



消費者委員會 CONSUMER COUNCIL
香港 • HONG KONG

國際消費者聯會
執委會及理事會成員
EXECUTIVE AND
COUNCIL MEMBER OF
CONSUMERS
INTERNATIONAL

來函檔號 YOUR REF.

本函檔號 OUR REF.

16 September 2015

Corporate Communications Department
Hong Kong Exchanges and Clearing Limited
12/F, One International Finance Centre
1 Harbour View Street
Central, Hong Kong

By email & post:
response@hkex.com.hk

Dear Sir/Madam,

Re: Consultation Paper on Review of the ESG Reporting Guide

The captioned consultation paper refers.

Attached please find a copy of the Council's submission for consideration by HKEx.

Should you have any queries arising from the issue, please feel free to contact Ms. Vera TAM, Chief Planning and Trade Practices Officer at [REDACTED].

Yours sincerely,

Gilly WONG
Chief Executive
Consumer Council

Encl.

Consumer Council

Submission to the Hong Kong Exchanges and Clearing Limited on Review of the Environmental, Social and Governance Reporting Guide

1. The Consumer Council (the Council) is pleased to submit its views concerning the proposed amendments to the Environmental Social and Governance (ESG) Reporting Guide (ESG Guide) by the Hong Kong Exchanges and Clearing Limited (HKEx) in a consultation paper.
2. In recent years, there has been emerging concerns among consumers regarding companies' corporate social responsibility, their policies on environmental protection and sustainable production and consumption. This has also led to greater demand on public listed companies to disclose non-financial information by investors and other stakeholders. It is understood that the current ESG Guide is a recommended practice which the ESG reporting rate is low in Hong Kong. The Council supports in principle HKEx's proposal of amending the Main Board Listing Rules that issuers must disclose ESG information set out in the ESG Guide on an annual basis.
3. The followings provide the Council's views on specific consultation questions and other comments in relation to the interests of consumers for HKEx's consideration.

PROPOSED AMENDMENTS TO THE MAIN BOARD RULE 13.91

QUESTION 1: Require issuers' disclosure in annual reports (or ESG reports) whether they have complied with the "comply or explain" provisions in the ESG Guide

4. The proposed amendment made to Main Board Rule 13.91 requires issuers to give considered reasons in the ESG reports if they have not disclosed "required information" in their annual reports or ESG reports whether they have complied with the "comply or explain" provisions in the ESG Guide. The Council welcomes this proposal. However, the Council is concerned that whether there will be a mechanism to examine the reasons provided by issuers. The Council is of the view that lack of such mechanism may undermine the effectiveness of ESG reporting.
5. **To facilitate effective review of the reasons, HKEx may further consider setting criteria for the making of explanations.** According to the G4 Sustainability Reporting Guidelines issued by the Global Reporting Initiative (GRI G4 Guidelines), for disclosure which reasons for omission may apply in exceptional cases, issuers need to identify the information that has been omitted and provide reasons for omission from a list of explanations¹ established in the GRI G4 Guidelines. The

¹ According to GRI G4 Guidelines Reporting Principles and Standard Disclosure, the applicable explanation of omission from the list below should be provided in exceptional cases for Standard

Council considers that this practice can limit the reasons for omission and encourage the ESG reporting. The Council suggests **HKEx to draw up a list of explanations in the proposed new ESG Guide and require issuers to provide the applicable explanation from the list in case of deviations from the “comply or explain” provisions.**

QUESTION 2: Require the issuer to report on ESG annually and regarding the same period covered in its annual report

6. The Council agrees with the proposed amendment made to Rule 13.91 to require the issuer to report on ESG annually and regarding the same period covered in its annual report since ESG is a matter that should be kept working on and this approach will enable investors and other stakeholders to review the issuer’s financial and non-financial performance in a more holistic way.

QUESTION 3(i): An ESG report may be presented as information in its annual report, in a separate report, or on the issuer’s website

7. The Council considers the part of proposed Note under Rule 13.91 about the presentation of ESG report pragmatic because it leaves the issuer the flexibility to issue ESG reports in the way that are suitable and convenient for it, which can relieve issuer’s burden of ESG reporting. However, the Council suggests that in case the issuer present ESG report in means other than annual report, which is in general regarded as the principal channel for investors to review the issuer’s performance, **the issuer should add a reference in its annual report to inform shareholders and the general public where it presented or going to present its ESG report and how the ESG report could be accessed.**

8. The Council noted that in paragraph 3 of the proposed new ESG Guide, it is specified that “whichever format is adopted, the ESG report should be published on the Exchange’s website and the issuer’s website”. The Council welcomes this amendment, which means whichever way the ESG report is presented, it can be found online. Despite that there is a designated website (HKExnews) providing listed issuers’ regulatory filings and disclosures including ESG information, the Council is of the view that **issuers should have their own communications and launch plans in place to inform the general public and users of ESG information that such**

Disclosures which reasons for omission may apply if it is not possible to disclose certain required information:

- A Standard Disclosure, part of a Standard Disclosure, or an Indicator, is not applicable; the reason why it is considered to be not applicable should be disclosed
- The information is subject to specific confidentiality constraints; those constraints are to be disclosed by the organization
- The existence of specific legal prohibitions; a reference to the specific legal prohibitions should be made
- The information is currently unavailable. In the case of the unavailability of data, the organization should disclose the steps being taken to obtain the data and the expected timeframe for doing so

information is publicly available and readily accessible when the ESG report is released for enhancing public awareness on ESG issues.

QUESTION 3(ii): The issuer should publish the ESG report no later than three months after the publication of its annual report

9. The Council is of the view that a shorter time lag between the availability of annual report and ESG report would facilitate investors and other stakeholders to review the issuer's financial and non-financial performance in a more comprehensive and timely way.

10. The Council considers that three months after the publication of the issuer's annual report being the publication deadline of the ESG report is fairly long. In light that discussion of the issuer's environmental policies and performance, as required by the Companies Ordinance, will be included in the business review section of the directors' report². The directors' report under Appendix 16 of the Main Board Listing Rules should be compiled based on data in relation to the environmental and social performance of the company and the annual report should be published no later than that of the ESG report. With the data already available in the course of preparing the annual report, the Council considers that **time taken for the issuer to publish the ESG report could be shorter** (e.g. anywhere between one and two months) than the proposed timeline.

PROPOSED AMENDMENTS TO THE ESG GUIDE

QUESTION 4: Proposed revisions of the introductory section of the ESG Guide

11. The Council is agreeable to revamp the introductory section of the ESG 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"), to provide a clearer guidance on ESG reporting for issuers.

12. In connection with the proposed revisions of the wording and content under the new ESG Guide, the Council has the following comments:

- In paragraph 2 under "The Guide", in the sentence "The issuer is encouraged, but not required, to report on the recommended disclosures of this Guide", the clause "but not required" is considered unnecessary since it may have an adverse effect on the reporting of

² It is noted in the consultation paper that under the new Companies Ordinance, issuers are required to include in their annual directors' reports:

- A discussion of their environmental policies and performance
- A discussion of their compliance with relevant laws and regulations that have a significant impact on them
- An account of their key relationships with employees, customers and suppliers and others that have a significant impact on them and on which their success depends

recommended disclosures and the word “encouraged” has already implied that such disclosures are voluntary.

- Regarding paragraph 6 under “Overall Approach” concerning information about stakeholders engagement, the Council noted that guidance on instances of stakeholders, activities of stakeholders engagement and the disclosure of mechanisms for stakeholders to provide feedback, which is included in the current ESG Guide (paragraphs 12, 13 and 14), but they are absent from the proposed new ESG Guide. The Council considers the above information strictly related to the interests of stakeholders including consumers and thus should not be excluded from the proposed new ESG Guide or at least provide as a reference for issuer by other means deemed appropriate, e.g. in technical guidelines.
- Regarding paragraph 7 under “Overall Approach”, the last sentence reads “The issuer may also consider obtaining assurance on its ESG report”. Since there are many technical terms in the ESG report, for instance, materiality, air emissions, greenhouse gas emissions, hazardous wastes, etc., the Council opines that third party assurance of issuers’ ESG reports plays an important role in ESG reporting and has significant influence on the quality and accuracy of ESG reporting. In a view to maintaining and even raising the quality of ESG reporting, the Council considers it important that the proposed new ESG Guide should place emphasis on third party assurance and should not leave it as an optional action. However, it is understood that various aspects of ESG report may have different kinds of third party assurance and some third party assurance may not be well established. To be practical, the Council suggests **the new ESG Guide to require the issuer to obtain and offer third party assurance on some international recognized aspects, such as greenhouse gas emissions, hazardous waste disposal, in its ESG report.**

QUESTION 5: Proposed wording of the Reporting Principles in the introductory section

13. The Council has no particular comment over the proposed wording of the Reporting Principles (i.e. “Materiality”, “Quantitative”, “Balance” and “Consistency”) in the introductory section of the ESG Guide. With respect to the wording of the Reporting Principles, the Council considers the description in the current ESG Guide could be useful supplementary information for issuers’ reference. The Council suggests including the information in paragraphs 9 to 11, 16, and 19 to 22 of the current ESG Guide in the new ESG Guide or in other means deemed appropriate, e.g. technical guidelines.

QUESTION 7: Proposal to re-arrange the ESG Guide into two Subject Areas

14. With the aim of making the ESG Guide in line with leading international guidelines, the Council agrees to re-arrange the Guide into two Subject Areas (i.e. “A.

Environmental” and “B. Social”) and re-categorise “Workplace Quality”, “Operating Practices” and “Community Involvement” under Subject Area B.

15. In addition, the Council believes that **“Customer Engagement and Addressing Concerns”** is an important **“Social”** aspect that a company with social responsibility should take into consideration. The Council urges the HKEx to include **“Customer Engagement and Addressing Concerns”** under Subject Area B. (See also the Council’s comments in paragraphs 24-26 below)

QUESTION 9: Proposal to upgrade the General Disclosures for each Aspect of the ESG Guide to “comply or explain”

16. The Council welcomes the proposal of upgrading the General Disclosures for each aspect of the Guide to “comply or explain”.

QUESTION 10: Proposed amendments to the wording of paragraph (b) under re-numbered Aspects A1, B1, B2, B4, B6 and B7

17. The Council has reservation on the proposed revision to paragraph (b) under Aspect A1, B1, B2, B4, B6 and B7 of the new ESG Guide. The proposed revised paragraph (b) requires issuers, under the “comply or explain” approach, to disclose information on “compliance with relevant laws and regulations that have a significant impact on the issuer”; whereas in paragraph (b) of the current ESG Guide, it encourages issuers to disclose information on “compliance and material non-compliance with relevant standards, rules and regulations”.

18. The Council considers that **disclosure of material non-compliance issues is important to investors and other stakeholders including consumers**. Also, **in cases that laws and regulations are not available, standards and rules would play an important role as the basis of acceptable performance and safety**. However, the Council opines that **a clear explanation of the rationale is required in the consultation paper regarding the proposed revised wording**.

19. According to GRI G4 Guidelines, it requires companies to disclose monetary value of significant fines and total number of non-monetary sanctions for non-compliance with laws and regulations in some aspects in relation to compliance and requires companies to disclose total number of incidents of non-compliance with regulations and voluntary codes concerning some aspects of product responsibility (e.g. the health and safety impacts of products and services). The Council is of the view that reference should be made to leading international guidelines and policies of other Countries and that **HKEx should consider including the requirement, under the “comply or explain” approach, of disclosure of non-compliance issues where appropriate in the new ESG Guide**.

QUESTIONS 11 and 12: Revise Aspect A1 by upgrading to “comply or explain” the re-numbered KPIs A1.1 to A1.6

20. The Council supports the proposal to upgrade all KPIs under Subject Area “A. Environmental” to “comply or explain”.

21. Regarding the concerns of opponents to the upgrade of re-numbered A1.3 and A1.6 as mentioned in paragraph 119 of the consultation paper, the Council is of the view that companies should already know the nature and type of the waste generated by their operations. Also, companies may take reference from international guidelines or standards about identification and separation of hazardous waste. The Council opines that the **KPIs of disclosure of production and handling of hazardous waste should be included in the new ESG Guide.**

22. On the scope classifications of emissions, it is proposed in the consultation paper that international accounting tools for reporting on greenhouse gas (GHG) emissions (i.e. Scope 1, 2 and 3) be included in Frequently Asked Questions and issuers are encouraged to report in accordance with the scope classification. For the sake of investors’ or other stakeholders’ easy reference and comparison, the Council suggests the reporting methods be standardized, for instance, to **revise the ESG Guide to require issuers to use this scope classification for reporting GHG emissions.**

23. Besides, taking reference from the GRI G4 Guidelines, the Council suggests HKEx to revise the ESG Guide to require issuers, on “comply or explain” approach, to disclose Scope 1 and Scope 2 emissions.

OTHER COMMENTS

Upgrading KPIs under Aspects “Supply Chain Management” and “Product Responsibility” to “comply or explain”

24. The Council urges that **KPIs under Aspects “Supply Chain Management” and “Product Responsibility” should be upgraded to “comply or explain”** due to the rising outbreaks related to the health and safety impacts of products and services for protection of the rights and interests of consumers. The Council expects that, by doing so, the awareness of issuers on the protection of consumer rights with regard to these aspects would be enhanced.

Including more KPIs under Aspects “Supply Chain Management” and “Product Responsibility”

25. Furthermore, the Council considers that **more KPIs could be added under Aspects “Supply Chain Management” and “Product Responsibility”**, for instance, whether issuer sells products that are banned in certain markets and results or key conclusions of customer satisfaction surveys. HKEx may review the compliance level

of issuers after implementation of the new ESG Guide and explore the possibility of enriching the KPIs in these aspects in due course.

26. Below are some indicators drawn from the GRI G4 Guidelines in relation to supply chain management and product responsibility that might be included in the ESG Guide for HKEx's consideration:

- Significant actual and potential negative environmental/social impacts in the supply chain and actions taken;
- Percentage of significant product and service categories for which health and safety impacts are assessed for improvement;
- Percentage of significant product and service categories subject to information and labeling requirements;
- Total number of incidents of non-compliance with regulations and voluntary codes concerning
 - the health and safety impacts of products and services during their life cycle
 - product and service information and labeling
 - marketing communications, including advertising, promotion, and sponsorship
- Results of surveys measuring customer satisfaction;
- Sale of banned or disputed products;
- Total number of substantiated complaints regarding breaches of customer privacy and losses of customer data; and
- Monetary value of significant fines for non-compliance with laws and regulations concerning the provision and use of products and services.

Setting timetable to review issuers' compliance level and upgrade all KPIs to "comply or explain"

27. The Council understands the rationale of HKEx of not proposing upgrading all the recommended disclosures in the current ESG Guide at this stage based on the consideration that setting the reporting bar too high prematurely may have an adverse effect on the overall quality of the ESG reporting among issuers.

28. However, in view of the globally marked increase in recent years in the amount of policy and regulation calling for ESG reporting and consumers' expectation on companies' CSR and environmental policy and performance, the Council opines that in the long run all the KPIs should be upgraded to "comply or explain" or mandatory to further protect consumers and investors. The Council urges **HKEx to set timetable to review and monitor the compliance level of issuers while putting the readiness of issuers into consideration closely after implementation of the new ESG Guide and plan for upgrading all KPIs structurally.**

Consumer Council
September 2015