

Hong Kong Exchanges and Clearing Limited  
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Hong Kong

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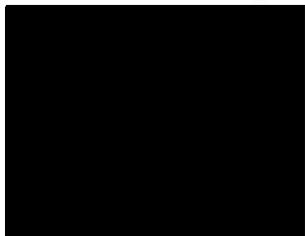
Dear Sir

**Consultation Paper – Review of Listing Rules relating to Disciplinary Powers and Sanctions**

On behalf of ACCA Hong Kong, we would like to submit our comments regarding the captioned consultation paper, and enclose a copy of the duly completed questionnaire.

Should you wish to clarify any of the above issues, please do not hesitate to contact the undersigned at [REDACTED].

Yours faithfully,



*ACCA Hong Kong*

Enclosures

**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.

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.

Where there has been a failure by the listed issuer’s director or senior management member to discharge their responsibilities under the Rules, the interest of the shareholders of the issuer have already been jeopardised. When the Exchange directs denial of facilities of the market to the listed issuer, the shareholders of the issuer are further penalized. Instead of protecting the interest of the investing public, the proposed enhanced follow-on actions of the Exchange in substance are sacrificing the interest of the shareholders of the issuer.

Should there be any serious misconduct by the directors or senior management members, they will be subject to civil and / or criminal liabilities under the Securities and Futures Ordinance (SFO), which may lead to a fine or disqualification.

The proposed enhanced follow-on actions not only sacrifice the interests of the shareholders of the issuer, but involve duplicated effort and regulations, which could result in directors and senior management members being subject to two set of rules and penalties.

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.

We recommend the listed issuer only disclosing and making reference to the PII statement in a separate announcement to be published after the Exchange’s issue of the PII statement.

The listed issuer will be required to explain and justify in the announcement why the company allows the individual to remain as a director or a senior management member even after the issue of PII statement. With the disclosures, the investing public will be able to make an informed investment decision.

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.

While we agree in principle to extend the scope of disclosure in listing applicants' listing documents in respect of their directors and members of senior management of full particulars of any public sanctions made against those individuals, we suggest such requirement on listed issuers be limited to only the relevant announcement / corporate communication upon the directors and members of senior management being sanctioned, and upon appointment or reappointment of the directors or members of senior management. The board of directors of the listing applicant / the listed issuer must explain in the relevant listing document / announcement / corporate communication, as the case may be, the basis of the retention / appointment / reappointment of the relevant individual is in the interests of the shareholders as a whole.

The decision of appointment / reappointment should be entrusted to the board of directors, and where appropriate, the shareholders who should exercise due care and perform thorough due diligence when employing someone to act as directors and members of senior management. The decisions and justifications can be discussed and disclosed in the corporate governance report.

We are of the opinion that the market and the investors should have been informed with the disclosures.

It would be too onerous to continue the proposed disclosure requirements in subsequent years and would result in different disclosure requirements in respect of an individual's historical non-compliances and breaches.

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.

Not applicable.

Please refer to the above answer of Question 3.

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.

Not applicable.

Please refer to the above answer of Question 3.

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.

We do not suggest the Exchange directs follow-on actions and / or denial of facilities of the market to the listed issuers. Please refer to the above answer of Question 3.

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.

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.

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.

While we agree in principle to this question, the definition of ‘complete’ information must be clearly defined.

The Relevant Parties should not be penalized when immaterial information is omitted. We consider that ‘complete’ information should mean that ‘there is no material omission rendering the information misleading’.

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.

Whilst we understand that HKEx should only impose sanction on employees of professional advisers who are directly involved in the breach, we suggest limiting the sanction to senior management of the professional adviser to make the scope consistent with that for listed issuers.

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.

No comment.

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.

We do not agree to extend the scope of the ban to cover banning of representation of any party as the scope will become too broad.

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 -