



Hong Kong Capital Markets Update

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HKEX's Consultation on Review of Disciplinary Powers and Sanctions

On 7 August 2020, the Stock Exchange of Hong Kong Limited (the Exchange) published a [consultation paper](#) (Consultation) seeking market views on proposed changes to the Listing Rules relating to disciplinary powers and sanctions. The deadline for submissions is 9 October 2020.

Highlights

- The Exchange proposed to enhance the existing disciplinary regime including widening the range of reputational sanctions and elevating the disciplinary and follow-on actions against individuals, which include directors and senior management who are responsible for breaching the Listing Rules.
- The deadline for submitting responses to the Consultation is 9 October 2020.

Background

The Exchange's disciplinary powers and sanctions are set out in Chapter 2A of the Listing Rules. This disciplinary regime was first effective from 1993, with only minor modifications made in 2005, 2007, 2009 and 2010.

The objective of disciplinary regime is to protect the public and the integrity of the market. The Exchange reviews the regime to ensure that it remains fit for purpose, continues to promote market quality and aligns with stakeholder expectations and international best practice.

The Exchange aims to have available a spectrum of graduated sanctions, ranging from private reprimand, public statement involving criticism, public censure, other statements of concern in respect of an individual's conduct, denial of facilities of the market, trading suspension to cancellation of listing. The Exchange also proposes to enhance certain existing sanctions to allow effective regulatory response to address different types of misconduct. To this end, particular emphasis has been placed on instances of misconduct by individuals in relation to a breach of the Listing Rules.

Key proposals

The key proposal and enhancements to the existing disciplinary regime are as follows:

- 1) lowering existing thresholds for public statements regarding individuals;
- 2) enhancing follow-on actions in relation to public statements regarding individuals;
- 3) removing existing thresholds for denying the facilities of the market to listed issuers;
- 4) introducing director unsuitability statements against individuals;
- 5) enhancing disclosure requirements for directors and senior management members subject to public sanctions;
- 6) introducing secondary liability for the Listing Rule breaches;
- 7) defining “senior management” within listed issuers and their subsidiaries;
- 8) expanding the disciplinary regime to new parties such as guarantors of structured products and parties who enter into an agreement or undertaking with the Exchange; and
- 9) including an explicit provision in the Rules that there is an obligation to provide accurate, complete and up-to-date information and explanation to the Exchange when responding to its enquiries or investigations.

The summary of the Exchange’s proposals is set out in **Appendix 1**.

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If you have any questions about the matters discussed in this publication, please feel free to contact the following capital markets partners and directors.

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Appendix 1: Summary of proposals

The summary of the Exchange's proposals is set out as follows:

	Current sanctions	Future state	Relevant Parties ¹	
			Against listed issuers and other entities	Against individuals
Reputational sanctions	Private reprimand	Enhance by enabling publication of the <i>substance</i> (without disclosing the identity of the parties)	√	√
	Public statement involving criticism	Retain	√	√
	Public censure	Retain	√	√
	Pll Statement	Enhance by: <ul style="list-style-type: none"> (a) Lowering existing thresholds of 'wilful' or 'persistent' (failure to discharge responsibilities) (b) Applying to former and current directors and senior management members of named listed issuers and their subsidiaries 	x	Directors and senior management members of named listed issuers and their subsidiaries only
		<u>New sanction</u> : Director Unsuitability Statement against directors if serious or repeated failure by director to discharge responsibilities	x	Directors of named listed issuers and their subsidiaries only

¹ Relevant Parties are: (1) a listed issuer or any of its subsidiaries; (2) any director of a listed issuer or any of its subsidiaries (or any alternate of such director); (3) any member of senior management of a listed issuer or any of its subsidiaries; (4) any substantial shareholder of a listed issuer; (5) any significant shareholder; (6) any professional adviser of a listed issuer or any of its subsidiaries; (7) any employee of a professional adviser of a listed issuer or any of its subsidiaries; (8) any authorised representative of a listed issuer; (9) any supervisor of a PRC issuer; (10) any guarantor of an issuer in the case of a guaranteed issue of debt securities or structured products; and (11) any other party who gives an undertaking to or enters into an agreement with the Exchange.

	Current sanctions	Future state	Relevant Parties	
			Against listed issuers and other entities	Against individuals
Remedial sanctions	Suspension or cancellation of listing as follow-on action if individual subject to PII Statement remains in office (of the specific issuer)	Retain Enhance by including denial of facilities of the market as follow-on action This will also apply to the new Director Unsuitability Statement	Listed issuers only ²	x
	Denial of facilities of the market	Enhance by: (a) Removing existing thresholds of ' <i>wilful</i> ' or ' <i>persistent</i> ' (failure to discharge responsibilities) (b) Including fulfilment of specified conditions	Listed issuers only	x
	Suspension or cancellation of listing	Retain	Listed issuers only	x
	Rectification or remedial sanctions	Retain	√	√
Ancillary or operational sanctions	Ban on professional advisers	Enhance by extending the ban to cover representation of any or a specified party	Professional advisers only	Employees of professional advisers only
	Report the offender's conduct to another regulatory authority	Retain	√	√
	Take such other action as appropriate	Retain	√	√

² Since any follow-on actions may impact the listed issuer, the listed issuer will be made a party to disciplinary proceedings despite the fact that there may be no assertion of breach against it.