

Part B Consultation Questions

Please reply to the questions below that are raised in the Consultation Paper downloadable from the HKEX website at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Consultation-Paper/cp202008.pdf>. Please indicate your preference by ticking the appropriate boxes.

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

We encourage you to read all of the following questions before responding.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

6. We propose to remove the existing threshold for ordering the denial of facilities of the market. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

7. We propose to include fulfilment of specified conditions in respect of the denial of facilities of the market. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

8. We propose to introduce the Director Unsuitability Statement as a new sanction. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

The above hides the HKEx actually asks for way more than purported above. We totally disagree that “...The Exchange expects parties subject to its enquiries and investigations to provide all information relevant to its enquiries even if it has not requested the specific information...” because it is against natural justice to request someone to voluntarily provide information against his own interest. In addition, who decides what is relevant?

14. Do you agree with the proposed definition of ‘senior management’?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

16. We propose to include guarantors of structured products as a Relevant Party under the Rules. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

17. We propose to include guarantors for an issue of debt securities as a Relevant Party under the MB Rules. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

19. We propose to extend the ban on professional advisers to cover banning of representation of any or a specified party. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

20. We propose to include express obligations on professional advisers when acting in connection with Rule matters. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

See our response in the attached letter.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

22. We propose that all review applications must be served on the Secretary. Do you agree?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

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?

Yes

No

If your answer to the above question is “no”, please provide reasons for your views.

- End -



DATE 7th October, 2020

Hong Kong Exchanges and Clearing Limited
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Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Sirs / Madams,

Re : Consultation Paper
Review of Listing Rules relating to Disciplinary Powers and Sanctions

We are pleased to respond to the above consultation.

Key Reasons for Objection

Removing the “willful or persistent” pre-requisites for breaches leading to the issue of PII (as defined below) is the key objection we raise.

The following are the major flaws of the new proposed disciplinary power:–

1. New 2A.10 is about “any” breach. There is no threshold in bringing disciplinary actions against the wide net of people, from directors to company secretaries, financial controllers and financial advisers.
2. New 2A.10(4) can issue a “prejudicial to interest of investors statement” (“PII Statement”) on “any” inadvertent breach, because the consultation proposes to remove the “willful or persistent” threshold.
3. New 2A.10(6) can deny an issuer market facilities on “any” inadvertent breach, because the consultation proposes to remove the “willful or persistent” threshold.
4. New 2A.10A(2) can deny an issuer market facilities when an individual (director, company secretary or CFO etc) remains employed by the listed issuer, after receiving a PII Statement, which can be issued on “any” inadvertent breach under the New Rule 2A.10(4).



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5. New 2A.10B gives the Stock Exchange of Hong Kong (“HKEx”) the power to sanction anyone if “any” breach was caused by “action or omission...” Such an unrestrained power over breaches with such a low threshold (or no threshold), resulting possibly in serious sanction, is not only highly inappropriate, but dangerous.

HKEx’s Power over Professional Advisers vs Disciplinary Proceeding of the SFC

HKEx now also proposes to expand its power to ban professional advisers (including financial advisers, lawyers, accountants, valuers etc) from acting on all matters relating to any or all listed companies, instead of a “specific” listed company.

The proposal is draconian and the implication is widespread, severe, and covers “all” professional advisers.

The disciplinary sanction can completely eradicate the corporate finance business of any firm and all their employees. If a firm practices only listed matters, which many do, it can close down on such a sanction. If HKEx wants deterrence, it surely can achieve that. But can we entrust such wide and high power to HKEx?

The HKEx’s disciplinary process has a low threshold, is overly simplified, can give devastating effect to the relevant persons or their professional advisers, heard and judged by all lay members of the Listing Committee, not guided by any experts in disciplinary sanction (see SFC’s disciplinary proceeding below), and is not automatically reviewable in Hong Kong Courts.

HKEx’s proposal is an encroachment of the dedicated power of the SFC on licensed corporations / financial advisers, the Law Society on solicitors, and/or the Financial Reporting Council on accountants etc.

Compared to the SFC’s disciplinary proceeding, the SFC is way more restrained, and the process more arduous, or prudent. Once the SFC issues a disciplinary sanction, a licensed person can have two levels of genuine appeals.

1. A licensed person can appeal SFC disciplinary sanctions with The Securities and Futures Appeals Tribunal (“SFAT”), an independent appellate body situated in a separate office and chaired by a High Court Judge.
2. If a licensed person is dissatisfied with the SFAT’s decision, as a matter of right, an appeal can be made to the Court of Appeal.



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Therefore, we are of the view that your proposed changes to the Listing Rules give HKEx too much power to impose severe sanctions on the relevant persons with low or no threshold.

For our specific response, please see the completed questionnaire submitted simultaneously with this letter.

Yours faithfully,
For and on behalf of
YU MING INVESTMENT MANAGEMENT LIMITED

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