

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.

Please see attached for additional comments.

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.

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.

Please see attached for additional comments.

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.

Please see attached for additional comments.

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.

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.

Please see attached for additional comments.

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.

Please see attached for additional comments.

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.

Please see attached for additional commentary

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.

Please see attached for additional commentary

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 -



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

INTRODUCTION

Thank you for the opportunity to provide comments to the HKEX’s Consultation Paper – Review of Listing Rules relating to Disciplinary Powers and Sanctions. Starling (<https://starlingtrust.com>) is an innovative US-based RegTech startup that delivers analytics using internal data to improve non-financial risk governance, particularly with regard to risks that stem from firm culture.

Through our thought leadership and industry engagement, Starling has become recognized as an expert in our industry. Our annual white-paper, *Culture and Conduct Risk Management in the Banking Industry*¹, (aka the Starling ‘Compendium’), has become a must-read reference on the latest trends and strategies taken by regulatory supervisors globally to address these non-financial operational risks. Our commentary has also been featured regularly on regional outlets including RegulationAsia on topics including [Governance and Risk Frameworks](#), [Culture Audits](#), and [Three Lines of Defense](#) frameworks.

Starling also offers an AI-driven technology platform that applies advances in behavioral science and network theory to the challenge of identifying and mitigating non-financial risk proactively.

We are strongly supportive of the HKEX’s proposed changes. In order to achieve the desired results, we at Starling would recommend that the HKEX should encourage the widespread adoption of new technologies in behavioral science and machine learning as a means to better manage conduct risk.

BACKGROUND ON REGTECH SOLUTIONS FOR MANAGING OPERATIONAL RISK

For the past decade, spending on systems and processes to manage non-financial risk has exploded. Increasingly, intrusive surveillance and monitoring tools, often powered by AI, are gaining traction. At the same time, compliance and risk functions are increasingly turning to Robotic Process Automation (RPA) to replace manual tracking and reporting activities with automation.

¹ <https://starlingtrust.com/compendium/>

At the operational level, listed firms have focused on implementing systems and processes to manage misconduct through controls, with a view to managing risk through documentation, restrictive processes, by removing people from decision making loops, and by detecting bad actors through surveillance and monitoring when controls fail – as they regularly do.

Without insight into the behavioral context that lies behind misconduct, management interventions are heavily rules-based, primarily targeting visible activities rather than underlying norms and cultural propensities. Further, by focusing on outcomes rather than the relational dynamics among teams that often precede *contagious* misconduct, standard non-financial risk management approaches are necessarily backward looking. Risk management becomes a tick-box exercise that is not ‘fit for purpose’ – amply evidenced by continual misconduct scandals.

What these investments miss is the “people” piece of the puzzle. Yet the success of the risk management frameworks depends entirely upon a complex web of interactions and critical behaviors among senior executives and risk management specialists in order to function effectively. Unfortunately, tools like online surveys and townhall meetings do not adequately capture such complexity.

WHAT’S MISSING

Regulators like the HKEX and firms have prioritized processes and systems for internal risk governance (and guarding against external threats such as those in cybersecurity). They have been far less inclined to address the people element – namely how to foster the necessary behaviors and cultural norms required to manage those systems and processes correctly.

This is understandable because, for a long time, the tools available for measuring and managing behavior have not lent themselves to effective supervision. Firms have been forced to rely on HR-delivered tools such as staff surveys, townhall meetings, self-reported behavior journals, and online ethics training. These tools lack objectivity, specificity, and real-time responsiveness. And – when these measures fail – the fallback is reliance upon robust surveillance and monitoring systems that promise to detect risk events as they occur. Such instruments produce high numbers of ‘false-positive’ signals which result in added expense as risk examiners are required to run each to ground. And, when successful in identifying an actual risk management failure, awareness of such is too little / too late.

These challenges are all the more relevant in the current COVID-19 pandemic. Controls and surveillance systems that were established in a time when everyone worked together have been upended. Further, the most effective protection is provided by a culture that encourages challenge and speak-up behavior, and where staff feels able and encouraged to push back the moment that risk behaviors threaten to take hold.

This situation will not be solved by existing approaches. Rather, firms need to test new technologies, models, and frameworks that can serve to break this impasse. Regulators and exchanges play a key role in this, as scandals contribute to an erosion in the public’s faith in ‘the system.’ By promoting innovation in risk management, regulators work to protect/promote the public’s interests.

MACHINE LEARNING OFFERS A WAY FORWARD

Advances in machine learning have made it possible to sift through vast troves of internal data at scale. By applying novel approaches in the field of “computational social science,” it is now possible to detect signals within those massive data sets that tie to particular behaviors of interest to management and

supervisors. These may be behaviors that represent a predilection for misconduct or, equally, behaviors that are necessary to the full functioning of critical non-financial risk management systems and processes.

Analyzing these signals allows us to generate metrics that update continuously and reveal where specific behavioral propensities are likely to appear. Such tools can illuminate the pathways by which certain behaviors are most likely to spread – contagion-like – throughout an organization. This ‘behavioral epidemiology’ positions management to operate from the front-foot. It also allows precision targeting of audit activities and risk management interventions, allowing firms and supervisors to scale their risk oversight and to act in a more timely, effective, and efficient manner.

A significant additional benefit is to be had once such technologies are established as industry-standard best practice: standardized risk metrics such as those we describe here may permit for horizontal reviews on an apples-to-apples basis, system-wide, across any given jurisdictional space. And the adoption of such metrics among regulators in other financial markets may permit for more efficient collaborative oversight of firms across their global footprint.

RECOMMENDATIONS

As the HKEX looks to implement stronger enforcement procedures for its listed firms, it will put increased pressure on firms to proactively address concerns that could lead to sanctions. While it is important to hold individual actors accountable, it is equally important for firms to foster a culture that protects the firm from those same bad actors.

This is particularly relevant to the rules extending regulations to senior management (Question #2), mandating more complete, accurate, and up-to-date information (Question #13), and redefining senior management (Question #14). It can be challenging to accurately assess whether senior management is taking sufficient measures to meet the firm’s obligations. Likewise, firms that take advantage of Regtech and behavioral analytics may potentially be in a better position to address deficiencies proactively and to generate better outcomes.

Rules changes addressing professional advisors of listed firms and their respective employees (Questions #15 and #20) may represent a similar opportunity.