



[By email \(response@hkex.com.hk\)](mailto:response@hkex.com.hk)

9 October 2020

Our Ref.: C/CFAP, M127576

Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place
Central
Hong Kong

Dear Sirs,

[Re: Consultation Paper – Review of Listing Rules relating to Disciplinary Powers and Sanctions](#)

Please find attached a questionnaire response to the above consultation. The consultation paper has been considered by the Hong Kong Institute of Certified Public Accountants' Corporate Finance Advisory Panel.

While, in principle, we are supportive of the introduction of more effective and graduated disciplinary and sanctioning powers by the Exchange, we have concerns about the lowering or removal of thresholds for taking action, including the threshold of "wilful or persistent failure" to discharge responsibilities, under the existing Listing Rules 2A.09(7) and (9). Removing such thresholds could potentially open the door to the imposition of severe sanctions for relatively less significant and inadvertent breaches of the Rules. Even if this not the intention, the wide discretion to initiate action that these changes could give to the Exchange will create uncertainty. While we agree with a number of the specific proposals, as indicated in our response, our agreement is predicated on this fundamental point being addressed.

We also have concerns about the extent to which the "Relevant Parties" subject to disciplinary actions and sanctions will be expanded to cover professional advisers, under a form of "secondary liability", which is not made clear in the proposed detailed wording changes to the Rules. We appreciate that section 23(8) of the Securities and Futures Ordinance (Cap. 571) will continue to apply in relation to arrangements between the Exchange and relevant regulatory bodies, including the Institute, as the consultation paper makes clear. However, there will nevertheless be implications for the kinds of cases that may in future be referred to those bodies and this needs to be considered carefully.

Our detailed comments are contained the questionnaire. We hope that you find these to be helpful and constructive.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

Should you have any questions on this submission, please feel free to contact me at the Institute on 2287 7084 or at peter@hki CPA.org.hk.

Yours faithfully,

Peter Tisman
Director, Advocacy and Practice Development

PMT/pk
Encl.



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

QUESTIONNAIRE ON REVIEW OF LISTING RULES RELATING TO DISCIPLINARY POWERS AND SANCTIONS

We invite interested parties to respond to the Consultation Paper on Review of Listing Rules relating to Disciplinary Powers and Sanctions (“**Consultation Paper**”), which can be downloaded 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>.

This Questionnaire contains the Privacy Policy Statement; Part A: General Information of the Respondent; and Part B: Consultation Questions.

All responses should be made in writing by completing and returning to HKEX both Part A and Part B of this Questionnaire no later than **Friday, 9 October 2020** by one of the following methods:

By mail or
hand delivery to: Hong Kong Exchanges and Clearing Limited
8th Floor, Two Exchange Square
8 Connaught Place
Central
Hong Kong

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

By fax to: (852) 2524-0149

By e-mail to: response@hkex.com.hk

Please mark in the subject line:

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

Our submission enquiry number is (852) 2840-3844.

The names of persons who submit comments together with the whole or part of their submissions may be disclosed to members of the public. If you do not wish your name to be published please indicate so in Part A.

Definitions

The terms used in Part B of this questionnaire are defined in the Consultation Paper.

Privacy Policy Statement

Hong Kong Exchanges and Clearing Limited, and from time to time, its subsidiaries (together the "**Group**") (and each being "**HKEX**", "**we**", "**us**" or "**member of the Group**" for the purposes of this Privacy Policy Statement as appropriate) recognise their responsibilities in relation to the collection, holding, processing, use and/or transfer of personal data under the Personal Data (Privacy) Ordinance (Cap. 486) ("**PDPO**"). Personal data will be collected only for lawful and relevant purposes and all practicable steps will be taken to ensure that personal data held by us is accurate. We will use your personal data which we may from time to time collect in accordance with this Privacy Policy Statement.

We regularly review this Privacy Policy Statement and may from time to time revise it or add specific instructions, policies and terms. Where any changes to this Privacy Policy Statement are material, we will notify you using the contact details you have provided us with and, where required by the PDPO, give you the opportunity to opt out of these changes by means notified to you at that time. Otherwise, in relation to personal data supplied to us through the HKEX website or otherwise, continued use by you of the HKEX website or your continued relationship with us shall be deemed to be your acceptance of and consent to this Privacy Policy Statement, as amended from time to time.

If you have any questions about this Privacy Policy Statement or how we use your personal data, please contact us through one of the communication channels set out in the "Contact Us" section below.

We will take all practicable steps to ensure the security of the personal data and to avoid unauthorised or accidental access, erasure or other use. This includes physical, technical and procedural security methods, where appropriate, to ensure that the personal data may only be accessed by authorised personnel.

Please note that if you do not provide us with your personal data (or relevant personal data relating to persons appointed by you to act on your behalf) we may not be able to provide the information, products or services you have asked for or process your requests, applications, subscriptions or registrations, and may not be able to perform or discharge the Regulatory Functions (defined below).

Purpose

From time to time we may collect your personal data including but not limited to your name, mailing address, telephone number, email address, date of birth and login name for the following purposes:

1. to process your applications, subscriptions and registration for our products and services;
2. to perform or discharge the functions of HKEX and any company of which HKEX is the recognised exchange controller (as defined in the Securities and Futures Ordinance (Cap. 571)) ("**Regulatory Functions**");
3. to provide you with our products and services and administer your account in relation to such products and services;
4. to conduct research and statistical analysis;
5. to process your application for employment or engagement within HKEX to assess your suitability as a candidate for such position and to conduct reference checks with your previous employers; and
6. other purposes directly relating to any of the above.

Direct marketing

Where you have given your consent and have not subsequently opted out, we may also use your name, mailing address, telephone number and email address to send promotional materials to you and conduct direct marketing activities in relation to HKEX financial services and information services, and financial services and information services offered by other members of the Group.

If you do not wish to receive any promotional and direct marketing materials from us or do not wish to receive particular types of promotional and direct marketing materials or do not wish to receive such materials through any particular means of communication, please contact us through one of the communication channels set out in the "Contact Us" section below. To ensure that your request can be processed quickly please provide your full name, email address, log in name and details of the product and/or service you have subscribed.

Identity Card Number

We may also collect your identity card number and process this as required under applicable law or regulation, as required by any regulator having authority over us and, subject to the PDPO, for the purpose of identifying you where it is reasonable for your identity card number to be used for this purpose.

Transfers of personal data for direct marketing purposes

Except to the extent you have already opted out we may transfer your name, mailing address, telephone number and email address to other members of the Group for the purpose of enabling those members of the Group to send promotional materials to you and conduct direct marketing activities in relation to their financial services and information services.

Other transfers of your personal data

For one or more of the purposes specified above, your personal data may be:

1. transferred to other members of the Group and made available to appropriate persons in the Group, in Hong Kong or elsewhere and in this regard you consent to the transfer of your data outside of Hong Kong;
2. supplied to any agent, contractor or third party who provides administrative, telecommunications, computer, payment, debt collection, data processing or other services to HKEX and/or any of other member of the Group in Hong Kong or elsewhere; and
3. other parties as notified to you at the time of collection.

How we use cookies

If you access our information or services through the HKEX website, you should be aware that cookies are used. Cookies are data files stored on your browser. The HKEX website automatically installs and uses cookies on your browser when you access it. Two kinds of cookies are used on the HKEX website:

Session Cookies: temporary cookies that only remain in your browser until the time you leave the HKEX website, which are used to obtain and store configuration information and administer the HKEX website, including carrying information from one page to another as you

browse the site so as to, for example, avoid you having to re-enter information on each page that you visit. Session cookies are also used to compile anonymous statistics about the use of the HKEX website.

Persistent Cookies: cookies that remain in your browser for a longer period of time for the purpose of compiling anonymous statistics about the use of the HKEX website or to track and record user preferences.

The cookies used in connection with the HKEX website do not contain personal data. You may refuse to accept cookies on your browser by modifying the settings in your browser or internet security software. However, if you do so you may not be able to utilise or activate certain functions available on the HKEX website.

Compliance with laws and regulations

HKEX and other members of the Group may be required to retain, process and/or disclose your personal data in order to comply with applicable laws and regulations or in order to comply with a court order, subpoena or other legal process (whether in Hong Kong or elsewhere), or to comply with a request by a government authority, law enforcement agency or similar body (whether situated in Hong Kong or elsewhere) or to perform or discharge the Regulatory Functions. HKEX and other members of the Group may need to disclose your personal data in order to enforce any agreement with you, protect our rights, property or safety, or the rights, property or safety of our employees, or to perform or discharge the Regulatory Functions.

Corporate reorganization

As we continue to develop our business, we may reorganise our group structure, undergo a change of control or business combination. In these circumstances it may be the case that your personal data is transferred to a third party who will continue to operate our business or a similar service under either this Privacy Policy Statement or a different privacy policy statement which will be notified to you. Such a third party may be located, and use of your personal data may be made, outside of Hong Kong in connection with such acquisition or reorganisation.

Access and correction of personal data

Under the PDPO, you have the right to ascertain whether we hold your personal data, to obtain a copy of the data, and to correct any data that is inaccurate. You may also request us to inform you of the type of personal data held by us. All data access requests shall be made using the form prescribed by the Privacy Commissioner for Personal Data ("**Privacy Commissioner**") which may be found on the official website of the Office of the Privacy Commissioner or via this link: <https://www.pcpd.org.hk/english/publications/files/Dforme.pdf>

Requests for access and correction of personal data or for information regarding policies and practices and kinds of data held by us should be addressed in writing and sent by post to us (see the "Contact Us" section below).

A reasonable fee may be charged to offset our administrative and actual costs incurred in complying with your data access requests.

Termination or cancellation

Should your account or relationship with us be cancelled or terminated at any time, we shall cease processing your personal data as soon as reasonably practicable following such cancellation or termination, provided that we may keep copies of your data as is reasonably required for archival purposes, for use in relation to any actual or potential dispute, for the purpose of compliance with applicable laws and regulations and for the purpose of enforcing any agreement we have with you, for protecting our rights, property or safety, or the rights, property or safety of our employees, and for performing or discharging our functions, obligations and responsibilities.

General

If there is any inconsistency or conflict between the English and Chinese versions of this Privacy Policy Statement, the English version shall prevail.

Contact us

By Post:
Personal Data Privacy Officer
Hong Kong Exchanges and Clearing Limited
8/F., Two Exchange Square
8 Connaught Place
Central
Hong Kong

By Email:
DataPrivacy@HKEX.COM.HK

Part A General Information of the Respondent

(1) Please state whether your response represents your personal or your company/entity's view by checking () the boxes below and filling in the information as appropriate:

Company/Entity view

Company/Entity name*:	Hong Kong Institute of Certified Public Accountants		
Company/Entity type*:	<input type="checkbox"/> HKEX Participant	<input type="checkbox"/> Accounting Firm	
	<input type="checkbox"/> Corporate Finance Firm/ Bank	<input type="checkbox"/> Investment Manager	
	<input type="checkbox"/> Law Firm	<input checked="" type="checkbox"/> Professional body / Industry association	
	<input type="checkbox"/> Listed Company	<input type="checkbox"/> Other	
Contact person*:	Mr	Peter Tisman	
Title:	Director, Advocacy and Practice Development		
Phone no.*:	2287 7084	Email address:	peter@hkcipa.org.hk

Personal view

Respondent's full name*:	Mr/Ms/Mrs		
Phone no.*:		Email address:	
Among the following, please select the one best describing your position*:			
<input type="checkbox"/> Listed company staff	<input type="checkbox"/> HKEX participant staff	<input type="checkbox"/> Retail investor	
<input type="checkbox"/> Institutional investor	<input type="checkbox"/> Other		

Important note: All fields marked with an asterisk (*) are mandatory. HKEX may use the contact information above to verify the identity of the respondent. Responses without valid contact details may be treated as invalid.

(2) Disclosure of identity

HKEX may publish the identity of the respondent together with Part B of this response to the members of public. Respondents who do not wish their identities to be published should tick the box below:

I/We do not wish to disclose my/our identity to the members of the public.

Signature (with Company/Entity Chop if the response represents the company's view)

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 agree that a PII (prejudicial to the interests of investors) Statement should be able to be made whether or not an affected individual continues in office at the time of the PII Statement. However, we do not agree with removing the threshold of “wilful or persistent failure” by a director to discharge his (or her) responsibilities under the listing rules, without replacing it with something else. This would be too open-ended and, in principle, put a director, or member of the senior management (under the expanded rule) who may make a single inadvertent breach, with a low likelihood of significant consequences for shareholders or other parties (the operative wording being, “may cause prejudice to the interest of investors”), at risk of a severe sanction. In the context of sanctions under the law, generally, for example, “reckless” conduct may be seen as a lower threshold than wilful conduct, while still requiring a mental element to be established. This might be one alternative threshold that the Exchange could consider.

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 agree, subject to our response to Question 1.

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 agree.

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.

We agree.

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 agree.

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 our response to 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.

We agree, subject to our response to Question 6.

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 agree.

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.

We agree.

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.

We note and welcome the commitment, at paragraph 97 of the consultation paper, that section 23(8) of the Securities and Futures Ordinance (Cap. 571) will continue to apply in relation to arrangements between the Exchange and relevant regulatory bodies. At the same time, we observe that the concept of “secondary liability” does not seem to be reflected in the proposed wording changes to the rules, which simply expand the list of parties that may be sanctioned.

Furthermore, paragraph 92 of the consultation paper indicates that the determination as to whether a person is subject to secondary liability for rule breaches lies with the Exchange, and some examples are set out in paragraph 93. We would suggest, however, that additional clarification is needed regarding how a decision would be made. The wording “has caused by...omission or knowingly participated in a contravention,” reflects, potentially, a wide scope. There may be, for example, circumstances in which professionals may be responsible for a specific piece of the work only within a project, and may not get access to all the documents in a transaction, or sometimes they may simply be copied in on a mass project email. It is unclear whether, under such circumstances, they may be at risk of “secondary liability.”

The examples in paragraph 93 include a company secretary. However, in some cases, the company secretary’s role may be primarily to assist on the preparation of public announcements and authorisation for publication, and they may not be given full access of all the information relating to the transactions. This may well be the case where the company secretary’s role is outsourced to an external service provider.

In circumstances where “secondary liability” for rule breaches is extended to company secretaries, purported breaches should be referred by the Exchange to the relevant professional bodies in Hong Kong for follow up and possible disciplinary action.

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.

We agree.

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.

We agree.

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.

Generally, we agree that parties responding to enquiries or investigations by the Exchange should provide information that is accurate, complete and up to date, i.e., not inaccurate, false or misleading, including by deliberate omission. However, we have some concern about the statement in paragraph 107 of the consultation paper that parties should provide “all information relevant to [the Exchange’s] enquiries even if it has not requested the specific information.” This would appear to suggest that the Exchange could embark on a “fishing expedition” and potentially penalise parties for not voluntarily providing information that the Exchange subsequently deemed to be relevant. This would be going too far.

We would refer you the “Report on Improving Corporate Governance in Hong Kong” (December 2017) issued by the Hong Kong Institute of Certified Public Accountants (co-authored by Syren Johnstone and Say H. Goo). In order to strengthen corporate governance and avenues for enforcement, Recommendation C4.5.2 therein proposed that listed issuers and their directors be subject to (1) a continuing obligation to promptly report breaches of the listing rules and (2) an annual obligation to certify compliance with the listing rules, subject to any disclosure under (1). It was also proposed that these disclosures be brought within the ambit of section 384(3) of the Securities and Futures Ordinance. This is an approach that could be considered further to enhance disclosures by listed companies and their boards.

Recommendation C4.6.1 in the above report notes that the Exchange already has ostensibly broad disciplinary powers, e.g., under the existing Rule 2A.09 (6) and (10) (2A.10 (11) and (12) of the proposed revised rules) that could be used to better effect.

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 definition of "senior management", at paragraph 115 of the consultation paper, includes a company secretary generally. However, in some cases, as indicated in our response to Question10, company secretaries' role may, in practice, be limited and they may not be given full access of all the information on the transactions, especially where the company secretary function is outsourced to an external service provider. A distinction may need to be drawn between in-house company secretaries and external providers.

We would also query whether arm (b) of the definition is sufficiently clear to target only senior-level management staff. In this regard, we note that European Union Regulation 596/2014 refers specifically to "a member of the administrative, management or supervisory body of that entity" or "a senior executive", while the listing rules or requirements of the Shanghai Stock Exchange and Bursa Malaysia also seem to adopt a more targeted approach than the definition proposed in paragraph 115, in terms of the seniority of the persons included.

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.

Yes, but generally this should be limited to senior management staff, as for "Relevant Parties" within listed issuers and their subsidiaries.

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.

We agree.

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.

We agree.

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.

The implications of this proposal are unclear and the scope seems vague. Is it proposed, for example, that a breach of any undertaking given to, or agreement with the Exchange will, in future, be regarded as tantamount to a breach of 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.

We agree.

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.

We note and welcome the commitment, at paragraph 142 of the consultation paper, that section 23(8) of the Securities and Futures Ordinance (Cap. 571) will continue to apply in relation to arrangements between the Exchange and relevant regulatory bodies.

Our agreement with this proposal is also subject to clarifying in the rules that the obligation under (a) of paragraph 141, i.e., that a professional adviser's obligation is to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of, and their obligations under, the rule(s), is limited to those rules on which the professional adviser is advising and related rules, not the whole of the listing rules.

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.

We agree.

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.

We agree.

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 agree.

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.

We agree.

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.

We agree.

- End -