

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.

By removing the “wilful and persistent failure” criteria means that the Exchange will now have the power to sanction anyone who breaches the rules as they see fit without being subjected/measured against a set of standards. This is essentially playing god. Also, the whole purpose of a PII statement is to warn the public of unscrupulous Directors who are still in the board. No reason to issue PII statement if they are no longer in office.

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.

It is the Directors' duty to safeguard and protect shareholders' interest. If the Directors deemed senior management unfit to render services to the firm, it is their duty to remove them from the company. The Exchange should not have a hand in deciding who gets to stay or leave the firm. It is highly doubtful that the Exchange even has sufficient manpower, industry experience and expertise to monitor, challenge or intervene in daily matters of all listed entities.

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.

Suspension or cancellation of securities of the issuer are effective sanctions for non-compliance. Publication requirement on the other hand seems fair.

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.

Senior management should be omitted all together.

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 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.

No issues with extending the scope of the sanction to require a listed issuer to fulfil specified conditions (e.g. to remedy the breach) – rather than merely wait for a specified period to lapse. Again, removing the wilful and persistent threshold is unacceptable.

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.

Fail to understand the difference between PII statement and Director Unsuitability Statement.

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.

Fail to understand the difference between PII statement and Director Unsuitability Statement.

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.

Shouldn't this be SFC's prerogative?

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.

Rule 2A.09 provides that the Listing Committee of the Exchange may impose sanctions if it finds there has been a Rule breach by any of the Relevant Parties. How is this different from the proposal above?

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 answer in question 10.

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.

Was under the impression all parties have to comply with Exchange’s enquiries or investigations to begin with. Non-compliance could lead to suspension or delisting in severe cases to begin with. So why the hassle to go through this proposal?

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.

Professional advisers are licensed person regulated by the SFC to begin with. Their job is to advise their clients but not to make decisions on behalf of the clients. Hence the responsibilities should lie with the company.

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.

This could potentially lead to higher cost of funding for companies.

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.

This could potentially lead to higher cost of funding for companies.

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.

“Enforcement of the undertaking or agreement is primarily a contractual issue between the Exchange and the party giving the undertaking or the contracting party and, as such, is enforceable through the courts.”

The above point suffices.

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.

Same as answers in question 15.

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.

It is the professional advisers' duty to provide correct information / advice to their clients. Any incompetence in this area is monitored by the SFC. However, it is not their duty to verify whether information provided to them by the company is true and accountable or important information is withheld from them that could lead to a different outcome. After all, their relationship with their clients will be nowhere as close as their auditors or sponsors. Any information received from them is taken in good faith that they are true and fair presentation of their state.

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 -