HKEX
香港交易所

May 2021

Consultation Conclusions

Review of Listing Rules Relating to Disciplinary Powers and Sanctions

CONTENTS

DEFINITIONS

TERM	DEFINITION
"CEO"	Chief Executive Officer
"CFO"	Chief Financial Officer
"CG Code"	Corporate Governance Code under Appendix 14 to the Main Board Rules and Appendix 15 to the GEM Rules
"Companies Ordinance"	Companies Ordinance (Cap. 622 of the Laws of Hong Kong)
"Consultation Paper"	Consultation Paper on Review of Listing Rules Relating to Disciplinary Powers and Sanctions issued on 7 August 2020
"COO"	Chief Operating Officer
"Director Unsuitability Statement"	Public statement that the director is unsuitable to be a director or senior management member of the named listed issuer
"Division"	Listing Division of the Exchange
"Enforcement Policy Statement"	Enforcement of the Listing Rules – Policy Statement published on the HKEX website
"Exchange"	The Stock Exchange of Hong Kong Limited
"GEM Rules"	Rules Governing the Listing of Securities on GEM
"HKEX"	Hong Kong Exchanges and Clearing Limited
"HKICPA"	Hong Kong Institute of Certified Public Accountants
"HKICS"	Hong Kong Institute of Chartered Secretaries
"Listing Rules" or "Rules"	Main Board Rules or GEM Rules
"Main Board Rules"	Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited
"PII Statement"	Public statement that the retention of office by the director is prejudicial to the interests of investors under Rule 2A.09(7), or the amended version of the statement under proposed Rule 2A.10(4) (see Questions 1 and 2), as appropriate
"Question [x]"	Question for consultation referred to in the Consultation Paper
"Relevant Party" or "Relevant Parties"	Parties who may be subject to disciplinary action under the Listing Rules
"Sanctions Statement"	Statement on Principles and Factors In Determining Sanctions and Directions Imposed By The Disciplinary Committee And The Review Committee published on the HKEX website
"Secretary"	Secretary to the Listing Committee or the Listing Review Committee
"SFC"	Securities and Futures Commission
"SFO"	Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong)
"UK Disclosure and Transparency Rules"	Disclosure and Transparency Rules of the Financial Conduct Authority of the United Kingdom

EXECUTIVE SUMMARY

Introduction

1. On 7 August 2020, The Stock Exchange of Hong Kong Limited (**Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**) published a "*Consultation Paper on Review of Listing Rules Relating to Disciplinary Powers and Sanctions*" (**Consultation Paper**). The Consultation Paper sought comments on proposed changes to the disciplinary regime of the Exchange, as well as related amendments to the Rules Governing the Listing of Securities on the Exchange (**Listing Rules** or **Rules**).

2. This paper presents the results of the consultation. The consultation reflects the Exchange's commitment to ensure that its disciplinary regime is effective in delivering regulatory outcomes. The key focus of the consultation is to ensure that the regime remains fit for purpose, continues to promote market quality and aligns with stakeholder expectations and international best practice. The proposals are aimed at making available to the Exchange a spectrum of graduated disciplinary sanctions, so that an effective regulatory response can be delivered to address different types of misconduct with the aim of improving market quality. To this end, we have placed particular emphasis on instances of misconduct by individuals in relation to Rule breaches. The Exchange also proposed to include additional circumstances where disciplinary sanctions can be imposed on the parties subject to the Exchange's disciplinary regime.

Results of consultation

3. The consultation period ended on 9 October 2020. The Exchange received a total of 107 submissions from a broad range of respondents, including listed issuers, professional bodies and industry associations, professional advisers and individuals.[1] 99 responses contained original content.[2]

4. All but one of the proposals received majority support.[3]

5. We conclude that the proposals outlined in the Consultation Paper should be adopted, one with a modification.

Way forward

6. The table below sets out a summary of our original proposals and the way forward. The references are to the Main Board Rules. Corresponding changes are also made to the GEM Rules.

[1] See paragraph 15 for the number of responses received under each category.

[2] Submissions with entirely identical content were counted as one response. Submissions by a professional body or industry association were counted as one response irrespective of the number of individual members that the body/association represents.

[3] Please refer to a quantitative analysis of the responses to the consultation questions set out in **Appendix 2**.

Original proposals		Way forward
Proposed Enhancements to Existing Disciplinary Sanctions		
1.	Amend the existing threshold for imposing a PII Statement [4] and to make it clear that a PII Statement can be made whether or not an individual continues in office at the time of the PII Statement	Adopt (Rule 2A.10(4))
2.	Extend the scope of a PII Statement to include directors and senior management of the relevant listed issuer and any of its subsidiaries	Adopt (Rule 2A.10(4))
3.	Enhance follow-on actions where an individual continues to be a director or senior management of the named listed issuer after a PII Statement has been made against him	Adopt (Rule 2A.10A(2)) and Note 4 to Rule 2A.10)
4.	Require named listed issuer to include a reference to the PII Statement in all its announcements and corporate communications unless and until the individual subject to a PII Statement with follow-on action is no longer its director or senior management member	Adopt (Rule 2A.10A(1))
5.	Extend the current express scope of disclosure in listing applicants' listing documents and listed issuers' annual reports in respect of their directors and members of senior management (current and/or proposed, as the case may be) by requiring provision of full particulars of any public sanctions made against those individuals	Adopt (Appendix 1A, paragraph 41(1); Appendix 1B, paragraph 34; Appendix 1C, paragraph 46; Appendix 1E, paragraph 41(1); Appendix 1F, paragraph 30; and Appendix 16, paragraph 12)
6.	Remove the existing threshold for ordering the denial of facilities of the market	Adopt (Rule 2A.10(6))
7.	Include fulfilment of specified conditions in respect of the denial of facilities of the market	Adopt (Rule 2A.10(6))
8.	Introduce the Director Unsuitability Statement[5] as a new sanction	Adopt (Rule 2A.10(5))
9.	Make the follow-on actions and publication requirement in respect of PII Statements also applicable to Director Unsuitability Statements	Adopt (Rules 2A.10A(1) and (2))

[4] As defined in paragraph 18 of the Consultation Paper.
[5] As defined in paragraph 71 of the Consultation Paper.

	Original proposals	Way forward
Additional circumstances where disciplinary sanctions can be imposed		
10.	Impose secondary liability on Relevant Parties if they have "*caused by action or omission or knowingly participated in a contravention of the Listing Rules*"	• Adopt • Add Note to new Rule (Rule 2A.10B(3) and Note)
11.	Include an explicit provision permitting the imposition of a sanction in circumstances where there has been a failure to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee of the Exchange	Adopt (Rule 2A.10B(1))
12.	Sanctions may be imposed on all Relevant Parties through secondary liability where a party has failed to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee	Adopt (Rule 2A.10B(3))
13.	Explicitly provide in the Rules the obligation to provide complete, accurate and up-to-date information when interacting with the Exchange in respect of its enquiries or investigations	Adopt (Rule 2.12B)
Details of definitions and inclusions within "*Relevant Parties*"		
14.	Propose defining "*senior management*"	Adopt (Rule 2A.09(2)(c))
15.	Include employees of professional advisers of listed issuers and their subsidiaries as a Relevant Party under the Rules	Adopt (Rule 2A.09(1)(f))
16.	Include guarantors of structured products as a Relevant Party under the Rules	Adopt (Rule 2A.09(1)(i))
17.	Include guarantors of an issue of debt securities as a Relevant Party under the Main Board Rules	Adopt (Rule 2A.09(1)(i))
18.	Include parties who give an undertaking to, or enter into an agreement with, the Exchange as Relevant Parties under the Rules	Adopt (Rule 2A.09(1)(j))
Proposed minor Rule amendments		
19.	Extend the ban on professional advisers to cover banning of representation of any or a specified party	Adopt (Rule 2A.10(9))

	Original proposals	Way forward
20.	Include express obligations on professional advisers when acting in connection with Rule matters	Adopt (Rule 2A.09(4))
21.	"*Business day*" be used as the benchmark for counting the periods for filing review applications, and for requesting or providing written reasons for decisions	Adopt (Rules 2A.12 and 2A.13)
22.	All review applications must be served on the Secretary	Adopt (Rule 2A.12)
23.	Counting of the period for filing review applications be from the date of issue of the decision or the written reasons	Adopt (Rules 2A.12 and 2B.08)
24.	Counting of the period for requesting written reasons be from the date of issue of the decision	Adopt (Rules 2A.13 and 2B.13(1))
25.	Counting of the period for providing written reasons be from the date of receipt of the request	Adopt (Rule 2A.13)

7. Set out below is a table showing in summary form the disciplinary sanctions which may be made against each of the Relevant Parties.

	Sanctions (relevant Rule)	**Relevant Parties**					
		Listed issuers	**Directors**	**Senior management members**	**Professional advisers (and/or their employees)**	**Substantial shareholders**	**Other entities / individuals**
Reputational sanctions	Private reprimand (Rule 2A.10(1))	✓	✓	✓	✓	✓	✓
	Public statement involving criticism (Rule 2A.10(2))	✓	✓	✓	✓	✓	✓
	Public censure (Rule 2A.10(3))	✓	✓	✓	✓	✓	✓
	PII Statement (Rule 2A.10(4))	n/a	✓	✓	×	×	×
	Director Unsuitability Statement (Rule 2A.10(5))	n/a	✓	×	×	×	×
Remedial sanctions	Follow-on actions[6] (Rule 2A.10A(2))	✓	n/a	n/a	n/a	n/a	n/a
	Denial of facilities of the market (Rule 2A.10(6))	✓	n/a	n/a	n/a	n/a	n/a
	Suspension or cancellation of listing (Rules 2A.10(7) and (8))	✓	n/a	n/a	n/a	n/a	n/a
	Rectification or remedial sanctions (Rule 2A.10(11))	✓	✓	✓	✓	✓	✓
Ancillary or operational sanctions	Ban on professional advisers (Rule 2A.10(9))	n/a	n/a	n/a	✓	n/a	n/a
	Report the offender's conduct to another regulatory authority (Rule 2A.10(10))	✓	✓	✓	✓	✓	✓
	Take such other action as appropriate (Rule 2A.10(12))	✓	✓	✓	✓	✓	✓

[6] Denial of facilities of the market, suspension or cancellation of listing as follow-on action if individual subject to PII Statement or Director Unsuitability Statement remains in office (of the specific issuer).

Implementation date

8. The revised Listing Rules will be implemented with effect from 3 July 2021.

About this paper

9. Submissions are available on the HKEX website[7] and a list of respondents (other than those who requested anonymity) is set out in **Appendix 1**. We have also set out a summary result of our quantitative analysis of the responses in **Appendix 2**.

10. This paper summarises the key comments made by respondents on the proposals, and our responses and conclusions. This paper should be read in conjunction with the Consultation Paper, which is posted on the HKEX website.[8]

11. Unless otherwise specified, the proposals with respect to the Main Board Rules apply equally to the GEM Rules. The amended Main Board Rules are set out in **Appendix 3**, while corresponding amendments made to the GEM Rules are set out in **Appendix 4**. They have been approved by the Board of the Exchange and the Securities and Futures Commission (**SFC**).

12. We would like to thank all respondents for their time and effort in reviewing the Consultation Paper and sharing with us their detailed and thoughtful suggestions.

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[7] Submissions received on the Consultation Paper can be accessed at: https://www.hkex.com.hk/News/Market-Consultations/2016-to-Present/Responses_May_2021?sc_lang=en, save for one respondent which requested its response not to be published.

[8] See HKEX, Consultation Paper on Review of Listing Rules Relating to Disciplinary Powers and Sanctions, 7 August 2020.

CHAPTER 1: INTRODUCTION

Overview

Background

13. On 7 August 2020, the Exchange published the Consultation Paper, which set out proposed changes to the disciplinary regime of the Exchange, as well as related amendments to the Listing Rules. The key focus of the consultation is to ensure that the regime remains fit for purpose, continues to promote market quality and aligns with stakeholder expectations and international best practice. The proposals are aimed at making available to the Exchange a spectrum of graduated disciplinary sanctions. To this end, we have placed particular emphasis on instances of misconduct by individuals in relation to Rule breaches. The Exchange also proposed to include additional circumstances where disciplinary sanction can be imposed on the parties subject to the Exchange's disciplinary regime.

Number of responses and nature of respondents

14. This paper sets out a summary of the key comments made by respondents on the proposals set out in the Consultation Paper, and our responses and conclusions.

15. We received a total of 107 submissions from a broad range of respondents, of which 99 responses contained original content.[9] The responses can be grouped into broad categories as follows:[10]

Respondent Category	No. of responses	% of responses
Institutions		
Listed issuers	13	13%
Professional bodies / regulators and industry associations	12	12%
Corporate finance firms / banks	5	5%
Law firms	10	10%
Other corporates	4	4%
Individuals		
Individuals	55	56%
Total	**99**	**100%**

16. A list of the respondents (other than those who requested anonymity) is set out in **Appendix 1**. We would like to thank all those who shared their views with us during the consultation process.

[9] Submissions with entirely identical content were counted as one response. Submissions by a professional body or industry association were counted as one response irrespective of the number of individual members that the body or association represents.

[10] The Exchange used its best judgement to categorise the respondents using the most appropriate descriptions.

Methodology

Qualitative analysis

17. We performed a qualitative analysis so that we could properly consider the broad spectrum of respondents and their views. A qualitative analysis enabled the Exchange to give due weight to responses submitted on behalf of multiple persons or institutions and the underlying rationale for a respondent's position.

Quantitative analysis

18. We also performed an analysis to determine the support, in purely numerical terms, for the proposals. The analysis is set out in **Appendix 2**.

19. For the purpose of our quantitative analysis, we counted the number of responses received, not the number of respondents those submissions represented. For example, a submission by a professional body was counted as one response even though that body may represent many members.

20. In calculating the percentage of support for or against each proposal, we did not count those who did not respond or indicate clearly a view to the corresponding question, and those responses in which respondents indicated opposition but did not provide any substantive reasons.

21. The statistical data should be viewed in light of the fact that many of the consultation questions inevitably overlapped with others in certain respects. One result of this is that, understandably, some comments received from respondents do not neatly fit within the scope of one question.

22. As part of our qualitative analysis, we have sought to read across all the responses received in order to understand the comments provided, rather than rigidly limiting our consideration of responses on a question-by-question basis. Our responses as set out below should also be read in this manner.

CHAPTER 2: MARKET FEEDBACK AND CONCLUSIONS

A. Current Disciplinary Sanctions

Amendments relating to a PII Statement (Question 1)

23. We proposed to lower the existing threshold for imposing a PII Statement of "*wilful*" or "*persistent*" failure by a director to discharge his responsibilities under the Rules and enabling the PII Statement to be made where the occupying of office may cause prejudice to the interests of investors. We also proposed to make it clear that a PII Statement can be made whether or not an individual continues in office at the time of the PII Statement.

Comments received

24. Respondents supporting the proposal generally agreed that the PII Statement should be an available sanction whether or not the individual remains in office at the time the statement is made. Respondents considered it important that individuals, whether directors or members of senior management, who violate the Rules should be held accountable for their actions.

25. Respondents generally agreed that more severe sanctions should be imposed for serious misconduct or breaches, and there is a need for flexibility when considering sanctions involving different types of misconduct. There was agreement that there may be evidential difficulties in establishing that misconduct is either "*wilful*" or "*persistent*".

26. Some respondents were concerned that, if the threshold is lowered, then the PII Statement, which is a relatively severe sanction, may be imposed arbitrarily, or for less serious or inadvertent breaches.

27. Some respondents were concerned that the proposed amendment to the wording of the PII Statement from "*is prejudicial*" to "*may cause prejudice*" provided the Exchange with overly wide powers, and a discretion to determine what amounts to the possibility of prejudice to the interests of investors.

28. Some respondents suggested replacing the current threshold with alternative standards. Various propositions were advanced in this regard.

29. Some respondents considered it would be helpful to have more guidance on what would be considered as potentially causing prejudice to investors. One suggested the Exchange consider a definitive period as to when a PII Statement would remain in effect. Another respondent suggested that a database should be maintained of persons subject to a PII Statement and/or Director Unsuitability Statement (discussed below) to facilitate listed issuers and listing applicants in checking individuals.

Our response

30. Respondents supporting the proposal generally agreed that the PII Statement can be imposed on individuals whether or not they continue in office at the time the sanction is made.

31. The reservations that were expressed by respondents primarily related to the proposed removal of the wilful or persistent threshold, and/or the amendment to the wording of the PII Statement. The underlying concern appeared to be that the Exchange would make a PII Statement in cases in which the misconduct was insufficiently serious to warrant the sanction.

32. The main aims of the proposals as a whole include ensuring that an effective regulatory response can be delivered to address different types or severity of misconduct. An element of this was to have available an appropriate spectrum of graduated sanctions. The proposals seek to build on the existing disciplinary regime, which already provides for (amongst other things) a range of sanctions, ranging from a private reprimand to a public censure, for which there are no express thresholds stipulated. Notwithstanding the absence of thresholds within this range of sanctions, the Exchange has not sought to impose more serious sanctions (such as a public censure) in cases involving less serious breaches. On the contrary, the Exchange has sought to impose the appropriate sanction on a case-by-case and respondent-by-respondent basis, i.e. to identify the sanction which is commensurate with the severity of the breach and culpability of the individual respondent, in accordance with the Listing Rules, the Enforcement Policy Statement and the Sanctions Statement.

33. The removal of the "*wilful*" or "*persistent*" threshold will permit greater flexibility towards ensuring the appropriate sanction can be matched with the misconduct. It will help overcome evidential challenges, and allow misconduct warranting a PII Statement to be appropriately sanctioned, even if the misconduct cannot neatly be classified as wilful or persistent. There is no intention to impose a PII Statement for misconduct which warrants only a private reprimand, public statement involving criticism, or a public censure. We recognise that the PII Statement is a sanction at the serious end of the spectrum, given that it goes beyond issuing a public censure. As with the current position, we will carefully consider the facts and circumstances of each case in order to determine whether a PII Statement is appropriate. An illustrative example of how graduated sanctions may be applied in a hypothetical case can be found in our response to Question 8 below.

34. The imposition of a PII Statement in the existing disciplinary regime also necessarily requires the Exchange to make an assessment in relation to potential prejudice to investors arising from an individual occupying an office at an issuer. The PII Statement has always been a statement of the Exchange's opinion in this regard. Whilst the proposal to replace the words "*is prejudicial*" to "*may cause prejudice*" may alter the meaning of the PII Statement, such an amendment neither changes the fact that the Exchange must still undertake an assessment regarding prejudice, nor gives the Exchange a wholly new discretion.

35. We do not think it is appropriate to define a period in which a PII Statement has "*effect*". A PII Statement is an expression of a view by the Exchange at a particular time. It is not a ban. An individual subject to a PII Statement can continue to be or become a director or senior management member of another listed issuer or listing applicant if he can demonstrate to the board of the listed issuer or listing applicant of his suitability and appropriateness to do so.

36. In light of the above, we will proceed with our proposal. With regard to the comments made by some respondents that more guidance should be provided as to the circumstances that may warrant the imposition of a PII Statement, the Exchange will consider publishing guidance to the market to provide further clarity.

Extension of PII Statement to cover senior management (Question 2)

37. We proposed extending the scope of a PII Statement to include directors and senior management of the relevant listed issuer and any of its subsidiaries.

Comments received

38. Respondents supporting the proposal agreed that directors and senior management may be generally responsible if misconduct occurs, and so the availability of the sanction against senior management members, and not just directors, is helpful to ensure that the appropriate individuals can be held accountable. There was similar agreement regarding the extension to subsidiaries of listed issuers, as respondents noted that the relevant misconduct may be committed at subsidiary level.

39. Some respondents also agreed that the extension of the statement to senior management and subsidiary directors can help to address the concern that listed issuer directors subject to a PII Statement should not be able to continue to assert influence within the listed issuer by moving into a senior management position, or taking up a director or senior management position at the subsidiary level.

40. Most of the respondents opposing the proposal considered that senior management of a listed issuer and directors of subsidiaries are often bound to rely on, take actions based on, the board's judgement and order. They may have limited powers and/or not be able to exercise their own discretion. Respondents commented that subjecting such individuals to the same sanctions as the directors of the listed issuer may be too draconian and burdensome.

41. In a similar vein, some opposing respondents commented that listed issuer directors have extensive and stringent duties under the Listing Rules and under their undertakings to the Exchange, but senior management and subsidiary directors are not required to give similar undertakings and do not have the same duties, and so the expectations of these categories of individuals should not be equated. One respondent submitted that inclusion of senior management may blur the lines of accountability in respect of the Listing Rules.

42. Some respondents expressed concern that if the threshold for the imposition of a PII Statement was lowered (see Question 1 above), implementation of this proposal would have widespread implications on senior management and subsidiary directors such that it may not be pragmatic for them to discharge their duties in a commercial environment. A related comment was made that the extension of a PII Statement may have the unintended consequence, which would not serve the interest of investors, of preventing listed issuers from continuing to benefit from the services of individuals (at senior management or subsidiary level) who have critical skillsets or who contribute towards the success of the listed issuer in areas other than Listing Rule compliance.

Our response

43. Respondents were generally supportive of extending the PII Statement to address the concern that directors of listed issuers may seek to avoid the aims of a PII Statement by moving into other positions within the issuer or its group from which the individual can continue to exert significant influence.

44. The reservations that were expressed by respondents primarily related to the appropriateness of imposing sanctions on individuals who are not directors of listed issuers. The underlying concern appeared to be that such individuals may not have the same duties, responsibilities, authority or control as the directors of listed issuers, and so should not be subject to equivalent liability and sanction.

45. The comments made in this regard are thus closely linked to those made in respect of secondary liability, which are more fully covered under Question 10 below. Our response to this question should therefore be read in the context of those other sections of these conclusions. In short, however, the imposition of a PII Statement or indeed any other sanction on individuals who are not directors of the listed issuer will be contingent on the assessment of the relevant individual's culpability and liability. This will necessarily involve consideration of that individual's position and conduct in respect of the particular case, which may include consideration of his role, duties, responsibilities, power, authority, and/or the information that was available to him.

46. In other words, whilst this proposal would allow a PII Statement to be an *available* sanction against senior management members, there is no intention to blindly treat senior management members as equally culpable as directors, or to pursue disciplinary action against senior management members instead of directors who are also culpable. Equally, we do not agree with the comments received from some respondents to the effect that senior management members and/or subsidiary directors will necessarily be less responsible for misconduct than the issuer's directors. We believe that the correct approach is for each matter, and each individual, to be considered in light of the specific facts and circumstances of the case. This is to ensure that appropriate individuals are held accountable.

47. In view of this, we will adopt this proposal.

Enhancement of follow-on actions after making of a PII Statement (Question 3)

48. We proposed that, in cases involving more serious conduct and depending on the facts and circumstances of the case, the Exchange may direct follow-on actions at the same time a PII Statement is made against an individual. We further proposed that, in such cases:

    (a) the available follow-on actions include (in addition to suspension or cancellation) the denial of facilities of the market to that listed issuer for a specified period; and

    (b) the follow-on actions apply, and will be triggered, where an individual subject to a PII Statement continues to be a director or senior management member of the specified listed issuer after a specified date.

Comments received

49. Respondents supporting the proposal[11] generally agreed that follow-on actions can help to ensure effectiveness of the PII Statement. They considered there is a need for consequences if an issuer fails to remove a director from office, as otherwise the

[11] Some of the respondents agreed to the enhancement of follow-on actions in respect of sanctions imposed against directors only, and not to members of senior management. Other respondents were only in agreement subject to the retention of thresholds for the imposition of a PII Statement. These comments appeared to be directed at the related proposals in Questions 10 and 1 respectively.

statement will not achieve the desired deterrent effect. They agreed the enhanced follow-on actions would provide a graduated response in such circumstances.

50. Generally, respondents agree that after a PII Statement has been made, it is up to the board of the listed issuer and shareholders to assess and decide whether the individual should continue to stay in office.

51. Some respondents noted that the denial of facilities of the market as a follow-on action was a very serious course of action, and may adversely impact minority shareholders, but that minority shareholders are generally not in a position to influence the board's composition or behaviour. Some respondents suggested that more or gradual follow-on actions could be taken before imposing a denial of facilities, such as making disclosure in the corporate governance report, or requiring the listed issuer to disclose the reasons for its decision, any risks involved and whether there are adequate internal control measures to prevent recurrence of similar misconduct in the future. However, some respondents considered this may impose undue pressure and influence on the listed issuer in making its decision.

52. Some respondents thought the existing regime including the currently available follow-on actions of suspension and cancellation were sufficiently effective. Some respondents requested that more clarity be provided as to the circumstances in which the Exchange may impose a PII Statement and direct follow-on actions, and suggested that a PII Statement should have a limited and specified duration. Some respondents indicated opposition to this proposal because they disagreed with the proposal in Questions 1 and/or 2.

Our response

53. We are mindful as to the serious nature of imposing, as a follow-on action, a denial of facilities of the market against a listed issuer. Such an action would only be triggered in circumstances where an individual has been sanctioned with at least a PII Statement, which is a very serious sanction, but the individual nevertheless remains in office. We consider the prospect of a follow-on action of this nature will actively prompt the board and/or shareholders of the named listed issuer to assess and determine whether the individual should continue in office, and to take timely action to avoid the consequences of the follow-on action. The board/shareholders accordingly have control as to whether or not the follow-on action is triggered. See also the hypothetical case illustration in paragraph 93 below for a potential scenario in which follow-on actions might be imposed.

54. Whilst we consider enhanced disclosure will be helpful and desirable (see Question 4 below), we do not consider that disclosure alone will necessarily provide sufficient backing to the making of a PII Statement. Furthermore, if the denial of facilities is not available as a follow-on action, then the alternative under the Listing Rules is suspension/cancellation. We consider these are more serious follow-on actions. In some cases, the denial of facilities would be necessary to balance the protection of potential investors and the market generally, on one hand, and the interests of existing investors, on the other.

55. Having considered the above, we will proceed with the proposal.

Reference to the PII Statement in announcements and corporate communications (Question 4)

56. We proposed that, after a PII Statement with follow-on actions has been made against an individual, the named listed issuer must include a reference to the PII Statement in all its announcements and corporate communications unless and until that individual is no longer its director or senior management member.

Comments received

57. Respondents generally agreed with the proposal[12] as it will assert effective pressure on the listed issuer to remove the subject individual from office. The requirement will increase visibility for shareholders of the listed issuer and investing public on the state of affairs of the listed issuer and hold the listed issuer accountable to its shareholders.

58. Two respondents suggested that the Exchange publish a list of persons subject to a PII Statement so that the investing public can have easier access to the relevant information.

59. Two respondents proposed that if the listed issuer considered an individual should stay in office after a PII Statement is imposed, that issuer can disclose its reasons for the decision. They considered the continued disclosure would increase the administrative burden on listed issuers, and the disclosure requirement on the issuer should either be for a limited period or replaced with a quarterly announcement.

Our response

60. We believe that the inclusion of a reference to a PII Statement having been made in the listed issuer's announcement and corporate communications will serve to ensure the investing public are adequately protected and provided with relevant information to protect their interest. We will therefore adopt this proposal.

61. As regards the suggestion to publish a list of those subject to a PII Statement, information regarding all public sanctions that have been imposed can be found on the HKEX website. Details of certain sanctions can also be found in our regular Enforcement Bulletin. We will consider if the presentation or searchability of that information can be enhanced.

Extending disclosure in listing documents and annual reports (Question 5)

62. We proposed to extend the current express scope of disclosure in listing applicants' listing documents and listed issuers' annual reports in respect of their directors and members of senior management (current and/or proposed, as the case may be) by requiring provision of full particulars of any public sanctions made against those individuals by statutory or regulatory authorities.

[12] Some respondents considered the requirement should only apply in respect of PII Statements made against directors and not senior management members. Other respondents opposed this proposal because they did not agree with the proposal to lower the threshold for the imposition of a PII Statement and/or its extension to members of the listed issuer's senior management. These comments appeared to be directed at the related proposals in Questions 10 and 1 respectively.

Comments received

63. Respondents agreed that requiring the disclosure of full particulars of any public sanctions made against the relevant individuals by statutory or regulatory authorities in listing documents and/or annual reports would ensure shareholders and the investing public are fully informed, thereby promoting further transparency in the market. One respondent particularly agreed that the enhanced disclosure would make it more difficult for directors and senior management members who have been subject to a PII Statement to move across other listed issuers undetected.

64. Some respondents considered there should be a specified duration for the disclosures, and that the subject individuals should be given an opportunity to "*rehabilitate*" from their previous breaches. Some respondents considered the continued disclosure requirements would be onerous and increase the administrative burden of listed issuers.

65. One respondent suggested more clarity should be given as to the extent of information to be disclosed. Another queried whether the disclosure of public sanctions as proposed would somehow contradict Rule 13.51B(3)(c).

Our response

66. The main concern raised by opposing respondents related to the duration of the disclosure requirement.

67. We considered imposing a time limit but, on balance, do not think it is appropriate to do so. The intention of the proposal is to ensure transparency, and that consistent and comprehensive information is available for the protection of the investing public. Information regarding sanctions is already a matter of public record – for example on the HKEX website. This proposal helps to bring that information more readily to those who may be most interested in it.

68. Equally, and for a similar reason, we do not consider that this proposal prevents "*rehabilitation*". An individual may still be appointed as a director or senior management member of a listed issuer if the individual meets the relevant suitability requirements as a director or is appropriate to be a senior management member despite the imposition of a PII Statement. In such cases, the listed issuer is still required to make the relevant disclosures concerning the individuals in due course under Rule 13.51B(2), listing documents and/or annual reports as the case may be. Rule 13.51B(3)(c) relates to disclosures of public sanctions made against an issuer by the Exchange, accordingly, there is no inconsistency since the disclosures to be made relate to the relevant individuals.

69. We will adopt this proposal.

Remove the existing threshold for the denial of facilities of the market (Question 6)

70. We proposed lowering the existing threshold for ordering the denial of facilities of the market by removing the requirement of "*wilful*" or "*persistent*" failure by a listed issuer to discharge its Rule responsibilities.

Comments received

71. Respondents generally agreed that this is a serious sanction which should be reserved for conduct and breaches with a high level of severity. Respondents supporting the proposal agreed that it may be difficult to categorise actions as either "*wilful*" or "*persistent*" and there accordingly may be occasions where the conduct is sufficiently serious to warrant the sanction but the conduct does not neatly fall into these categories.

72. Some respondents opposing the proposal considered a threshold was necessary and appropriate in light of the serious consequences to a listed issuer and/or that the existing threshold is reasonable. Some respondents were concerned that the removal of the threshold would allow the Exchange to impose such a serious sanction for an inadvertent or minor breach – these comments were similar to those made regarding the equivalent proposal as regards the imposition of a PII Statement (Question 1 above).

73. One respondent suggested that denial of facilities of the market should only be imposed as a last resort, after having exhausted disclosure requirements and follow-on actions on wrong-doers. Some respondents suggested that if the threshold is removed, then further guidance should be issued to the market to provide clarity and achieve consistency regarding the imposition of the sanction. A concern was expressed that this sanction may have unintended consequences impacting the interests of independent shareholders.

Our response

74. The imposition of a denial of facilities of the market is a serious sanction, and is intended to be reserved for appropriate cases, which will necessarily be those involving serious conduct and breaches of the Rules. The impact of such a sanction would have to be considered and balanced on a case-by-case basis to ensure that it is imposed only in appropriate cases.

75. However, similar considerations apply to this proposal as to the proposal to remove the equivalent wording in respect of the imposition of a PII Statement (see Question 1 above). In particular, the removal of the threshold will help overcome evidential challenges in establishing the wilful mindset of the culpable individual, and permit greater flexibility towards ensuring that the appropriate sanction can be matched with the misconduct. Furthermore, there is no threshold for the more severe sanctions of suspension or cancellation; the retention of a threshold for the lower sanction of denial of the facilities of the market appears inconsistent.

76. We will accordingly adopt this proposal.

Include fulfilment of specified conditions in respect of the denial of facilities of the market (Question 7)

77. We proposed extending the scope of the sanction such that the sanction's duration could be contingent on the fulfilment of specified conditions (e.g. remedying the breach), rather than being for a specified period.

Comments received

78. Generally the respondents supported the proposal in principle and agreed that it should be possible for the duration of the sanction to be subject to fulfilment of specified conditions in order to be effective and to encourage positive remedial steps to be taken, as listed issuers could otherwise take no remedial action, and instead simply wait for the specified period of the sanction to expire.

79. Some respondents commented that more guidance could be given as to when and what type of conditions may be imposed. One respondent suggested that such conditions should be targeted, directly related to the correction of the Rule contravention, and achievable for the relevant listed issuer.

80. The respondents opposing the proposal generally opposed because they disagreed with the removal of the threshold for imposing a denial of facilities of the market on listed issuers (Question 6 above).

Our response

81. The aim of this proposal was to enhance the effectiveness of the existing sanction by connecting it with desirable action on the part of the issuer. The concern is that, if this connection is not made, then it may have limited effect if the issuer can instead wait for the specified period to expire.

82. As noted in paragraph 67 of the Consultation Paper, there is a wide range of conduct and breaches which could warrant this sanction. Equally, the appropriate conditions to be imposed will necessarily have to be considered in light of the specific facts and circumstances in each case. While it is therefore not appropriate to provide an exhaustive list of possible conditions that could be imposed, examples could involve denying facilities of the market until the listed issuer has: (a) conducted an independent internal controls review and implemented any recommendations; (b) sought and obtained independent shareholders' ratification in respect of a matter.

83. In light of the above, we will adopt this proposal.

B. Details of proposed new disciplinary sanction

Introduce the Director Unsuitability Statement (Question 8)

84. We proposed to introduce a new sanction, namely that the Exchange may, "*in the case of serious or repeated failure by a director to discharge his responsibilities under the Listing Rules, state publicly that in the Exchange's opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries*" (i.e. the Director Unsuitability Statement).

Comments received

85. Several respondents commented that they agreed that there should be a spectrum of sanctions that can imposed for differing degrees of misconduct. Having a range of sanctions available can increase fairness, and enable sanctions to be imposed that are more proportionate to the culpability and/or misconduct of the individuals involved.

86. Some respondents said they considered that it is up to the board of the listed issuer to assess whether a subject individual should remain as director, and the introduction of a Director Unsuitability Statement may impose undue pressure on the listed issuer in making that decision. A suggestion was that, if the board of the listed issuer decides that the individual should stay as a director, this could be subject to disclosure by the listed issuer of its reasons, any risk / impact of its operations, and whether adequate measures had been taken to prevent similar misconduct in the future, and/or a requirement that the relevant individual be subject to re-election at the next annual general meeting.

87. Some respondents considered there was little distinction between a PII Statement and a Director Unsuitability Statement and questioned whether having both sanctions is necessary. Some respondents considered there should be further clarification and guidance as to the degree of severity required for the respective imposition of the PII Statement and Director Unsuitability Statement.

88. Most respondents considered the proposed threshold for the imposition of this sanction to be appropriate. Some respondents proposed that the sanction should only be available if the subject director's failure to discharge his/her Rule responsibilities had a material adverse effect on the listed issuer or its shareholders.

Our response

89. As noted in the Consultation Paper, and in our response to Question 1 above, one of the overall objects of the proposals is to have a sufficiently broad range of sanctions so that an appropriate regulatory response is available to address the wide range and different degrees of misconduct. Respondents broadly appear supportive of this.

90. We note the concern expressed by some respondents that the introduction of a new sanction may cause confusion and uncertainty, particularly given perceived similarities of the PII Statement and Director Unsuitability Statement. This however is somewhat inevitable in any flexible but graduated sanctions regime. The existing regime provides for, amongst other things, public reputational sanctions in the form of either a public statement involving criticism or a public censure. We believe that the market has a general understanding of the comparative levels of severity between these two sanctions, which are already used by the Exchange to differentiate the sanction appropriately to the relevant breaches and misconduct.

91. The range of sanctions currently available is however too narrow and inadequate to address scenarios involving serious misconduct. We believe that, in order to carry out the Exchange's statutory duty to maintain the integrity of its markets, it is necessary to introduce further differentiation and more severe penalties to tackle the most serious cases. While the Exchange does not have the power to compel any listed company to remove an unsuitable director, the Director Unsuitability Statement will allow the Exchange to clearly state its views regarding the unsuitability of a director and alert investors. A Director Unsuitability Statement would normally be accompanied by follow-on actions (see Question 3 above and Question 9 below).

92. The facts and circumstances warranting a Director Unsuitability Statement rather than a PII Statement will necessarily differ on a case-by-case basis. However, as illustrated in the flowchart at paragraph 83 of the Consultation Paper, whilst the PII Statement may be imposed in situations of serious misconduct by individuals, the Director Unsuitability Statement is at the top end of the spectrum and is reserved for the most egregious or severe cases of misconduct.

93. We set out below a hypothetical case to illustrate how various graduated sanctions might be imposed. Please note that this example is provided for illustration purposes only. It is in no way binding or a precedent for any actual case.

Hypothetical illustrative case

A listed issuer is in the business of, among other things, installation of lighting and fixtures in shopping malls in the PRC. The Board comprised 3 executive directors (**EDs**) and 3 independent non-executive directors (**INEDs**). One of the EDs, Mr. X, is also a director of the issuer's operating subsidiary in the PRC (**Subsidiary**).

There was a delay in publication of the issuer's annual results and report because the auditors were unable to complete the audit due to insufficient audit evidence relating to a series of substantial payments made to a third party by the Subsidiary. Upon being notified by the auditor of the issuer, the audit committee comprising the INEDs immediately procured an independent review to be carried out of the issues as well as the internal controls of the issuer group. The review report revealed that the payments were purportedly made for purchases of construction materials but the issuer's business did not appear to have a need for such materials. The review report also revealed internal controls deficiencies concerning payment authorisations, namely that there were no reasonable monetary limits and no countersigning / authorisation mechanism before large sums of money could be paid out of the Subsidiary's bank accounts. The internal controls deficiencies had been identified previously by the auditor in the prior year. In addition, the issuer did not comply with Chapter 14 and 14A requirements with regard to the payments.

It transpired upon investigation that:

1. Mr. X said that he had transferred the money to "*help*" his spouse's family business in property construction, in which he has an interest.

2. The other two EDs were aware of the payments. Although the nature of the payments should have given rise to further enquiry, the EDs did not question further because they relied on Mr. X to look after the business of the Subsidiary and did not consider its business their responsibility.

3. The INEDs did not take action to address the internal controls deficiencies identified because no issues had arisen in the previous year. However, upon becoming aware of the present issue, they immediately took steps to enhance the payment controls within the issuer group including the Subsidiary, recommended to the Board and sought professional advice for the recovery of the sums paid, and arranged appropriate training to be given to relevant staff regarding payment controls and Listing Rule compliance.

4. The CFO (not a director) was responsible for processing the payments on the instructions of Mr. X. The CFO had noticed that the recipient was connected to Mr. X, and was aware that this had Rule implications, but nevertheless decided not to raise the issue, and to proceed with the payment regardless.

All relevant directors of the Board remained in office at the time of the disciplinary action. The main sanctions that may be imposed are as follows:

Director Unsuitability Statement with follow-on actions:	Mr. X
PII Statement with follow-on actions:	the two other EDs
PII Statement (without follow-on actions):	the three INEDs
Public Censure:	CFO

94. For the above reasons, we will proceed with this proposal.

Follow-on actions/publication apply to Director Unsuitability Statement (Question 9)

95. We proposed that the follow-on actions, publication requirements and enhanced disclosures as applicable to PII Statements also apply to directors against whom a Director Unsuitability Statement has been made.

Comments received

96. Generally, respondents who supported the introduction of the Director Unsuitability Statement also supported this proposal. One respondent noted this would align the requirements and would accordingly minimise confusion.

97. Respondents who opposed the proposal appeared to do so because they did not agree to the introduction of a Director Unsuitability Statement (Question 8 above). Generally, these respondents did not offer additional reasons for their view, or comment specifically on this proposal.

Our response

98. As set out in the Consultation Paper, the Director Unsuitability Statement is a means for the Exchange to publicly raise concern about the director's conduct such that, in its opinion, the individual is not suitable to occupy the position of a director of the named listed issuer or be a member of its senior management. The intention is that the board of the listed issuer should take active steps to remove the director from holding any office within the named listed issuer. Accordingly, we believe the follow-on actions are a necessary corollary to the introduction of the Director Unsuitability Statement sanction, to ensure that it is effective and serves as a deterrent against misconduct. Furthermore, it is to be expected that follow-on actions would normally be sought in cases warranting the imposition of a Director Unsuitability Statement if the relevant director remained in office.

99. In view of the reasons above, we will proceed with this proposal.

C. Additional circumstances where disciplinary sanctions can be imposed

Impose secondary liability (Question 10)

100. We proposed to impose secondary liability on Relevant Parties if they have "*caused by action or omission or knowingly participated in a contravention of the Listing Rules*".

Overview of comments received

101. Views expressed in support of the proposal included that it will enhance individual accountability and the overall alertness of the Relevant Parties which will in turn enhance compliance with the Rules; it will also address the regulatory gap caused by the existing lack of Rule obligations and/or standard of compliance in respect of certain Relevant Parties, such as senior management of listed issuers; and imposing a reasonable duty is good for market regulation in general.

102. Opposing views commented on a variety of issues, but can be broadly categorised into three areas, namely: (a) concerns on the fundamentals, including the legal basis for imposing secondary liability; (b) the scope of the proposed threshold and related interpretation issues (including the position of senior management members of listed issuers and their subsidiaries, and company secretaries, and whether substantial shareholders should be held liable for causing a Rule breach as a result of omissions where they do not have a duty under the law); and (c) the scope of the Relevant Parties which should be subject to secondary liability, including amongst other things comments on the unique position of professional advisers (in particular, solicitors, accountants and financial advisers). We consider each of these areas in detail below.

103. In addition, some comments provided by respondents on this question related primarily to the serious nature of disciplinary sanctions, with particular reference to the PII Statement and the ban on professional advisers. On these matters, please refer also to the other relevant sections of these Conclusions, particularly Question 1 (PII Statement) and Question 19 (ban on professional advisers).

Comments received: Fundamentals

104. Some respondents queried whether secondary liability can be imposed on Relevant Parties who, unlike directors of an issuer, do not give a written undertaking to the Exchange. The concern was that the absence of such an undertaking would mean there is no contractual nexus with the Exchange, and accordingly whether liability could be imposed in the absence of legislation raised a question of legal validity. One respondent noted that the UK Disclosure and Transparency Rules (which have been cited as a jurisdictional reference in the Consultation Paper) are expressly subject to legislation (the Financial Services and Markets Act), which may indicate that secondary liability should have the necessary legislative backing.

105. There were also comments that, in the absence of a written undertaking, it would be unjustifiable to impose secondary liability, especially given the seriousness of certain sanctions. One respondent, whilst supporting the proposal to implement secondary liability, opined that the Relevant Parties need to be clearly defined and the Exchange must require them to sign a confirmation so that they are aware that they are Relevant Parties, be more alert during their work and keep appropriate records as evidence.

106. Some opposing respondents commented generally on the role, ability and appropriateness of the Listing Division and Listing Committee / Listing Review Committee to respectively investigate and determine disciplinary matters relating to secondary liability, in particular for professional advisers and their employees. Some respondents requested clarification of the disciplinary process, and how the Exchange would investigate, determine roles and responsibilities of individuals and/or liability for Rule breaches, and exercise its disciplinary powers. Some respondents commented on perceived duplication of enforcement work between the SFC and the Exchange.

Our response: Fundamentals

107. The Relevant Parties set out in Rule 2A.10 already include parties who do not provide undertakings to, or have a contractual nexus with, the Exchange.

108. Under section 21 of the SFO, the Exchange has the statutory duty to ensure, as far as reasonably practicable, an orderly, informed and fair market for the trading of securities listed on it. To enable the Exchange to perform its duties, section 23 of the SFO confers

a broad power on the Exchange to make rules for such matters as are necessary or desirable for, amongst other matters, the proper regulation and efficient operation of the market which it operates.[13] In other words, the Listing Rules are expressly authorised by the SFO. The Exchange may make rules for, amongst other matters, the imposition on any person of obligations to observe specified standards of conduct or to perform, or refrain from performing, specified acts reasonably imposed in connection with the listing or continued listing of securities,[14] and the penalties or sanctions which may be imposed by the Exchange for a breach of rules under section 23 of the SFO.[15] The Listing Rules may, subject to the provisions of the SFO, govern the conduct of persons with whom the Exchange has no contractual nexus, this includes the making of rules relating to the imposition of secondary liability. Accordingly, and as confirmed by the courts,[16] the ability of the Exchange to impose disciplinary sanctions extends beyond those with a contractual nexus with the Exchange to others involved in Listing Rule matters.

109. The Exchange's disciplinary powers are clearly set out in the Listing Rules. Guidance materials and further information on the disciplinary process, including the procedures applicable to disciplinary actions, and the Exchange's approach to enforcement, are available on the HKEX website. The role of the SFC and the Exchange in relation to enforcement matters has been carefully considered on other occasions and in other public consultations. The Exchange does not consider that the introduction of secondary liability should result in duplication of work.

110. Currently, the Exchange's powers to make rules under the SFO, or make any public finding, impose any penalty or sanction or take disciplinary action under the Listing Rules, do not extend to solicitors or certified public accountants in private practice, except in certain specified circumstances contained in arrangements agreed between the Exchange and the regulatory bodies for solicitors and certified public accountants.[17]

111. Given that: (a) these parties are covered by the specific statutory regime set out in section 23(8) of the SFO; (b) the arrangements agreed with the relevant professional regulatory bodies already set out the circumstances in which disciplinary action may be brought by the Exchange; and (c) the introduction of secondary liability is necessarily subject to such arrangements (see paragraph 97 of the Consultation Paper), we will modify the scope of this proposal by including the following note to Rule 2A.10B:

"*In respect of parties covered by section 23(8) of the SFO, a sanction may be imposed under rule 2A.10B(3) in and only in the circumstances prescribed for disciplinary action in the arrangements agreed from time to time between the Exchange and the relevant professional regulatory body; and, in considering whether a party covered by section 23(8) of the SFO has breached rule 2A.10B(3), the Exchange will take into account,*

[13] SFO, section 23(1)(a).
[14] SFO, section 23(2)(d).
[15] SFO, section 23(2)(f).
[16] See *New World Development Company Limited and Others v The Stock Exchange of Hong Kong Limited* [2005] 2 HKLRD 612: "*the ability of the Exchange to make rules regulating its activities is not simply based on the consent of the players, but ... mandated by the SFO to make rules for its proper operation and such rules must be approved by the SFC. The Exchange, through the Disciplinary Committee, may impose sanctions on parties who have not signed any agreement with the Exchange* ...". On appeal, this point was affirmed by the Court of Final Appeal.
[17] SFO, section 23(8).

among other things, whether such party has knowingly or recklessly facilitated or participated in a breach of the Listing Rules or any undertaking given or any agreement with the Exchange."

112. We consider the inclusion of this note will ensure additional clarity that, whilst the Exchange is able to bring disciplinary action against solicitors and certified public accountants in accordance with the arrangements agreed under section 23(8) of the SFO, the introduction of Rule 2A.10B will not result in any widening of scope for liability beyond those arrangements agreed in respect of such parties.

Comments received: Threshold for imposing secondary liability

113. This area focuses primarily on the words "*… caused by action or omission or knowing participated in a contravention of the Listing Rules*", and whether this encapsulates the correct threshold or test for establishing secondary liability.

114. Some thought that the words were vague, difficult to interpret, broadly formulated, and/or may have adverse unintended consequences, such as catching parties which did not intend to breach the Rules. One respondent, while supporting the proposal, thought that the phrase "*knowingly participated*" might give rise to evidential difficulties in establishing the actual knowledge of the Relevant Parties.

115. Some respondents were concerned that individuals who are not directors may not be the decision-makers, or have sufficient power or authority, or may only have limited information, and yet may still either "*participate*" in, or fail to prevent, conduct which involves or leads to a breach. For example, a senior manager might be said to have participated in a breach if he executed an action under orders from directors, which he had no authority to challenge or overrule. The concern was that the imposition of liability in such circumstances might be unfair. Several respondents commented that company secretaries in particular may fall into this category of individual, emphasising that company secretaries play only a supporting or administrative role, and may or may not be an employee of the listed issuer.

116. Some respondents thought that secondary liability should not be imposed on the basis of omissions, as liability for omissions should only be possible for a person who is under a duty, but fails, to do something. In this respect, a number of respondents said that a substantial shareholder of a listed issuer, being a Relevant Party, would not normally have any particular duties to the issuer, or in respect of Listing Rule compliance. Reference was made to the example in paragraph 93(d) of the Consultation Paper which contemplated a scenario in which secondary liability should be imposed on substantial shareholders in the context of a listed issuer's failure to maintain the minimum public float.

117. Several respondents put forward alternative suggestions for the appropriate threshold. These included: (a) wilful default or gross negligence / intention or at least recklessness by the Relevant Parties; (b) for professional advisers, a requirement of actively aiding, abetting, counselling or procuring a contravention of the Rules; (c) a conjunctive test involving both causation by action or omission and knowing participation in a contravention of the Rules; and (d) restricting liability only to those breaches which the Exchange considers to be of particular importance to the integrity of the market. There was also a suggestion that there should be no liability for an omission causing a Rule breach, if that was a result of the Relevant Party not understanding the Rules, and remedial action is taken after discovery of the breach.

Our response: Threshold for imposing secondary liability

118. The proposed threshold was arrived at following consideration of other regimes, and based on our enforcement case experience, in which we have found that the conduct of one or more of the Relevant Parties was a significant factor in the commission of a Rule breach, but sanctions could not be imposed against them. We have provided examples of such case scenarios in paragraph 93 of the Consultation Paper.

119. In assessing whether a person has caused by action or omission or knowingly participated in a contravention of the Listing Rules, the facts and circumstances of the matter, including the roles and responsibilities of the Relevant Person in question in respect of the subject matter of the breach and also the listed issuer's Rule compliance, will be taken into consideration. This will necessarily include a consideration at an individual respondent level of what each person was expected to do, what they knew, and what they in fact did.

120. For example, a concern was expressed that a senior management member or professional adviser might be liable if, despite having given the correct advice on a matter, the individual were to be overruled by the board, and as a result a breach committed. However, in those circumstances, it is clear that the Rule breach was not caused by the action of the senior management member / professional adviser and therefore he would not be subject to secondary liability.

121. We agree with the respondents who noted that liability for an omission can only arise if the relevant individual was under a duty to act. Some respondents appeared to think that the proposed introduction of secondary liability would be accompanied by a general duty on all Relevant Parties to prevent breaches from occurring, but that is not the case.

122. We also agree that the circumstances in which substantial shareholders have relevant duties which could expose them to secondary liability are likely to be relatively rare. For example, substantial shareholders are not normally under a general duty to ensure the issuer maintains a sufficient public float. In the specific example in paragraph 93(d) of the Consultation Paper, the substantial shareholders had given undertakings to take appropriate steps to ensure that a sufficient public float existed. Such an undertaking would create an obligation to act, and this was accordingly a critical element leading to secondary liability in that scenario.

123. We consider that omissions should not, however, be carved out altogether. We do not think it is appropriate to exclude from liability those that are under a duty to act but culpably fail to do so. Similarly, we do not think that ignorance of the Rules should form a liability exclusion or a basis for a defence.

124. Knowledge will clearly be relevant in relation to "*knowing participation*". If an individual, say a senior management member, who is responsible for a transaction, has only been given limited information, and enters into the transaction without the knowledge that the transaction was in fact a connected transaction and subject to various procedural requirements under the Rules, that individual could not be said to have "*knowingly*" participated in the transaction such as to engage secondary liability. Similarly, if he approved publication of an announcement believing it to be accurate, but material matters existed unbeknownst to him which rendered the announcement misleading, secondary liability should not be engaged.

125. We have considered the alternative formulations proposed, but consider on balance that our proposal remains the appropriate threshold. Introducing a requirement of wilful default, intention or recklessness would create an inconsistency and is problematic as regards omissions, as discussed above. Such thresholds would also lead to the very evidential difficulties that we have sought to address in other aspects of this consultation – see in particular Question 1 above. An element of negligence is already factored into the requirement for there to be a duty, and a breach of that duty, for liability to be established as an act or omission.

126. Given the nature of the Listing Rules and the Exchange's enforcement process, we do not think it is appropriate to incorporate principles of inchoate liability from criminal law, namely the concepts of aiding and abetting, counselling or procuring a contravention of the Rules. We have also considered the suggestion that secondary liability be restricted to breaches which the Exchange considers to be of particular importance to the integrity of the market. We do not think it appropriate to limit secondary liability in such a way, as it could lead to unhelpful argument, inappropriate in individual disciplinary cases, as to what the Exchange should or should not consider important, or how the Exchange should deploy its resources. The Exchange in any event focuses its resources on the cases which it considers most appropriate for enforcement action.

Scope / who should be covered

127. The comments in this area focussed on whether action for secondary liability should be available against all Relevant Parties.

128. There appeared to be a general consensus that directors of listed issuers are ultimately responsible for listed issuers' compliance with the Rules and therefore any liability on their part is likely to be primary rather than secondary. There was a view that secondary liability should be extended to supervisors of listed issuers incorporated in the PRC, as they have a specific role to play in such issuers.

129. Similarly, there appeared to be a view that secondary liability should be imposed for at least some members of senior management, such as CEOs who are not themselves directors. Some respondents suggested that secondary liability should foremost apply to those involved in the day-to-day running of the listed issuer's business, such as directors, executive officers and persons discharging managerial functions in the listed issuer. However, third parties, such as professional advisers, may have no control over the actions of a listed issuer or its directors, so secondary liability may not be appropriate.

130. Several respondents commented specifically on the following Relevant Parties: (a) substantial shareholders; (b) professional advisers, or certain categories that fall under the heading of professional advisers, such as lawyers and accountants; and (c) senior management members (by reference to the proposed definition – see Question 12 below), including under this heading several specific comments in relation to company secretaries. We consider each of these in detail below.

Substantial shareholders – comments received

131. As noted above, some respondents objected to the proposal to impose secondary liability on substantial shareholders and/or questioned how substantial shareholders could be liable, as they may not be involved in, or in a position to control, the management of the listed issuer. Some commented that the Rules should not impose

duties on substantial shareholders towards companies of which they are shareholders when the law does not impose such duties.

Substantial shareholders – our response

132. We refer to our response in paragraph 122 above. We accordingly consider that substantial shareholders should be subject to secondary liability as proposed.

Professional advisers – comments received

133. There was significant opposition against imposing secondary liability on professional advisers. Some respondents expressed the view that professional advisers are already subject to existing standards of compliance prescribed by law and their respective professional regulatory bodies (such as the Law Society), and such advisers would also fall under the disciplinary jurisdiction and regime of, and could accordingly be sanctioned by, that other regulatory body. The introduction of secondary liability would risk exposing them to double jeopardy in respect of the same misconduct, i.e. disciplinary proceedings and sanctions by both the Exchange and the other regulatory body. In this regard, some respondents considered that misconduct should be referred, and disciplinary action reserved, to the relevant regulatory body.

134. Some respondents were concerned that the possibility of secondary liability under the Rules might place a solicitor in a position of conflict, given his obligations to his client and professional duties under the law (including the Legal Practitioners Ordinance) and the Law Society regulations, and/or that legal professional privilege may be undermined if a lawyer wished to rely on privileged lawyer-client communications in order to defend disciplinary action brought by the Exchange.

135. Some respondents believed that the proposal encroached on the jurisdiction of the Law Society in respect of solicitors, and queried how the proposed regime was compatible with section 23(8) of the SFO, and the Memorandum of Understanding between the Exchange and the Law Society,[18] under which the Exchange may only discipline solicitors in certain limited circumstances. Some more broadly considered that the current framework which regulates lawyers' conduct is sufficient and effective, and the Exchange may refer a solicitor's conduct to the Law Society for investigation and disciplinary action.

Professional advisers – our response

136. Professional advisers are identified as Relevant Parties under the existing Rules. In other words, the disciplinary jurisdiction of the Exchange already applies to professional advisers.

137. The fact that a Relevant Party may also be subject to the oversight and disciplinary regime of another body, regulator or authority is not of itself a reason to be excluded from that of the Exchange. Any disciplinary action by the Exchange is limited to matters governed by or arising out of the Listing Rules – it is not duplicative of the general jurisdiction of a professional regulatory body. By acting in connection with listing matters, the Exchange's jurisdiction is necessarily engaged.

[18] Dated 18 December 1996.

138. In light of this, we consider that professional advisers should fall within the scope of secondary liability. We will accordingly adopt the proposal, save that, as noted in paragraph 111 above, we will include a note in the Rules to take into account the particular statutory position of solicitors and certified public accountants and the arrangements agreed under section 23(8) of the SFO.

Senior management – comments received

139. Some respondents were of the view that it would be unfair to impose secondary liability on senior management members as they act in accordance with directors' instructions and are not decision makers, and may not have full information, ability or power to deter a Rule breach. There was a query whether there would be exemption from liability where a Rule breach is a result of directors' failure to accept senior management's advice or the senior management member did or could not participate in the final decision leading to the Rule breach.

140. Another opposing view was that the standards expected of directors of listed issuers is intended to be higher than that of senior management members and subsidiaries' directors, as the Rules impose extensive and stringent duties and responsibilities on the former but not the latter. Putting senior management members and subsidiaries' directors on the same penalty scale as directors of listed issuers, when their terms of reference and compensation package are not on the same level, is therefore unfair.

141. Several responses expressed opposition in relation to company secretaries being exposed to secondary liability as members of senior management. Most comments in this regard were received from the HKICS, accompanied by submissions provided by its individual members. In broad terms, these responses commented that:

(a) Company secretaries only play a supporting role, but that under the proposal they could be liable simply through participation in a contravention, even if they had only played a minor supporting or advisory role.

(b) Secondary liability should only arise if a company secretary failed to meet applicable professional standards in discharging his duties. Such a professional disciplinary matter should be left to the HKICS to determine.

(c) The proposal did not distinguish between internally employed and externally appointed company secretaries. The latter category in particular might not have day-to-day knowledge of the listed issuer's affairs and/or have all relevant information on a timely basis.

(d) An increase in risk of personal liability on the part of company secretaries would reduce the attractiveness of the profession and would therefore weaken the level of corporate governance in Hong Kong.

Senior management members – our response

142. As noted above, our response on this issue closely relates to the proposal considered below in relation to the definition of senior management (Question 14). Reference should also be made to that section of these Conclusions.

143. Senior management members of a listed issuer often play an important role in an issuer's Rule compliance and corporate governance, although they may not

necessarily be directors of the issuer. In our experience, some Rule breaches were at least partially, if not primarily, caused by the conduct of the issuers' senior management members. We refer to some of the examples set out in the Consultation Paper.[19] However, although senior management members are currently a Relevant Party subject to the Exchange's disciplinary jurisdiction, as there are no Rule obligations imposed on, and no prescribed standard of compliance for, senior management members, disciplinary action against them is not possible even in circumstances where their conduct was a significant factor in the commission of a Rule breach. We therefore consider it necessary to impose secondary liability to close a gap in our disciplinary regime in the interest of the market.

144. We have considered in detail the comments received in respect of the proposed introduction of secondary liability in respect of company secretaries.

145. Under the CG Code,[20] company secretaries are responsible for, amongst other matters, advising the board through the chairman and/or the chief executive on governance matters. The CG Code also provides that company secretaries should be employees of the issuers and have day-to-day knowledge of the issuers' affairs, although it does allow for engagement of external service providers as company secretaries. It further provides that the board should approve the selection, appointment or dismissal of the company secretaries; and company secretaries should report to the board chairman and/or the chief executive.[21] These provisions support the Exchange's expectation that company secretaries are and should be senior management members who have a significant role to play in listed issuers' Rule compliance and corporate governance matters. This expectation is fortified by the fact that under the Rules, a company secretary, together with a director, can be appointed as a listed issuer's authorised representatives to act as the issuer's principal channel of communication.[22]

146. In 2019, in response to our Consultation Paper on Codification of General Waivers and Principles relating to IPOs and Listed Issuers and Minor Rule Amendments, the HKICS submitted that the role that the members of HKICS perform as company secretary as to implementation of day-to-day listed company regulatory compliance is a central one; the company secretary performs roles requiring undoubted professionalism, local knowledge and making of critical decisions germane for investor protection through day-to-day practical governance implementation and holistic understanding of many areas of regulatory concerns bringing together of many moving parts. The submission referred to research which found that the company secretary has primary and/or significant responsibility as to regulatory compliance in almost all listed issuers that they work for.

147. There is a suggestion that there be a distinction between internally employed and externally engaged company secretaries as the latter may not have full knowledge and understanding of a listed issuer's business and affairs and therefore it would not be fair to hold them secondarily liable for the listed issuer's Rule breach. As discussed above, in assessing whether secondary liability should be imposed on a Relevant Party, the role and responsibilities, and the knowledge and involvement, of the party will be taken into consideration. We note further that, under the CG Code, the company secretary

[19] Paragraph 93(a) to (c) and (e).
[20] Appendix 14 to the Main Board Rules and Appendix 15 to the GEM Rules, section F.
[21] Code provisions F.1.1 to F.1.3 of the CG Code.
[22] Under Main Board Rule 3.05 and GEM Rule 5.24, the two authorised representatives must be either two directors or a director and the listed issuer's secretary unless the Exchange, in exceptional circumstances, agrees otherwise.

should be an employee of the issuer. We therefore see no justification for different treatment of externally-engaged company secretaries.

148. In considering whether to bring a disciplinary action against a company secretary, being a senior management member of a listed issuer, for the issuer's Rule breach, the Exchange will take into account his/her role and responsibility in the issuer, and his/her knowledge of and involvement in the subject matter of the Rule breach. As stated in the Consultation Paper,[23] the aim is to impose secondary liability only in circumstances where the conduct in question was a significant factor in the commission of a Rule breach, not when the involvement is only trivial and/or administrative in nature.

149. Whilst the HKICS has disciplinary jurisdiction over its members, there is a fundamental difference between company secretaries and the jurisdiction of the HKICS as a professional body, and the position as regards solicitors / the Law Society; or accountants / the HKICPA. Unlike lawyers and accountants, company secretaries are not subject to a mandatory, statutorily-backed professional regime. There is no guarantee that a company secretary will be governed by the expectations or disciplinary regime of HKICS.

150. After considering the responses in detail, we maintain our view that it is necessary for the efficient operation and proper regulation of the market that senior management members, including company secretaries, being a Relevant Party, be subject to secondary liability for Rule breaches.

Overview of our response

151. An analysis of the comments suggest widespread support for secondary liability, with a particular focus on senior management members such as CEOs, CFO, and COOs. Much of the opposition to the proposal related specifically to (a) professional advisers; and/or (b) company secretaries.

152. We remain of the view that the introduction of secondary liability is necessary for the proper regulation of the market, and that the proposed threshold strikes the right balance. For the reasons given, we consider it important that company secretaries, as members of senior management, fall within the scope of such liability. Similarly, we consider professional advisers should fall within scope, save as described above in light of section 23(8) of the SFO.

153. We will therefore adopt the proposal to introduce secondary liability for all Relevant Parties, and will include the following note to Rule 2A.10B:

"*In respect of parties covered by section 23(8) of the SFO, a sanction may be imposed under rule 2A.10B(3) in and only in the circumstances prescribed for disciplinary action in the arrangements agreed from time to time between the Exchange and the relevant professional regulatory body; and, in considering whether a party covered by section 23(8) of the SFO has breached rule 2A.10B(3), the Exchange will take into account, among other things, whether such party has knowingly or recklessly facilitated or participated in a breach of the Listing Rules or any undertaking given or any agreement with the Exchange.*"

[23] Paragraph 90.

Explicit sanction for failure to comply with requirements imposed (Question 11)

154. We proposed to include an explicit provision in the Rules permitting the imposition of a sanction in circumstances where there has been a failure to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee of the Exchange.

Comments received

155. One respondent supporting the proposal acknowledged that Rule 2A.09 allowed the Listing Committee to impose sanctions for Rule breaches but there is no express provision for sanction where there is a failure to comply with a requirement imposed by the Listing Division, Listing Committee or the Listing Review Committee. This proposal will therefore enhance the Rules.

156. On the other hand, one respondent considered the proposal would result in the Listing Division, Listing Committee or the Listing Review Committee having too much power as their decisions would have the same legal effect and status as Rule provisions.

157. A significant number of the opposing respondents were concerned the provision would pose difficulties for lawyers, in that lawyers might find themselves in a conflict situation (for example, by virtue of the duties owed to their client, client confidentiality and legal professional privilege), which could mean that they were unable to fulfil the requirements imposed. These respondents considered the proposal should not apply to lawyers acting in their professional capacity. These comments largely appeared to reflect the concerns expressed regarding the secondary liability proposals covered in Questions 10 and 12.

158. One respondent commented that any failure to comply may be outside the control of a Relevant Party if they were not the decision-maker.

Our response

159. This proposal is essentially one of clarification of an existing position, rather than the introduction of something new.

160. As noted above, the majority of the comments made by those in opposition appeared to relate to a wider concern regarding secondary liability, rather than this specific proposal. Our response in relation to secondary liability can be found in Question 10 above and Question 12 below.

161. The opposing views were also primarily expressed in the context of legal professional advisers. As illustrated by the examples in paragraph 100 of the Consultation Paper, the requirements that are envisaged are typically imposed on issuers under specific provisions of the Listing Rules, or on either issuers or individuals as a result of disciplinary action. We do not envisage that such requirements would place lawyers or other professional parties in situations of conflict of interest.

162. Accordingly, we will adopt this proposal.

Secondary liability – failure to comply with a requirement imposed (Question 12)

163. We proposed that sanctions may be imposed on all Relevant Parties through secondary liability where a party has failed to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee.

Comments received

164. Respondents agreed that if Relevant Parties may have secondary liability for Rule breaches, then it follows that they may also be secondarily liable for failures to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee.

165. The majority of the opposition to this proposal appeared to be based on opposition to the proposal to impose secondary liability more generally (see in particular Question 10 above) and/or consequential comments in line with those made in opposition to the proposal under Question 11 above.

166. One respondent thought that the scope of secondary liability is ambiguous, and requested clarification as to whether all Relevant Parties under the Rules, or only those Relevant Parties which have caused by action or omission, or knowingly participated in, a contravention of a requirement, would be subject to secondary liability.

Our response

167. As noted above, this proposal is intended to ensure a logical consistency following the introduction of secondary liability. There appeared to be no particular opposition to this specific proposition (distinct from the wider issue of secondary liability discussed above). We will adopt this proposal.

168. In relation to the comment regarding potential ambiguity of scope, we note that secondary liability is to be imposed only on such Relevant Parties which have caused by action or omission, or knowing participated in, a contravention of the requirement imposed.

Obligation to provide complete, accurate and up-to-date information (Question 13)

169. We proposed to include a Rule provision to make explicit the obligation to provide complete, accurate and up-to-date information when interacting with the Exchange in respect of its enquiries or investigations.

Comments received

170. Some respondents commented that the proposed obligation would provide clarity to parties who are subject to the Exchange's enquiries or investigations, and thought that the proposed Rule would enhance cooperation by providing a distinct route to penalise parties who provide false or misleading information.

171. Some respondents opposed the proposal because the obligation was too wide, unnecessary, placed an onerous burden on parties, or might infringe the right to silence, privilege against self-incrimination, or legal professional privilege. Some respondents commented that parties should not and cannot be expected to know what information the Exchange might consider relevant, if the Exchange has not asked for it – on this

point, concern was expressed regarding paragraph 107 of the Consultation Paper, which refers to the provision of "*all information relevant to [the Exchange's] enquiries even if it has not requested the specific information.*"

172. Some commented that the proposal could result in parties submitting voluminous material to satisfy their obligations, or that the concept of "*complete*" information in the new Rule should mean that "*there is no material omission rendering the information misleading*".

173. Some respondents stated that the proposed Rule should not apply to solicitors. One of the respondents recommended that a Note be added under Rule 2.12B to clarify that the obligation under the proposed Rule will not apply to professional advisers in circumstances where it would conflict with their duties under applicable laws or professional conduct rules.

174. One respondent opposed the proposal because they were not sure whether the proposed Rule was a backdoor extension of the Exchange's investigative powers. They suggested the Exchange make clear that a party should provide complete, accurate and up-to-date information only where a person chooses to respond to enquiries or investigations by the Exchange.

Our response

175. It is an essential standard for the market that information provided to the regulator is complete, accurate and up-to-date. Parties who provide information to the Exchange after cherry-picking, or taking an overly narrow view, such that the information provided gives an unhelpful, distorted, or misleading impression, unacceptably undermine the market and hinder the Exchange in the discharge of its statutory duties.

176. Many of the opposing comments received appeared to arise from misplaced concerns regarding the nature of the proposed obligation. We do not expect parties to guess or speculate as to the information that we might find relevant, in circumstances when we have never asked for any information. However, the Exchange expects that if a party is providing information to the Exchange regarding a matter, whether proactively or in response to an enquiry, then the information provided should be as complete, accurate and up-to-date as possible.

177. The provision of misleading information, and/or a failure to respond to and/or cooperate with the Exchange when there is a duty to do so, will be viewed as serious misconduct, warranting some of the most severe sanctions. For example, if a director fails to respond to an investigation by the Exchange, then that director is unlikely to be suitable to continue in office as a director.

178. The proposed obligation does not widen the Exchange's ability to compel the production of information from parties which are currently not under such an obligation, nor does it infringe on any right to silence. The proposed obligation applies "*when interacting with the Exchange*" – there are separate provisions regarding obligations to respond or cooperate, as noted in the Consultation Paper. Similarly, the proposal does not infringe on any privilege. As noted in paragraph 107 of the Consultation Paper, the proposed provision is not intended to override professional conduct requirements applicable to professional advisers.

179. Having considered the above, we will adopt the proposal.[24]

D. Details of definitions and inclusions within "*Relevant Parties*"

Definition of "*senior management*" (Question 14)

180. We proposed defining the term "*senior management*" (being one of the Relevant Parties) to include:

(a) any person occupying the position of chief executive, supervisor, company secretary, chief operating officer or chief financial officer, by whatever name called;

(b) any person who performs managerial functions under the directors' immediate authority; or

(c) any person referred to as senior management in the listed issuer's corporate communication or any other publications on the Exchange's website or on the listed issuer's website.

Comments received

181. Respondents supporting the proposal considered a centralised definition will prevent confusion, provide more clarity and certainty to the market. This may also prompt the board of a listed issuer to establish a suitable management structure to enable a clear delineation and delegation of management authority.

182. One respondent further suggested that the persons classified as senior management should be informed, and they should confirm such status, so that they are aware of their responsibilities and can ensure they are prepared with evidence to respond to any enquiries made by the Exchange. Another suggested that there should be a transition period for implementation, with information provided to the market to raise awareness and understanding of the new definition.

183. A group of respondents suggested that, as board secretaries may be subject to secondary liability, the definition should include a board secretary in the context of a PRC issuer.

184. Comments provided in opposition largely fell into two conflicting groups: some respondents considered the definition was too broad and imprecise, whereas other respondents considered the prescribed definition would be too narrow and restrict flexibility, as the situation of every company and individual will be different.

185. Some respondents considered the definition of senior management should be defined by the listed issuer, and not by reference to a title and/or reporting line. A respondent suggested that senior management who do not proactively participate in the administration of the relevant Rule breaches should be excluded.

186. Some respondents questioned whether it was necessary to introduce a definition of senior management, as any employee of a listed issuer involved in the commission of

[24] The wording of the new Rule 2.12B will be amended in accordance with the housekeeping amendments set out in paragraph 263.

a fraudulent scheme would already be subject to criminal sanctions. A respondent thought that the absence of a definition had not led to any uncertainty in the market, and in any event considered it may be difficult for the Exchange to demonstrate that a relevant individual is performing managerial functions under the directors' immediate authority, or otherwise on the facts and evidence of the case falls within the definition.

187. Several respondents commented specifically on whether company secretaries should fall within the definition of senior management. These respondents commented, among other things, that company secretaries do not have management power, only handle housekeeping matters, may not have access to all transactional information, and/or may have limited day-to-day knowledge of the listed issuer's affairs.

188. Respondents noted the definition did not differentiate between in-house company secretaries and those who are externally appointed, commenting that externally-appointed are in a different position, as they are not employees and are unlikely to have sufficient knowledge of the internal affairs of the listed issuer.

Our response

189. Members of senior management are currently Relevant Parties under the existing Listing Rules (see Rule 2A.10(c)). The term is, however, undefined.

190. The absence of a definition under the Listing Rules would not prevent disciplinary action being brought against those individuals who fall within the proposed definition on the basis that, by their nature, they fall within the existing Relevant Parties under the Rules. Whilst this would be possible, we consider it would be undesirable for all parties concerned. By stating a definition of senior management, we aim to clarify and minimise potential uncertainty as to who may fall within our disciplinary jurisdiction. We believe this is particularly important in view of the comments received in relation to the extension of liability on senior management for Rule breaches.

191. The proposed definition is designed to capture a balanced category of individuals in order to hold accountable those individuals in a senior position within the listed issuer, who have decision-making responsibilities and/or who may have significant influence over the decisions of the board. As set out in paragraph 113 of the Consultation Paper, we note that the proposed definition has been carefully benchmarked against comparable definitions, including definitions which already form part of Hong Kong law in the SFO and Companies Ordinance. The Exchange will consider the facts, evidence and circumstances in determining whether the individual falls within the definition. Paragraph 116 of the Consultation Paper provides further guidance and clarity on the interpretation of the definition.

192. With regard to the suggestion to include an express reference to "*board secretary*" in the definition, we consider that board secretaries will fall within the proposed definition, as company secretaries and board secretaries are effectively equivalent positions using different terminology dependent on the jurisdiction. As such, a board secretary is essentially occupying the position of a company secretary and is covered by the words: "*by whatever name called*".

193. In relation to the specific issue as to whether company secretaries should be considered members of senior management, we note that conflicting comments have been made as to their role. The CG Code sets out the importance of the role of company secretaries in supporting the board and advising the board on, among other

matters, governance matters including ensuring that board procedures, applicable laws, rules and regulations are complied with.[25] In recognising the importance of the role that company secretaries play, the Exchange requires that parties appointed as company secretaries must possess knowledge and experience such that they are capable of discharging the functions of a company secretary to assist the listed issuer's compliance with the Rules and to achieve a good standard of corporate governance.[26] We consider there is also desirability in maintaining consistency with the SFO and Companies Ordinance, which impose duties on company secretaries, who fall within the definition of "*officers*". See also our response in relation to the introduction of secondary liability in Question 10 above.

194. The Rules do not draw a distinction between externally-appointed company secretaries and those who are employees of the issuer. Code provision F.1.1 contemplates the existence of both "*internal and external*" company secretaries, but says that a company secretary "*should be an employee*". This is consistent with the desirability of having company secretaries who have sufficient day-to-day knowledge of the listed issuer's affairs, such that they can effectively discharge their important role within the issuer's senior management. It would be undesirable to permit externally-engaged company secretaries to operate at a lower standard, and similarly undesirable to exclude them from the definition of senior management.

195. We believe that defining the scope of senior management will assist listed issuers and promote a clear allocation of responsibilities with a view to strengthening individual accountability. In view of this, we will adopt the proposal.

Include employees of professional advisers as a Relevant Party (Question 15)

196. We proposed to include employees of professional advisers of listed issuers and their subsidiaries as a Relevant Party under the Rules.

Comments received

197. Many of the respondents who opposed this proposal appeared to do so because they objected to other proposals made in the consultation, which they considered related to this proposal. For example, some respondents who opposed the proposal in Question 10 above regarding secondary liability, appear to have seen this proposal as an extension or a corollary as regards professional advisers. Many of the comments made in relation to Question 10 were reiterated. Similarly, some respondents indicated opposition to this proposal because of concerns regarding the lowering of the threshold for a PII Statement (Question 1).

198. Some opposing respondents considered that the inclusion of all employees of a professional adviser as a Relevant Party would be too wide – one respondent suggested that only individuals at the highest level of a professional adviser should be included. Some respondents considered that employees of a law firm who are legal practitioners should be excluded as a Relevant Party.

Our response

199. The existing Rules already contemplate that employees of professional advisers can be banned following a breach. In particular, the existing Rule 2A.09(5) provides that

[25] Code provision F.1.4, Appendix 14.
[26] See Rule 3.28 (GEM Rule 5.14), and paragraph 5, Guidance Letter 108-20 (August 2020).

the Listing Committee may ban "*a named individual employed by a professional adviser*". This proposal sought to address a technical inconsistency in the Rules which impacted the operation of this sanction, by ensuring that such employees are included within the definition of Relevant Parties. In that context, this proposal is neither a new sanction nor an extension of the disciplinary regime already contemplated in the Rules.

200. The comments received did not indicate particular opposition to rectifying the inconsistency. It appears instead that opposing respondents were largely reiterating views which relate to other proposals in this consultation, and/or objecting to the scope of the sanctions already existing in the Rules.

201. Furthermore, the adoption of this proposal will further clarify that sanctions can be imposed against specific individuals or groups, rather than against whole firms, in appropriate cases (see Question 19 below).

202. For these reasons, we will adopt the proposal.

Include guarantors of structured products as a Relevant Party (Question 16)

203. We proposed including guarantors of structured products as a Relevant Party so that disciplinary action can be taken against them if they fail to discharge their Rule obligations.

Comments received

204. Respondents supporting the proposal agreed with the basis of our proposal, and considered that the inclusion would ensure fairness to the other Relevant Parties and consistency under the disciplinary regime. One respondent considered that providing a guarantee to facilitate a securities offering is a serious matter and the guarantor should have given it deliberation and understood the consequences.

205. Different reasons were advanced by the minority opposed to the proposal. These included views that: the SFC should have exclusive disciplinary jurisdiction to avoid duplication of regulatory resources; breach of the terms of any undertakings or agreements should remain a contractual issue between the parties and be settled through the court; the proposal could lead to higher funding cost for companies and may make it difficult to find a guarantor; and the guarantor (for example, a subsidiary of the issuer) may not possess sufficient information to discharge its duty.

Our response

206. As explained in the Consultation Paper, we propose to include guarantors of structured products as a Relevant Party so that disciplinary action can be taken against them if they fail to discharge their Rule obligations. This is to close a gap in the current disciplinary regime.

207. Disciplinary action against guarantors of structured products for their failure to discharge their Rule obligations is separate from, and serves a different purpose to, enforcement of their contractual obligations. Whether a guarantor has sufficient information to discharge its duty is a factor which will be taken into account in assessing whether it has complied with its Rule obligations and/or whether disciplinary action is warranted – in our view, these should not mean that there should be no disciplinary jurisdiction for breaches by these parties at all.

208. In light of the above, we will adopt this proposal.

Include guarantors of debt securities as a Relevant Party (Question 17)

209. We proposed that guarantors for an issue of debt securities be included as a Relevant Party under the Main Board Rules so that disciplinary action can be taken against them if they fail to discharge their obligations. This proposal was also to align the list of Relevant Parties under the Main Board Rules and GEM Rules.

Comments received

210. Comments expressed by supportive respondents agreed with the reasons for our proposal.

211. The comments from the minority of opposing respondents were largely the same as those opposing the proposal to include guarantors of structured products as a Relevant Party as set out under Question 16 above.

Our response

212. In light of our response to comments under Question 16 above, we will adopt this proposal.

Include party giving undertaking / entering into an agreement as a Relevant Party (Question 18)

213. We proposed to include parties who give an undertaking to, or enter into an agreement with, the Exchange as Relevant Parties under the Rules.

Comments received

214. Respondents who supported the proposal were of the view that the proposal would provide the Exchange with another avenue to pursue those who have breached such undertakings or agreements, in addition to pursuing the matter through the court which may be a lengthier process, and therefore may save resources and enhance efficiency.

215. Respondents opposing the proposal commented that breach of the terms of any undertakings or agreements should remain a contractual issue and be resolved through the court. Some respondents noted that the contracting parties may already be a Relevant Party under the current Rules.

216. One respondent was of the view that whether a contracting party should be included as a Relevant Party should be reviewed on a case-by-case basis and should not be codified in the Rules. Another respondent commented that this should be included as a specific clause in undertakings to be given to the Exchange.

217. Some respondents opposed the proposal on the basis of their opposition to the proposals concerning the PII Statement and/or secondary liability.

218. One respondent queried whether a breach of any undertaking given to, or agreement with the Exchange, will be regarded as a breach of the Rules.

Our response

219. This proposal is to enable disciplinary action and the imposition of sanctions against parties who voluntarily give undertakings to, or enter into agreements, with the Exchange. Being able to bring disciplinary action for breaches of an agreement or undertaking provides the Exchange with another forum to pursue the matter which will save time and resources and achieve a speedier outcome.

220. To alert contracting parties and those who have given an undertaking to the Exchange in respect of listing matters that they are a Relevant Party under the Rules and therefore subject to the disciplinary jurisdiction of the Exchange, we will, where possible, include a clause in the agreement or the undertaking to that effect.

221. Our response to the opposing views on the proposals in respect of the PII Statement and secondary liability, and the basis for enforcement of the Rules, have already been set out in the other parts of this paper.

222. In the light of the above, we will adopt this proposal.

E. Proposed minor rule amendments

Extend the ban on professional advisers to representation of any party (Question 19)

223. We proposed extending the ban on professional advisers to cover banning of representation of any or a specified party.

Comments received

224. The response was divided. Some respondents agreed that the proposal would have a greater deterrent effect. One suggested that the Exchange publish a list of professional advisers whose conduct falls below the expectations of the Exchange. However, some respondents were concerned that the wider ban would have a disproportionate effect and be too draconian, and could even drive a professional adviser out of business. Some respondents queried how the ban would work in practice, and in particular whether it would be limited to teams or departments, or cover the whole firm.

225. Several opposing respondents reiterated comments in line with those made in relation to other proposals in this consultation. These comments tended not to respond to the specific proposal in Question 19, but instead commented more widely on whether professional advisers should be responsible for Rule breaches, or whether the Exchange's disciplinary jurisdiction should extend to professional advisers who are already regulated by their own professional body. We have responded to these comments under the relevant section of these conclusions.

Our response

226. Banning a professional adviser is an existing sanction under the Rules. However, the current limitations of the scope of any such ban mean that a ban may have limited practical effect, and hence may not be an effective deterrent.

227. It is recognised that a ban is a severe sanction. The ban to be imposed in any case will necessarily have to be carefully considered to ensure that its breadth and duration are appropriate in all circumstances. A similar determination will necessarily have to be made to ensure that any ban imposed is directed appropriately whether against individuals, groups or the whole firm, by reference to the circumstances of the case. We consider that, in making these assessments on a case-by-case basis, the concerns that this proposal is overly severe can be addressed.

228. For these reasons, we will adopt this proposal.

Include express obligations on professional advisers (Question 20)

229. We proposed that professional advisers be under an express obligation:

(a) to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of and their obligations under the Rules, when acting in connection with Rule matters on which they are instructed to advise; and

(b) not to knowingly provide information to the Exchange which is false or misleading in a material particular.

Comments received

230. Respondents generally agreed that professional advisers play an important role in advising listed issuers on Rule compliance and it is important that they advise their clients properly.

231. Some respondents opposing the proposal thought the proposed Rule placed an onerous burden on professional advisers. Some commented that professional advisers are external to the listed issuer and thus have no decision making powers and rely on information provided by the listed issuer. Some respondents, particularly from the legal sector, reiterated views (set out under Question 10 above) regarding the imposition of secondary liability on professional advisers, including legal practitioners.

232. Some respondents considered that the proposed Rule should be clarified to ensure that a professional adviser's obligation only relates to the relevant Listing Rules on which they have been instructed to advise. Some respondents commented that the inclusion of an express obligation to not knowingly provide false or misleading information would add little to existing provisions of the SFO which already create potential civil and criminal liabilities for professional advisers for providing false or misleading information.

Our response

233. A significant proportion of opposing comments related to secondary liability (Question 10) and/or other aspects of the Consultation Paper, rather than this specific proposal.

234. We consider that the proposed obligation is sufficiently clearly limited in scope to professional advisers "*acting in connection with Rule matters on which they are instructed to advise.*" We agree that the obligation not to provide false or misleading information overlaps with the SFO (as noted in paragraph 140(b) of the Consultation Paper). However, we do not consider such an overlap to be problematic. On the contrary, it is appropriate for the Exchange to be able to take enforcement action

against a professional adviser, being a Relevant Party, in circumstances when that adviser has misled the Exchange.

235. In light of this, we will adopt this proposal.

Aligning the practices for filing review applications and requesting or providing written reasons for decisions

236. As noted in the Consultation Paper, the current requirements and/or practices for filing review applications and requesting or providing written reasons for decisions are different for disciplinary and non-disciplinary review matters. We therefore proposed amendments to align these requirements and practices, details of and responses to which are set out below.

Benchmark for counting relevant periods (Question 21)

237. We proposed that "*business day*" be used as the benchmark for counting the periods for filing review applications, and for requesting or providing written reasons for decisions.

Comments received

238. Respondents commented that different counting benchmarks might create uncertainty and cause confusion to listed issuers, and there was no reason to adopt different counting benchmarks. The proposal also aligned the requirements for disciplinary and non-disciplinary review matters.

Our response

239. We will adopt the proposal.

Review applications must be served on the Secretary (Question 22)

240. We proposed that all review applications must be served on the Secretary.

Comments received

241. Respondents generally agreed that the proposal aligned the practices for disciplinary and non-disciplinary review matters. There was a request to elaborate on the role of the Secretary and the rationale for imposing such a requirement.

242. A few opposing respondents appeared to misunderstand the proposal and think that it involved the addressee of listed issuers, rather than that of the Exchange. They commented that review applications should be sent to authorised representatives, directors, and consultants of the listed issuer, instead of its company secretary.

Our response

243. The proposed change concerns the addressee of the Exchange (not of the listed issuer) upon whom review applications should be served. Under the proposal, the Secretary refers to the secretary to the Listing Committee or the secretary to the Listing Review Committee, as the case may be. For the avoidance of doubt, the proposal involves no change to the current practice on service of documents and correspondence on listed

issuers under the Listing Rules and/or the applicable procedures for disciplinary and non-disciplinary matters.

244. For clarity, we would also highlight the key roles of the Secretary regarding review applications as follows:

(i) the Secretary is responsible for overseeing and coordinating the operation of the review procedures;

(ii) the Secretary will ensure notices, notifications and all relevant submissions filed in the course of the disciplinary proceedings or the review process to be provided to all parties concerned and the members of the Listing Committee or the Listing Review Committee, as appropriate;

(iii) the Secretary shall be the point of contact for all relevant parties in respect of any administrative matter arising out of the review procedures; and

(iv) the Secretary shall advise the Listing Committee or the Listing Review Committee on procedural matters, and refer any pre-hearing enquiries or matter to the chairman of the Listing Committee or the Listing Review Committee, as the case may be.

245. We will adopt the proposal.

Counting of the period for filing review applications (Question 23)

246. We proposed that the counting of the period for filing review applications be from the date of issue of the decision or the written reasons.

Comments received

247. Some respondents commented that the proposal could align the practices for disciplinary and non-disciplinary review matters, and expedite the processing time for the review applications, which is particularly significant given the time-sensitive nature of these applications. They considered that counting from the date of issue of the decisions or the written reasons was the most efficient and straightforward approach.

248. An opposing respondent preferred counting the period from the date of receipt of the decision or the written reasons, taking into account possible delay in the delivery of the decision or written reasons.

Our response

249. There is significant practical difficulty in ascertaining the date of receipt of the decision or the written reasons. This is particularly so when a case involves a number of parties. Arguments as to the actual date of receipt may arise, leading to unnecessary prolongation and complication of the review process.

250. In addition, the amendment to the counting benchmark to business days as mentioned above (Question 21), together with the increased use of email in communication, will mitigate against the risk of possible delay in delivery.

251. We will adopt the proposal.

Counting of the period for requesting written reasons (Question 24)

252. We proposed that the counting of the period for requesting written reasons be from the date of issue of the decision.

Comments received

253. The comments received in respect of this proposal were broadly similar to those received in respect of Question 23 above.

Our response

254. In light of our response under Question 23 above, we will adopt the proposal.

Counting of the period for providing written reasons (Question 25)

255. We proposed that the counting of the period for providing written reasons be from the date of receipt of the request.

Comments received

256. A supportive respondent considered 14 business days from the date of receipt of the request sufficient for the Exchange to provide explained written reasons, in light of multiple applications and requests being processed and handled by the Exchange simultaneously.

Our response

257. The proposal aimed to align the practices for disciplinary and non-disciplinary review matters. We consider providing written reasons within 14 business days from the date of receipt of the request reasonable and justifiable.

258. We will adopt the proposal.

Housekeeping amendments which involve no change in policy direction

259. In addition to the housekeeping Rule amendments set out in Chapter 7 of the Consultation Paper, which we will adopt, we will make Rule amendments in respect of the following.

260. It is essential for market quality that regulators are able to contact those whom they regulate. To that end, listed issuers and directors are obliged to provide the Exchange with contact information, and to ensure that such information remains up-to-date.

261. We have observed instances in which directors fail to respond to the Exchange's requests for information, or otherwise do not cooperate with an investigation. The SFC has also observed similar failures by directors of listed issuers in respect of its own inquiries and investigations.

262. Such a loss of contact by listed issuers and/or directors with the regulators is unacceptable. As noted under Question 13 above, a failure to respond to and/or cooperate with the Exchange will be viewed as serious misconduct warranting some of the most severe sanctions. The SFC may similarly take appropriate action against

those who fail to respond to its investigations.

263. The Listing Rules[27] and Directors' Undertaking[28] contain clear wording regarding the provision of information in response to a regulatory request, and service of notices or other documents on directors. As currently drafted, these provisions apply to requests for information, or service of documents, by the Exchange. To further bolster the effectiveness of these provisions, and to facilitate the taking of regulatory action in appropriate cases, we will amend the relevant provisions to clarify that the SFC may also rely on them.

[27] Main Board Rules 2.12A, 2.12B, 3.09A and 3.20; and GEM Rules 5.02A, 5.13A, 17.55A and 17.55B.

[28] Main Board Rules Part 2 of Appendix 5 Forms B, H and I; and GEM Rules Part 2 of Appendix 6 Forms A, B and C.

APPENDIX 1: LIST OF RESPONDENTS

Named Respondents

INSTITUTIONS	
Corporate Finance Firms / Banks	
1	Central China International Capital Limited
2	Centurion Corporate Finance Limited
3	Charltons on behalf of Alliance Capital Partners Limited, Altus Capital Limited, Anglo Chinese Corporate Finance Limited and SHK Hong Kong Industries Limited
4	China Tonghai Capital Limited
5	Yu Ming Investment Management Limited
Law Firms	
6	Howse Williams
7	Norton Rose Fulbright Hong Kong
8	Skadden, Arps, Slate, Meagher & Flom
9	Slaughter and May
10	Sullivan & Cromwell (Hong Kong) LLP
11	Withers
Listed Issuers	
12	Cathay Pacific Airways Limited
13	China Tonghai International Financial Limited
14	CLP Holdings Limited
15	HSBC Holdings plc.
16	Meitu, Inc.
17	Swire Pacific Limited
18	Swire Properties Limited
19	Yue Xiu Enterprises (Holdings) Limited (for itself and on behalf of Yuexiu Property Company Limited, Yuexiu Transport Infrastructure Limited and Chong Hing Bank Limited)

Professional bodies / regulators and industry associations	
20	ACCA Hong Kong
21	CFA Society Hong Kong
22	Financial Reporting Council
23	Hong Kong Institute of Certified Public Accountants
24	Hong Kong Professionals and Senior Executives Association
25	Hong Kong Securities Association
26	The British Chamber of Commerce in Hong Kong
27	The Chamber of Hong Kong Listed Companies
28	The Hong Kong Institute of Chartered Secretaries
29	The Hong Kong Institute of Directors
30	The Law Society of Hong Kong
31	The Professional Commons
Other Corporates	
32	CompliancePlus Consulting Limited
33	Starling Trust Sciences, LLC
34	SWCS Corporate Services Group (Hong Kong) Limited
35	Vistra Corporate Services (HK) Limited
INDIVIDUALS	
36	Angela Tsang
37	Bons Chan
38	Brian Pak Chuen Ho
39	Catherine Lau
40	Dr Angus Young
41	Elaine Leung
42	Eve Leung
43	Ng Kwok Fai
44	Tang Yuet Yung, Chase
45	Wai Po Louise Yu
46	Yeung Wan Mei

47	Yu Wai Kiu
48	Zhang Xiaoqi
49	艾國光
50	陳美君
51	張持豎
52	付英
53	譚國順
54	王俊娜
55	楊國征

Anonymous Respondents

Category	Number
Law Firms	4
Listed Issuers	12[29]
Individuals	36[30]
TOTAL	**52**

[29] Of which seven responses contained original content.
[30] Of which 35 responses contained original content.

APPENDIX 2: QUANTITATIVE ANALYSIS OF RESPONSES

Proposals in the Consultation Paper		Feedback	
		Agree	Disagree
1	We propose to amend the existing threshold for imposing a PII Statement and to make it clear that a PII Statement can be made whether or not an individual continues in office at the time of the PII Statement. Do you agree?	67%	33%
2	We propose to extend the scope of a PII Statement to include directors and senior management of the relevant listed issuer and any of its subsidiaries. Do you agree?	68%	32%
3	We propose to enhance follow-on actions where an individual continues to be a director or senior management member of the named listed issuer after a PII Statement has been made against him. Do you agree?	75%	25%
4	We propose that, after a PII Statement with follow-on actions has been made against an individual, the named listed issuer must include a reference to the PII Statement in all its announcements and corporate communications unless and until that individual is no longer its director or senior management member. Do you agree?	78%	22%
5	We propose to extend the current express scope of disclosure in listing applicants' listing documents and listed issuers' annual reports in respect of their directors and members of senior management (current and/or proposed, as the case may be) by requiring provision of full particulars of any public sanctions made against those individuals. Do you agree?	86%	14%
6	We propose to remove the existing threshold for ordering the denial of facilities of the market. Do you agree?	69%	31%
7	We propose to include fulfilment of specified conditions in respect of the denial of facilities of the market. Do you agree?	84%	16%
8	We propose to introduce the Director Unsuitability Statement as a new sanction. Do you agree?	84%	16%

Proposals in the Consultation Paper		Feedback	
		Agree	Disagree
9	We propose that the follow-on actions and publication requirement in respect of PII Statements also apply to Director Unsuitability Statements. Do you agree?	85%	15%
10	We propose to impose secondary liability on Relevant Parties if they have "*caused by action or omission or knowingly participated in a contravention of the Listing Rules*". Do you agree?	47%	53%
11	We propose to include an explicit provision permitting the imposition of a sanction in circumstances where there has been a failure to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee of the Exchange. Do you agree?	79%	21%
12	We propose that sanctions may be imposed on all Relevant Parties through secondary liability where a party has failed to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee. Do you agree?	58%	42%
13	We propose to explicitly provide in the Rules the obligation to provide complete, accurate and up-to-date information when interacting with the Exchange in respect of its enquiries or investigations. Do you agree?	74%	26%
14	Do you agree with the proposed definition of "*senior management*"?	67%	33%
15	We propose to include employees of professional advisers of listed issuers and their subsidiaries as a Relevant Party under the Rules. Do you agree?	54%	46%
16	We propose to include guarantors of structured products as a Relevant Party under the Rules. Do you agree?	87%	13%
17	We propose to include guarantors for an issue of debt securities as a Relevant Party under the Main Board Rules. Do you agree?	85%	15%
18	We propose to include parties who give an undertaking to, or enter into an agreement with, the Exchange as Relevant Parties under the Rules. Do you agree?	81%	19%

Proposals in the Consultation Paper		Feedback	
		Agree	Disagree
19	We propose to extend the ban on professional advisers to cover banning of representation of any or a specified party. Do you agree?	60%	40%
20	We propose to include express obligations on professional advisers when acting in connection with Rule matters. Do you agree?	76%	24%
21	We propose that "*business day*" be used as the benchmark for counting the periods for filing review applications, and for requesting or providing written reasons for decisions. Do you agree?	100%	0%
22	We propose that all review applications must be served on the Secretary. Do you agree?	93%	7%
23	We propose that the counting of the period for filing review applications be from the date of issue of the decision or the written reasons. Do you agree?	95%	5%
24	We propose that the counting of the period for requesting written reasons be from the date of issue of the decision. Do you agree?	98%	2%
25	We propose that the counting of the period for providing written reasons be from the date of receipt of the request. Do you agree?	100%	0%

APPENDIX 3: AMENDMENTS TO THE MAIN BOARD RULES

Chapter 2
Information Gathering

2.12A An issuer must provide to the Exchange or the Commission as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(1) any information that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information or explanation that the Exchange or the Commission may reasonably require for the purpose of investigating a suspected breach of or verifying compliance with the Exchange Listing Rules or the Securities and Futures Ordinance.

2.12B In responding to enquiries or investigations by the Exchange or the Commission, a party subject to the enquiries or investigations must provide to the Exchange or the Commission information or explanation which is accurate, complete and up-to-date.

Chapter 2A
Disciplinary ~~Procedures~~ Jurisdiction and Sanctions

2A.~~10~~09 (1) The Exchange may bring disciplinary actions and impose or issue the sanctions in rule ~~2A.09 may be imposed or issued~~ 2A.10 against any of the following:

(a) a listed issuer or any of its subsidiaries;

(b) any director of a listed issuer or any of its subsidiaries (or any alternate of such director);

(c) any member of the senior management of a listed issuer or any of its subsidiaries;

(d) any substantial shareholder of a listed issuer;

(e) any professional adviser of a listed issuer or any of its subsidiaries;

(f) any employee of a professional adviser of a listed issuer or any of its subsidiaries;

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

(g) any authorised representative of a listed issuer;

(h) any supervisor of a PRC issuer; ~~and~~

(i) any guarantor in the case of a guaranteed issue of debt securities or structured products; and

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

(j) any other party who gives an undertaking to or enters into an agreement with the Exchange.

~~(j) any independent financial adviser of a listed issuer~~.

(2) For the purposes of this rule:

(a) "listed issuer" includes an issuer of listed structured products; ~~and~~

(b) "professional adviser" includes any financial adviser, independent financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer to provide professional advice in relation to a matter governed by the Listing Rules. It does not include sponsors or Compliance Advisers~~.~~; and

(c) "senior management" includes:

(i) any person occupying the position of chief executive, supervisor, company secretary, chief operating officer or chief financial officer, by whatever name called;

(ii) any person who performs managerial functions under the directors' immediate authority; or

(iii) any person referred to as senior management in the listed issuer's corporate communication or any other publications on the Exchange's website or on the listed issuer's website.

~~*Notes:*~~

(3~~1~~) The scope of any disciplinary action taken~~, in particular any ban imposed on~~ against a professional adviser ~~pursuant to~~ under rule~~s~~ ~~2A.09(5),~~ 2A.09, 2A.10 and 2A.10B, including any ban imposed on a professional adviser under rule 2A.10(9), shall be limited to matters governed by or arising out of the Listing Rules.

(42) ~~In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie in pursuance of rule 2A.10. In particular, p~~Professional advisers'~~ obligations to~~, when acting in connection with Listing Rule matters on which they are instructed to advise, shall use all reasonable efforts to ensure that their clients understand and are advised as to the scope of and their obligations under the Listing Rules. They must not knowingly provide any information to the Exchange which is false or misleading in a material particular ~~are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member~~.

2A.0910 ~~In addition to its powers to suspend or cancel a listing, i~~If the Listing Committee finds there has been a breach of the Listing Rules by any of the parties named in rule 2A.09, ~~10 of the Listing Rules~~ it may: ~~—~~

(1) issue a private reprimand;

(2) issue a public statement ~~which involves~~involving criticism;

(3) issue a public censure;

~~(4) report the offender's conduct to the Commission or another regulatory authority (for example the Financial Secretary, the Commissioner of Banking or any professional body) or to an overseas regulatory authority;~~

~~(5) ban a professional adviser or a named individual employed by a professional adviser from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period;~~

~~(6) require a breach to be rectified or other remedial action to be taken within a stipulated period including, if appropriate, the appointment of an independent adviser to minority shareholders;~~

(47) ~~in the case of wilful or persistent failure by a director of a listed issuer to discharge his responsibilities under the Listing Rules,~~state publicly that in the Exchange's opinion the occupying ~~retention~~of the position of ~~office by the~~ director or senior management of a named listed issuer or any of its subsidiaries by an individual ~~is prejudicial~~may cause prejudice to the interests of investors;

(5) in the case of serious or repeated failure by a director to discharge his responsibilities under the Listing Rules, state publicly that in the Exchange's

opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries;

~~(8) in the event a director remains in office following a public statement pursuant to paragraph (7) above, suspend or cancel the listing of the issuer's securities or any class of its securities;~~

(6~~9~~) ~~in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the Listing Rules, order that~~ deny the facilities of the market to a listed issuer ~~be denied~~ for a specified period and/or until fulfilment of specified conditions ~~to that issuer~~ and prohibit dealers and financial advisers from acting or continuing to act for that issuer;

(7) suspend trading in the listed issuer's securities or any class of its securities;

(8) cancel the listing of the listed issuer's securities or any class of its securities;

(9) ban a professional adviser or a named individual employed by a professional adviser from representing any or a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period;

(10) recommend reporting the conduct of the party in breach to the Commission or another regulatory authority, whether in Hong Kong or overseas (for example, the Financial Secretary or any professional body);

(11) order rectification or other remedial action to be taken within a stipulated period; and

(12~~0~~) take, or refrain from taking, such other action as it thinks fit, including making public any action taken~~pursuant to paragraphs (4), (5),(6),(8) or (9) above~~.

Notes:

1. Any reference to the Listing Committee in rules 2A.10, 2A.10A and 2A.10B includes both the Listing Committee and the Listing Review Committee.

2. Where the Listing Committee or the Listing Review Committee (as the case may be, after the decision has become final), issues:

(i) a public sanction under rule 2A.10, such sanction will be published with reasons; or

(ii) *a private reprimand, the substance of such sanction may be published with reasons without disclosing the identities of the parties involved.*

3. *In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie under rule 2A.09.*

4. *For the purposes of this rule and rule 2A.10A(2) below, denying "facilities of the market" is not intended to mean cancellation of listing. It is meant to include withholding approval of any matters that require approval from the Exchange, including the issuance of shares.*

2A.10A (1) If a statement under rule 2A.10(4) with follow-on actions in sub-rule (2) below, or rule 2A.10(5), has been made against an individual, the listed issuer:

(a) named in the statement; or

(b) in respect of which any of its subsidiaries is named in the statement

must include in all of its announcements and corporate communications to be published a reference to the sanction made under rule 2A.10(4) or 2A.10(5), unless and until that individual ceases to be a director or senior management, as the case may be, of the named listed issuer and/or its subsidiaries.

(2) If an individual against whom a statement has been made under rule 2A.10(4) or 2A.10(5) occupies the position of director or senior management, as the case may be, of the named listed issuer or subsidiary, as the case may be, after a date to be determined and specified by the Listing Committee, the Listing Committee may, at any time in its sole discretion, impose the follow-on actions below:

(a) order that the facilities of the market be denied to that issuer for a specified period; and/or

(b) suspend or cancel the listing of that issuer's securities or any class of its securities.

(3) The Listing Committee may make public any follow-on action imposed under rule 2A.10A(2).

2A.10B In addition to imposing the sanctions in rule 2A.10 when a party has failed to discharge obligations or responsibilities expressly imposed on that party by a specific Listing Rule, the Listing Committee may impose the sanctions in rule 2A.10 on any of the parties named in rule 2A.09 above, if it finds the party has:-

(1) failed to comply with a requirement imposed by the Listing Division or the Listing Committee;

(2) contravened an undertaking given to or breached an agreement with the Exchange in relation to a listing matter; or

(3) caused by action or omission or knowingly participated in a contravention of the Listing Rules or a requirement referred to in (1) above.

Note: In respect of parties covered by section 23(8) of the SFO, a sanction may be imposed under rule 2A.10B(3) in and only in the circumstances prescribed for disciplinary action in the arrangements agreed from time to time between the Exchange and the relevant professional regulatory body; and, in considering whether a party covered by section 23(8) of the SFO has breached rule 2A.10B(3), the Exchange will take into account, among other things, whether such party has knowingly or recklessly facilitated or participated in a breach of the Listing Rules or any undertaking given to or any agreement with the Exchange.

2A.11 The Listing Committee will, if requested by any party to be reprimanded, criticised, censured or otherwise sanctioned in pursuance of the powers contained in rules 2A.09, ~~and~~ 2A.10, 2A.10A and 2A.10B (a "review applicant"), give its reasons in writing for the decision made against that review applicant pursuant to rules 2A.09, ~~and~~ 2A.10, 2A.10A and 2A.10B and that review applicant shall have the right to have the decision against him referred to the Listing Review Committee for a further and final review. The Listing Review Committee may endorse, overturn, modify or vary the ruling of the earlier meeting. Subject to rule 2A.16A, the decision of the Listing Review Committee on review shall be conclusive and binding on the review applicant. If requested by the review applicant, the Listing Review Committee will give reasons in writing for its decision on review.

2A.12 A request for a review of any decision of ~~the Listing Division or~~ the Listing Committee made pursuant to rule 2A.11 must be ~~notified to the Exchange~~ served on the Secretary within seven business days of the ~~Listing Division's or~~ issue of the Listing Committee's decision unless written reasons for a decision are requested, in which case a request for a review of that decision must be notified within seven business days of the ~~receipt~~ issue of the written reasons.

2A.13 Any request for ~~the Listing Division,~~ the Listing Committee or the Listing Review Committee to give its reasons in writing for its decision shall be made within three business days of the issue of its decision. Where requested, written reasons for a decision will be provided to all parties to the proceedings by ~~the Listing Division,~~ the Listing Committee or the Listing Review Committee (as the case may be) as soon as possible and, in any event, within 14 business days of the receipt of the request.

Chapter 2B
Time for application

2B.08 (1) Subject to (3) below, a Review Request for reviewing any decision of the Listing Division, the Listing Committee or the Listing Review Committee (as the case may be) under rules 2B.05(1), 2B.06, 2B.06A and 2B.16(7) must be served on the Secretary within seven business days of ~~receipt~~ the issue of either the relevant decision, or if the relevant party requests written reasons under rule 2B.13(1), those written reasons.

(2) A Review Request for reviewing a Return Decision or a 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~~ the issue of the written decision under rule 2B.13(2).

(3) A Review Request made under rule 2B.06 for reviewing a decision of the Listing Division to direct the resumption of trading or, if such decision has been referred to the Listing Committee for review, the 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 issue of the written decision under rule 2B.13(3).

Request for written reasons

2B.13 (1) Except for a review relating to a Return Decision or a decision to direct the resumption of trading, any request for ~~on receipt of a decision by~~ the Listing Division, the Listing Committee or the Listing Review Committee (as the case may be) to give written reasons for its decision shall be made by a relevant party within ~~has~~ three business days of the issue of ~~to request written reasons for~~ the decision. The Listing Division, the Listing Committee or the Listing Review Committee (as the case may be) will provide written reasons within 14 business days of the receipt of the request. Such written reasons will be provided to all parties to the review.

Chapter 3
Directors

3.09A Directors, in accepting to be directors of a listed issuer, shall be considered as having:

(1) irrevocably appointed the listed issuer as their agent, for so long as they remain directors of the issuer, for receiving on their behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and

(2) authorised the Executive Director – Listing, or any person authorised by the Executive Director – Listing, to disclose any of their personal particulars given by them to members of the Listing Committee or the Commission and, with the approval of the Chairman or a Deputy Chairman of the Exchange, to such other persons, as the Executive Director – Listing may from time to time think fit.

3.20 Directors of a listed issuer shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(1) as soon as reasonably practicable after their appointment, their telephone number, ... for correspondence from and service of notices and other documents by the Exchange or the Commission;

…

Any correspondence from and/or service of notices and other documents by the Exchange or the Commission to the directors … If directors or former directors fail to provide the Exchange with their up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to them, they may not be alerted to any proceedings commenced against them by the Exchange or the Commission.

Chapter 6
Trading halt or suspension

6.02 …

Note: (1) … Failure by an issuer to do so may result in disciplinary proceedings being brought against, amongst others, the issuer and its directors with the Exchange imposing sanctions available under rule 2A.10 ~~2A.09~~.

Chapter 8A
GENERAL

8A.03 …

(2) impose the disciplinary sanctions set out in rule ~~2A.09~~ 2A.10 against the parties set out in rule 2A.09 ~~2A.10~~;

Appendix 1
Part A

Information about the issuer's management

41. (1) … In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include … and such other information of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). …

Appendix 1
Part B

Information about the issuer's management

34. … In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include… and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1
Part C

Information about the issuer's management

46. … In addition, brief biographical details in respect of every director or proposed director (or any person who performs an important administrative, management or supervisory function) must be provided. Such details must not be less than those required to be disclosed in an announcement relating to the appointment or re-

designation of the director pursuant to rule 13.51(2) and would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities.

Appendix 1
Part E

Information about the issuer's management

41. (1) … In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include… and such other information of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1
Part F

Information about the issuer's management

30. … In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include… and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). …

Appendix 5
Declaration and Undertaking with regard to Directors
Form B
Part 2
UNDERTAKING

(b) I shall, when I am a director of the issuer and after I cease to be so:

(i) provide to The Stock Exchange of Hong Kong Limited (the "Exchange") and the Securities and Futures Commission (the "Commission") as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(1) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Listing Rules or as requested by the Commission; and

(ii) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear;

(c) I, in accepting to be a director of the issuer, hereby irrevocably appoint the issuer as my agent, for so long as I remain as a director of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission;

(d) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(i) as soon as reasonably practicable after my appointment, my telephone number, … for correspondence from and service of notices and other documents by the Exchange or the Commission;

…

I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me…I acknowledge that, if I, as a director or a former director of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission; and

(e) I, in accepting to be a director of the issuer, hereby authorise the Executive Director – Listing, or any person authorised by the Executive Director – Listing, to disclose any of my personal particulars given by me to members of the Listing Committee or the Commission and, …

Appendix 5
Declaration and Undertaking with regard to Directors of an Issuer incorporated in the People's Republic of China ("PRC")
Form H
Part 2
UNDERTAKING

(b) I shall, when I am a director of the issuer and after I cease to be so:

(i) provide to the Exchange and the Securities and Futures Commission (the "Commission") as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(1) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Listing Rules or as requested by the Commission; and

(ii) cooperate in any investigation conducted by the Listing Division and / or the Listing Committee of the Exchange or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear;

(c) I, in accepting to be a director of the issuer, hereby irrevocably appoint the issuer as my agent, for so long as I remain as a director of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission;

(d) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(i) as soon as reasonably practicable after my appointment, my telephone number, … for correspondence from and service of notices and other documents by the Exchange or the Commission;

…

I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me…I acknowledge that, if I, as a director or a former director of the issuer, fail to provide the Exchange with my up-

to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission; and

(e) I, in accepting to be a director of the issuer, hereby authorise the Executive Director – Listing, or any person authorised by the Executive Director – Listing, to disclose any of my personal particulars given by me to members of the Listing Committee or the Commission and, …

Appendix 5
Declaration and Undertaking with regard to Supervisors of an Issuer incorporated in the People's Republic of China ("PRC")
Form I
Part 2
UNDERTAKING

(b) I shall, when I am a supervisor of the issuer and after I cease to be so:

(i) provide to the Exchange and the Securities and Futures Commission (the "Commission") as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(1) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the Listing Rules or as requested by the Commission; and

(ii) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear;

(c) I, in accepting to be a supervisor of the issuer, hereby irrevocably appoint the issuer as my agent, for so long as I remain a supervisor of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission;

(d) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(i) as soon as reasonably practicable after my appointment, my telephone number, … for correspondence from and service of notices and other documents by the Exchange or the Commission;

…

I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me … I acknowledge that, if I, as a supervisor or a former supervisor of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission; and

(e) I, in accepting to be a supervisor of the issuer, hereby authorise the Executive Director – Listing, or any person authorised by the Executive Director – Listing, to disclose any of my personal particulars given by me to members of the Listing Committee or the Commission and, …

Appendix 16
Information in annual reports

12. A listed issuer should provide brief biographical details of its directors and senior managers. Such details will include … and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). …

APPENDIX 4: AMENDMENTS TO THE GEM RULES

Chapter 3
Disciplinary ~~procedures~~ jurisdiction and sanctions

3.~~11~~10 (1) The Exchange may bring disciplinary actions and impose or issue the sanctions in rule ~~3.10 may be imposed or issued~~ 3.11 against any of the following:~~—~~

(a) a listed issuer or any of its subsidiaries;

(b) any director of a listed issuer or any of its subsidiaries (or any alternate of such director);

(c) any member of the senior management of a listed issuer or any of its subsidiaries;

(d) any substantial shareholder of a listed issuer;

(e) any significant shareholder;

(f) any professional adviser of a listed issuer or any of its subsidiaries;

(g) any employee of a professional adviser of a listed issuer or any of its subsidiaries;

(h~~g~~) any authorised representative of a listed issuer;

(i~~h~~) any supervisor of a PRC issuer; ~~and~~

(j~~i~~) ~~the~~ any guarantor ~~of an issuer~~ in the case of a guaranteed issue of debt securities or structured products; and

(k) any other party who gives an undertaking to or enters into an agreement with the Exchange.

(2) For the purposes of this rule:

(a) "professional adviser" includes any financial adviser, independent financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer to provide professional advice in relation to a matter governed by the GEM Listing Rules. It does not include Sponsors or Compliance Advisers~~.~~; and

(b) "senior management" includes:

(i) any person occupying the position of chief executive, supervisor, company secretary, chief operating officer or chief financial officer, by whatever name called;

(ii) any person who performs managerial functions under the directors' immediate authority; or

(iii) any person referred to as senior management in the listed issuer's corporate communication or any other publications on the Exchange's website or on the listed issuer's website.

~~*Notes:*~~

(3~~1~~) The scope of any disciplinary action taken~~, in particular any ban imposed on~~ against a professional adviser ~~pursuant to~~ under rules ~~3.10(5),~~ 3.10, 3.11 and 3.11B, including any ban imposed on a professional adviser under rule 3.11(9), shall be limited to matters governed by or arising out of the GEM Listing Rules.

(4~~2~~) ~~In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie in pursuance of rule 3.11. In particular, p~~Professional advisers' ~~obligations to~~, when acting in connection with GEM Listing Rule matters on which they are instructed to advise, shall use all reasonable efforts to ensure that their clients understand and are advised as to the scope of and their obligations under the GEM Listing Rules. They must not knowingly provide any information to the Exchange which is false or misleading in a material particular ~~are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member~~.

3.1~~0~~1 ~~In addition to its powers to suspend, resume or cancel a listing, i~~If the GEM Listing Committee finds ~~that~~ there has been a breach of the GEM Listing Rules by any of the parties named in rule 3.1~~1~~0, ~~of the GEM Listing Rules~~ it may: ~~—~~

(1) issue a private reprimand;

(2) issue a public statement ~~which involves~~involving criticism;

(3) issue a public censure;

~~(4) report the offender's conduct to the Commission or another regulatory authority (for example the Financial Secretary, the Commissioner of~~

~~Banking or any professional body) or to an overseas regulatory authority;~~

~~(5) ban a professional adviser or a named individual employed by a professional adviser from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the GEM Listing Committee for a stated period;~~

~~(6) require a breach to be rectified or other remedial action to be taken within a stipulated period including, if appropriate, the appointment of an independent adviser to minority shareholders;~~

(~~4~~7) ~~in the case of wilful or persistent failure by a director of a listed issuer to discharge his responsibilities under the GEM Listing Rules,~~state publicly that in the Exchange's opinion the occupying ~~retention~~of the position of ~~office by the~~ director or senior management of a named listed issuer or any of its subsidiaries by an individual ~~is prejudicial~~may cause prejudice to the interests of investors;

(5) in the case of serious or repeated failure by a director to discharge his responsibilities under the GEM Listing Rules, state publicly that in the Exchange's opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries;

~~(8) in the event a director remains in office following a public statement pursuant to paragraph (7) above, suspend or cancel the listing of the issuer's securities or any class of its securities;~~

(~~6~~9) ~~in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the GEM Listing Rules, order that~~ deny the facilities of the market to a listed issuer ~~be denied~~ for a specified period and/or until fulfilment of specified conditions ~~to that issuer~~ and prohibit dealers and financial advisers from acting or continuing to act for that issuer;

(7) suspend trading in the listed issuer's securities or any class of its securities;

(8) cancel the listing of the listed issuer's securities or any class of its securities;

(9) ban a professional adviser or a named individual employed by a professional adviser from representing any or a specified party in relation to a stipulated matter or matters coming before the Listing Division or the GEM Listing Committee for a stated period;

(10) recommend reporting the conduct of the party in breach to the Commission

or another regulatory authority, whether in Hong Kong or overseas (for example, the Financial Secretary or any professional body);

(11) order rectification or other remedial action to be taken within a stipulated period; and

(12~~0~~) take, or refrain from taking, such other action as it thinks fit, including making public any action taken ~~pursuant to paragraphs (4), (5),(6),(8) or (9) above~~.

Notes:

1. Any reference to the GEM Listing Committee in rules 3.11, 3.11A and 3.11B includes both the GEM Listing Committee and the GEM Listing Review Committee.

2. Where the GEM Listing Committee or the GEM Listing Review Committee (as the case may be, after the decision has become final), issues:

(i) a public sanction under rule 3.11, such sanction will be published with reasons; or

(ii) a private reprimand, the substance of such sanction may be published with reasons without disclosing the identities of the parties involved.

3. In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie under rule 3.10.

4. For the purposes of this rule and rule 3.11A(2) below, denying "facilities of the market" is not intended to mean cancellation of listing. It is meant to include withholding approval of any matters that require approval from the Exchange, including the issuance of shares.

3.11A (1) If a statement under rule 3.11(4) with follow-on actions in sub-rule (2) below, or rule 3.11(5), has been made against an individual, the listed issuer:

(a) named in the statement; or

(b) in respect of which any of its subsidiaries is named in the statement

must include in all of its announcements and corporate communications to

be published a reference to the sanction made under rule 3.11(4) or 3.11(5), unless and until that individual ceases to be a director or senior management, as the case may be, of the named listed issuer and/or its subsidiaries.

(2) If an individual against whom a statement has been made under rule 3.11(4) or 3.11(5) occupies the position of director or senior management, as the case may be, of the named listed issuer or subsidiary, as the case may be, after a date to be determined and specified by the GEM Listing Committee, the GEM Listing Committee may, at any time in its sole discretion, impose the follow-on actions below:

(a) order that the facilities of the market be denied to that issuer for a specified period; and/or

(b) suspend or cancel the listing of that issuer's securities or any class of its securities.

(3) The GEM Listing Committee may make public any follow-on action imposed under rule 3.11A(2).

3.11B In addition to imposing the sanctions in rule 3.11 when a party has failed to discharge obligations or responsibilities expressly imposed on that party by a specific GEM Listing Rule, the GEM Listing Committee may impose the sanctions in rule 3.11 on any of the parties named in rule 3.10 above, if it finds the party has:-

(1) failed to comply with a requirement imposed by the Listing Division or the GEM Listing Committee;

(2) contravened an undertaking given to or breached an agreement with the Exchange in relation to a listing matter; or

(3) caused by action or omission or knowingly participated in a contravention of the GEM Listing Rules or a requirement referred to in (1) above.

Note: In respect of parties covered by section 23(8) of the SFO, a sanction may be imposed under rule 3.11B(3) in and only in the circumstances prescribed for disciplinary action in the arrangements agreed from time to time between the Exchange and the relevant professional regulatory body; and, in considering whether a party covered by section 23(8) of the SFO has breached rule 3.11B(3), the Exchange will take into account, among other things, whether such party has knowingly or recklessly facilitated or participated in a breach of the GEM Listing Rules or any undertaking given to or any agreement with the Exchange.

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, 3.11A and 3.11B (a "review applicant"), give its reasons in writing for the decision made against that review applicant pursuant ~~thereto~~ to rules 3.10, 3.11, 3.11A and 3.11B and that review applicant shall have the right to have the decision against him referred to the GEM Listing Review Committee for a further and final review. The GEM Listing Review Committee may endorse, overturn, modify or vary the ruling of the earlier meeting. Subject to rule 3.17A, the decision of the GEM Listing Review Committee on review shall be conclusive and binding on the review applicant. If requested by the review applicant, the GEM Listing Review Committee will give reasons in writing for its decision on review.

3.13 A request for a review of any decision of ~~the Listing Division or~~ the GEM Listing Committee made pursuant to rule 3.12 must be ~~notified to the Exchange~~ served on the Secretary within ~~7~~ seven business days of the ~~Listing Division's or~~ issue of the GEM Listing Committee's decision unless written reasons for a decision are requested, in which case a request for a review of that decision must be notified within ~~7~~ seven business days of the ~~receipt~~ issue of the written reasons.

3.14 Any request for ~~the Listing Division,~~ the GEM Listing Committee or the GEM Listing Review Committee to give its reasons in writing for its decision shall be made within three business days of the issue 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 GEM Listing Review Committee (as the case may be) as soon as possible and, in any event, within 14 business days of the receipt of the request.

Chapter 4
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) must be served on the Secretary within seven business days of ~~receipt~~ the issue of either the relevant decision, or if the relevant party requests written reasons under rule 4.13(1), those written 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~~ the issue 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 issue of the written decision under rule 4.13(3).

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, any request for ~~on receipt of a decision by~~ the Listing Division, the GEM Listing Committee or the GEM Listing Review Committee (as the case may be) to give written reasons for its decision shall be made by a relevant party within ~~has~~ three business days of the issue of ~~to request written reasons for~~ the decision. The Listing Division, the GEM Listing Committee or the GEM Listing Review Committee (as the case may be) will provide written reasons within 14 business days of the receipt of the request. Such written reasons will be provided to all parties to the review.

Chapter 5
Directors

5.02A Directors, in accepting to be directors of a listed issuer, shall be considered as having:

(1) irrevocably appointed the listed issuer as their agents, for so long as they remain directors of the issuer, for receiving on their behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and

(2) authorised the Executive Director – Listing, or to any person authorised by the Executive Director – Listing to disclose any of their personal particulars given by them to members of the GEM Listing Committee or the Commission and, with the approval of the Chairman or a Deputy Chairman of the Exchange, to such other persons, as the Executive Director – Listing may from time to time think fit.

5.13A Directors of a listed issuer shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(1) as soon as reasonably practicable after their appointment, their telephone number, ... for correspondence from and service of notices and other

documents by the Exchange or the Commission;

…

Any correspondence from and/or service of notices and other documents by the Exchange or the Commission to the directors … If directors or former directors fail to provide the Exchange with their up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to them, they may be not alerted to any proceedings commenced against them by the Exchange or the Commission.

Chapter 17
Information Gathering

17.55A An issuer must provide to the Exchange or the Commission as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(1) any information that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information or explanation that the Exchange or the Commission may reasonably require for the purpose of investigating a suspected breach of or verifying compliance with the GEM Listing Rules or the Securities and Futures Ordinance.

17.55B In responding to enquiries or investigations by the Exchange or the Commission, a party subject to the enquiries or investigations must provide to the Exchange or the Commission information or explanation which is accurate, complete and up-to-date.

Chapter 18
Annual reports

18.39 Brief biographical details in respect of the directors and senior managers of the listed issuer. Such details will include … and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). …

Appendix 1
Part A

Information about the issuer's management

41. (1) … In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include … and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). …

Appendix 1
Part B

Information about the issuer's management

34. … In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include… and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1
Part C

Information about the issuer's management

46. … In addition, brief biographical details in respect of every director or proposed director (or any person who performs an important administrative, management or supervisory function) must be provided. Such details must not be less than those required to be disclosed in an announcement relating to the appointment or re-designation of the director pursuant to rule 17.50(2) and would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities.

Appendix 6
Form A
Director's Declaration, Undertaking and Acknowledgement
Part 2
UNDERTAKING AND ACKNOWLEDGEMENT

(b) I shall, when I am a director of the issuer and after I cease to be so:

(i) provide to The Stock Exchange of Hong Kong Limited (the "Exchange") and the Securities and Futures Commission (the "Commission") as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(1) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the GEM Listing Rules or as requested by the Commission; and

(ii) cooperate in any investigation conducted by the Listing Division … and/or the Listing Committee (as such term is defined in rule 1.01 of the GEM Listing Rules) or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear;

(c) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(i) as soon as reasonably practicable after my appointment, my telephone number, … for correspondence from and service of notices and other documents by the Exchange or the Commission;

…

I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me … I acknowledge that, if I, as the director or former director of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission;

(d) I, in accepting to be a director of the issuer, hereby (i) irrevocably appoint the issuer as my agent, for so long as I remain as a director of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and (ii) authorise the Executive Director – Listing Division, or any person authorised by the Executive Director – Listing Division, to disclose any of my personal particulars given by me to members of the Listing Committee or the Commission and, …

Appendix 6
Form B
Director's Declaration, Undertaking and Acknowledgement (PRC Issuer)
Part 2
UNDERTAKING AND ACKNOWLEDGEMENT

(b) I shall, when I am a director of the issuer and after I cease to be so:

(i) provide to the Exchange and the Securities and Futures Commission (the "Commission") as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(1) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the GEM Listing Rules or as requested by the Commission; and

(ii) cooperate in any investigation conducted by the Listing Division … and/or the Listing Committee (as such term is defined in rule 1.01 of the GEM Listing Rules) or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear;

(c) I, in accepting to be a director of the issuer, hereby (i) irrevocably appoint the issuer as my agent, for so long as I remain as a director of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Commission; and (ii) authorise the Executive Director – Listing Division, or any person authorised by the Executive Director – Listing Division, to disclose any of my personal particulars given by me to members of the Listing Committee or the Commission and, …

(d) I shall inform the Exchange (in the manner prescribed by the Exchange from time to

time):

(i) as soon as reasonably practicable after my appointment, my telephone number, … for correspondence from and service of notices and other documents by the Exchange or the Commission;

…

I acknowledge and agree that any correspondence from and/or service of notices and other documents by the Exchange or the Commission to me … I acknowledge that, if I, as the director or former director of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission; and

Appendix 6
FORM C
Supervisor's declaration and undertaking and acknowledgement in respect of an issuer incorporated in the People's Republic of China ("PRC")
Part 2
UNDERTAKING AND ACKNOWLEDGEMENT

1. in the exercise of my powers and duties as a supervisor of …

…

(g) I, in accepting to be a supervisor of the issuer, hereby (i) irrevocably appoint the issuer as my agent, for so long as I remain a supervisor of the issuer, for receiving on my behalf any correspondence from and/or service of notices and other documents by the Exchange or the Securities and Futures Commission (the "Commission"); and (ii) authorise the Executive Director – Listing Division …, or any person authorised by the Executive Director – Listing Division, to disclose any of my personal particulars given by me to members of the Listing Committee … or the Commission and, …

(h) I shall inform the Exchange (in the manner prescribed by the Exchange from time to time):

(i) as soon as reasonably practicable after my appointment, my telephone number, … for correspondence from and service of notices and other documents by the Exchange or the Commission;

…

2. I acknowledge and agree that any correspondence from and/or service of notices and

other documents by the Exchange or the Commission to me … I acknowledge that, if I, as the supervisor or former supervisor of the issuer, fail to provide the Exchange with my up-to-date contact details or arrange for notices, documents or correspondence to be forwarded to me, I may not be alerted to any proceedings commenced against me by the Exchange or the Commission.

3. I shall, when I am a supervisor of the issuer and after I cease to be so:

(a) provide to the Exchange and the Commission as soon as possible, or otherwise in accordance with time limits imposed by the Exchange or the Commission:

(i) any information and documents that the Exchange or the Commission reasonably considers appropriate to protect investors or ensure the smooth operation of the market; and

(ii) any other information and documents or explanation that the Exchange may reasonably require for the purpose of verifying compliance with the GEM Listing Rules or as requested by the Commission; and

(b) cooperate in any investigation conducted by the Listing Division and/or the Listing Committee of the Exchange or the Commission, including answering promptly and openly any questions addressed to me, promptly producing the originals or copies of any relevant documents and attending before any meeting or hearing at which I am requested to appear.

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