

## 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.

We disagree with this proposal because a PII Statement by definition relates to a breach of the Listing Rules, and only the directors of a listed company are required to undertake to comply with, and cause a listed issuer to comply with, the Listing Rules. By extending PII Statements to senior management positions, it could have the unintended consequence of preventing listed issuers from continuing to benefit from the services of individuals who have critical skillsets or have made (and may continue to make) contributions that are pivotal to the success of the listed issuer in areas other than Listing Rules compliance. The success of a company can often hinge on an individual who is a particularly gifted scientist, medical practitioner or technology innovator – and while these individuals may not have strong compliance backgrounds (indeed, in some cases they may be well known as "disruptors"), forcing them out of any position with the company may have a material adverse effect on the company, and thereby the Hong Kong investing public. To use an example, imagine if Tesla were Hong Kong listed and Elon Musk was forced out by a PII Statement because he kept using twitter to announce developments instead of issuing announcements in accordance with the Listing Rules?

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.

We consider this to be overkill, and instead propose that it be addressed by way of disclosure in the corporate governance report.

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.

See responses to 3 and 5

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.

We consider this inappropriate and, more importantly, inconsistent with the Rehabilitation of Offenders Ordinance (Cap. 297) (and in particular section 2(1)(iii)), which provides that it shall not be lawful or proper ground for excluding an individual from any office, profession, occupation or employment or for prejudicing him in any way in that office, profession, occupation or employment if, following a conviction, the individual has not re-offended within a three year period. A person should not be tainted for the rest of his or her career in this way, especially in light of the high degree of discretion the Stock Exchange has to interpret the Listing Rules.

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.

A clear threshold should be maintained and the "wilful" or "persistent" threshold is a reasonable test to use especially in light of the serious consequence to a listed issuer for denying facilities of the market (which will in most cases put the issuer on a path from which they can ever return). Some breaches by the listed issuers may be inadvertent and whether a breach of the Listing Rules occurred is usually subject to the actual circumstances and the interpretation of a Listing Rule, which is in turn subject to a very high degree of discretion from the Stock Exchange. A listed issuer may have a reasonable interpretation of a rule based on a plain language reading of the rule that is not accepted by the Stock Exchange. As such, a higher threshold should continue to be used for denial of facilities of the market and not a mere breach.

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.

Without a pre-defined list of circumstances where this may be imposed, we consider that it places a disproportionately high amount of discretion in the Stock Exchange's hands to pick and choose who to penalize, and how to penalize them. We consider there to be significantly more value in having rules that are specific, clear, easily understood by the market, and subject to a lower degree of regulatory discretion.

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.

We believe it should be up to listed issuers and their shareholders to determine whether a particular individual is suitable to continue to serve as a director. Therefore, a more appropriate sanction would be requiring the relevant individual to be subject to re-election at the next annual general meeting.

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.

See responses above.

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 directors of a listed company are ultimately responsible for exercising oversight on the company's affairs and how they are managed and it is therefore not appropriate to extend secondary liability to other parties. In particular, third parties such as advisers have no control over how a listed company or its directors ultimately act on their advice – a client could choose to ignore the advice of an adviser completely. In any event, to the extent that they play a role in causing a document to be issued by a listed company, advisers are already potentially liable under the Securities and Futures Ordinance. In addition, legal advisers (as with accountants) are also regulated by a professional body with its own code of conduct for its members to abide by. The Stock Exchange can therefore also report lawyers to the law society (or accountants to the HKICPA) if it is of the view that they have committed any misconduct. Notwithstanding the above, we agree that it is reasonable to extend liability to supervisors of PRC issuers given the specific role that supervisors play in such companies.

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.

See response to Q10 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.

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.

See response to Q10 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.

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.

See response to Q10 above.

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.

See response to Q10 above. This is already in substance covered by section 384 of the Securities and Futures Ordinance.

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.

We had a recent experience where the Listing Committee refused to provide written reasons (beyond the initial decision, which was essentially encapsulated in a single short paragraph). The short time frame effectively limited the client's ability to file a meaningful review application. We therefore think the time frame should run from the later of the date of issue of (a) the decision, (b) written reasons or (c) refusal to issue written reasons.

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 -