeals Committee~~ GEM Listing Review Committee have sole power and authority to act in relation to all listing matters to the exclusion of the Board unless and until the Board revokes these arrangements.

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3.03 In discharging their respective functions and powers ~~the Listing Appeals Committee~~ the GEM Listing Review Committee, the GEM Listing Committee, the Listing Division and the Chief Executive are required to administer the GEM Listing Rules, and otherwise to act, in the best interest of the market as a whole and in the public interest.

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Disciplinary procedures

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3.12 The GEM Listing Committee will, if requested by any party to be reprimanded, criticised, censured or otherwise sanctioned in pursuance of the powers contained in rules 3.10 and 3.11 (an "~~review applicant~~ appellant"), give its reasons in writing for the decision made against that ~~appellant~~ review applicant pursuant thereto and that ~~appellant~~ review applicant shall have the right to have the decision against him referred to the GEM Listing Review Committee ~~again~~ for a further and final review. If ~~the GEM Listing Review Committee may endorse, overturn, modify~~ ies or ~~vary~~ ies the ruling of the earlier meeting, it will, if requested by the appellant, give its reasons in writing for the modification or variation and, in respect of decisions pursuant to rule 3.10(2), (3), (5), (7), (8) or (9) only, the appellant shall have a right to a further and final review of the decision against the appellant by the Listing Appeals Committee. Subject to rule 3.17A, ~~the decision of the Listing Appeals Committee~~ GEM Listing Review Committee on review shall be conclusive and binding on the ~~appellant~~ review applicant. If requested by the ~~appellant~~ review applicant, the GEM Listing Appeals Review Committee will give reasons in writing for its decision on review.

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- 3.14 Any request for the Listing Division, the GEM Listing Committee or the ~~Listing Appeals Committee~~GEM Listing Review Committee to give its reasons in writing for its decision shall be made within ~~three~~ three business days of its decision. Where requested, written reasons for a decision will be provided to all parties to the proceedings by the Listing Division, the GEM Listing Committee or the ~~Listing Appeals Committee~~GEM Listing Review Committee (as the case may be) as soon as possible and, in any event, within 14 days of the request.

...

- 3.16 The GEM Listing Committee and the GEM Listing Review Committee may from time to time prescribe such procedures and regulations for any review meetings or hearings of the respective Committee as it they may think fit, including procedures for appointing from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.

Rights of parties to be heard

- 3.17 In any disciplinary proceedings of the GEM Listing Committee and on any further and final review of the decision resulting from those proceedings by the ~~GEM Listing Review Committee~~Listing Committee or the ~~Listing Appeals Committee~~, the party the subject of such proceedings shall have the right to attend the meeting, to make submissions and to be accompanied by its professional advisers. In all disciplinary proceedings the Listing Division will provide the parties with copies of any papers to be presented by it at the meeting, in advance of the meeting.

Disciplinary reviews initiated by the Commission

- 3.17A (1) The Commission shall have the right to request in writing a review of any disciplinary decision of the GEM Listing Committee by the GEM Listing Review Committee under this rule.
- (2) In reviewing a matter, the GEM Listing Review Committee shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.
- (3) The Commission may request written reasons for a decision of the GEM Listing Committee or the GEM Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 3.14. The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 3.14. Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
- (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.
- (5) The GEM Listing Review Committee and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.

(6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the GEM Listing Review Committee, and the GEM Listing Review Committee shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 3.17A(7).

(7) Where the GEM Listing Review Committee overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by a second GEM Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the GEM Listing Review Committee, all of the members present at the further and final review shall be persons who were not present at the earlier review hearing of the GEM Listing Review Committee. In the event there are insufficient persons available to make up the required quorum for the GEM Listing Review Committee, the proposed Chairman of the GEM Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

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Appointment and removal of members of the GEM Listing Committee

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3.23 The Chairman and the Deputy Chairmen of the GEM Listing Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The Listing Nominating Committee may choose to nominate one or more than one Deputy Chairman and the Board may choose to appoint one or more than one Deputy Chairman. The Chief Executive of HKEC may not be elected as either Chairman or Deputy Chairman of the GEM Listing Committee.

...

Functions and powers of the GEM Listing Committee

3.28 The GEM Listing Committee shall exercise all the powers and functions of the Board in relation to all listing matters in relation to GEM. The GEM Listing Committee's exercise of such powers and functions is only subject to the powers of review in the ~~Listing Appeals Committee~~GEM Listing Review Committee.

Conduct of meetings of the GEM Listing Committee

3.29 The GEM Listing Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. The quorum necessary for the transaction of any business by the GEM Listing Committee shall be ~~5~~five members present in person. The Chief Executive of HKEC will not attend meetings of the GEM Listing Committee

at which the GEM Listing Committee is determining a matter in the first instance or on review, pursuant to any disciplinary proceedings. At any meeting held to review an earlier decision of the GEM Listing Committee pursuant to any disciplinary proceedings, all of the members present at the second meeting must be persons who were not present at the first meeting.

Composition of the Listing Appeals Committee

- 3.30 ~~[Repealed 6 July 2019] The Listing Appeals Committee, being the final appellate body of the Exchange in respect of both GEM and the Main Board, shall consist of the chairman and 2 other members of the board of HKEC.~~
- 3.31 ~~[Repealed 6 July 2019] The Chairman of the Listing Appeals Committee shall be the chairman of the board of HKEC.~~
- 3.32 ~~[Repealed 6 July 2019] The Chairman of the Listing Appeals Committee shall appoint a Deputy Chairman from amongst the members of the board of HKEC, except the Chief Executive Officer of HKEC. The Chairman of the Listing Appeals Committee shall vacate office when a new chairman of the board of HKEC is appointed by the members of the board of HKEC and approved in writing by the Chief Executive of Hong Kong or upon his earlier removal from the chairmanship of the board of HKEC. The Deputy Chairman of the Listing Appeals Committee shall vacate office upon (i) the expiry of his term as a director of HKEC unless he is re-appointed or re-elected as a director of HKEC (as the case may be) and re-appointed by the Chairman of the Listing Appeals Committee as Deputy Chairman; or (ii) his earlier removal as director of HKEC.~~
- 3.33 ~~[Repealed 6 July 2019] The third member shall be chosen and invited to sit on the Listing Appeals Committee by the Chairman of the Listing Appeals Committee as and when the Listing Appeals Committee is required to review a decision of the GEM Listing Committee and shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The third member shall be a member of the board of HKEC, except the Chief Executive of HKEC.~~
- 3.34 ~~[Repealed 6 July 2019] In the event that either the Chairman or the Deputy Chairman of the Listing Appeals Committee is materially interested in the outcome of a review (otherwise than as a member of the board of HKEC and, where applicable, of the Board) or is otherwise unavailable to hear a review then the one who is available shall appoint a replacement member for the purposes of hearing that review and such person shall cease to be a member once the Listing Appeals Committee has given its decision upon the matter or upon resignation, whichever is the sooner. The replacement member appointed must be a member of the board of HKEC.~~
- 3.35 ~~[Repealed 6 July 2019] In the event that both the Chairman and the Deputy Chairman of the Listing Appeals Committee are materially interested in the outcome of a review (otherwise than as members of the board of HKEC and, where applicable, of the Board) or are otherwise unavailable to hear a particular review the board of HKEC shall appoint a temporary Chairman of the Listing Appeals Committee from the members of the board of HKEC. The temporary Chairman shall appoint a temporary Deputy Chairman and a third member of the Listing Appeals Committee from the members of the board of HKEC to hear that review. The temporary Chairman, the temporary Deputy Chairman and the third member appointed by the temporary Chairman shall all cease to be members of the Listing Appeals Committee once the Listing Appeals Committee has given its decision upon the matter or upon resignation~~

~~whichever is the sooner. The provisions of rule 3.34 and this rule shall apply mutatis mutandis to the temporary Chairman and temporary Deputy Chairman as if all references to the Chairman and Deputy Chairman were references to the temporary Chairman and temporary Deputy Chairman respectively.~~

- 3.36 ~~[Repealed 6 July 2019] The Chairman of the Listing Appeals Committee may not invite a person to sit on the Listing Appeals Committee if that person was present at any meeting of the GEM Listing Committee at which the decision under review was made or considered or is otherwise materially interested in the outcome of the review (otherwise than as an Exchange Participant or a member of the board of HKEC and, where applicable, of the Board).~~

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

- 3.37 ~~[Repealed 6 July 2019] The Listing Appeals Committee shall be the review body in respect of any decision of the GEM Listing Committee on any of the following matters:—~~

- ~~(1) that an application for listing by a new applicant has been rejected solely on the grounds that the issuer or its business is unsuitable for listing;~~
- ~~(2) [Repealed 1 January 2007]~~
- ~~(3) that a person's appointment as an issuer's compliance officer or authorised representative should be terminated;—~~
- ~~(4) that an application for the lifting of a suspension of dealings in the securities of an issuer has been rejected where the suspension has been in place for more than 30 consecutive days;~~
- ~~(5) [Repealed 1 August 2018]~~
- ~~(6) that the listing of a listed issuer be cancelled; or~~
- ~~(7) any decision pursuant to rule 3.10 (2), (3), (5), (7), (8) or (9).~~

~~Conduct of meetings of the Listing Appeals Committee~~

- 3.38 ~~[Repealed 6 July 2019] The Listing Appeals Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.~~

Composition of the GEM Listing Review Committee

- 3.38A Subject to casual vacancies from time to time the GEM Listing Review Committee shall consist of 20 members or such greater number of members as the Board may from time to time agree. An individual who was a member of the GEM Listing Committee may be eligible for appointment as a member of the GEM Listing Review Committee after the lapse of two years from the date on which he last vacates office of the GEM Listing Committee.

- 3.38B The GEM Listing Review Committee shall comprise:

- (1) at least six individuals who the Listing Nominating Committee considers will represent the interest of investors; and
- (2) the remaining members who the Listing Nominating Committee considers will represent a suitable balance of representatives of listed issuers and market practitioners including lawyers, accountants, corporate finance advisers and Exchange Participants (or their officers), and who have experience and expertise in GEM Listing Rule matters, or are familiar with the work of the GEM Listing Committee.

No current GEM Listing Committee members or representatives of the Commission or the HKEC shall be members of the GEM Listing Review Committee.

Appointment and Removal of Members of the GEM Listing Review Committee

3.38C Members of the GEM Listing Review Committee shall be appointed by the Board. The Board may appoint only persons nominated in accordance with rule 3.38D.

3.38D The persons eligible for appointment or re-appointment in each year as members of the GEM Listing Review Committee shall be nominated by the Listing Nominating Committee.

3.38E Members of the chairmen pool of the GEM Listing Review Committee shall be nominated by the Listing Nominating Committee and appointed by the Board. The chairmen pool shall comprise at least four members of the GEM Listing Review Committee.

3.38F Members of the GEM Listing Review Committee shall normally be appointed for a term of approximately twelve months.

3.38G All members of the GEM Listing Review Committee shall vacate office at the end of their term unless they are re-appointed by the Board for a further full term or such shorter period as the Board may stipulate at the time of re-appointment. Subject to rule 3.38I, all members of the GEM Listing Review Committee are eligible for re-appointment.

3.38H The Board may fill any casual vacancies that may occur in the GEM Listing Review Committee by reason of resignation, retirement or otherwise. A person eligible for appointment to fill any such casual vacancy shall be nominated by the Listing Nominating Committee and shall be a person who is eligible within the same category of rule 3.38B as the member who has vacated office. The term of a member appointed to fill a casual vacancy in an office shall end on the same date as the term of the member whose vacation from that office created the casual vacancy.

3.38I Members of the GEM Listing Review Committee may only remain in office for a maximum of six consecutive years in addition to any period of appointment pursuant to rule 3.38H for the purpose of filling a casual vacancy. A member who has served for the maximum period permitted by this rule may be eligible for re-appointment after the lapse of two years from the date on which he last vacates office. Notwithstanding the foregoing, in exceptional circumstances, the Listing Nominating Committee shall have the discretion to nominate a person for re-appointment at any time before the lapse of two years from the date such person vacates office and the Board shall have the power to appoint such person.

3.38J The office of a member of the GEM Listing Review Committee shall be vacated if any one of the following events occurs:—

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

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

Functions and powers of the GEM Listing Review Committee

3.38K The GEM Listing Review Committee shall be the review body in respect of any decision of the GEM Listing Committee and, where the Commission had requested a review by the GEM Listing Review Committee of a decision made by the GEM Listing Committee, the further and final review body for decisions of the GEM Listing Review Committee as provided in rules 3.17A(7) and 4.16(7).

Conduct of meetings of the GEM Listing Review Committee

3.38L The GEM Listing Review Committee shall meet for the despatch of business, adjourn and otherwise regulate its meetings in accordance with the provisions of the rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule 3.38L. The quorum necessary for the transaction of any business of the GEM Listing Review Committee shall be five members present in person. All review hearings shall be heard *de novo*. The GEM Listing Review Committee will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the GEM Listing Review Committee. The GEM Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The GEM Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

Bona fide acts of eCommittee members

3.39 All bona fide acts of a member of the GEM Listing Committee or any member of the ~~GEM Listing Appeals~~ Review Committee pursuant to the resolutions passed at any meeting of those Committees shall, as regards all persons dealing in good faith with the Exchange, notwithstanding that it be subsequently discovered that there was some defect in the appointment of any such member or that such member was for some reason ineligible for appointment, be deemed to be valid as if every member

had been duly appointed and was qualified to be a member of the relevant Committee.

Transitional

3.40 All disciplinary review hearings for disciplinary proceedings commenced before the implementation of the new rules will be conducted under Chapters 3 and 4 of the GEM Listing Rules in force as at the time of commencement of disciplinary proceedings. The Committees in existence before the implementation of the new rules will continue in existence until all such proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of these matters.

Note: (1) Disciplinary proceedings are commenced upon the Listing Division submitting a report to the Secretary setting out its case and all material facts and submissions upon which it intends to rely.

(2) For the purpose of this rule, the reference to “new rules” refers to the amendments to this Chapter and Chapter 4 which came into effect on 6 July 2019.

Chapter 4

GENERAL

REVIEW PROCEDURE

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Definitions and Interpretation

4.01A In this Chapter:

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(3) “Review Request” means a written request by the relevant party for a review of the decision of the Listing Division, GEM Listing Committee or the GEM Listing ~~(Review)~~ Committee (as the case may be) under rules 4.05, 4.06 and ~~4.07~~, 4.06A and 4.16(7) which must be served on the Secretary of the GEM Listing Committee, or the Secretary of the GEM Listing ~~(Review)~~ Committee ~~or~~ the Secretary of the Listing Appeals Committee (hereinafter referred to as the “Secretary”), as the case may be

4.02 The GEM Listing Committee may at any time conduct a hearing in relation to any matter relating to or arising out of the GEM Listing Rules and it may require the attendance at such hearing of such persons and the production to such hearing of such documents as it deems appropriate. As provided in this Chapter, certain decisions of the Listing Division may be referred to the GEM Listing Committee for review; and certain decisions of the GEM Listing Committee may be referred to the GEM Listing ~~(Review)~~ Committee for a further and final review ~~(as defined in rule~~

~~4.06(2)) for review; certain decisions of the GEM Listing Committee or the GEM Listing (Review) Committee may also be referred to the Listing Appeals Committee for review.~~

4.02A This Chapter sets out the mechanism, procedures and related provisions for the review of non-disciplinary decisions by the GEM Listing Committee and the GEM Listing Review Committee.

4.03 The GEM Listing Committee and the GEM Listing Review Committee may from time to time prescribe such procedures and regulations for any review hearings of the respective Committee as it ~~they~~ may think fit, including procedures for appointing from time to time the Chairman for any review hearing, procedures governing members' conflict of interest and the publication of decisions and reasons.

4.04 (1) Notwithstanding rule 4.03 and provisions in respect of the application form set out in Appendix 5A, a listed issuer or new applicant shall submit to the GEM Listing Committee or the Listing Division, as the case may be, information for an application for listing pursuant to each application form no more than 2 times, subject always to:—

(a) the GEM Listing Committee or the Listing Division, as the case may be, permitting otherwise if it considers necessary; and

(b) only one right of review by the listed issuer or new applicant against the latest decision made by the GEM Listing Committee or the Listing Division, as the case may be, as at the date of the Review Request pursuant to rule 4.08; ~~and~~

(c) [Repealed 6 July 2019] rule 4.11(5).

...

Review cases of a new applicant to be considered by the GEM Listing Committee and the GEM Listing (Review) Committee

4.05 (1) (a) Where the Listing Division rejects an application for listing by a new applicant, the new applicant has the right to have ~~that ruling the decision reviewed by~~ referred to the GEM Listing Committee for a review.

(b) Subject to rule 4.16, tThe decision of the GEM Listing Committee on review is conclusive and binding on the new applicant except where a new applicant is rejected solely on the grounds of unsuitability of the new applicant itself or its business, in which case the new applicant has the right to have the decision referred to the GEM Listing Review Committee for a further and final review. Subject to rule 4.16, the decision of the GEM Listing Review Committee on the review is conclusive and binding on the new applicant.

Note: A rejection decision under rule 4.05(1) does not include a Return Decision.

(2) ...

- (b) Where the GEM Listing Committee endorses the Return Decision, the new applicant and/or the Sponsor have the right to have the Return Decision referred to the GEM Listing ~~(Review)~~ Committee for a further and final review. Subject to rule 4.16, t~~The decision of the GEM Listing (Review)–Committee on the review is conclusive and binding on the new applicant and the Sponsor.~~

Review cases of a listed issuer to be considered by the GEM Listing Committee and the GEM Listing ~~(Review)~~ Committee

- 4.06 (1) Where the Listing Division makes a ~~ruling~~decision on the listed issuer, the listed issuer may request ~~that the ruling~~decision be referred to the GEM Listing Committee and the ~~GEM Listing Committee may, in its sole discretion, review the ruling at a first~~ for a review hearing of ~~by~~ the GEM Listing Committee.
- (2) Subject to rule 4.04, where the GEM Listing Committee endorses, modifies or varies the Listing Division's ~~ruling~~decision or makes its own ~~ruling~~decision, the listed issuer may request ~~that it~~ the decision be referred to the GEM Listing ~~(Review)~~ Committee for a further and final review ~~of the ruling~~.
- (3) ~~Subject to rule 4.16, t~~Subject to rule 4.16, t~~The decision of the Listing Division or, the GEM Listing Committee, the GEM Listing (Review) Committee or the Listing Appeals Committee, as the case may be, shall be conclusive and binding on the listed issuer if the listed issuer does not seek review of the decision of the Listing Division, or the GEM Listing Committee or the GEM Listing (Review) Committee, as the case may be; otherwise, the decision of the GEM Listing (Review) Committee or, in the cases to which rule 4.07 applies, the decision of the Listing Appeals Committee, shall be conclusive and binding on the listed issuer.~~

Review cases of a compliance officer or an authorised representative to be considered by the GEM Listing Committee and the GEM Listing Review Committee

- 4.06A (1) Where the Listing Division decides that a person's appointment as an issuer's compliance officer appointed under rule 5.19 or authorised representative under rule 5.24 should be terminated, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision referred to the GEM Listing Committee for review.
- (2) Where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision reviewed by the GEM Listing Review Committee, whose decision shall be conclusive and binding on both the listed issuer and that compliance officer or authorised representative, as the case may be.

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

- 4.07 ~~[Repealed 6 July 2019] The Listing Appeals Committee shall be the review hearing body in respect of any decision of the GEM Listing Committee or GEM Listing (Review) Committee on any of the following matters:—~~
- (1) ~~Rejection of a new applicant – unsuitability for listing—~~

~~Where the GEM Listing Committee on review of an earlier decision by the Listing Division rejects the new applicant solely on the ground that the new applicant or its business is not suitable for listing, the new applicant shall have a right to a further and final review of the application by the Listing Appeals Committee. The Listing Appeal Committee's decision will then be conclusive and binding on the new applicant.~~

~~(2) [Repealed 1 January 2007]~~

~~(3) Rejection of a compliance officer or an authorised representative~~

~~(a) Where the Listing Division decides that a person's appointment as an issuer's compliance officer appointed under rule 5.19 or authorised representative under rule 5.24 should be terminated, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision referred to the GEM Listing Committee for review.~~

~~(b) Where the GEM Listing Committee endorses, modifies or varies the Listing Division's decision, that compliance officer or authorised representative, as the case may be, shall have the right to have that decision reviewed by the Listing Appeals Committee, whose decision shall be conclusive and binding on both the listed issuer and that compliance officer or authorised representative, as the case may be.~~

~~(4) Rejection of a lifting of suspension of dealings~~

~~(a) Where the Listing Division rejects an application by a listed issuer to lift a suspension of dealings which has been in effect for more than 30 consecutive days, the listed issuer shall have the right to have that decision referred to the GEM Listing Committee for review.~~

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

~~(5) [Repealed 1 August 2018]~~

~~(6) Cancellation of a listing~~

~~(a) Following a decision to cancel the listing of a listed issuer, the GEM Listing Committee will set down a detailed review procedure upon the receipt of the written request made including time limits for submitting documents on a case by case basis.~~

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

~~(c) Where the GEM Listing (Review) Committee endorses, modifies or varies the earlier decision of the GEM Listing Committee, the listed issuer shall have a right to further and final review of that decision by~~

~~the Listing Appeals Committee, whose decision shall be conclusive and binding on the listed issuer.~~

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

Time for application

- 4.08 (1) Subject to (3) below, a Review Request for reviewing any decision of the Listing Division, the GEM Listing Committee or the GEM Listing ~~(Review)~~ Committee (as the case may be) under rules 4.05(1), 4.06, 4.06A and 4.16(7) ~~4.07~~ must be served on the Secretary, within seven business days of receipt of either the relevant decision, or if the relevant party requests a written decision reasons under rule 4.13(1), ~~that those written decision reasons.~~
- (2) A Review Request for reviewing a Return Decision or a GEM Listing Committee's decision to endorse a Return Decision must include the grounds for the review together with reasons and be served on the Secretary within five business days of receipt of the written decision under rule 4.13(2).
- (3) A Review Request made under rule 4.06 for reviewing a decision of the Listing Division to direct the resumption of dealings or, if such decision has been referred to the GEM Listing Committee for review, the GEM Listing Committee's decision on such review, must include the grounds for the review together with reasons and be served on the Secretary within five business days of receipt of the written decision under rule 4.13(3).

Notice of review hearing

- 4.09 Upon the receipt of ~~the written request for a review of any decision of the Listing Division, the GEM Listing Committee or GEM Listing (Review) Committee~~ a Review Request, the GEM Listing Committee, or the GEM Listing ~~(Review)~~ Committee ~~or the Listing Appeals Committee~~, as the case may be, will convene a hearing to review the matter in accordance with the procedures as prescribed by the Secretary; provided that when the GEM Listing Committee or the GEM Listing ~~(Review)~~ Committee considers that it is necessary to resolve an issue urgently, it may stipulate such time as may be necessary within which the relevant party should be informed as to the date for the review hearing.

Prehearing procedures

- 4.10 In all review cases, the Listing Division and the relevant parties will provide each other and the GEM Listing Committee, or the GEM Listing ~~(Review)~~ Committee, as the case may be, ~~or the Listing Appeals Committee~~ through the Secretary of the relevant Committee with copies of any papers to be presented by it at the hearing, in advance of the review hearing.

Conduct of review hearing

- 4.11 (1) The GEM Listing Committee, or the GEM Listing ~~(Review)~~ Committee ~~or the Listing Appeals Committee~~ shall meet for the despatch of business, adjourn and otherwise regulate its hearings in accordance with the provisions of the

rules made by the Board for this purpose, including rules governing members' conflicts of interest, subject to the provisions of this rule. All review hearings under this Chapter shall be heard *de novo*. The GEM Listing Committee and the GEM Listing Review Committee (as the case may be) will rehear the case and decide it afresh, after considering all the relevant evidence and arguments made at the earlier hearings and any additional evidence or information which may be adduced in accordance with the procedures and regulations for review hearings and any directions made by the GEM Listing Committee or the GEM Listing Review Committee. The GEM Listing Review Committee will consider the decision of the previous decision making body and state the reasons for its own decision. The GEM Listing Review Committee will also address the prior decision (and the basis therefor) in its own decision, whether it is upholding or overturning that prior decision.

- (2) The quorum necessary for the transaction of any business by the GEM Listing Committee or the GEM Listing (Review) Committee shall be 5 members present in person. ~~The quorum necessary for the transaction of any business by the Listing Appeals Committee shall be 3 members present in person.~~
- (3) The Chief Executive of HKEC will not attend meetings of the GEM Listing Committee at which the GEM Listing Committee is determining a matter in the first instance or attend review hearings of the GEM Listing Committee ~~or the GEM Listing (Review) Committee.~~
- (4) ~~[Repealed 6 July 2019] At any meeting held to review an earlier decision of the GEM Listing Committee, subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of either the Chairman of the GEM Listing Committee or the GEM Listing (Review) Committee, as the case may be, all of the members present at the review hearing shall be persons who were not present at the earlier GEM Listing Committee meeting.~~
- (5)
 - (a) ~~[Repealed 6 July 2019] Before seeking to review a decision of the GEM Listing Committee or the Listing Division (the "Original Body") by the GEM Listing (Review) Committee or the GEM Listing Committee (the "Reviewing Body"), the relevant party shall have provided the Original Body with all or any new information for consideration by the Original Body.~~
 - (b) ~~[Repealed 6 July 2019] A party may only request a review of a decision of the Original Body when all the relevant information and evidence has been provided to the Original Body. A party seeking to review shall not seek to present to the Reviewing Body new information or evidence that was not previously presented to the Original Body.~~
 - (c) ~~[Repealed 6 July 2019] If the Listing Division upon receipt of the written submission from the relevant party discovers that the relevant party adduces new information in its written submissions prepared for the review hearing, the Listing Division shall notify the Secretary immediately so that arrangements may be made for the relevant party to withdraw its application for review. The new submission will then be considered by the GEM Listing Committee or the Listing Division, as the case may be, as a first instance hearing.~~

- (d) ~~Sub-rules (a), (b) and (c) do not apply to a review relating to a Return Decision.~~ In a review of a Return Decision or a GEM Listing Committee's decision to endorse a Return Decision, any materials submitted to the GEM Listing Committee or the GEM Listing (Review) Committee must be based on the original materials submitted to the Listing Division when the new applicant first filed its listing application.

...

- (7) (a) At a GEM Listing Committee or ~~Listing Appeals Committee~~ GEM Listing Review Committee hearing, the directors of the new applicant have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the Sponsor, the Compliance Adviser, authorised representatives, proposed or otherwise, the financial adviser, the legal adviser and auditors of the new applicant; a Sponsor, Compliance Adviser or authorised representative may be accompanied by its/his legal adviser.
- (b) At a review hearing before the GEM Listing Committee or the GEM Listing (Review) Committee or ~~Listing Appeals Committee~~ hearing, the directors of the listed issuer have the right to attend the hearing, to make submissions and to be accompanied by one representative of each of the Compliance Adviser, authorised representatives, the financial adviser, the legal adviser and auditors of the listed issuer; a Compliance Adviser or authorised representative may be accompanied by its/his legal adviser.
- (8) In the case of a review hearing sought by a compliance officer or an authorised representative under rule ~~4.07(3)~~ 4.06A, the compliance officer or authorised representative, as the case may be, shall have the right to attend the review hearing, to make submissions and may be accompanied by his legal adviser.
- (9) Sub-rule (7) does not apply to a review relating to a Return Decision. In a review hearing of a Return Decision by the GEM Listing Committee or the GEM Listing (Review) Committee, the directors of the new applicant and/or one representative of each Sponsor have the right to attend the hearing, to make submissions and to be accompanied, in the case of the directors of the new applicant, by one representative of each of the new applicant's financial adviser, legal adviser and auditors; and in the case of each Sponsor, by its legal adviser. If all the parties seeking a review decide not to attend the hearing, the hearing will proceed based on the documents submitted for hearing. For the avoidance of doubt, if a party seeking a review decides not to attend the hearing, the hearing will proceed in his absence.

Role of the Secretary

4.12 ...

- (2) Any notices, notifications and all other documents required to be submitted to the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~ must be served upon the Secretary who will ensure that copies are provided to the other parties and members of the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~, as appropriate.

- (3) The Secretary shall advise the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~ on procedural matters, but all decisions on such matters shall be made only by the GEM Listing Committee, or the GEM Listing (Review) Committee, ~~or the Listing Appeals Committee~~ as the case may be; and the Secretary shall carry out such duties as may from time to time be authorised by the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~.

...

- (5) The Secretary shall refer any pre-review hearing enquiries or matters, procedural or otherwise, to the Chairman proposed for any of the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or Listing Appeals Committee~~, as the case may be, for confirmation or decision or if the proposed Chairman so directs, the Secretary shall refer the same to the GEM Listing Committee, or the GEM Listing (Review) Committee ~~or the Listing Appeals Committee~~, as the case may be, for its decision.

Request for written reasons

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

Publication of decisions

- 4.13A The conclusive and binding decisions of the GEM Listing Review Committee under this Chapter shall be published on the Exchange's website unless otherwise directed by the review body. In the event of a further and final review under rule 4.16(7), the decision of the GEM Listing Review Committee which heard the review initiated by the Commission and the decision of the GEM Listing Review Committee which heard the further and final review shall both be published.

Costs

- 4.14 Upon submission of a Review Request pursuant to rule 4.08, a non-refundable fee of HK\$60,000 is payable to the Exchange, for each review, by any party seeking to

review a decision of the Listing Division, the GEM Listing Committee or (in relation to a review under rule 4.16(7)) the GEM Listing (Review) Committee, as the case may be, pursuant to this Chapter.

...

Non-disciplinary reviews initiated by the Commission

- 4.16 (1) The Commission shall have the right to request in writing a review of any non-disciplinary matter, including a decision of the GEM Listing Committee by the GEM Listing Review Committee under this rule.
- (2) In reviewing a matter, the review body shall have due regard to the rights and interests of all third parties who would be directly affected by the further review of the matter.
- (3) The Commission may request written reasons for a decision of the GEM Listing Committee or the GEM Listing Review Committee if no written reasons were provided in the decision of the relevant Committee and if the relevant party does not request written reasons under rule 4.13(1). The Commission will make such a request within seven days of the expiry of the time stipulated for request of written reasons under rule 4.13(1). Where the relevant party requests written reasons, the written reasons provided to the relevant party will be provided to the Commission and the Listing Division. Similarly, written reasons provided to the Commission pursuant to the Commission's request will also be provided to the relevant party and the Listing Division.
- (4) If the Commission decides to request a review of a matter, it will do so within seven business days after receipt of the relevant decision or, if either the Commission or the relevant party requests written reasons for the decision, those written reasons.
- (5) The review body and/or its Chairman may prescribe the procedures for reviewing a matter under this rule as they may think fit.
- (6) The relevant party, the Listing Division and the Commission will have the right to make written submissions to the review body, and the review body shall take into account all such written submissions when reaching its decision. This applies to both a review requested by the Commission and any further and final review requested by the relevant party pursuant to rule 4.16(7).
- (7) Where the review body overturns, modifies or varies the decision subject to review, the relevant party shall have a further and final right to seek a review of the decision by the GEM Listing Review Committee. Subject to the facts and circumstances arising in the earlier meeting(s) in each case and subject further to the absolute discretion of the proposed Chairman of the GEM Listing Review Committee, all of the members present at the further and final review shall be persons who were not present at the earlier review hearing of the GEM Listing Review Committee (if any). In the event there are insufficient persons available to make up the required quorum for the GEM Listing Review Committee, the proposed Chairman of the GEM Listing Review Committee shall direct the Secretary to select sufficient additional members to make up the required quorum by such method as the proposed Chairman considers appropriate in the proposed Chairman's absolute discretion.

Transitional

4.17 (1) All non-disciplinary review hearings in respect of the following decisions will be conducted under Chapters 3 and 4 of the GEM Listing Rules in force immediately before the implementation of the new rules:

(a) subject to (b) below, any first instance non-disciplinary decision made before the implementation of the new rules;

(b) any decision made under rule 9.15(1) before the implementation of the new rules and any follow on or further decision made in relation to those decisions (including a decision to cancel the listing if an issuer fails to remedy the specified matters within the specified period); and

(c) any review decision of the decisions referred to in (a) or (b) above.

(2) The Committees in existence before the implementation of the new rules will continue in existence until all relevant review proceedings have been concluded and the rules and procedures then in force will continue to apply for the purpose of the conduct of the above matters.

Note: For the purpose of this rule, the reference to “new rules” refers to the amendments to this Chapter and Chapter 4 which came into effect on 6 July 2019.

...

Chapter 36

...

The Commission's powers and functions in the event of a conflict of interest

...

36.04 Where, pursuant to section 74 of the Securities and Futures Ordinance and this Chapter, the Commission exercises powers and functions with respect to applicants for listing or listed issuers in place of the Exchange:

...

(2) the Commission shall exercise such powers and functions through and within the framework described in rules 38.05 to 38.08 of the Main Board Listing Rules as if:

...

(c) references to “Listing {Review} Committee” were replaced with “GEM Listing {Review} Committee”;

...