

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.

We fully understand the intention behind the proposed broadening of responsibility to include senior management and subsidiary directors; we would question that with this category of persons, this would potentially include a large group of persons especially in a sizeable listed group, the lines of accountability on listing rules compliance could be potentially blurred. Furthermore, as a matter of listing regulation, a practical question that one would raise is whether this would require the expanded category of persons to sign a similar set of undertaking as the Directors are required to on their appointment. With due respect, if the Exchange could provide additional information on such issues, this would greatly assist the market participants’ understanding of the proposed rule change.

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.

In so far as it relates to senior management member and for the reasons set out for question 2.

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.

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.

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.

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.

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.

We fully understand the intention behind the proposed introduction of the concept of secondary liability and we note that the Exchange has, in the consultation paper, cited legislations in Hong Kong that do impose secondary liability. However, given the potentially wide implications of such a rule introduction, we believe the market participants could benefit from some further elaboration from the Exchange regarding issues of enforceability, legality and the basis of the concept of secondary liability through the Listing Rules (as opposed to through legislation). We also note that the UK Disclosure and Transparency Rules have also been cited and that the rule provision is expressly subject to the legislation (Financial Services and Markets Act) indicating that the secondary liability should have the necessary legislation backing. In the absence of the legislation backing and as a matter of listing regulation, a practical question that one would raise is whether this would require the expanded Relevant Parties to sign a similar set of undertaking as the Directors are required to on their appointment. With due respect, if the Exchange could provide additional information on such issues, this would greatly assist the market participants’ understanding of the proposed rule change.

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.

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.

Please refer to answer to Q10.

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.

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.

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.

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.

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.

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.

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.

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.

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 -