

**Public Submission to the HKEx about the Consultation Paper on the Review of Listing Rules
relating to Disciplinary Powers and Sanctions**

Submission by:

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General remarks:

This public submission is my personal view. I shall respond to questions 1 to 9 of the Consultation Paper.

Responses to 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.

Answer: YES

Additional Comments:

The lowering of existing thresholds of wilful or persistent is important. However, in deciding what constitutes director's failure to discharge his/her responsibilities could be problematic due to the complexities of the matters concerned. A barometer the disciplinary committee could consider is the 'harm' (actual and potential) done to the issuer as one of the factors in determining failures a director in discharging his/her responsibilities. Even though the concept of harm is often used in criminal matters, there has been new case laws concerning breaches of directors' duty of care and diligence in Australia. For example, see *Australian Securities and Investments Commission v Mitchell (No 2)* [2020] FCA 1098 and *Australian Securities and Investments Commission v Mariner Corporation Ltd* (2015) 241 FCR 502. Therefore, including

harm as a factor when considering to issue PII Statement could reinforce the expectations that directors must act diligently in discharging their duties.

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.

Answer: YES

Additional Comments:

The influence and direct contributions to how listed entities are governed often go beyond the board to include senior management. This is found in the Manager-in-Charge requirements developed by the *Securities and Futures Commission* for licensed financial services companies in Hong Kong. Furthermore, the Manager-in-Charge is a good reference point for the disciplinary committee in mapping out the scope of senior management's duties and the roles individual manager have over various departments of the issuer.

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.

Answer: YES

Additional Comments:

If, however after follow-on actions the disciplinary committee finds that the listed entity has failed to comply with PII Statement, the disciplinary committee should consider issuing PII Statement to other directors of the board. This is critical as good corporate governance requires the board as a whole to act collectively in governing a company.

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.

Answer: YES

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.

Answer: YES

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.

Answer: YES

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.

Answer: YES

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

Answer: YES

Additional Comments:

As noted in response to Q 1 that the disciplinary committee should consider the issue of 'harm' (actual and potential) as one of the factors to determine failures of the director in question discharging his/her responsibilities when issuing PII Statement. It is my opinion that for Director Unsuitability Statement should go beyond the harm of the directors' actions or inactions and decisions or indecisions regarding their corporate duties to include public interest considerations as well as the negative impact upon the reputation of other issuers and the

HKEx. This is particularly important for the HKEx as majority of the new issuers are based outside Hong Kong or have their core business operations outside Hong Kong. The differences in corporate governance culture of issuers in various countries would invariably affect governance practices. Having public interests and impact on upon the reputation of other issuers and the HKEx as a factor when considering to issue Director Unsuitability Statement would enhance the overall quality of the governance of entities listed on the HKEx.

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.

Answer: YES

End of submission