

GUIDANCE NOTE ON COOPERATION

1. Objective

- 1.1. The Exchange conducts investigations of potential Listing Rule breaches by listed issuers, directors and other relevant parties, and implements the appropriate regulatory response, through disciplinary action if necessary before the Listing Committee and the Listing Review Committee (each referred to in this statement as the **Committee**).
- 1.2. Cooperation with the Exchange is an essential element for the maintenance of an orderly, informed and fair market, and the Listing Rules accordingly have broad requirements on listed issuers and directors, amongst others, to provide to the Exchange any information that the Exchange may reasonably require for investigating a suspected breach of or verifying compliance with the Listing Rules. Furthermore, directors and some other Parties are required to undertake to cooperate in any investigation conducted by the Exchange, and any persons interacting with the Exchange in respect of its enquiries or investigations are expected to provide complete, accurate and up-to-date information.
- 1.3. The Exchange recognises and values cooperation in its investigations and disciplinary actions, as it assists the Exchange to achieve its regulatory and enforcement objectives, and facilitates the effective and efficient use of the Exchange's resources, which in turn benefits the market and all its stakeholders.
- 1.4. The extent to which a party has cooperated may influence the Exchange's decision as to the appropriate level of regulatory response. Furthermore, whether a party has fully assisted and cooperated with the Exchange in its investigation, and whether a party has made an early decision not to contest a disciplinary case brought against it, are two of the principal factors that may be taken into account by the Committee in determining an appropriate sanction.¹
- 1.5. This Guidance Note seeks to provide further clarity on: (a) what constitutes, and what does not constitute, cooperation in the context of the Exchange's work, and (b) the Exchange's approach to cooperation. The focus of this note is on those parties who are the subject of enforcement investigations and/or disciplinary action (**Parties**).
- 1.6. This Guidance Note should be read alongside the [Enforcement Policy Statement](#), the [Sanctions Statement](#) and the [Settlement Statement](#). The guidelines below do not derogate from the obligation of the Committee, when determining the appropriate sanctions and directions, to have regard to all relevant circumstances in any individual case.

¹ See the [Sanctions Statement](#), paragraph 7(c)-(d)

2. Cooperation with the Exchange

2.1. As noted above, Parties are expected to cooperate with the Exchange during its investigations and disciplinary actions. Mere compliance with statutory or regulatory obligations does not in itself amount to cooperation. Cooperation will therefore normally need to be at an exceptional level in order to constitute a mitigating factor.

2.2. The following are non-exhaustive examples which may be recognised as cooperation:

2.2.1. *Providing true and complete information and documents regarding the suspected breach or misconduct.*

This may include:

- (i) making timely arrangements to provide evidence and information;
- (ii) taking early and proactive steps to preserve and collect relevant evidence;
- (iii) giving full disclosure of all relevant information, including information regarding any weaknesses, failings or breaches, and information which may not have been specifically requested by the Exchange, or discovered by the Exchange if not for the cooperation; and
- (iv) assisting the procurement of relevant evidence from individuals and/or entities with whom the Party has dealings, including (amongst others) staff, service providers, and advisors.

2.2.2. *Taking a proactive approach:* demonstrating a willingness to prioritise and devote resources to investigate the matter and respond to the Exchange's enquiries:

- (i) if an investigation is being conducted and/or input is being sought from professional third parties on matters relevant to the investigation (such as auditors, forensic investigators, legal or financial advisers, or control reviewers), then this should be done promptly to ensure the Party can submit a timely response to the Exchange; and
- (ii) early and proactive reporting to the Exchange of breaches or misconduct are typically indicators of good culture and attitude towards Listing Rule compliance. For the avoidance of doubt, any such reporting is distinct from, and does not in any way operate as a substitute for, a Party's obligations to make any appropriate disclosures under the Listing Rules.

2.2.3. *Early admission of breaches:* willingness to take responsibility by the Parties for the breaches and/or misconduct, and to admit any breaches at an early stage. Such an admission should normally be in writing and should include at least the following information:

- (i) the relevant Listing Rule(s) / obligations;

- (ii) a chronology describing relevant events relating to the breach;
- (iii) identification of all relevant parties involved in the matter and their responsibilities (see Note 1 below);
- (iv) an admission of breach;
- (v) the reason(s) why the breach took place (see Note 2 below); and
- (vi) any remedial actions taken or to be taken.

Note 1: All relevant parties should be specifically identified, including individuals. If a listed issuer is admitting a breach, the admission should also state which individuals are responsible, and whether those individuals accept their responsibility and are also admitting any breaches.² In this regard, Parties should bear in mind that a listed issuer can only operate through the acts of individuals, and that an issuer's directors have primary responsibility for that issuer's Rule compliance.

Note 2: It is generally inadequate to say that a breach occurred due to an error, oversight, misunderstanding, or similar, without providing further details. If such reasons apply, then details should be given as the circumstances, including identifying who was mistaken etc and in what regard, how this led to the breach, and whether there were any relevant internal control deficiencies.

2.2.4. *Initiating settlement / accepting sanctions*: seeking early resolution of enforcement action by initiating settlement negotiations with the Exchange and, if the Exchange has indicated the sanctions that it proposes to recommend, providing early acceptance of those sanctions (prior to the commencement of disciplinary action). Parties wishing to settle should approach the Exchange as early as possible, as the Exchange is less likely to be amenable to settlement the further the enforcement action has progressed.³

2.3. The Exchange may take into account the degree of cooperation provided by the Parties and consider it with all relevant circumstances when determining the appropriate regulatory response.

2.4. Cooperation may be recognised in appropriate cases by, amongst other things:

- 2.4.1. a reduction in the sanction recommended by the Listing Division or imposed by the Committee; and/or
- 2.4.2. the inclusion of a statement in respect of the cooperation in a publication by the Exchange in respect of a disciplinary matter (such as a news release or statement of disciplinary action).

² See the section entitled "Responsibility" in the [Enforcement Policy Statement](#).

³ See the [Settlement Statement](#) for details.

3. Uncooperative conduct

- 3.1. A failure to cooperate when there is a duty to do so is itself considered a serious breach, warranting the imposition of some of the most severe sanctions available. A failure to cooperate fully with the Exchange can also constitute an aggravating factor which the Committee may take into account when determining the appropriate sanction to be imposed on a Party.
- 3.2. Uncooperative conduct includes but is not limited to:
- 3.2.1. a failure to respond to the Exchange, including a failure to provide substantive responses to some or all of the Exchange's enquiries;
 - 3.2.2. provision of inaccurate, incomplete or misleading information;
 - 3.2.3. unnecessarily prolonging the Exchange's investigation;
 - 3.2.4. failure to attend an interview or disciplinary hearing at which a Party has been requested to appear; or
 - 3.2.5. the provision of late submissions, evidence or documents (see paragraph 3.3 for details).
- 3.3. Late provision of relevant information, submissions and evidence, and/or the delayed raising of an explanation or defence, can increase the time and cost of an investigation, and can interfere with the efficient administration of the disciplinary process. Parties to an investigation must therefore take particular care to answer the Exchange's enquiries fully, and to provide all relevant evidence. Amongst other things:
- 3.3.1. Parties should ensure that they answer all, and not just some, of the Exchange's enquiries. Parties should also ensure they answer the questions asked. For example, if the Exchange asks for submissions from each member of the board of directors regarding the steps they have individually taken to ensure that a listed issuer's internal control framework is adequate, then a response to the effect that no internal control issues have been identified does not answer the Exchange's enquiry at all.
 - 3.3.2. Responding to the Exchange's enquiries without providing substantive information, remaining in contact with the Exchange during the course of an investigation / disciplinary action, and/or indicating availability to answer the Exchange's enquiries, does not of itself constitute cooperation.
 - 3.3.3. If a Party attempts to raise new submissions or evidence, when the same could or should have been submitted to the Exchange at an earlier stage of the matter, then this may call into question the credibility or reliability of the new submissions / evidence.

- 3.3.4. In disciplinary matters, if any Party does not agree with the content of the disciplinary report, they should: (a) identify the matters with which they disagree, (b) explain why they disagree, and (c) provide all relevant evidence in support of their stance, at the earliest available opportunity. If a Party fails to take issue with the content of a disciplinary report before the deadline for response, then it may prejudice the ability of that Party to raise the matter at a later date.
- 3.4. Parties should take note that if they fail to provide relevant submissions, information or evidence at the appropriate time, then this may result in one or more of the following consequences:
 - 3.4.1. the Committee may attach less weight to any late submissions or materials, or draw adverse inferences from the fact that they were raised at a late stage;
 - 3.4.2. that Party's conduct may be considered an aggravating factor, to be taken into account when determining the appropriate sanction; and/or
 - 3.4.3. the Party may in appropriate cases be found to be in breach of its obligation to cooperate, resulting in the imposition of a sanction on grounds of non-cooperation, even if a failure to cooperate has not been alleged in the disciplinary report.

4. Legal professional privilege

- 4.1. The Exchange fully respects the Parties' right to legal professional privilege. The assertion of this right on a bona fide basis will not be regarded as uncooperative conduct.
- 4.2. Voluntary waiver of legal professional privilege by a Party over one or more documents, even on a limited basis, may assist the Exchange's investigation and will be taken into consideration when the Exchange assesses the degree of cooperation provided by that Party.

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