

Part B Consultation Questions

Please indicate your preference by checking the appropriate boxes. Please reply to the questions below on the proposed changes discussed in the Consultation Paper downloadable from the HKEx website at: <http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201208.pdf>.

Where there is insufficient space provided for your comments, please attach additional pages.

CHAPTER 2: PROPOSED AMENDMENTS

Main Features of Proposed New Rules

1. Do you agree with our proposed inclusion of express statements regarding the SFC's and the Exchange's role and responsibilities for enforcement of the obligation to disclose inside information under the SFO in MB Chapter 13 and GEM Chapter 17?

Yes

No

Please give reasons for your views.

We welcome HKEx's confirmation that it will remain the frontline regulator for monitoring the market, requiring announcements and trading suspension on a day-to-day basis. It is sensible and efficient to retain and utilise HKEx's existing expertise in this area, and its current practices. Dual monitoring and enquiries by both authorities would not only be duplicative and inefficient, but would also cause confusion in the market for listed issuers, exposing them to potential enquiries in respect of the same matter from two different regulators.

Given that HKEx will continue to perform this frontline role, we also agree that it is appropriate that, where HKEx becomes aware of a possible breach of the statutory disclosure obligation, it may refer the matter to the SFC for further enquiry or investigation. In fact we think it is important to spell out clearly that the SFC will be solely responsible for statutory disclosure obligation and that HKEx will not duplicate the regulatory function with the SFC in this regard.

It is important for listed issuers to be clear about which authority they will be dealing with, and for which purposes. Retaining the role of HKEx in conducting monitoring and initial enquiries, while leaving it to the SFC to conduct more formal investigation into suspected breaches where appropriate, would provide this clarity.

We hope that this division of responsibilities will be set out in the new Memorandum of Understanding which the Government has said, in its Consultation Conclusion, will be entered into between HKEx and the SFC, now that the legislation has been passed.

2. Do you agree with our proposed deletion of MB Rules 13.09(1)(a) and 13.09(1)(c) (GLRs 17.10(1) and 17.10(3))?

Yes

No

Please give reasons for your views.

3. Do you agree to delete some of the notes to Rule 13.09(1) (GLR17.10) and elevate some of them to rules, as proposed?

Yes

No

Please give reasons for your views.

4. Do you agree with the proposed changes to Rule 13.10 (GLR17.11)?

Yes

No

Please give reasons for your views.

5. Do you agree that the issuer should be required to confirm all the four negatives set out in the proposed new standard announcement under MB Rule 13.10 (GLR17.11), as proposed in paragraph 17?

Yes

No

Please give reasons for your views.

We agree to the contents of the proposed new standard announcements except the reference to the correction or prevention of the false market. We are of the view that the concept of false market is problematic. Since there is no definition of what would amount to a false market, it is not easy to determine whether a false market has been created. Moreover, where a false market seems to exist because of irregular trading activities of a company's shares, such trading activities are often times outside the control of the issuer and it is therefore hard for the issuer to take any action to prevent or correct them. To place the responsibility on the issuer to expressly correct or prevent a false market is onerous and not always practical. We recommend that reference to false market in this proposed announcement be removed.

6. Do you agree that the obligation under Rule 13.09(1)(b) (GLR17.10(2)) should remain in the Rules despite implementation of Part XIVA of the SFO?

Yes

No

Please give reasons for your views.

7. Do you agree with the drafting in the proposed new MB Rule 13.09(1) (GLR17.10(1))?

Yes

No

Please give reasons for your views.

As per our views stated in our answer to Q.5, it is onerous to require an issuer to expressly take action to prevent or correct a false market, we feel that it is more suitable to adopt the existing wordings which refer to the avoidance of the establishment of a false market.

8. Do you agree to clarify the obligation to apply for a trading halt? Do you agree with the proposed new MB Rule 13.10A (GLR17.11A)?

Yes

No

Please give reasons for your views.

9. Do you agree that a trading halt will be required if an issuer reasonably believes there is inside information which requires disclosure under the SFO but it cannot disclose the information promptly? Do you agree with the proposed new MB Rule 13.10A(2) (GLR17.11A(2))?

Yes

No

Please give reasons for your views.

10. Do you agree to include MB Rule 13.06A (GLR17.07A) which imposes an obligation to preserve confidentiality of inside information until disclosure?

Yes

No

Please give reasons for your views.

As currently drafted, issuers could still be in breach of Rule 13.06A, and potentially subject to disciplinary action, even after complying with the inside information disclosure obligation under the SFO.

This is because of the fact that, under 307D of the Securities and Futures (Amendment) Ordinance, the SFO disclosure requirement does not apply, even if strict confidentiality is not maintained and such information has been leaked, provided that the issuer has taken all reasonable precautions to ensure that information would not be leaked, and has disclosed the information as soon as reasonably practicable after the issuer has become aware of the leakage. By contrast, Rule 13.06A would provide no such defence.

This means that a potential conflict exists between 13.06A and the new statutory disclosure obligation, and that an issuer could still be in breach of 13.06A for failure to maintain confidentiality, even though such failure would be excused under the SFO. This anomaly arises because the focus of the general disclosure requirement under the Listing Rules was on safeguarding confidentiality prior to announcement, whereas the focus of the new SFO disclosure requirement is on announcement as soon as reasonably practicable, subject to a limited confidentiality safe harbour.

We do not believe it is the policy intention to impose stricter requirements in respect of inside information under the Listing Rules than under the SFO. Moreover, we believe that there is a sufficient incentive under the SFO to maintain the confidentiality of inside information until announcement, because of the safe harbour provided for confidential information under 307D of the Securities and Futures (Amendment) Ordinance. We therefore believe that Rule 13.06A is redundant and can be deleted.

Other Changes

Part A: New Defined Terms and Revise Some Defined Terms

11. Do you agree that we should define Part XIVA of the SFO as “Inside Information Provisions”?

Yes

No

Please give reasons for your views.

12. Do you agree with the proposed changes to the defined terms set out in paragraphs 26(b) and 26(c) of the Consultation Paper?

Yes

No

Please give reasons for your views.

13. Do you agree with the proposed definition of the term “trading halt” and its use in the proposed Rule changes?

Yes

No

Please give reasons for your views.

Part B: Other Consequential Changes

14. Do you agree with our proposal to replace the term “price sensitive information” in the Rules with the term “inside information”?

Yes

No

Please give reasons for your views.



15. Do you agree with our proposal to retain provisions such as MB Rules 10.06(2)(e) and 17.05 (GLR13.11(4) and 23.05) by replacing the term “price sensitive information” with the term “inside information”, although their enforcement would require the Exchange’s interpretation of whether certain information is inside information?

Yes

No

Please give reasons for your views.

16. Do you agree with our proposal to delete references to the obligation to disclose information under the current general disclosure obligation and in particular, MB Rules 13.09(1)(a) and (c) and GLR17.10(1) and (3)?

Yes

No

Please give reasons for your views.

17. Do you agree with our proposal to create specific rules in respect of those matters which are currently discloseable under the general disclosure obligation, i.e. the proposed new MB Rules 13.24A, 13.24B, and the revised Practice Notes 15 and 17?

Yes

No

Please give reasons for your views.

18. Do you agree with our proposed changes to the provisions and the Listing Agreements in respect of the issue of debt securities?

Yes

No

Please give reasons for your views.

19. Do you agree with our proposal to clarify the obligation on guarantors of debt securities to disclose information which may have a material effect on their ability to meet the obligations under the debt securities?

Yes

No

Please give reasons for your views.

Part C: Plain Writing Amendments

20. Do you have any comments on the plainer writing amendments? Do you consider any part(s) of these amendments will have unintended consequences? Please give reasons for your views.

Yes

No

Please give reasons for your views.