

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.

We support the Exchange’s effort and appreciate the need to step up market compliance standards. However, we envisage that an overly burdensome disciplinary regime could increase listed companies’ difficulties in attracting and retaining prominent market players (particularly to serve as directors / INEDs) and talents to generate value for investors. So a careful balance may need to be struck.

PII Statement is a very heavy sanction in that an individual subject to a PII Statement would not in normal circumstances be able to continue to act as director of the listed company, or to secure any senior position in any other listed company, where his suitability has been called into question openly. Therefore, a PII Statement, being a sanction punitive in nature, should only be imposed against an individual in respect of “serious and persistent” non-compliance of the Listing Rules.

Further, as we understand a PII Statement is not intended to have an indefinite effect, the Exchange may wish to consider whether a time period should be specified in a PII Statement so that the subject individual (and his potential employers / listed companies in general) would know how long such sanction is meant to last.

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.

A director who fails to ensure Listing Rules compliance of the listed company could be very experienced and competent in operational and other business matters. So there would be circumstances where interests of investors are better served by allowing the director (subject to a PII Statement) to continue to serve as senior management responsible for operational or other business function (whether at listed company or subsidiary level), provided he has to work within the internal control system of the listed company (which system should have been "remedied" if it is the reason why compliance failure has happened in the first place).

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.

Our comments on Q1 above similarly apply. We suggest that such heavy sanction should only be imposed in respect of "serious and persistent" non-compliance of the Listing Rules.

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.

A PII Statement, which already indicates that the subject individual's office may be prejudicial to the interest of investors, by itself should be a statement strong enough to ordinary investors. The Exchange therefore may wish to consider whether it is necessary to create a new and separate sanction of imposing a Director Unsuitability Statement.

Our comments on Q1 above similarly apply if this new sanction is to be adopted. We suggest that this punitive sanction should only be imposed in respect of "serious and persistent" non-compliance of the Listing Rules, and the Exchange may wish to consider whether a time period should be specified in 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.

Reference is made to paragraph 93(d) of the Consultation Paper. In a shareholders’ fight or hostile takeover situation, it is a commercial matter as to how the controlling shareholder (being a substantial shareholder) would like to strategize its action to defend its position. Furthermore, in the case of a State-owned listed company, the controlling shareholder may not be in a position to place down its shares unless the relevant PRC regulatory requirements are met (e.g. placing price not lower than the per share NAV of the listed company, which is subject to the then prevailing market conditions). The controlling shareholder’s position would be seriously prejudiced if it is forced to placed down where the lack of public float is a result of something beyond its control (e.g. another shareholder or group of shareholders increasing shareholding in the listed company). The Exchange may wish to consider whether it is appropriate to include “substantial shareholder” as a “Relevant Party” in these cases.

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.

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.

The scope of "any person who performs managerial functions under the directors' immediate authority" appears overly broad. It would create uncertainty as to who would be regarded as senior management, and thereby defeat the purpose to have "senior management" defined in the first place.

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.

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.

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 -