

From: [Tiffany Cheng](#)
To: [response](#)
Subject: Re: CP on Review of ESG Reporting Guide
Date: 18 September 2015 09:41:27
Attachments: [2015 HKEx ESG Consultation Questionnaire.doc](#)

Dear Sir/ Madam,

I am writing in relation to the Consultation Paper on the Review of the ESG Reporting Guide, and my views are as follows:

Reporting approach and principles

1. The newly-proposed ESG Reporting Guide (“the Guide”) has addressed the issue of “timeliness” of ESG reports by requiring listed issuers to publish ESG reports no later than three months after their publication of annual reports. I agree that ESG data is more meaningful when investors and various stakeholders can evaluate financial data of listed issuers along with their ESG data. I also agree with the approach that ESG reports are to be presented as information in the listed issuers’ annual report, in a standalone report or on the company’s website, as it is important for ESG reports to be disseminated widely and easily accessed by the public.

2. It is practical for the Guide to complement with the requirement of Directors’ Report under the Companies Ordinance (Cap. 622), as this reduces administrative burden of Hong Kong-incorporated listed issuers and avoids duplicity of information for report audience. However, as the Hong Kong Stock Exchange (“the Exchange”) may want to clarify, Hong Kong-incorporated listed issuers have to comply with the requirements under the Companies Ordinance (Cap. 622), where it is fully mandatory to disclose environmental policies and performance, while they have to comply with the Guide as well. Hence, it is likely that Hong Kong-incorporated listed issuers may not opt for “explanations” when disclosing their environmental policies and performance in purported compliance to both the Guide and Companies Ordinance.

3. As listed issuers are required to report on a “comply-or-explain” basis, it will be more sufficient and complete if the Exchange gives guidance on what constitutes an “explanation”. The Financial Reporting Council of the United Kingdom has conducted consultation with listed issuers and investors and issued a discussion report to explain what constitutes an “explanation”^[1], which contains different market views of “explanation” and concludes that: “*an explanation should be full and include reference to context and coherent rationale. They should explain how the company is fulfilling the relevant principle of the Code and also whether deviation from its provisions is time limited.*” The Exchange may consider issuing guidance documents to elaborate on what constitutes an “explanation” to assist listed issuers to comply with the Guide.

4. Under the proposed Guide, listed issuers are encouraged to engage with stakeholders on an ongoing basis to understand their expectations towards the ESG reports^[2]. Stakeholders’ opinions are also vital to determine the degree of materiality of information that should be included in the ESG Report, as

stated in the principle of “materiality” in the Guide. It is suggested that the Guide could make stakeholder engagement processes more transparent to investors and stakeholders by requiring listed issuers, as a recommended disclosure at this stage, to disclose information on how listed issuers have engaged with stakeholders, and thus how it has helped identifying material ESG issues of the company.

5. One of the examples is a materiality assessment report published by Bloomberg^[3], which lays out their methodologies, groups of stakeholders identified, and the list of questions they have consulted the stakeholders. This approach was also suggested in a global investor survey conducted by Investor Initiative for Stock Exchanges^[4], where investors proposed stock exchanges to incorporate stakeholder engagement and materiality assessment disclosure into their listing rules. The report audience could have a better understanding on listed issuer's stakeholder relationships, how the listed issuers have engaged with them to understand the ESG impacts of the company, and how well the listed issuers have taken into account of the stakeholders' expectations on the ESG report. Hence, it is believed that it will increase transparency and accountability of listed issuers by making the stakeholder engagement and materiality assessment processes as recommended disclosures under the Guide.

Required scope of disclosure

6. Under the current proposal by the Exchange, the Key Performance Indicators (KPIs) under “social” subject area are not upgraded to the “comply-or-explain” level yet. For the time being, the Exchange is placing a higher priority to the “environment” element within the ESG Guide. To achieve full and comprehensive ESG reporting and to align with international reporting frameworks, the disclosure of “social” KPIs should also be made mandatory in the future. It is strongly urged that the Exchange should have a public timeline of when the “social” KPIs are upgraded to the “comply-or-explain” level. This will signal to the market that the Exchange is continuously improving ESG disclosure of the listed issuers and issuers would also have time to build capacity for further disclosure.

7. The general disclosure sections of “environmental” and “social” subject areas are proposed to be upgraded to the “comply-or-explain” level. Under the general disclosure section, issuers are required to report on “information on policies” and “compliance with relevant laws and regulations that have a significant impact on the issuer”. It is not required for them to discuss the implementation and outcomes of their ESG policies. Currently, Denmark^[5] and European Union^[6] have required companies to discuss description of policies, their implementation and outcomes. Though only narrative description is required for the general disclosure section, investors and various stakeholders could gain a better understanding on the listed company's yearly ESG performance, while a mere ESG policy description could remain static over a few years. It is advisable for the Exchange to require more qualitative disclosure on the implementation and outcomes of ESG policies. The disclosed information could cover the internal mechanisms and controls to implement such policies and their outcomes. Hence, on top of gaining a better understanding of issuers' ESG policies, information users could understand

how these policies are implemented, and how these policies yield positive or negative results to issuers' long-term performance.

8. It is positive that the Guide is including gender diversity as a recommended disclosure, as this is more in line with international reporting frameworks. Aligning the domestic reporting regulations with international reporting frameworks is a global trend^[7], as countries like Denmark and Norway are endorsing international frameworks such as United Nations Global Compact, Principles for Responsible Investment and Global Reporting Initiative, where companies are exempt from the domestic reporting requirement when they comply with these international frameworks. While Hong Kong might not adopt the Danish and Norwegian approaches, aligning our domestic reporting framework with international standards is a way to move forward corporate ESG disclosure in Hong Kong, I hope that the Exchange could make further improvements to the Guide in the future to make it more in line with international standards.

Quality control measures

9. It is positive that the Guide is emphasizing the overall responsibility of the board for the company's ESG strategy and reporting. This would stimulate more involvement from the top management regarding the company's ESG strategy and reporting, rather than leaving it as an exercise for the company's marketing department and sustainability department.

10. I suggest that the Exchange may consider specifying, or reiterating, the possible consequences to the listed company and the directors if the listed company does not comply with the ESG Guide i.e. not complying nor giving explanation, or giving inappropriate explanations. Under Rule 2A.09-10 of the Main Board Listing Rules ("the Listing Rules"), the Exchange can exercise its powers to discipline listed issuers when there is non-compliance with the Listing Rules, such as issuing a public statement with criticism, require a breach to be rectified, or publicly state that retention of a particular director is prejudicial to the interest of the investors of that listed company etc. Laying out the consequence of non-compliance could encourage directors and listed issuers to comply with the Guide or make appropriate explanations.

11. I also suggest the Exchange to have a public list of issuers which have complied with the ESG Guide, and for those who have not, their explanations should also be published in the list. This approach is adopted by the Brazilian Stock Exchange, BM&FBOVESPA^[8]. This could help increase the transparency as to how listed issuers have complied with the ESG Guide and how they are addressing ESG issues. This measure could also encourage listed issuers to comply with the Guide or to produce more full and sufficient explanations.

My comments and recommendations are based on an intern paper pending publication: *Moving Forward Corporate ESG Disclosure in Hong Kong: The Upcoming Opportunities*. I will submit a copy and provide a link to an electronic version when the paper is published in the public domain.

[1] Financial Reporting Council (2012), What constitutes an explanation under “comply-or-explain”?

[2] HKEx (2015), Consultation Paper: Review of the Environmental, Social and Governance Reporting Guide, The Proposed New Guide, para 6

[3] Bloomberg (2014), Impact Report 2014: Materiality Assessment, retrieved from http://www.bloomberg.com/bcause/content/uploads/sites/6/2015/06/15_0604-Materiality-Assessment-Cover.pdf

[4] Investor Initiative for Stock Exchanges (2014), Investors Listing Standards Proposal: Recommendation Stock Exchange Requirements on Corporate Sustainability Reporting

[5] Danish Financial Statements Act 2008

[6] European Parliament (2014), *Directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups*, retrieved at <http://register.consilium.europa.eu/doc/srv?l=EN&f=PE%2047%202014%20INIT>

[7] United Nations Environment Programme, Global Reporting Initiative, KPMG, The Centre for Corporate Governance in Africa (2013), Carrots and Sticks: Sustainability Reporting Practices Worldwide – today’s best practices, tomorrow’s trends

[8] BM&FBOVESPA, List of Companies which have complied with the requirement or their explanations, retrieved at <http://www.bmfbovespa.com.br/en-us/markets/download/Relate-ou-Explique-ingles.pdf>

Attached please also find the filled-in Questionnaire (Part A only). I have not signed since I do not have an e-signature, however I agree to your private policy and agree to release to you my personal information. Please do not hesitate to contact me if you have further questions.

Yours sincerely,

Tiffany Cheng

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed change discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201507.pdf>

Where there is insufficient space provided for your comments, please attach additional pages.

1. Do you agree with our proposal to amend Rule 13.91 to require issuers to disclose in their annual reports or ESG reports whether they have complied with the “comply or explain” provisions in the ESG Guide and if they have not, they must give considered reasons in the ESG reports?

Yes

No

Please give reasons for your views.

2. Do you agree with our proposal to amend Rule 13.91 to require the issuer to report on ESG annually and regarding the same period covered in its annual report?

Yes

No

Please give reasons for your views.

3. Do you agree with our proposal to include a Note under Rule 13.91 to clarify that:
- (i) an ESG report may be presented as information in its annual report, in a separate report, or on the issuer’s website; and
 - (ii) the issuer should publish the ESG report as close as possible to, and in any event no later than three months after, the publication of the issuer’s annual report?
- Yes
- No

Please give reasons for your views.

4. Do you agree with our proposal to revise the introductory section of the Guide into four areas (i.e. “The Guide”, “Overall Approach”, “Reporting Principles” and “Complementing ESG Discussions in the Business Review Section of the Directors’ Report”), and with the wording set out in Appendix II to the Consultation Paper?
- Yes
- No

Please give reasons for your views.

5. Do you agree with the proposed wording of the Reporting Principles (i.e. “Materiality”, “Quantitative”, “Balance” and “Consistency”) in the introductory section of the Guide, as set out in Appendix II to the Consultation Paper?

Yes

No

Please give reasons for your views.

6. Do you agree with the proposed wording in the Guide linking it to Appendix 16 to the Main Board Listing Rules (in relation to the requirement for ESG discussions in the business review section of the directors’ report), as set out in Appendix II to the Consultation Paper?

Yes

No

Please give reasons for your views.

7. Do you agree with the proposal to re-arrange the Guide into two Subject Areas (A. Environmental and B. Social) and re-categorise “Workplace Quality”, “Operating Practices” and “Community Involvement” under Subject Area B?

Yes

No

Please give reasons for your views.

8. Do you agree with the proposal to change the heading “Workplace Quality” to “Employment and Labour Standards”?

Yes

No

Please give reasons for your views.

9. Do you agree with our proposal to upgrade the General Disclosures for each Aspect of the ESG Guide to “comply or explain”?

Yes

No

Please give reasons for your views.

10. Do you agree with our proposal to amend the wording of paragraph (b) under current Aspects A1, A2, A4, B1, C2 and C3, re-numbered Aspects A1, B1, B2, B4, B6 and B7, to “compliance with relevant laws and regulations that have a significant impact on the issuer...” in order to align it with the language of the relevant provisions of the Companies Ordinance?

Yes

No

Please give reasons for your views.

11. Do you agree with our proposal to revise proposed Aspect A1 (“Emissions”) by upgrading to “comply or explain” the current KPIs B1.1, B1.2, B1.4 and B1.5, re-numbered KPIs A1.1, A1.2, A1.4 and A1.5, concerning disclosure of emissions and non-hazardous waste?

Yes

No

Please give reasons for your views.

12. Do you agree with our proposal to upgrade to “comply or explain” the current KPIs B1.3 and B1.6, re-numbered KPIs A1.3 and A1.6, concerning disclosure of hazardous waste?

Yes

No

Please give reasons for your views.

13. Do you agree with our proposal to upgrade to “comply or explain” the KPIs under the current Aspect B2, re-numbered Aspect A2, “Use of Resources”?

Yes

No

Please give reasons for your views.

14. Do you agree with our proposal to upgrade to “comply or explain” the current KPI B3.1, re-numbered KPI A3.1, concerning disclosure of the significant impacts of activities on the environment and natural resources?

Yes

No

Please give reasons for your views.

15. Do you agree with our proposal to incorporate gender disclosure in proposed Subject Area B. Social, under the sub-heading “Employment and Labour Standards”?

Yes

No

Please give reasons for your views.

- End -