

Consultation Paper

Review of Listing Rules Relating to Disciplinary Powers and Sanctions



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The Stock Exchange of Hong Kong Limited (the **Exchange**), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**), invites written comments on the matters discussed in this paper, or comments on related matters that might have an impact upon the matters discussed in this paper, on or before **9 October 2020**. You may respond by completing the questionnaire which is available at: <https://www.hkex.com.hk/-/media/HKEX-Market/News/Market-Consultations/2016-Present/August-2020-Disciplinary-Powers/Questionnaire/cp202008q.docx>

Written comments may be sent:

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

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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.

Respondents are reminded that the Exchange will publish responses on a named basis. If you do not wish your name to be disclosed to members of the public, please state so when responding to this paper. Our policy on handling personal data is set out in **Appendix III**.

Submissions received during the consultation period by **9 October 2020** will be taken into account before the Exchange decides upon any appropriate further action and a consultation conclusions paper will be published in due course.

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EXECUTIVE SUMMARY

Purpose

1. This consultation invites market views in relation to proposed changes to the disciplinary regime of the Exchange.

Background

2. The Listing Rules (**Rules**) concerning the disciplinary regime of the Exchange¹ have been in place since 1993 without major amendment (minor modifications were made in 2005, 2007, 2009 and 2010²).
3. As stated in the 2013, 2014 and 2015 Listing Committee Reports, the Listing Division was conducting a review of the Exchange's disciplinary powers and sanctions under Chapter 2A of the Rules. The scope of the review included the parties against whom the Exchange may exercise its disciplinary powers; the current range of sanctions under the Rules and the feasibility of introducing other sanctions into the disciplinary regime; and the structure and composition of the decision-making bodies and the levels of review.
4. The Listing Division presented various proposals to the Listing Committee in 2015. However, in light of the publication of the 'Joint Consultation Paper on Proposed Enhancements to the Exchange's Decision-Making and Governance Structure for Listing Regulation' in 2016 (**Joint Consultation**), the Exchange postponed further work on the various proposals.
5. The Joint Consultation concluded in 2017. The Exchange has since refreshed its previous review of the disciplinary regime, including considering the type of Rule breaches in recent years and the level of seriousness of the misconduct in coming up with the proposals presented in this paper.

Objectives

6. Disciplinary sanctions should be imposed to protect the public and the integrity of the market and facilities the Exchange operates, improve corporate governance, remedy conduct in breach of the Rules, and deter both the respondent(s) and all other parties subject to the disciplinary jurisdiction of the Listing Committee from engaging in the same or any similar misconduct.

¹ MB Rules 2A.09 and 2A.10 and GEM Rules 3.10 and 3.11.

² Minor amendments were made in relation to parties subject to disciplinary action. For example, independent financial advisers were included with effect from 1 January 2005. Sponsors and compliance advisers were removed with effect from 1 January 2007 as were qualified accountants (from 1 January 2009) and management shareholders (from 3 June 2010).

7. Our review has focused on ensuring that the regime remains fit for purpose, continues to promote market quality and aligns with stakeholder expectations and international best practice.
8. The disciplinary sanctions currently provided under the Rules are set out in Rule 2A.09. Some of the sanctions have not been imposed in any disciplinary action taken by the Exchange for legal or technical reasons. The sanctions which are frequently imposed are reputational sanctions coupled with directions for remedial action. They are deployed to respond to a wide ranging type of misconduct.
9. We aim 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, amongst others.
10. We also propose to enhance some of our existing sanctions so that an effective regulatory response can be delivered to address different types of misconduct with the aim of improving market quality. To this end, we have placed particular emphasis on instances of misconduct by individuals in relation to Rule breaches.
11. Currently, anomalies also exist between the Main Board and the GEM regimes in respect of parties which are subject to the Exchange's disciplinary regime. We propose to ensure that they are aligned and consistent. Corresponding changes will be made to the GEM Listing Rules (**GEM Rules**) pending the outcome of this consultation.
12. In conducting this review and putting forward the proposals set out in this paper, we have taken into account the continued requirement to ensure procedural fairness as part of the Exchange's disciplinary process and the unique nature and structure of our current disciplinary process. As a result, some of the proposals may not necessarily align with other regulatory bodies or exchanges operating in different jurisdictions.

Key Proposals

13. The key proposals and enhancements to the existing disciplinary regime are as follows:
 - (a) lowering existing thresholds for public statements regarding individuals;
 - (b) enhancing follow-on actions in relation to public statements regarding individuals;
 - (c) removing existing thresholds for denying the facilities of the market to listed issuers;
 - (d) introducing director unsuitability statements against individuals;

- (e) enhancing disclosure requirements for directors and senior management members subject to public sanctions;
- (f) introducing secondary liability for Rule breaches;
- (g) defining ‘senior management’ within listed issuers and their subsidiaries;
- (h) 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
- (i) 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.

14. The following represents a high level summary of the Exchange’s proposals with regard to disciplinary sanctions set out in Chapters 2, 3 and 6:

<u>Current Sanctions</u>		<u>Future State</u>	<u>Parties³</u>	
			<u>Against listed issuers and other entities</u>	<u>Against individuals</u>
<u>Reputational sanctions</u>	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	√	√

³ See paragraph 86 of this paper in respect of the relevant parties subject to the Exchange’s disciplinary jurisdiction and against whom disciplinary sanctions may be imposed.

	<u>Current Sanctions</u>	<u>Future State</u>	<u>Parties³</u>	
			<u>Against listed issuers and other entities</u>	<u>Against individuals</u>
<u>Reputational sanctions</u>	PII Statement	Enhance by: (a) Lowering existing thresholds of ' <i>wilful</i> ' or ' <i>persistent</i> ' (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
<u>Remedial sanctions</u>	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 ⁴	x

⁴ 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.

	<u>Current Sanctions</u>	<u>Future State</u>	<u>Parties³</u>	
			<u>Against listed issuers and other entities</u>	<u>Against individuals</u>
	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	√	√
<u>Ancillary or operational sanctions</u>	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	√	√

15. Subject to the responses to this consultation, the proposed amendments to the Rules as a result of our proposals and the consequential Rule changes as set out in **Appendix I** and **Appendix II** respectively will also be applicable to the GEM Rules.

16. Unless otherwise stated, in this consultation paper:
- (a) rule references are to the Main Board Rules (**MB Rules**); and
 - (b) words importing the masculine gender include the feminine and neuter genders and vice versa.

CHAPTER 1: CURRENT DISCIPLINARY SANCTIONS

17. This Chapter provides a short overview of the main disciplinary sanctions currently available to the Exchange under Rule 2A.09.
18. Where there is a Rule breach, the main sanctions provided under the Rules are:
- (a) reputational sanctions:
 - 1. private reprimand;
 - 2. public statement involving criticism;
 - 3. public censure⁵;
 - 4. a public statement that the retention of office by the director is prejudicial to the interests of investors (**PII Statement** ⁶);
 - (b) rectification or remedial sanctions⁷;
 - (c) denial of facilities of the market⁸; and
 - (d) suspension or cancellation of listing⁹.
19. In addition to the main sanctions available to the Exchange, there are ancillary or operational sanctions such as:
- (a) reporting the offender's conduct to another regulatory authority¹⁰;
 - (b) imposing a ban on professional advisers or their employees from representing a specified party in relation to matters coming before the Listing Division or the Listing Committee¹¹; and
 - (c) taking such other action as appropriate¹².
20. We propose to retain all existing sanctions in Rule 2A.09, subject to the enhancements set out in this consultation paper.

⁵ Rules 2A.09(1) to (3) respectively. A public censure is considered to be a more serious reputational sanction than a public statement involving criticism, and is generally used in respect of conduct which is considered to be more serious in character.

⁶ Rule 2A.09(7).

⁷ Rule 2A.09(6).

⁸ Rule 2A.09(9).

⁹ Preamble to Rule 2A.09, and Rule 2A.09(8).

¹⁰ Rule 2A.09(4).

¹¹ Rule 2A.09(5).

¹² Rule 2A.09(10).

CHAPTER 2: DETAILS OF PROPOSED ENHANCEMENTS TO EXISTING DISCIPLINARY SANCTIONS

21. This Chapter provides a detailed discussion of our proposed enhancements to the existing disciplinary sanctions available to the Exchange.

PII Statement

Current position

22. Where there has been a '*wilful*' or '*persistent*' failure by a director to discharge his responsibilities under the Rules, the Exchange can make a PII Statement under Rule 2A.09(7) in relation to that individual.
23. In making a PII Statement, the Exchange indicates its view that the relevant director's retention of office of that particular listed issuer is prejudicial to the interests of investors. Given that the Exchange does not have power to remove directors from office, it is for stakeholders associated with the listed issuer (such as the board of directors and shareholders) to take action as appropriate¹³.
24. Whilst an available sanction, the PII Statement has rarely been issued by the Exchange (due to the matters identified at paragraphs 26 to 29 below)¹⁴.
25. The Exchange has dealt with cases where the directors concerned had already resigned at the time of the disciplinary action. In those circumstances, the Exchange indicated that it was '*minded*' to make a PII Statement had the director remained in office; and further, if the individual wished to become a director of a listed issuer in the future, the conduct referred to would be taken into account in assessing director suitability (under Rule 3.09¹⁵). This however is not, strictly speaking, classified as a PII Statement.

Potential issues

26. There are obvious limitations to the ability of the Exchange to issue a PII Statement.

¹³ Shareholders may remove a director subject to satisfaction of the requirements under the applicable laws and regulations.

¹⁴ From 2010 to 31 December 2019, the Exchange has issued 5 PII Statements and 14 statements in the modified form (see paragraph 25).

¹⁵ The conduct of a director involved in disciplinary action will be taken into account in assessing his suitability under Rule 3.09 if he wishes to become a director of any issuer listed or to be listed on the Exchange in the future.

27. The sanction may only be imposed in circumstances involving '*wilful*' or '*persistent*' failure by a director to discharge his responsibilities under the Rules. What amounts to '*wilful*' or '*persistent*' failure will depend on the facts and circumstances of each case. Not all misconduct warranting the issue of a PII Statement can neatly be classified as wilful or persistent. There may also be evidential difficulties in establishing the wilful mindset of the culpable director.
28. The wording of Rule 2A.09(7) suggests that its scope may be limited to situations where a director remains on the board when such a statement is made. As a result, the Exchange deals with cases where the directors concerned have already resigned at the time of the disciplinary action by way of the statement referred to in paragraph 25.
29. Whilst the removal of a director (by resignation or otherwise) is clearly one of the intended aims of a PII Statement, an individual can still maintain significant influence within a listed issuer by remaining within the senior management of the listed issuer or occupying the position of a director or senior management of a subsidiary of the listed issuer despite displaying conduct that warrants a PII Statement.

Consultation proposals and rationale

30. We believe that the Exchange should have sanctions that can respond more readily and more effectively to misconduct by directors and members of senior management.
31. The Exchange should be in the position to publicly raise concerns about an individual continuing in a role in circumstances which may be prejudicial to the interests of the investing public, at both director and senior management level within the same listed issuer¹⁶. Whether the individual has remained in office or not at the time of the disciplinary action, the Exchange should be able to ensure consideration is given to the relevant conduct in the event the individual is, or wishes in the future to become, a director or senior management member of another listed issuer.
32. We propose to enhance the existing criteria for making a PII Statement by:
 - (a) lowering the existing threshold of '*wilful*' or '*persistent*' failure – this includes enabling the PII Statement to be made where the occupying of office *may* cause prejudice to the interests of investors;
 - (b) making it clear that a PII Statement can be made whether or not an individual continues in office at the time of the statement; and

¹⁶ In this paper, in the context of making PII Statements and Director Unsuitability Statements (discussed in section 3 of this paper), the consequences of being subject to such statements, and an individual's suitability as a director or appropriateness as a senior management member of a listed issuer, references to listed issuers include subsidiaries of listed issuers.

- (c) widening the scope to include directorship and senior management¹⁷ positions of the listed issuer.
33. The proposed wording is:
- '...state publicly that in the Exchange's opinion the occupying of the position of director or senior management of a named listed issuer or any of its subsidiaries by an individual may cause prejudice to the interests of investors'.*
34. The proposed enhanced PII Statement will identify the listed issuer to which the statement relates (i.e. the relevant listed issuer at which the individual was a director or senior management member at the time of the Rule breach in respect of which the sanction was imposed).
35. This proposal will:
- (a) allow the Exchange flexibility when dealing with different types of conduct by individuals; and
- (b) allow for a stronger regulatory response in appropriate cases when individual misconduct warrants such a response (in addition to a public censure) to safeguard investors of a specific listed issuer.
36. Any disciplinary sanctions under Rule 2A.09 can be made in conjunction with any other disciplinary sanctions under Rule 2A.09. It is envisaged that a PII Statement will be made in conjunction with a public censure against an individual in circumstances where the conduct warrants more than a public censure. The PII Statement is one mechanism to distinguish conduct which is more severe than conduct warranting a public censure.
37. As with the current position, circumstances warranting a PII Statement will depend on the facts and circumstances of each case and, in particular, the conduct involved. The Exchange will take into account the non-exhaustive factors and considerations set out in the published Enforcement Policy Statement¹⁸ and the Sanctions Statement¹⁹.
38. Unlike disqualification orders made by the courts or the Market Misconduct Tribunal, the proposed revised statement (in paragraph 33 above) does not have a specified duration. It is not intended that this statement will have an indefinite effect.

¹⁷ See paragraph 115 in Chapter 5 of this paper.

¹⁸ https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Procedures-and-Enforcement-Guidance-Materials/enf_state_201702.pdf?la=en.

¹⁹ Statement on Principles and Factors in Determining Sanctions and Directions imposed by the Disciplinary Committee and the Review Committee published at https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Disciplinary-and-Enforcement/Disciplinary-Procedures-and-Enforcement-Guidance-Materials/sancs_0913.pdf?la=en.

39. An individual who is subject to a PII Statement may still continue to be or become a director or a senior management member of another listed issuer or a listing applicant if he can demonstrate his suitability and/or appropriateness to do so. Individuals should be expected to meet the requirements and standards that appropriately align with the office to be held. In practice, this means that the individual will have to satisfy the board of directors of the listed issuer or listing applicant that he has the character, experience, integrity and a standard of competence commensurate with the position of director of a listed issuer²⁰, or is otherwise appropriate to be a senior management member, as the case may be.

Consultation questions

Q1 *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? If not, please provide reasons for your views.*

Q2 *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? If not, please provide reasons for your views.*

Enhancements to follow-on actions for PII Statements and publication requirements

Introduction

40. This section refers to the follow-on actions that may be taken by the Exchange upon the making of a PII Statement.

Current position

41. The Exchange has no power to remove an individual from office. After a PII Statement is made, it is essentially up to the relevant listed issuer and other listed issuers (of which he is also a director) and their shareholders to decide what, if any, action should be taken in respect of the relevant individual.
42. Should an individual remain in office following a PII Statement, the Exchange may potentially suspend or cancel the listing of the issuer's securities or any class of its securities²¹.

²⁰ Rule 3.09.

²¹ Rule 2A.09(8).

Potential issues

43. Currently, the follow-on actions which the Exchange may direct where an individual subject to a PII Statement remains in office as a director are limited to suspension or cancellation of listing of the issuer's securities or any class of its securities. There is no graduated response to the individual's retention of office.
44. In the past²², the Exchange has not imposed follow-on actions. In the absence of any immediate consequences, any perceived pressure on a director to resign following a PII Statement can diminish over time. Subsequently, any delay by a director to resign may limit the desired remedial impact of such resignation.

Consultation proposals and rationale

45. It is of significant regulatory value for the Exchange to have appropriate follow-on actions to ensure the effectiveness of a PII Statement as a sanction and deterrent against misconduct.
46. We also believe that it would be beneficial to provide more clarity and certainty of the potential impact of a PII Statement.
47. The proposals below are aimed at sharpening the focus of compliance attitudes and cultures within listed issuers for the purpose of benefitting the investing public.
48. In cases involving more serious conduct and depending on the facts and circumstances of the case, the Exchange may also direct follow-on actions *at the same time* a PII Statement is made against an individual. We propose that, in such cases:
 - (a) the follow-on actions which the Listing Committee or the Listing Review Committee may direct include the denial of facilities of the market to that listed issuer for a specified period, in addition to suspension or cancellation of the listing of that listed issuer's securities or any class of its securities which are currently available under the Rules; and
 - (b) the follow-on actions apply where an individual subject to a PII Statement continues to be a director or senior management member of the specified listed issuer.
49. The follow-on actions will be triggered if the individual subject to the PII Statement occupies the position specified in the statement after such date as may be determined and specified by the Listing Committee or the Listing Review Committee.

²² From 2010 to 31 December 2019.

50. We also propose that, after a PII Statement with follow-on actions has been made against an individual, the listed issuer identified in the statement must include a reference to the PII Statement in all of its announcements and corporate communications²³, unless and until that individual is no longer a director or senior management member of the relevant listed issuer.
51. It is intended that this proposed publication requirement is to operate as a rule rather than a sanction which may or may not be imposed by the Listing Committee. If a PII Statement with follow-on actions is made, the publication requirement must be followed.
52. Considering the potential impact of the follow-on actions on the relevant listed issuer, if a PII Statement and follow-on actions are recommended in a disciplinary action, the relevant listed issuer will be made a party to the disciplinary action, even in circumstances where there is no assertion of Rule breaches against it.
53. However, if a PII Statement is sought against an individual with no follow-on action against a listed issuer, then naturally, there is no requirement for the listed issuer to be made a party to the action.
54. The requirement for listed issuers to include references in announcements and corporate communications will enhance visibility for shareholders and the investing public in relation to a PII Statement with follow-on actions which has been made against an individual who remains a director or senior management member of the relevant listed issuer.
55. Further, we believe that the investing public should be protected from individuals with serious disciplinary records seeking to have continued influence at director and senior management level by moving across different listed issuers.
56. The other listed issuers of which the individual is a director are required to announce the PII Statement as soon as practicable²⁴. Any other listed issuers which appoint the individual as a director are required to disclose in the appointment announcement that the director is subject to a PII Statement²⁵. Listing applicants are currently required to disclose in their listing documents certain information about their current and proposed directors and members of senior management, and listed issuers are required to

²³ The term 'corporate communication' is defined in Rule 1.01.

²⁴ Currently, under Rule 13.51B(2), an issuer must announce, as soon as practicable, full particulars of any public sanctions made by statutory or regulatory authorities against its directors, supervisors or chief executives (Rule 13.51(2)(h)), and full particulars where its directors, supervisors or chief executives have been found guilty of or been involved in insider dealing, or been held by any Court or competent authority to have breached any securities or financial markets laws, rules or regulations including any rules and regulations of any securities regulatory authority, stock exchange or futures exchange at any time (Rule 13.51(2)(n)(iii)).

²⁵ Currently, under Rule 13.51(2)(h), where a new director is appointed, the issuer must announce the change as soon as practicable and include in the announcement, amongst other information, full particulars of any public sanctions made against the director by statutory or regulatory authorities.

disclose certain information about their directors and members of senior management in their annual reports²⁶. We propose to extend the express scope of these disclosures to ensure consistent and comprehensive information is provided by requiring provision of full particulars of any public sanctions made against those individuals by statutory or regulatory authorities.

57. These will enhance the regulatory impact and increase public awareness of a PII Statement made against an individual. If any of these other listed issuers fail to discharge these obligations, it would have committed a Rule breach and may be subject to separate disciplinary proceedings by the Exchange.
58. Further, after a PII Statement is made, the board of directors of the other listed issuers of which the individual is a director or senior management would be expected to assess and determine, as soon as reasonably practicable, whether the individual should continue to serve as director or within senior management in respect of each of those other listed issuers given the conduct involved. A determination against the individual may lead to the board and/or shareholders taking action to remove the individual from office.
59. For the avoidance of any doubt, the follow-on actions (including the publication requirement) would only apply after the Exchange's decision to impose a PII Statement is final, i.e. after any review process has been completed. A listed issuer which is made a party to the disciplinary action (as referred to in paragraph 52 above) will have the same right as any other respondent to review any decision which imposes a follow-on action made in respect of it.

Consultation questions

Q3 *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? If not, please provide reasons for your views.*

Q4 *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? If not, please provide reasons for your views.*

²⁶ Appendix 1A, paragraph 41(1); Appendix 1B, paragraph 34; Appendix 1E, paragraph 41(1); Appendix 1F, paragraph 30; and Appendix 16, paragraph 12.

Q5 *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? If not, please provide reasons for your views.*

Denial of facilities of the market to an issuer

Current position

60. Currently, in the case of '*wilful*' or '*persistent*' failure by a listed issuer to discharge its responsibilities under the Rules, the Exchange may:
- (a) direct that the facilities of the market be denied for a specified period to that issuer; and
 - (b) prohibit dealers and financial advisers from acting or continuing to act for that issuer²⁷.

Potential issues

61. This sanction has not been imposed before. There are limitations and potential issues with the application and enforcement of this sanction:
- (a) This sanction can only be imposed where there is a '*wilful*' or '*persistent*' failure by a listed issuer to discharge its Rule responsibilities. The limitations faced by the Exchange in imposing a PII Statement (discussed in paragraph 27 above) also apply in this respect.
 - (b) The current drafting refers to the denial of market facilities for a '*specified period*'. This does not necessarily place any impetus on a listed issuer to take action to remedy the issues which gave rise to the breaches. A listed issuer can merely wait for the specified period to lapse without taking any positive action.

Consultation proposals and rationale

62. There is clear regulatory value in maintaining a sanction which denies market facilities in circumstances of Rule breaches with a high level of severity. Imposition of this sanction will also act as a deterrent against further breaches.

²⁷ Rule 2A.09(9).

63. We believe the Exchange should continue to have the ability to impose this sanction after duly considering all of the circumstances of the breach and the conduct of the parties, for the purposes of achieving its regulatory objectives of a fair and orderly market.
64. We however propose to enhance the applicability and effectiveness of this sanction by:
- (a) lowering the existing threshold and removing the requirement of ‘*wilful*’ or ‘*persistent*’ failure; and
 - (b) extending the scope of the sanction to require a listed issuer to fulfil specified conditions (e.g. to remedy the breach) – rather than merely wait for a specified period to lapse.
65. The proposed wording is:
- ‘...deny the facilities of the market to a listed issuer for a specified period and/or until fulfilment of specified conditions ...’.*
66. This is not intended to amount to a cancellation of listing. Rather, denying the ‘*facilities of the market*’ will include withholding approval of any matters that require approval from the Exchange, including the issuance of shares. This will provide the wider market with an indication of the potential impact of the sanction and a greater understanding of the potential meaning of the words ‘*facilities of the market*’²⁸ within the context of the Exchange’s disciplinary regime.
67. Given the wide ranging conduct and Rule breaches which may warrant this sanction, it is not appropriate for the Exchange to specify an exhaustive list of circumstances under which the sanction may be imposed.
68. Examples of the circumstances in which this sanction may be imposed include the following:
- (a) where the listed issuer has repeatedly committed Rule breaches such that shareholders are deprived of the right to receive material information in a timely manner and to vote on notifiable or connected transactions; and
 - (b) where there are serious Rule breaches which are partly the result of significant deficiencies in the listed issuer’s internal control systems.
69. Where there are significant deficiencies in a listed issuer’s internal controls, this sanction may be imposed until an external professional adviser has conducted an internal control review and the listed issuer has implemented adequate and effective internal controls for procuring Rule compliance. This is to ensure that the cause of the

²⁸ See the proposed Note 4 to Rule 2A.10 set out in Appendix I.

Rule breaches is remedied before the listed issuer is allowed access to the facilities of the market again.

Consultation questions

Q6 *We propose to remove the existing threshold for ordering the denial of facilities of the market. Do you agree? If not, please provide reasons for your views.*

Q7 *We propose to include fulfilment of specified conditions in respect of the denial of facilities of the market. Do you agree? If not, please provide reasons for your views.*

CHAPTER 3: DETAILS OF PROPOSED NEW DISCIPLINARY SANCTION

Director unsuitability statement against individuals

Consultation proposals and rationale

70. Rule breaches committed by directors are wide ranging in terms of the nature and the level of seriousness. Further, the mindset of the directors in breach is equally broad, ranging from the deliberate and reckless to conduct which, at its root, demonstrates a simple lack of understanding or knowledge of the Rules. In some cases, the misconduct may be so serious and blatant that in the view of the Exchange, a specific director is no longer suitable to be a director of a named issuer listed on the Exchange.
71. It is appropriate that the Exchange has the ability, in particularly egregious or severe cases (and in accordance with the non-exhaustive factors within the Enforcement Policy Statement and the Sanctions Statement²⁹), to publicly raise concerns about suitability, by stating expressly that the director is unsuitable to be a director or senior management member of the listed issuer in respect of which this conduct relates (**Director Unsuitability Statement**). We believe that it will promote clarity and understanding for a Director Unsuitability Statement, rather than a PII Statement, to be made in circumstances falling at the most serious end of the spectrum of misconduct.
72. These circumstances may be where, in the Exchange's view, the conduct of the director may not only be prejudicial to the interests of investors (see paragraph 22 above) but also may not meet all the requirements of a director under Rule 3.09. Non-exhaustive examples of this may be where a director has been shown to have entered into unauthorised transactions in which he has a clear conflict of interest or which do not appear to be in the interest of the listed issuer (e.g. exposes the listed issuer to material risks) or its shareholders; or repeatedly failed to procure the listed issuer's compliance with Rule requirements despite previous public sanction. In these circumstances, the conduct or manner in which the breach occurred will be carefully considered.
73. Given the serious impact of the Director Unsuitability Statement, we propose to impose the threshold of '*serious or repeated failure by a director to discharge his responsibilities under the Listing Rules*' for its imposition.
74. Therefore we propose, as a new sanction, that the Exchange may:

'...in the case of serious or repeated failure by a director to discharge his responsibilities under the Listing Rules, state publicly that in the Exchange's

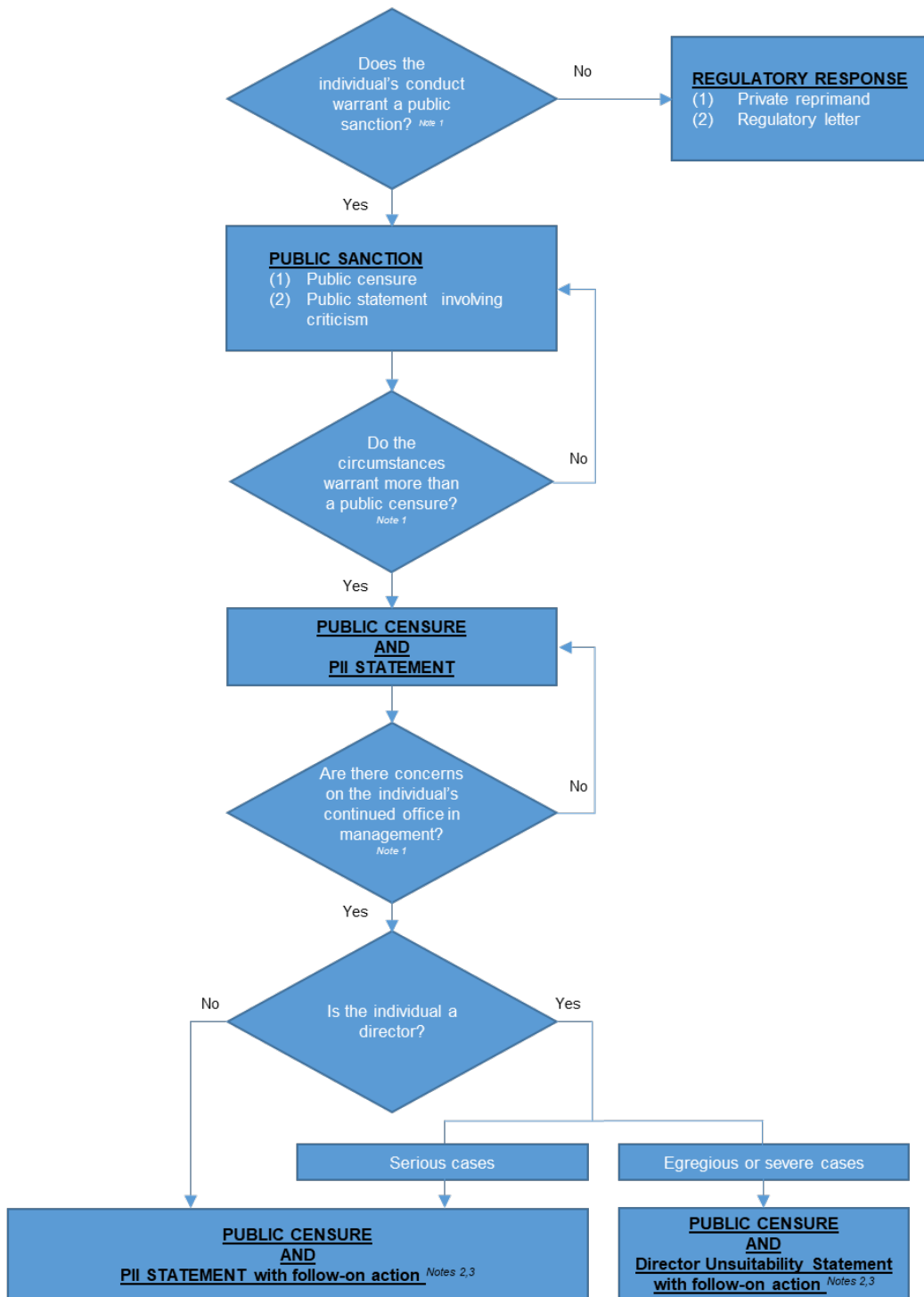
²⁹ Refer to footnotes 18 and 19.

opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries.'

75. Given our belief as set out in paragraph 55 above, appropriate action needs to be taken where an individual subject to a Director Unsuitability Statement is also a director or senior management member of other issuers listed on the Exchange.
76. We therefore propose that the follow-on actions and the publication requirement in respect of the PII Statement in paragraphs 48 and 50 above also apply in respect of a Director Unsuitability Statement, but only against the listed issuer named in the statement. In addition, the existing announcement requirements referred to in paragraph 56 also apply insofar as they relate to a director. The proposed extended disclosure in respect of directors and senior management members in listing applicants' listing documents and listed issuers' annual reports would also cover Director Unsuitability Statements as they are public sanctions made by a regulatory authority. These actions and requirements will apply only after the decision to make a Director Unsuitability Statement has become final, i.e. after any review process has been completed.
77. Further, after a Director Unsuitability Statement is made and if the individual is also a director or senior management member of other listed issuers, enquiries may be made with the other listed issuers of which the individual is a director as to his suitability to remain a director of the other listed issuers. An assessment to determine whether the individual should continue to serve as director or within senior management in respect of those other listed issuers referred to in paragraph 58 should also take place and should ultimately result in a determination as to whether the individual should retain office. A determination against the individual may lead to the board and/or shareholders taking action to remove him from office.
78. Where an individual continues to be a director of another listed issuer despite the Exchange's view that he is not suitable to do so, the follow-on actions discussed in paragraphs 48 and 50 above will *not* automatically apply to that other listed issuer. However, the Exchange may take separate and independent action in relation to that listed issuer and the director.
79. The introduction of the new Director Unsuitability Statement will enhance the options available to the Exchange when dealing with cases where the enhanced PII Statement does not fully reflect the seriousness of the Rule breaches and director misconduct. It will also put pressure on other listed issuers to actively consider whether the individual should occupy a position as director or within senior management given the nature of the conduct involved.
80. We believe that a Director Unsuitability Statement is an important regulatory tool to influence compliance culture and attitude and to deter future Rule breaches. The introduction of the Director Unsuitability Statement and the enhancement to the PII Statement discussed above represent the Exchange's efforts to drive individual accountability in line with our regulatory objectives.

81. There are similarities in the consequences of imposition of a PII Statement with follow-on actions and a Director Unsuitability Statement on a director. However, the availability of these two reputational sanctions allows further differentiation in relation to the seriousness of the misconduct involved, which we believe will assist the market, issuers and investors.
82. As with the enhanced PII Statement, the Director Unsuitability Statement will not have a specified duration and is not intended to have an indefinite effect. As set out in paragraph 39 above, if the individual wishes to become a director or senior management member of a listed issuer or listing applicant, he would have to satisfy the board of directors of the listed issuer or listing applicant that he meets the director suitability requirements, or is otherwise appropriate to be a senior management member, as the case may be.
83. The flowchart below describes the process relating to the imposition of a PII Statement and a Director Unsuitability Statement. Chapter 8 of this paper sets out the future state of our proposed disciplinary sanctions.

Disciplinary Sanctions Against Individuals



Notes:

- (1) Non-exhaustive factors which may be considered are detailed in the Enforcement Policy Statement and Sanctions Statement.
- (2) Listed issuers and listing applicants must note the applicable disclosure requirements upon a PII Statement or Director Unsuitability Statement being imposed on an individual.
- (3) Follow-on actions available are (i) denial of facilities of the market; and/or (ii) suspension or cancellation of listing.

Consultation questions

Q8 *We propose to introduce the Director Unsuitability Statement as a new sanction. Do you agree? If not, please provide reasons for your views.*

Q9 *We propose that the follow-on actions and publication requirement in respect of PII Statements also apply to Director Unsuitability Statements. Do you agree? If not, please provide reasons for your views.*

CHAPTER 4: ADDITIONAL CIRCUMSTANCES WHERE DISCIPLINARY SANCTIONS CAN BE IMPOSED

84. The proposed changes in this Chapter are required for the continued effective operation of the Exchange's disciplinary regime generally.

The introduction of secondary liability

85. Unless otherwise stated, the existing parties who may be subject to disciplinary action³⁰ and those parties proposed to be introduced (within Chapter 5) are collectively referred to as the **Relevant Parties**.

86. The Relevant Parties are set out below for ease of reference:

- (a) a listed issuer or any of its subsidiaries;
- (b) any director of a listed issuer or any of its subsidiaries (or any alternate of such director);
- (c) any member of senior management of a listed issuer or any of its subsidiaries;
- (d) any substantial shareholder of a listed issuer;
- (e) any significant shareholder³¹;
- (f) any professional adviser of a listed issuer or any of its subsidiaries;
- (g) any employee of a professional adviser of a listed issuer or any of its subsidiaries³²;
- (h) any authorised representative of a listed issuer;
- (i) any supervisor of a PRC issuer;
- (j) any guarantor of an issuer in the case of a guaranteed issue of debt securities³³ or structured products³⁴; and

³⁰ Rule 2A.10.

³¹ For GEM Rules only (GEM Rule 3.11(e)).

³² Parties proposed to be introduced – see Chapter 5 of this paper.

³³ For GEM Rules only (GEM Rule 3.11(i)).

³⁴ See footnote 32 above.

- (k) any other party who gives an undertaking to or enters into an agreement with the Exchange³⁵.

Current position

87. For some of the existing Relevant Parties (senior management of listed issuers and their subsidiaries, and significant shareholders), the Rules do not impose any obligation on them.
88. In addition, the Rules do not impose secondary liability for Rule breaches – i.e. the responsibility of a person or entity which arises when the party directly liable fails to discharge an obligation.
89. Finally, there is no prescribed standard of compliance for members of senior management, substantial shareholders, professional advisers, authorised representatives³⁶ and significant shareholders.

Issue

90. As a result, disciplinary action against the Relevant Parties (identified above) may not be possible, even in circumstances where their conduct was a significant factor in the commission of a Rule breach.

Jurisdictional references

91. We understand that secondary liability appears as a concept in some Hong Kong legislation³⁷, and is imposed by certain overseas exchanges and securities regulators, including the Financial Conduct Authority of the UK (**FCA**), Singapore Exchange and Bursa Malaysia³⁸.

Consultation proposal and rationale

92. We propose that all Relevant Parties be subject to secondary liability for Rule breaches in circumstances where the Exchange determines the person ‘...*has caused by action or omission or knowingly participated in a contravention of the Listing Rules*’³⁹.
93. We set out below examples of how secondary liability would work in practice.

³⁵ See footnote 32 above.

³⁶ Rules 2A.10(c), (d), (e) and (g) respectively.

³⁷ Sections 213 and 307G of the Securities and Futures Ordinance (Chapter 571, Laws of Hong Kong); Section 728 of the Companies Ordinance (Chapter 622, Laws of Hong Kong); and Section 91 of the Competition Ordinance (Chapter 619, Laws of Hong Kong).

³⁸ FCA’s Disclosure and Transparency Rules, DTR 1.5.3G; Singapore Exchange’s Mainboard Rules paragraph 1402 and Catalist Rules 302; and Bursa Malaysia Main Market and ACE Market Listing Requirements paragraph 16.13.

³⁹ See proposed Rule 2A.10B(3) set out in Appendix I below.

Caused by action or omission a contravention of the Rules

CFO – secondary liability for listed issuer’s failure to obtain auditors’ agreement before publication, and material inaccuracy, of preliminary results announcement

- (a) A listed issuer failed to obtain its auditors’ agreement before publication of its preliminary results announcement as required under the Rules. After the board and the Audit Committee approved the results announcement, the auditors made further comments on the figures before the results were published. The chief financial officer (**CFO**) decided, without discussing the auditors’ further comments with the board, to publish the results announcement without incorporating those comments. The CFO belongs to the senior management of the issuer and is therefore subject to the disciplinary jurisdiction of the Exchange. Although the listed issuer’s Rule breach was clearly caused by the CFO’s conduct, there is currently no Rule obligation imposed on the CFO for procuring the listed issuer’s Rule compliance and therefore he could not be found in breach of the Rules. However, under the proposal for secondary liability, sanctions may be imposed on him as he has caused by both action and omission a contravention of the Rules by the listed issuer.

COO – secondary liability for listed issuer’s failure to disclose share charge in a timely manner and in its interim financial report

- (b) A listed issuer failed to disclose a share charge as soon as reasonably practicable after it was executed and in its interim financial report as required by the Rules. The directors knew about the share charge but had delegated to the listed issuer’s chief operating officer (**COO**) the responsibility for the listed issuer’s Rule compliance and finalising the interim report. The advice of the listed issuer’s professional advisers to the COO that it was mandatory to disclose the share charge in the interim report was not shared with the directors. The COO belongs to the senior management of the listed issuer and is therefore subject to the disciplinary jurisdiction of the Exchange. Although the listed issuer’s Rule breach was clearly caused by the COO’s failure to discharge his duties, there is currently no Rule obligation imposed on the COO for procuring the listed issuer’s Rule compliance and therefore he could not be found in breach of the Rules. He would, however, be caught under the proposal for secondary liability and sanctions may be imposed on him as he had caused by omission a contravention of the Rules by the listed issuer.

Board secretary – secondary liability for material inaccuracy of listed issuer’s announcement of controlling shareholder’s transfer of shares

- (c) A listed issuer announced its controlling shareholder’s transfer of its shares. However, the listed issuer failed to disclose some material information concerning, including some conditions to, the transfer and therefore breached the Rules. The chairperson and the board secretary were in charge of

reviewing and approving the listed issuer's announcements before publication and ensuring the listed issuer's Rule compliance in this respect. The board secretary is a member of the listed issuer's senior management and therefore subject to the disciplinary jurisdiction of the Exchange. Although the board secretary's failure to identify the missing information in the announcement partly contributed to the listed issuer's breach, there is currently no Rule obligation imposed on the board secretary and therefore he could not be found liable for breaching the Rules. However, as his omission has caused a contravention of the Rules by the listed issuer, he would be caught under the proposal for secondary liability and sanctions may be imposed on him.

Substantial shareholders – secondary liability for listed issuer's breach of minimum public float requirement

- (d) A listed issuer failed to maintain the minimum public float required under the Rules as a result of the substantial shareholders' refusal to reduce its shareholding in the listed issuer or to approve proposals which would address the issue due to a shareholders' fight, despite their undertakings to take appropriate steps to ensure that sufficient public float exists in the shares. There are currently no specific obligations in the Rules which require substantial shareholders to take appropriate action to procure the issuer's compliance with the minimum public float requirement. Under the proposal for secondary liability, sanctions may be imposed on these substantial shareholders as they had caused by action or omission a contravention of the Rules by the listed issuer.

Knowingly participated in a contravention of the Rules

CEO – secondary liability for listed issuer's breach of procedural requirements for very substantial acquisition

- (e) A listed issuer failed to comply with the procedural requirements under the Rules in respect of a very substantial acquisition. That was a result of the decision of the Chief Executive Officer (**CEO**) (who was not a director of the listed issuer), together with the board of directors, on the basis of commercial expediency, despite their knowledge of the applicable Rule requirements. The CEO is a senior management member of the issuer and therefore subject to the Exchange's disciplinary jurisdiction. There is currently no Rule obligation imposed on the CEO and therefore he could not be found to have breached the Rules, although he had participated in the decision not to procure the listed issuer's Rule compliance with clear knowledge that by doing so, the listed issuer would breach the Rules. However, under the proposal to impose secondary liability, the CEO would be liable for having knowingly participated in a contravention of the Rules.

Financial adviser – secondary liability for material inaccuracy of listed issuer’s acquisition circular

- (f) A listed issuer failed to disclose in its circular the significant deteriorating financial performance of a target which it intended to acquire. The financial adviser engaged to advise the listed issuer on the acquisition and to prepare a circular which fully complied with the Rules was aware of the target’s deteriorating financial performance, but agreed with the listed issuer and its directors to withhold disclosure of that information. There is currently no Rule obligation imposed on the financial adviser in these circumstances and therefore it could not be found to have breached the Rules, although it had participated in the decision not to disclose the information in question and was clearly aware that the non-disclosure would render the circular inaccurate in a material respect and misleading. However, under the proposal to impose secondary liability, the financial adviser would be liable for having knowingly participated in a contravention of the Rules.
94. By introducing secondary liability in the circumstances specified in paragraph 92 above, disciplinary action can be taken and disciplinary sanctions may be imposed against all Relevant Parties in the specified circumstances. This would obviate a need to impose a specific Rule obligation on each of the Relevant Parties in respect of each possible circumstance under which the Relevant Parties should be held liable for Rule breaches. Where the Listing Division is of the view that the facts and circumstances of a case support the imposition of secondary liability for a Rule breach, the Relevant Party(ies) will be made respondents to the disciplinary action which will be subject to the Exchange’s disciplinary procedures. The disciplinary sanctions which may be imposed through secondary liability upon a finding of breach are those set out in Rule 2A.10 (see paragraph 157).
95. Our aim is to take enforcement action against all Relevant Parties where the circumstances justify, whilst recognizing that primary responsibility for compliance remains with the listed issuer and, in particular, its directors.
96. We believe that this proposal is fair and proportionate, as secondary liability will arise and be attached only in limited circumstances where the individual or party concerned has exhibited conduct which has caused the Rule breach or has participated in, knowing that the conduct amounts to, a Rule breach.
97. For those Relevant Parties covered by section 23(8) of the Securities and Futures Ordinance (Chapter 571, Laws of Hong Kong) (**SFO**), where the Exchange identifies circumstances under which possible liability for Rule breaches may be attached to them, it will act in accordance with the arrangements agreed from time to time between it and the relevant regulatory bodies (for example, consider making a referral to the relevant regulatory bodies for possible action under their rules and regulations).

Consultation question

Q10 *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? If not, please provide reasons for your views.*

Explicit sanction for failure to comply with requirements imposed by the Listing Division, the Listing Committee or the Listing Review Committee

Current position

98. Rule 2A.09 provides that the Listing Committee of the Exchange may impose sanctions if it finds there has been a Rule breach by any of the Relevant Parties.

Issue

99. However, there may be occasions where the Relevant Parties do not comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee of the Exchange.

100. Examples include failure by listed issuers to appoint a Compliance Adviser as directed by the Listing Division⁴⁰ for the agreed duration; failure by listed issuers to procure the Compliance Adviser to complete the task for which it is appointed as directed by the Listing Division; and failure and/or refusal by listed issuers and directors to carry out an internal control review or by certain Relevant Parties to undergo training as directed by the Listing Committee upon conclusion of a disciplinary action.

101. In those cases, it may be appropriate for the Exchange to enforce that sanction or requirement by initiating disciplinary proceedings against the relevant party. The disciplinary sanctions which may be imposed are those set out in Rule 2A.10 (see paragraph 157).

Consultation proposals and rationale

102. Whilst the initiation of disciplinary proceedings in these circumstances currently occurs – for the avoidance of any doubt – we consider it appropriate to include a provision that explicitly refers to the ability of the Exchange to impose sanctions in those circumstances.

⁴⁰ Under Rule 3A.20.

103. The Rule provision will explicitly permit the Exchange to impose sanctions on Relevant Parties in circumstances where they have ‘...failed to comply with a requirement imposed by the Listing Division or the Listing Committee’⁴¹.
104. We also propose that sanctions may be imposed on all Relevant Parties through secondary liability where a party fails to comply with a requirement imposed by the Listing Division, the Listing Committee or the Listing Review Committee if the Relevant Parties have caused by action or omission or knowingly participated in a contravention of the requirement.

Consultation questions

Q11 *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? If not, please provide reasons for your views.*

Q12 *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? If not, please provide reasons for your views.*

Failure to provide accurate, complete and up-to-date information when responding to the Exchange’s enquiries or investigations

Current position

105. Currently, issuers⁴², directors⁴³ and supervisors⁴⁴ must provide to the Exchange in a timely manner any information that the Exchange reasonably considers appropriate to protect investors or ensure the smooth operation of the market, and any other information or explanation that the Exchange may reasonably require for investigating a suspected breach of or verifying compliance with the Rules.

⁴¹ See proposed Rule 2A.10B(1) set out in Appendix I. The reference to the “Listing Committee” in the proposed Rule includes both the Listing Committee and the Listing Review Committee (see Note 1 to the proposed Rule 2A.10).

⁴² Rule 2.12A.

⁴³ Contained in the Director’s Undertaking to the Exchange, see, for example, Part 2 of Appendix 5B.

⁴⁴ Contained in the Supervisor’s Undertaking to the Exchange, see, for example, Part 2 of Appendix 5I.

106. In addition, directors, supervisors, sponsors, compliance advisers and independent financial advisers are obliged to cooperate in the Exchange's investigations and enquiries, including answering promptly and openly any questions addressed to them⁴⁵.
107. While there is a duty on parties to provide complete, accurate and up-to-date information when interacting with the Exchange in respect of its enquiries and investigations, there is no explicit provision in the Rules in this regard. The Exchange expects parties subject to its enquiries and investigations to provide all information relevant to its enquiries even if it has not requested the specific information. This expectation would apply to professional advisers, provided that such provision does not contravene the relevant requirements of professional conduct.

Issue

108. The parties subject to the Exchange's enquiries or investigations may not be aware of the duty mentioned in paragraph 107 above.

Consultation proposal and rationale

109. We therefore propose to include a Rule provision to make explicit, and to raise awareness of, the duty.
110. To require complete, accurate and up-to-date disclosure by those subject to the Exchange's enquiries or investigations is necessary to enable actual or potential non-compliance to be detected at an early stage and to facilitate the Exchange's investigations, hence promoting the objectives of the Exchange and the Rules. Disciplinary action may be taken where this obligation is not properly discharged.

Consultation question

Q13 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? If not, please provide reasons for your views.

⁴⁵ See the obligation contained in their respective Undertaking to the Exchange in the form of Appendices 5B, 5I, 17, 20 and 22 to the Rules.

CHAPTER 5: DETAILS OF DEFINITIONS AND INCLUSIONS WITHIN ‘RELEVANT PARTIES’

‘Senior management’ under current Rule 2A.10(c)

Current position

111. A member of ‘*senior management*’ of listed issuers (and their subsidiaries) is an existing Relevant Party. However, there is no explicit definition of the term ‘*senior management*’ within the Rules and within the context of potential disciplinary actions⁴⁶.

Issue

112. There may be uncertainty therefore as to which individuals fall within the definition of senior management for the purposes of the Exchange’s disciplinary regime.

Jurisdictional references

113. We have looked at the position in related Hong Kong legislation and some other overseas jurisdictions, and note that senior management members or equivalent senior officers are defined. We have considered the definitions of the terms listed below:
- (a) In Hong Kong, Part XIVA of the Securities and Futures Ordinance (i.e. the Inside Information Provisions as defined in the Rules) imposes obligations on every ‘*officer*’ of a listed corporation in respect of the requirement to disclose inside information⁴⁷, and the Companies Ordinance⁴⁸ imposes duties on ‘*officers*’⁴⁹ which includes ‘*managers*’⁵⁰.

⁴⁶ For the purposes of compliance with some disclosure obligations under the Rules (e.g. disclosure in listing documents and annual reports of listed issuers), the Rules provide that it is the responsibility of the directors of listed issuers to determine which individuals constitute senior management, and the term may include directors of subsidiaries and heads of divisions, departments or other operating units within the group as, in the opinion of the issuer’s directors, is appropriate. See, for example, Appendix 1 to the Rules, Part A, paragraphs 41(1) and 41(5), and Appendix 16 to the Rules, paragraph 12.

⁴⁷ Section 307G provides that, every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation. “*Officer*” is defined in Schedule 1 to mean “*in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; ...*”.

⁴⁸ Chapter 622, Laws of Hong Kong.

⁴⁹ Defined in section 2(1) to mean, “*in relation to a body corporate, includes a director, manager or company secretary of the body corporate*”.

⁵⁰ Defined in section 2(1) and “*means a person who performs managerial functions in relation to the company under the directors’ immediate authority but excludes – (i) a receiver or manager of the company’s property; and (ii) a special manager of the company’s estate or business appointed under section 216 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)*”.

- (b) The listing rules of the Shanghai Stock Exchange (**SSE**) impose obligations on ‘*senior officers*’⁵¹ against whom the SSE can take disciplinary action for failure to discharge their obligations.
- (c) The Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) imposes notification obligations and dealing restrictions on ‘*persons discharging managerial responsibilities*’⁵².
- (d) The Listing Requirements of Bursa Malaysia empower it to take disciplinary action against ‘*officers*’⁵³.

Consultation proposal and rationale

114. We believe that Relevant Parties should be clearly identified, and that adopting a definition of ‘*senior management*’ for disciplinary purposes is necessary and justified to provide clarity and certainty.
115. We propose that the term ‘*senior management*’ be defined to include:
- (a) any person occupying the position of chief executive, supervisor, company secretary, chief operating officer or chief financial officer, by whatever name called;
 - (b) any person who performs managerial functions under the directors’ immediate authority; or
 - (c) any person referred to as senior management in the listed issuer’s corporate communication or any other publications on the Exchange’s website or on the listed issuer’s website.
116. Our proposed definition of ‘*senior management*’:
- (a) attempts to provide certainty by naming specific senior office holders;

⁵¹ Defined in paragraph 18.1(5) of the Rules Governing the Listing of Stocks on Shanghai Stock Exchange to mean the CEO, deputy CEO, board secretary or financial officer of a company or any other person as defined in the articles of association of the company.

⁵² Defined in Article 3(1)(25) as “a person within an issuer... who is: (a) a member of the administrative, management or supervisory body of that entity; or (b) a senior executive who is not a member of the bodies referred to in point (a), who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity”.

⁵³ Defined in paragraph 1.01 of the Bursa Malaysia Main Market and ACE Market Listing Requirements: the term “*officer*”, in relation to an applicant, listed issuer or its related corporation, means the chief executive, the chief operating officer, the chief financial controller or any other person primarily responsible for the operations or financial management of an applicant, listed issuer or its related corporation, by whatever name called.

- (b) captures those who perform managerial functions one level below the board of directors. This part of the definition is from the definition of ‘*manager*’ in the Companies Ordinance (see paragraph 113(a)). It brings within our disciplinary compass only those senior individuals who have decision-making responsibilities which give rise to Rule implications and who report directly to the board. By adopting this element of the definition we also seek to ensure that our proposal is in line with that found in related Hong Kong legislation; and
 - (c) includes those designated as ‘*senior management*’ by directors of listed issuers. This is to preserve to an extent the influence of the directors of issuers in this area while separately recognizing the Exchange’s role as regulator and the need for it to determine who should be subject to its jurisdiction.
117. Whether a particular individual falls within the definition will be an issue of fact to be determined by evidence obtained during the course of the Exchange’s investigation into the suspected Rule breach.
118. The potential Relevant Party subject to the investigation will be provided with opportunities to state their case.

Consultation question

Q14 Do you agree with the proposed definition of ‘senior management’? If not, please provide reasons for your views.

Include employees of a professional adviser of a listed issuer or any of its subsidiaries as a Relevant Party

Current position

119. Where there has been a Rule breach, the Listing Committee may ban a professional adviser or a named individual employed by a professional adviser from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period⁵⁴.

Issue

120. Currently employees of a professional adviser are not a Relevant Party and therefore the disciplinary sanction referred to in paragraph 119 above cannot be imposed on them even if they are liable for Rule breaches.

⁵⁴ Rule 2A.09(5).

Consultation proposal and rationale

121. To enable the Exchange's disciplinary jurisdiction against employees of professional advisers of listed issuers and their subsidiaries to be operative, we propose including them as a Relevant Party.

Q15 *We propose to include employees of professional advisers of listed issuers and their subsidiaries as a Relevant Party under the Rules. Do you agree? If not, please provide reasons for your views.*

Include guarantors of structured products as a Relevant Party

Current position

122. Guarantors of structured products have Rule obligations. They are required to comply with the Rules to the same extent as if they were the issuer of the structured products⁵⁵. They are, however, not an existing Relevant Party and therefore not subject to the Exchange's disciplinary jurisdiction.

Issue

123. As such, failure by guarantors to discharge their Rule obligations will not necessarily carry any consequences.

Consultation proposal and rationale

124. We propose including guarantors of structured products as a Relevant Party so that disciplinary action can be taken against them if they fail to discharge their Rule obligations.

Consultation question

Q16 *We propose to include guarantors of structured products as a Relevant Party under the Rules. Do you agree? If not, please provide reasons for your views.*

⁵⁵ Rule 15A.16(3). They are required to sign a Listing Agreement under which they undertake to comply with the covenants therein fully and in good faith (Rule 15A.16(4) and Appendix 7H). The obligations imposed on them include, for example, announcing information necessary to avoid a false market in the securities as soon as reasonably practicable after consultation with the Exchange; announcing information which may have a material effect on its ability to meet the obligations under the securities; and responding promptly to enquiries concerning unusual movements in the price or trading volume of the issuer's securities (Appendix 7H, paragraphs 2(1)(b), 2A and 26 respectively).

Include guarantors of debt securities as a Relevant Party under the MB Rules

Current position

125. Guarantors for an issue of debt securities are currently a Relevant Party under the GEM Rules⁵⁶ but not the MB Rules. They are, however, subject to obligations under the MB Rules⁵⁷.

Issue

126. The list of existing Relevant Parties under the MB and GEM Rules are different for no apparent or valid reason.

Consultation proposal and rationale

127. We propose that guarantors for an issue of debt securities be included as a Relevant Party under the MB Rules.
128. This is to align the list of Relevant Parties under the MB and GEM Rules in the interest of consistency, and to ensure that disciplinary action can be taken against these parties if they fail to discharge their Rule obligations.

Consultation question

Q17 We propose to include guarantors for an issue of debt securities as a Relevant Party under the MB Rules. Do you agree? If not, please provide reasons for your views.

Include a party who provides an undertaking to or who enters into an agreement with the Exchange as a Relevant Party

Current position

129. There may be occasions where parties give an undertaking to, or enter into an agreement with, the Exchange in connection with listing matters.

⁵⁶ GEM Rule 3.11(i).

⁵⁷ Rules 26.01, 35.01 and 37.44. All such guarantors (except those who guarantee debt issues to professional investors only) are required to sign a Listing Agreement under which they undertake to perform the covenants contained therein fully and in good faith (Rules 26.01 and 26.03; Appendices 7C, 7D and 7E). Guarantors for guaranteed debt issues to professional investors only are required to sign the application form for listing of securities or listing of a debt programme which contains an undertaking to comply with the Rules (Rule 37.35(a); Appendix 5C2, paragraph 11). In practice, guarantors will separately sign the application form or modify it to incorporate themselves as a party and sign it together with the listed issuer.

130. Enforcement of the undertaking or agreement is primarily a contractual issue between the Exchange and the party giving the undertaking or the contracting party and, as such, is enforceable through the courts.
131. For example, an offeror in a mandatory offer may give an undertaking to the Exchange to take appropriate steps to ensure that sufficient public float in the shares exists after the offer closes. Breach of the undertaking would give rise to a possible breach by the issuer of the Rule obligation to maintain a minimum public float.

Issue

132. Currently, the Rules do not provide for disciplinary action against these parties and therefore disciplinary sanctions cannot be imposed if they fail to honour their undertakings or contractual obligations.

Consultation proposal and rationale

133. We believe that it would be useful to have the ability to bring disciplinary action and impose sanctions against parties who voluntarily give undertakings to, or enter into agreements with, the Exchange in a variety of circumstances.
134. We therefore propose to make such parties a Relevant Party under the Rules.

Consultation question

Q18 *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? If not, please provide reasons for your views.*

CHAPTER 6: PROPOSED MINOR RULE AMENDMENTS

135. This Chapter discusses a number of proposed minor Rule amendments to Chapter 2A.

Ban on professional advisers

Current position

136. As mentioned in paragraph 119 above, one of the disciplinary sanctions under the Rules is to ban a professional adviser or its employees from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period.

Issue

137. The current ban is confined to representing a specified party only and hence its deterrent value is limited.

Consultation proposal and rationale

138. This sanction is a reputational sanction and is an effective practical disciplinary tool against professional advisers. To enhance its value and for greater effectiveness, we propose to extend the scope of the ban to cover banning of representation of any or a specified party.

Consultation question

Q19 We propose to extend the ban on professional advisers to cover banning of representation of any or a specified party. Do you agree? If not, please provide reasons for your views.

Clarification of the position of professional advisers

Current position

139. The existing Notes to Rule 2A.10 provide as follows:

- (a) An adviser's obligations to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of the Rules are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member. In other words, compliance with such obligations should not contravene a relevant requirement of professional conduct.

- (b) The scope of any disciplinary action taken, in particular, any ban imposed on a professional adviser under Rule 2A.09(5) (see paragraph 19(b)), shall be limited to matters governed by or arising out of the Rules.

Issues

140. There are a number of issues with the current language of these notes:

- (a) First, the Notes appear to assume that professional advisers are subject to an obligation to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of the Rules. However, there does not appear to be any express obligation to this effect imposed by the Rules.
- (b) Similarly, there is no express obligation that professional advisers shall not provide to the Exchange information which is false or misleading in a material particular (even though such conduct will likely contravene section 384 of the Securities and Futures Ordinance).

Consultation proposals and rationale

141. Professional advisers have an important role to play in the discharge of Rule obligations by listed issuers. We therefore propose that professional advisers be under an express obligation:

- (a) to use all reasonable efforts to ensure that their clients understand and are advised as to the scope of and their obligations under the Rules, when acting in connection with Rule matters on which they are instructed to advise; and
- (b) not to knowingly provide information to the Exchange which is false or misleading in a material particular.

142. It should be noted that for the professional advisers who are covered by section 23(8) of the SFO, the scope of any disciplinary action against them under Rules 2A.09, 2A.10 and 2A.10B shall be limited to matters governed by or arising out of the Rules and accord with the arrangements agreed from time to time between the Exchange and the relevant regulatory body.

Consultation questions

Q20 *We propose to include express obligations on professional advisers when acting in connection with Rule matters. Do you agree? If not, please provide reasons for your views.*

Aligning the practices for filing review applications and requesting or providing written reasons for decisions

Current position

143. The Rules set out the periods for filing review applications by review applicants⁵⁸, and the periods for requesting written reasons for decisions by the relevant parties or providing written reasons by the Exchange in disciplinary cases and non-disciplinary review matters.⁵⁹

144. Our practices under the respective Rules are as follows:

(a) Filing of review applications

	For disciplinary matters – Rule 2A.12	For non-disciplinary review matters – Rule 2B.08
Method of filing	By notifying the Exchange	By serving on the Secretary to the Listing Committee and the Listing Review Committee
Benchmark for counting the period	Calendar days	Business days
When we start counting the period?	From the date of issue of the decision or receipt of the written reasons	From the date of receipt of the decision or the written reasons

(b) Requesting or providing written reasons

	For disciplinary matters – Rule 2A.13	For non-disciplinary review matters – Rule 2B.13
For the relevant party to request written reasons		
Benchmark for counting the period	Business days	Business days
When we start counting the period?	From the date of issue of the decision	From the date of receipt of the decision

⁵⁸ Rules 2A.12 and 2B.08.

⁵⁹ Rules 2A.13 and 2B.13.

	For disciplinary matters – Rule 2A.13	For non-disciplinary review matters – Rule 2B.13
For the Exchange to provide written reasons		
Benchmark for counting the period	Calendar days	Business days
When we start counting the period?	From the date of issue of the request	From the date of receipt of the request

Issue

145. The practices for filing review applications and for requesting or providing written reasons for decisions are different for disciplinary and non-disciplinary review matters.

Consultation proposals and rationale

146. To align the practices for disciplinary and non-disciplinary review matters, we propose the following:
- (a) Use '*business day*' as the benchmark for counting the periods for filing review applications, and for requesting or providing written reasons for decisions.
 - (b) All review applications must be served on the Secretary.
 - (c) The counting of the periods for filing review applications, and for requesting or providing written reasons for decisions, is as follows:

	Filing review applications	Requesting written reasons	Providing written reasons
When we start counting the period?	From the date of issue of the decision or the written reasons	From the date of issue of the decision	From the date of receipt of the request

147. We also propose to delete reference to '*Listing Division*' in Rules 2A.12 and 2A.13 as decisions for disciplinary matters are only made by the Listing Committee and the Listing Review Committee but not the Listing Division.

Consultation questions

Q21 *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? If not, please provide reasons for your views.*

Q22 *We propose that all review applications must be served on the Secretary. Do you agree? If not, please provide reasons for your views.*

Q23 *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? If not, please provide reasons for your views.*

Q24 *We propose that the counting of the period for requesting written reasons be from the date of issue of the decision. Do you agree? If not, please provide reasons for your views.*

Q25 *We propose that the counting of the period for providing written reasons be from the date of receipt of the request. Do you agree? If not, please provide reasons for your views.*

CHAPTER 7: HOUSEKEEPING AMENDMENTS WHICH INVOLVE NO CHANGE IN POLICY DIRECTION

148. This Chapter discusses a number of proposed housekeeping Rule amendments to Chapter 2A that do not involve questions of policy. The proposed housekeeping amendments are straightforward, and are intended to improve clarity in the Rules.
149. All housekeeping Rule amendments will become effective on a date to be announced, subject to the necessary regulatory approvals. In the meantime, we welcome comments regarding whether the manner in which the proposed Rule amendments are drafted will give rise to any ambiguities or unintended consequences.

Re-writing Rules 2A.09 and 2A.10

Current position

150. Rule 2A.09 sets out a list of sanctions the Listing Committee may impose for Rule breaches, whereas Rule 2A.10 lists the persons subject to the disciplinary jurisdiction of the Exchange.

Our proposal

151. We propose to re-write the Rules regarding the disciplinary framework of the Exchange, including identifying the Relevant Parties first, to be followed by the disciplinary sanctions available to the Listing Committee.
152. We also seek to simplify the drafting of the Rules, and remove any obsolete references in the Rules⁶⁰.

Removal of independent financial advisers as a standalone Relevant Party

Current position

153. Independent financial advisers of a listed issuer are an existing Relevant Party under the MB Rules⁶¹ but not the GEM Rules. They are, however, subject to obligations under the GEM Rules⁶².

⁶⁰ We have removed the reference to the Commissioner of Banking in the new Rule 2A.10(10). The Office of the Commissioner of Banking and the Office of the Exchange Fund merged in 1993 to establish the Hong Kong Monetary Authority.

⁶¹ Rule 2A.10(j).

⁶² For example, under GEM Rule 17.92, an independent financial adviser appointed under GEM Rules 17.47(6)(b), 20.42 or 24.05(6)(a)(ii) must take all reasonable steps to satisfy itself that (1) it has a reasonable basis for making the statements required by GEM Rule 20.43, and (2) there is no reason to believe any information relied on by it in forming its opinion or any information relied on by any third party expert on whose opinion or advice it relies in forming its opinion, is not true or omits a material fact.

154. Currently, professional advisers of a listed issuer or any of its subsidiaries are a Relevant Party for disciplinary action under the Rules⁶³.
155. For disciplinary purposes, the term '*professional adviser*' is defined to include '*any financial adviser ... retained by an issuer to provide professional advice in relation to a matter governed by the Exchange Listing Rules*'⁶⁴.

Our proposal

156. We consider that independent financial advisers fall within the definition of '*professional adviser*'. We therefore propose removing independent financial advisers as a separate Relevant Party for disciplinary action, but make it clear that the term '*professional advisers*' includes independent financial advisers.

⁶³ Rule 2A.10(e).

⁶⁴ The paragraph immediately after Rule 2A.10(j).

CHAPTER 8: PROPOSED FUTURE STATE

157. The following represents a high level summary of the Exchange's proposals with regard to disciplinary sanctions set out in Chapters 2, 3 and 6:

	<u>Current Sanctions</u>	<u>Future State</u>	<u>Parties</u> ⁶⁵	
			<u>Against listed issuers and other entities</u>	<u>Against individuals</u>
<u>Reputational sanctions</u>	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	√	√
	PII Statement	Enhance by: (a) Lowering existing thresholds of ' <i>wilful</i> ' or ' <i>persistent</i> ' (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	x	Directors of named listed issuers and their subsidiaries

⁶⁵ See paragraph 86 of this paper in respect of the relevant parties subject to the Exchange's disciplinary jurisdiction and against whom disciplinary sanctions may be imposed.

	<u>Current Sanctions</u>	<u>Future State</u>	<u>Parties⁶⁵</u>	
			<u>Against listed issuers and other entities</u>	<u>Against individuals</u>
		director to discharge responsibilities		only
<u>Remedial sanctions</u>	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 also applies to the new Director Unsuitability Statement	Listed issuers only	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	√	√

<u>Current Sanctions</u>		<u>Future State</u>	<u>Parties⁶⁵</u>	
			<u>Against listed issuers and other entities</u>	<u>Against individuals</u>
<u>Ancillary or operational sanctions</u>	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 ⁶⁶	Retain	√	√
	Take such other action as appropriate	Retain	√	√

158. We set below, for information only, the actions that we will take to enhance our enforcement regime.

Publication of sanctions

Private reprimands: publications on an anonymous basis

159. A private reprimand is a current reputational sanction. By its nature, it does not attract publicity.
160. We recognize that the wider market may benefit (particularly from an educational perspective) by being made aware of the Exchange's concerns relating to specific conduct or a specific fact scenario that ultimately led to the imposition of a private reprimand.
161. In the circumstances, we will publish the *substance* of a private reprimand (without disclosing the identity of the party involved) in appropriate cases. This will increase the effectiveness of a private reprimand from the perspective of market education, future deterrence and influencing compliance culture and corporate governance.
162. The substance of the private reprimand will be published in a manner to maintain the anonymity of the parties concerned, e.g. the publication will not take place at the same time as that of the public sanctions of the same case.

⁶⁶ For the avoidance of doubt, the Exchange retains the ability to, at any time, refer to other regulatory bodies matters which fall within their jurisdiction even in the absence of a direction by the Listing Committee to do so.

Public sanctions

163. In line with the current practice of the Exchange, where the Listing Committee or the Listing Review Committee (as the case may be, after the decision has become final) has issued a public sanction or statement pursuant to the proposed new Rule 2A.10, those sanctions and/or statements will continue to be published on the HKEX website with reasons.
164. The Rules will be amended to reflect this practice to provide further clarity and certainty to the market.

Other sanctions under Rules 2A.10 and 2A.10A

165. Under the current Rule 2A.09(10), where there has been a Rule breach, the Listing Committee may take, or refrain from taking, such other action as it thinks fit. Currently, Rule 2A.09(10) expressly provides that this includes making public any action taken pursuant to certain sub-rules.⁶⁷
166. In order to provide further clarity, and in light of the proposed new sanctions and follow-on actions, we will remove the reference to the various sub-rules in the equivalent new Rule 2A.10(12) to reflect that the Listing Committee's power to take such actions as it thinks fit includes the power to make public any actions taken.

New Regime of Regulatory Letters

167. Where the Listing Division considers that there has been a Rule breach, it will decide, by reference to the criteria and non-exhaustive factors set out in the Enforcement Policy Statement⁶⁸, the appropriate regulatory response, including whether to bring a disciplinary action before the Listing Committee. If disciplinary action is not warranted, a regulatory letter will be issued to the party in breach.
168. The Listing Division will simplify and streamline the categories of regulatory letters it issues.
169. Under the new regime, there will be three categories of regulatory letters:
- (a) warning letters;
 - (b) guidance letters; and

⁶⁷ Currently, Rule 2A.09(10). Rules 2A.09(4), (5), (6), (8) or (9) being reporting the offender's conduct to another regulatory authority; ban on professional advisers or its employees; rectification or remedial action; trading suspension or cancellation of listing if a director subject to a PII Statement remains in office; and denial of facilities of the market.

⁶⁸ Refer to footnote 18.

- (c) no further action letters (where the Listing Division will take no further action following the conclusion of an investigation).
170. Generally, the distinguishing factors between warning letters and guidance letters are the level of severity of the conduct, the seriousness of the Rule breaches and the nature of the regulatory concerns. Warning letters are more severe than guidance letters, and as is the current practice, they need to be acknowledged, signed and returned by the relevant board members. Both categories will form part of the compliance record of the recipient.
171. The Exchange does not consider that specific consultation is required in relation to this new regime as this is a reorganisation of the regulatory letters and does not involve a change in enforcement policy.

APPENDIX I: DRAFT AMENDMENTS TO THE MAIN BOARD RULES

Chapter 2 Information Gathering

2.12B In responding to enquiries or investigations by the Exchange, a party subject to the enquiries or investigations must provide to the Exchange information or explanation which is accurate, complete and up-to-date.

Chapter 2A Disciplinary Procedures Jurisdiction and Sanctions

2A.4009

(1) The Exchange may bring disciplinary actions and impose or issue the sanctions in rule 2A.09 may be imposed or issued 2A.10 against any of the following:

- (a) a listed issuer or any of its subsidiaries;
- (b) any director of a listed issuer or any of its subsidiaries (or any alternate of such director);
- (c) any member of the senior management of a listed issuer or any of its subsidiaries;
- (d) any substantial shareholder of a listed issuer;
- (e) any professional adviser of a listed issuer or any of its subsidiaries;
- (f) any employee of a professional adviser of a listed issuer or any of its subsidiaries;
- ~~(f) [Repealed 1 January 2007]~~
- (g) any authorised representative of a listed issuer;
- (h) any supervisor of a PRC issuer; ~~and~~
- (i) [Repealed 1 January 2007]any guarantor of an issuer in the case of a guaranteed issue of debt securities or structured products; and
- (j) any other party who gives an undertaking to or enters into an agreement with the Exchange.

~~(j) any independent financial adviser of a listed issuer.~~

(2) For the purpose of this rule:

(a) “listed issuer” includes an issuer of listed structured products; ~~and~~

(b) “professional adviser” includes any financial adviser, independent financial adviser, lawyer, accountant, property valuer or any other person retained by an issuer to provide professional advice in relation to a matter governed by the Listing Rules. It does not include sponsors or Compliance Advisers; and

(c) “senior management” includes:

(i) any person occupying the position of chief executive, supervisor, company secretary, chief operating officer or chief financial officer, by whatever name called;

(ii) any person who performs managerial functions under the directors’ immediate authority; or

(iii) any person referred to as senior management in the listed issuer’s corporate communication or any other publications on the Exchange’s website or on the listed issuer’s website.

Notes: —

(34) The scope of any disciplinary action taken, ~~in particular any ban imposed on~~ against a professional adviser pursuant to under rules 2A.09(5), 2A.09, 2A.10 and 2A.10B, including any ban imposed on a professional adviser under rule 2A.10(9), shall be limited to matters governed by or arising out of the Listing Rules.

(42) ~~In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie in pursuance of rule 2A.10. In particular, p~~ Professional advisers’ obligations to, when acting in connection with Listing Rule matters on which they are instructed to advise, shall use all reasonable efforts to ensure that their clients understand and are advised as to the scope of and their obligations under the Listing Rules. They must not knowingly provide any information to the Exchange which is false or misleading in a material particular ~~are subject to any relevant requirements of professional conduct, as policed and enforced by any professional body of which that adviser is a member.~~

2A.0910

In addition to its powers to suspend or cancel a listing, if the Listing Committee finds there has been a breach of the Listing Rules by any of the parties named in rule 2A.0910 of the Listing Rules, it may: —

- (1) issue a private reprimand;
- (2) issue a public statement ~~which involves~~ involving criticism;
- (3) issue a public censure;
- (4) ~~report the offender's conduct to the Commission or another regulatory authority (for example the Financial Secretary, the Commissioner of Banking or any professional body) or to an overseas regulatory authority;~~
- (5) ~~ban a professional adviser or a named individual employed by a professional adviser from representing a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period;~~
- (6) ~~require a breach to be rectified or other remedial action to be taken within a stipulated period including, if appropriate, the appointment of an independent adviser to minority shareholders;~~
- (47) ~~in the case of wilful or persistent failure by a director of a listed issuer to discharge his responsibilities under the Listing Rules, state publicly that in the Exchange's opinion the occupying retention of the position of office by the director or senior management of a named listed issuer or any of its subsidiaries by an individual is prejudicial may cause prejudice to the interests of investors;~~
- (5) in the case of serious or repeated failure by a director to discharge his responsibilities under the Listing Rules, state publicly that in the Exchange's opinion the director is unsuitable to occupy a position as director or within senior management of a named listed issuer or any of its subsidiaries;
- (8) ~~in the event a director remains in office following a public statement pursuant to paragraph (7) above, suspend or cancel the listing of the issuer's securities or any class of its securities;~~
- (69) ~~in the case of wilful or persistent failure by a listed issuer to discharge its responsibilities under the Listing Rules, order that deny the facilities of the market to a listed issuer be denied for a specified period and/or until fulfillment of specified conditions to that issuer and prohibit dealers and financial advisers from acting or continuing to act for that issuer;~~

- (7) suspend trading in the listed issuer's securities or any class of its securities;
- (8) cancel the listing of the listed issuer's securities or any class of its securities;
- (9) ban a professional adviser or a named individual employed by a professional adviser from representing any or a specified party in relation to a stipulated matter or matters coming before the Listing Division or the Listing Committee for a stated period;
- (10) recommend reporting the conduct of the party in breach to the Commission or another regulatory authority, whether in Hong Kong or overseas (for example, the Financial Secretary or any professional body);
- (11) order rectification or other remedial action to be taken within a stipulated period;
- (12) take, or refrain from taking, such other action as it thinks fit, including making public any action taken pursuant to paragraphs (4), (5), (6), (8) or (9).

Notes:

- 1. Any reference to the Listing Committee in rules 2A.09, 2A.10, 2A.10A and 2A.10B includes both the Listing Committee and the Listing Review Committee.
 - 2. Where the Listing Committee or the Listing Review Committee (as the case may be, after the decision has become final), issues:
 - (i) a public sanction under rule 2A.10, such sanction will be published with reasons; or
 - (ii) a private reprimand, the substance of such sanction may be published with reasons without disclosing the identities of the parties involved.
 - 3. In exercising its powers of sanction the Exchange will recognise the differing roles and levels of responsibility of the persons against whom sanctions may lie under rule 2A.09.
 - 4. For the purposes of this rule and rule 2A.10A(2) below, denying "facilities of the market" is not intended to mean cancellation of listing. It is meant to include withholding approval of any matters that require approval from the Exchange, including the issuance of shares.
- 2A.10A(1) If a statement under rule 2A.10(4) with follow-on actions in sub-rule (2) below, or rule 2A.10(5), has been made against an individual, the listed issuer:
- (i) named in the statement; or

(ii) in respect of which any of its subsidiaries is named in the statement

must include in all of its announcements and corporate communications to be published a reference to the sanction made under rule 2A.10(4) or 2A.10(5), unless and until that individual ceases to be a director or senior management, as the case may be, of the named listed issuer and/or its subsidiaries.

(2) If an individual against whom a rule 2A.10(4) or 2A.10(5) statement has been made occupies the position of director or senior management, as the case may be, of the named listed issuer or subsidiary after a date to be determined and specified by the Listing Committee, as the case may be, the Listing Committee may, at any time in its sole discretion, take the follow-on actions below:

(i) order that the facilities of the market be denied to that issuer for a specified period; and/or

(ii) suspend or cancel the listing of that issuer's securities or any class of its securities.

(3) The Listing Committee may make public any follow-on action taken under rule 2A.10A(2).

2A.10B In addition to imposing the sanctions in rule 2A.10 when a party has failed to discharge obligations or responsibilities expressly imposed on that party by a specific Listing Rule, the Listing Committee may impose the sanctions in rule 2A.10 on any of the parties named in rule 2A.09 above, if it finds the party has:-

(1) failed to comply with a requirement imposed by the Listing Division or the Listing Committee;

(2) contravened an undertaking given to or breached an agreement with the Exchange in relation to a listing matter; or

(3) caused by action or omission or knowingly participated in a contravention of the Listing Rules or a requirement referred to in (1) above.

2A.11 The Listing Committee will, if requested by any party to be reprimanded, criticised, censured or otherwise sanctioned in pursuance of the powers contained in rules 2A.09, ~~and 2A.10, 2A.10A and 2A.10B~~ (a "review applicant"), give its reasons in writing for the decision made against that review applicant pursuant to rules 2A.09, ~~and 2A.10, 2A.10A and 2A.10B~~ and that review applicant shall have the right to have the decision against him referred to the Listing Review Committee for a further and final review. The Listing Review Committee may endorse, overturn, modify or vary the ruling of the earlier meeting. Subject to rule 2A.16A, the decision of the Listing Review Committee on review shall be conclusive and binding on the review

applicant. If requested by the review applicant, the Listing Review Committee will give reasons in writing for its decision on review.

- 2A.12 A request for a review of any decision of ~~the Listing Division or the Listing Committee~~ made pursuant to rule 2A.11 must be ~~notified to the Exchange~~ served on the Secretary within seven business days of the ~~Listing Division's or~~ issue of the Listing Committee's decision unless written reasons for a decision are requested, in which case a request for a review of that decision must be notified within seven business days of the ~~receipt~~ issue of the written reasons.
- 2A.13 Any request for ~~the Listing Division,~~ the Listing Committee or the Listing Review Committee to give its reasons in writing for its decision shall be made within three business days of the issue of its decision. Where requested, written reasons for a decision will be provided to all parties to the proceedings by ~~the Listing Division,~~ the Listing Committee or the Listing Review Committee (as the case may be) as soon as possible and, in any event, within 14 business days of the receipt of the request.

Chapter 2B

Time for application

- 2B.08 (1) Subject to (3) below, a Review Request for reviewing any decision of the Listing Division, the Listing Committee or the Listing Review Committee (as the case may be) under rules 2B.05(1), 2B.06, 2B.06A and 2B.16(7) must be served on the Secretary within seven business days of ~~receipt~~ the issue of either the relevant decision, or if the relevant party requests written reasons under rule 2B.13(1), those written reasons.
- (2) A Review Request for reviewing a Return Decision or a Listing Committee's decision to endorse a Return Decision must include the grounds for the review together with reasons and be served on the Secretary within five business days of ~~receipt~~ the issue of the written decision under rule 2B.13(2).
- (3) A Review Request made under rule 2B.06 for reviewing a decision of the Listing Division to direct the resumption of trading or, if such decision has been referred to the Listing Committee for review, the Listing Committee's decision on such review, must include the grounds for the review together with reasons and be served on the Secretary within five business days of ~~receipt of~~ the issue of the written decision under rule 2B.13(3).

Request for written reasons

- 2B.13 (1) Except for a review relating to a Return Decision or a decision to direct the resumption of trading, any request for ~~on receipt of a decision by~~ the Listing Division, the Listing Committee or the Listing Review Committee (as the case may be) to give written reasons for its decision shall be made by a relevant

party within has three business days of the issue of ~~to request written reasons~~ for the decision. The Listing Division, the Listing Committee or the Listing Review Committee (as the case may be) will provide written reasons within 14 business days of the receipt of the request. Such written reasons will be provided to all parties to the review.

Appendix 1

Part A

Information about the issuer's management

- 41.(1) ...In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include ... and such other information of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1

Part B

Information about the issuer's management

34. ...In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include... and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1

Part E

Information about the issuer's management

41. (1) ...In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will... and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 1
Part F
Information about the issuer's management

30. ...In addition, brief biographical details in respect of the directors, proposed directors, senior managers and proposed senior managers of the issuer shall be provided. Such details will include... and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities). ...

Appendix 16
Information in annual reports

12. A listed issuer should provide brief biographical details of its directors and senior managers. Such details will include... and such other information (which may include business experience) of which shareholders should be aware, pertaining to the ability or integrity of such persons (which would include, without limitation, full particulars of any public sanctions made against them by statutory or regulatory authorities).

APPENDIX II: DRAFT CONSEQUENTIAL MAIN BOARD RULE CHANGES

Chapter 6 Trading halt or suspension

6.02 ...

Note: (1) ... Failure by an issuer to do so may result in disciplinary proceedings being brought against, amongst others, the issuer and its directors with the Exchange imposing sanctions available under rule 2A.10 ~~2A.09~~.

Chapter 8A General

8A.03(2) ... impose the disciplinary sanctions set out in rule ~~2A.09~~ 2A.10 against the parties set out in rule 2A.09 ~~2A.10~~;

APPENDIX III: PRIVACY POLICY STATEMENT

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 reorganisation

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

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By Email: DataPrivacy@HKEX.COM.HK

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