

## 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.

Whilst agreeing to the Exchange's proposal to lower the threshold for imposing a PII Statement, the test under the proposed wording of the PII Statement threshold lacks objectivity. As the proposed wording states that it would be determined "in the Exchange's opinion", this may provide the Exchange with wide and sweeping power to determine what may be considered as prejudice to the interest of the investors. In that regard, I suggest the Exchange to lay down clearer guidance as to the circumstances and factors that the Exchange may consider in assessing whether a director or senior management may cause prejudice to the interest of the investors. In order to avoid the arbitrary exercise of such power, the assessment should also provide for a "reasonable person's test" such that a PII Statement will be imposed in the event a reasonable person is of the view that the occupying of the position of director or senior management may cause prejudice to the interest of the investors.

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.

I agree that the Exchange should be in a position to take further action against listed issuers which have failed to take any action after the issuance of a PII Statement. However, such action should be imposed with the view to enhance accountability and corporate governance of the listed issuer. Shareholders' interests, in particular, minority shareholders' interests, may be jeopardised if follow-on actions include denial of facilities of the market to a listed issuer. Rather than allowing the listed issuer not to take any action after the issuance of a PII Statement, follow-on actions should include requesting the listed issuer to issue a formal announcement explaining the reasons as to why a director or senior management subject to a PII statement should continue to be a director or senior management of that listed issuer. The Exchange can also request the listed issuer to include in its announcement the risks to the listed issuer and the internal control measures that will be undertaken by the listed issuer if a director or senior management subject to a PII statement continues to be a director or senior management of that listed issuer. I think this is consistent with the disclosure base system that has been imposed on listed issuers.

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.

By removing the condition "wilful or persistent failure by a listed issuer to discharge its responsibilities under the Listing Rules", the proposed wordings would give the Exchange the power to deny the facilities of the market should there be a breach of the Listing Rules. I am of the view that such threshold has been set too low and it seems like this action can be taken by the Exchange even if there is mere breach of the Listing Rules by the listed issuer. Whilst it is understandable that a wilful mindset may be difficult to prove, persistent failure to discharge responsibilities under the Listing Rules is a matter of fact and therefore the denial of facilities of the market should be imposed by the Exchange if the listed issuer has been breaching the Listing Rules on a regular and consistent basis.

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.

Whilst agreeing to this new sanction, there seems to be a certain degree of overlap between this sanction and the sanction under a PII Statement. The Exchange should set our clear guidance as to what circumstances may constitute a sanction under a PII Statement and one under a 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.

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.

I am against such proposal to the extent that it applies to legal practitioners.

As required under the Legal Practitioners Ordinance and the Code of Conduct issued by the Law Society of Hong Kong, legal practitioners owe a duty of care towards their clients. Full compliance with the proposal may put the relevant legal practitioner in a potentially difficult situation should a conflict arise between the position of the Exchange, the client and the legal practitioner, such as the situation when a legal practitioner, while complying with his professional duties under the rules of professional conduct regulated by the Law Society of Hong Kong, may be prohibited from advising the client to fulfil the requirements to be imposed by the Listing Division. Furthermore, there may be circumstances when the advice to be given by a legal practitioner to his client may not be in line with the requirements to be imposed by the Listing Division due to a different interpretation of the Listing Rules and other regulations, however, that should not constitute a misconduct by the relevant legal practitioner that will subject him to secondary liability. Further, the legal practitioner is bound by the confidentiality towards his client as such advice is subject to legal professional privilege.

Further, I also understand that the Law Society of Hong Kong and the Exchange have previously entered into a memorandum of understanding (the "MOU") in which there are only a few circumstances that the Exchange may take disciplinary action against legal practitioners. The proposal of imposing secondary liability on legal practitioners due to such person having "caused by action or omission or knowingly participated in a contravention of the Listing Rules" would be outside the scope of what was agreed in the MOU. Therefore, I am of the view that the existing enforcement regime administered by the Law Society of Hong Kong and the Solicitors Disciplinary Tribunal is sufficient and more suitable in handling enforcement, including imposing secondary liability on legal practitioners as set out in the proposal. I encourage closer collaboration between the Exchange and the Law Society of Hong Kong in the latter's efforts on disciplining wrongdoing of legal practitioners.

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.

I am against to such proposal to the extent that it applies to legal practitioners.

For the reasons as set out in my response to Q10, there was an agreed protocol between the Exchange and the Law Society of Hong Kong that the conduct of solicitors in Hong Kong is regulated by the Law Society of Hong Kong and the MOU has only allowed a few circumstances in which the Exchange has disciplinary powers over legal practitioners. In view of the aforesaid and the potential conflict that a legal practitioner may run into between acting in the best interest of the client and ensuring compliance with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee of the Exchange, I do not agree to expanding this proposal to cover legal practitioners. Lastly, so far as it relates to legal practitioners, I am of the view that the existing system of referral of matters to the Law Society of Hong Kong should suffice as the Law Society of Hong Kong and the Solicitors Disciplinary Tribunal, being the statutory bodies tasked with the regulation of legal practitioners are more suited in handling related enforcements.

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.

Agreed to the extent as explained in my responses to Q10 and Q11 above

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.

Agreed to the extent as explained in my responses to Q10 and Q11 above

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.

Agreed except that employees of a law firm who are legal practitioners should be excluded. Please see my responses to Q10 and Q11 above.

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.

Since there is a contractual relationship between the contracting party and the Exchange for a party who has entered into an undertaking or agreement, should there be any breach under such contract, the Exchange is able to seek remedy or enforce its position through court proceedings. Under such circumstances, I do not agree to include such contracting parties as Relevant Parties under the Listing Rules as the Exchange has other avenue to go after such parties. Further, in a lot of circumstances, such contracting parties would be considered as a Relevant Party under the current definition of Relevant Parties in the Listing Rules.

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.

Agreed to the extent that it does not apply to sanction against legal practitioners or law firms. Pursuant to the Basic Law, subjects in Hong Kong have the right to obtain confidential legal advice. The proposal to ban a legal practitioner or a law firm from representing any party or matter coming before the Listing Division or the Listing Committee is a violation of one of the fundamental rights under the Basic Law. Should a legal practitioner commit any breach under the Listing Rules, the Exchange can refer the matter to the Law Society of Hong Kong and the Law Society of Hong Kong, under its statutory power, can take appropriate disciplinary actions against the relevant legal practitioner including suspending the practising certificate of the relevant legal practitioner. Please also refer to the reasons explained in Q10 and Q11 above.

Whilst I do not intend to speak for other professional advisers, I believe the existing disciplinary mechanisms applicable in other industries (such as those administered by the Hong Kong Institute of Certified Public Accountants in respect of accountants and the Securities and Futures Commission in respect of licensed person/firms) are effective in sanctioning the wrongdoing professional advisers according to the relevant industry standards. I therefore do not feel that this proposal is necessary.

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.

Agreed to the extent as explained in my responses in Q10, Q11 and Q19 above.

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 -