

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.

- i. The circumstances in each failure by a director discharging the responsibilities should be considered on a case-by-case basis. If the director concerned has already resigned from the listed issuer, the issue of a PII Statement against him would give little meaning.
- ii. While it is good to impose severe sanctions against misconduct, there should be a clear, transparent, generally accepted "line" on what would amount to such sanctions. Removing the "wilful" and "persistent" threshold would bring ambiguity and disputes could be expected on different cases. It also seems inappropriate and not transparent for regulator to have undefined power to impose sanction without considering the seriousness and the nature (inadvertent or wilful) of the misconduct.
- iii. Whether the director concerned is suitable to stay in office should be solely a matter of judgement by the board of directors of the listed issuer concerned. The issue of a PII Statement with threshold removed is likely to impose undue pressure/influence on the listed issuer in making its own independent decision.

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 are of the view that senior management at listed issuer level are acting with delegated powers from the board of directors and should report to the board of directors on their decisions. It is the responsibility of the board of directors to reserve matters of significant importance that can be "prejudicial to the interests of the investors" to the board itself.

Senior management at subsidiary level have limited powers only.

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.

Whether the director concerned is suitable to stay in office should be entirely a matter of judgement by the board of directors of the listed issuer concerned and supported by the shareholders of the listed issuer. The enhancement of follow-on actions is likely to impose undue pressure/influence on the listed issuer in making its own decision.

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.

Same as question 3.

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.

Same as paragraph (ii) in question 1.

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.

Denial of facilities of the market is a severe sanction that has significant impact on the listed issuer concerned. For a transparent market, any kind of sanction and the conditions for restoring should be pre-defined clearly instead of vesting the powers entirely on the regulator.

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.

Whether the director concerned is suitable to stay in office should be entirely a matter of judgement by the board of directors of the listed issuer concerned. The introduction of the Director Unsuitability Statement is likely to impose undue pressure/influence on the listed issuer in making its own decision.

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.

Same as question 8.

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.

The implication of this proposal is too significant and unreasonably cover nearly all market practitioners.

In the list of Relevant Parties cited in the consultation paper, some of the positions apparently require the candidate to hold relevant professional qualifications or licences in order to secure the position/engagement (e.g. CFO, board secretary, financial advisers, legal advisers), and so their conduct are already regulated by the relevant professional/regulatory bodies (e.g. HKICPA for CFO; HKICS for board secretary; SFC for financial advisers; Law Society for legal advisers). Any misconduct shall be governed by the relevant professional body, and disciplinary action shall be reserved to the professional body itself.

It is also questionable how a substantial shareholder of a pure investment nature who does not involve in the listed issuer's day-to-day management and operation should be liable for the breach of the Listing Rules by the listed issuer. Where a substantial shareholder does participate in the listed issuer's management (by nominating a representative to sit in the board), the representing director is made liable for his own conduct (on behalf of the substantial shareholder) in the current mechanism.

Therefore, we consider the proposal goes further than is necessary.

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.

This proposal will result in members of the Listing Division, the Listing Committee or the Listing Review Committee overly powered, and create an implication that the decisions of these committees have same legal effect and status as the provisions in the Listing Rules, which are without legal foundation.

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.

Same as question 11.

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.

In the paragraph 107 of the consultation paper, the wordings are "...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..." the range is too wide that "all information relevant to", 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.

The "senior management" of a listed issuer should be defined by the listed issuer itself, not simply by its title and reporting line.

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.

The coverage of the term "employees" is unreasonably wide. The organisational structure of different professional firm may vary significantly. Employees from other unrelated business units of the firm should not be made liable for all Listing Rules breaches of the firm.

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.

We consider that the breach of the terms of any undertakings or agreements should remain a contractual issue between the parties and be settled through courts. The powers of the Exchange to impose sanctions should be primarily focused on listed issuers and its directors.

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.

Same as question 16.

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.

Same as question 16.

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.

A ban on professional advisers to represent ANY parties is an extremely severe sanction which can result in close of business. There are usually different teams serving different clients in sizeable firms, and the overall circumstances in handling each client's case can be very different. Banning of the professional adviser representing any other clients just because of one case would be too draconian.

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 -