

# Hong Kong Capital Markets Update

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## HKEX's consultation conclusions on review of disciplinary powers and sanctions

On 20 May 2021, the Stock Exchange of Hong Kong Limited (the "Exchange") published the [conclusions](#) of its consultation ("Conclusions") on its review of Listing Rules relating to disciplinary powers and sanctions. The way forwards is summarised below:

### Way Forwards

All proposals will be adopted with a minor modification

- The Exchange will **implement all the proposals** relating to disciplinary powers and sanctions, with a **minor modification** in relation to **secondary liability**.
- See **Appendix 1** for the **summary of proposals adopted**.
- See **Appendix 2** for the **summary of parties** against which the **disciplinary sanctions** may be made.

### Implementation date

- The revised Listing Rules will be implemented with effect from **3 July 2021**.

### Background

To reflect the commitment to ensure the disciplinary regime is effective in delivering regulatory outcomes, the Exchange published a [consultation paper](#) (the "Consultation Paper") on 7 August 2020 seeking market views on proposed changes to the Listing Rules relating to disciplinary powers and sanctions (for the summary, please refer to our [Capital Markets Update Issue 2020-04](#)). The consultation period ended on 9 October 2020.

The key focus of the Consultation Paper is to ensure that the regime remains fit for purpose, continues to promote market quality and aligns with stakeholder expectations and international best practices. The proposals are aimed at making available to the Exchange a spectrum of graduated disciplinary sanctions and, hence, place particular emphasis on instances of misconduct by individuals in relation to Listing Rules breaches. The Exchange also proposed to include additional circumstances where disciplinary sanctions can be imposed on parties subject to the Exchange's disciplinary regime.

### Proposals adopted

The Exchange concluded that all the proposals outlined in the Consultation Paper should be adopted with one minor modification. The key changes to the existing disciplinary regime which will be adopted 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 Listing Rules 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 Listing 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 only modification to the original proposals is a new note to be included in the Listing Rules to provide additional clarity in relation to the secondary liability.

The summaries of the Exchange’s proposals to be adopted and parties that may be affected by disciplinary sanctions are set out in **Appendix 1** and **Appendix 2** respectively.

### Implementation date

The revised Listing Rules will be implemented with effect from 3 July 2021.

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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 adopted

Original proposals		Way forward
<b>Proposed enhancements to existing disciplinary sanctions</b>		
1.	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.	Adopt (Rule 2A.10(4))
2.	Extend the scope of a PII Statement to include directors and senior management of the relevant listed issuer and any of its subsidiaries.	Adopt (Rule 2A.10(4))
3.	Enhance follow-on actions where an individual continues to be a director or senior management of the named listed issuer after a PII Statement has been made against him.	Adopt (Rule 2A.10A(2)) and Note 4 to Rule 2A.10
4.	Require named listed issuers to include a reference to the PII Statement in all its announcements and corporate communications unless and until the individual subject to a PII Statement with follow-on action is no longer its director or senior management member.	Adopt (Rule 2A.10A(1))
5.	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.	Adopt (Appendix 1A, paragraph 41(1); Appendix 1B, paragraph 34; Appendix 1C, paragraph 46; Appendix 1E, paragraph 41(1); Appendix 1F, paragraph 30; and Appendix 16, paragraph 12)
6.	Remove the existing threshold for ordering the denial of facilities of the market.	Adopt (Rule 2A.10(6))
7.	Include fulfilment of specified conditions in respect of the denial of facilities of the market.	Adopt (Rule 2A.10(6))
8.	Introduce the Director Unsuitability Statement as a new sanction.	Adopt (Rule 2A.10(5))
9.	Make the follow-on actions and publication requirements in respect of PII Statements also applicable to Director Unsuitability Statements.	Adopt (Rules 2A.10A(1) and (2))

## Appendix 1: Summary of proposals adopted (continued)

Original proposals		Way forward
<b>Additional circumstances where disciplinary sanctions can be imposed</b>		
10.	Impose secondary liability on Relevant Parties if they have “ <i>caused by action or omission or knowingly participated in a contravention of the Listing Rules</i> ”.	<ul style="list-style-type: none"> <li>• Adopt</li> <li>• Add Note to new Rule (Rule 2A.10B(3) and Note)</li> </ul>
11.	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.	Adopt (Rule 2A.10B(1))
12.	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.	Adopt (Rule 2A.10B(3))
13.	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.	Adopt (Rule 2.12B)
<b>Details of definitions and inclusions within “<i>Relevant Parties</i>”</b>		
14.	Propose defining “ <i>senior management</i> ”.	Adopt (Rule 2A.09(2)(c))
15.	Include employees of professional advisers of listed issuers and their subsidiaries as a Relevant Party under the Rules.	Adopt (Rule 2A.09(1)(f))
16.	Include guarantors of structured products as a Relevant Party under the Rules.	Adopt (Rule 2A.09(1)(i))
17.	Include guarantors of an issue of debt securities as a Relevant Party under the Main Board Rules	Adopt (Rule 2A.09(1)(i))
18.	Include parties who give an undertaking to, or enter into an agreement with, the Exchange as Relevant Parties under the Rules.	Adopt (Rule 2A.09(1)(j))
<b>Proposed minor Rule amendments</b>		
19.	Extend the ban on professional advisers to cover banning of representation of any or a specified party.	Adopt (Rule 2A.10(9))

**Appendix 1: Summary of proposals adopted (continued)**

<b>Original proposals</b>		<b>Way forward</b>
20.	Include express obligations on professional advisers when acting in connection with Rule matters.	Adopt (Rule 2A.09(4))
21.	“ <i>Business day</i> ” be used as the benchmark for counting the periods for filing review applications, and for requesting or providing written reasons for decisions.	Adopt (Rules 2A.12 and 2A.13)
22.	All review applications must be served on the Secretary.	Adopt (Rule 2A.12)
23.	Counting of the period for filing review applications be from the date of issue of the decision or the written reasons.	Adopt (Rules 2A.12 and 2B.08)
24.	Counting of the period for requesting written reasons be from the date of issue of the decision.	Adopt (Rules 2A.13 and 2B.13(1))
25.	Counting of the period for providing written reasons be from the date of receipt of the request.	Adopt (Rule 2A.13)

## Appendix 2: Summary of parties against which the disciplinary sanctions may be made

Sanctions (relevant Rule)		Relevant Parties					
		Listed issuers	Directors	Senior management members	Professional advisers (and/or their employees)	Substantial shareholders	Other entities / individuals
Reputational sanctions	Private reprimand (Rule 2A.10(1))	✓	✓	✓	✓	✓	✓
	Public statement involving criticism (Rule 2A.10(2))	✓	✓	✓	✓	✓	✓
	Public censure (Rule 2A.10(3))	✓	✓	✓	✓	✓	✓
	PII Statement (Rule 2A.10(4))	n/a	✓	✓	x	x	x
	Director Unsuitability Statement (Rule 2A.10(5))	n/a	✓	x	x	x	x
Remedial sanctions	Follow-on actions* (Rule 2A.10A(2))	✓	n/a	n/a	n/a	n/a	n/a
	Denial of facilities of the market (Rule 2A.10(6))	✓	n/a	n/a	n/a	n/a	n/a
	Suspension or cancellation of listing (Rules 2A.10(7) and (8))	✓	n/a	n/a	n/a	n/a	n/a
	Rectification or remedial sanctions (Rule 2A.10(11))	✓	✓	✓	✓	✓	✓
Ancillary or operational sanctions	Ban on professional advisers (Rule 2A.10(9))	n/a	n/a	n/a	✓	n/a	n/a
	Report the offender's conduct to another regulatory authority (Rule 2A.10(10))	✓	✓	✓	✓	✓	✓
	Take such other action as appropriate (Rule 2A.10(12))	✓	✓	✓	✓	✓	✓

\* Denial of facilities of the market, suspension or cancellation of listing as follow-on action if individual subject to PII Statement or Director Unsuitability Statement remains in office (of the specific issuer).