

## **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 appreciate the Exchange's efforts in clarifying its powers in relation to the issuer's general disclosure obligations. We believe a set of unambiguous rules and clear guidances from the Exchange on this very daily and important topic would greatly enhance market efficiency and, in turn, the overall competitiveness of the Exchange as a globally recognized exchange.

In principle, we agree that the respective roles and responsibilities of the Commission and the Exchange should be separated and clearly specified. We would like to make the following general comments with a view to improving transparency and efficiency of our securities practice owing to the recent change of the regime:

- The first sentence of the new Rule 13.05(3) provides that "[w]here the Exchange becomes aware of a possible breach of the Inside information Provisions, it will refer it to the Commission". It indicates the Exchange itself will not take any action to enforce the Inside Information Provisions. However, the second part of the new Rule 13.05(3) appears to suggest that the Exchange may take action for a breach of the Inside Information Provisions "under the Listing Rules" if "the Commission considers it not appropriate to pursue the matter under the Ordinance and the Exchange considers action under the Rules for a possible breach of the Rules appropriate". It becomes unclear as to when any non-disclosure of Inside Information would be regarded as a "possible breach of the Rules", and whether the Commission or the Exchange would be monitoring the situation in different scenarios. It would be helpful if the Exchange could clarify the regulators' intention in the Rules.

- In many circumstances a non-disclosure would constitute both a non-disclosure of inside information under the Inside Information Provisions and a breach of a specific disclosure obligation under the Rules. Particularly, given the retention of Rule 13.09(1)(b) which requires the issuers to disclose "information necessary to correct or prevent a false market in an issuer's securities" under the Rules, there would be cases where a disclosure obligation of the issuer would arise under both the Inside Information Provisions and the Rules in relation to the same piece of material information - where such material information, if not properly disclosed, may have a potential effect of creating a false market in the issuer's securities. It would be helpful if the Exchange could provide guidance as to whether in such circumstances the Exchange would refer the case to the Commission, or if it would make enquiries against the issuer directly (and whether it would consult the Commission before making such enquiries).

- It is also noted that there are specific provisions under the Rules (e.g. new Rule 10.06(2)(e) the compliance of which would require the determination of whether there is indeed "inside information" at the relevant time. If the Exchange is to enforce such provision without consulting the Commission, it would be helpful if the Exchange could clarify whether it will take into account the guidances made by the Commission in determining whether the event in question would constitute "inside information" for the purposes of the Rules. It would also be helpful if the Exchange could clarify if there is any understanding that rulings made by the Exchange would in turn be referred to by the Commission in relation to the same event and in future cases, particularly in respect of the same issuer.

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.

N/A
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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.

We believe it is appropriate so long as the notes are dealing with disclosure obligations under specific circumstances.

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

Yes

No

Please give reasons for your views.

Without clear guidance from the Exchange, issuers (and practitioners) would not be able to ascertain as to what is required to be done, and what degree of investigation should be made, before an announcement can be made pursuant to the revised Note 1 (a "Note 1 Announcement").

This is particularly the case when the subject matter of the Exchange's enquiry is related to an event beyond the control of the issuer (e.g. market rumours, expectations or sentiments). Other events beyond the control of the issuer (e.g. State policy or industry development and speculation) could also result in a false market, or otherwise constitute inside information, to an issuer's securities. It is therefore difficult for issuers (and practitioners) to determine as to what "due enquiry" should be made before making a Note 1 Announcement, noting that a Note 1 Announcement has to be made without any delay.

We believe clear guidance should be given under the Rules and by the Exchange as to what would constitute "due enquiry" in different circumstances.

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.

See our comments on question 4 above.

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.

In practice, it may be difficult to distinguish any obligation to disclose "information necessary to correct or prevent a false market in an issuer's securities" from the general obligation to disclose "inside information" under the Inside Information Provisions. In many cases a piece of inside information, if not properly disclosed, may have a potential effect of creating a false market in the relevant securities.

The retention of Rule 13.09(1)(b) may create two overlapping yet different regulators, i.e. the Commission and the Exchange, in relation to the same piece of material information in some circumstances.

If Rule 13.09(1)(b) is to be retained, we would request the Exchange to provide clear guidance from a daily operational perspective. Please see our comments on Question 1.

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.

See Question 6

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.

Our comments, if any, are reserved for the separate consultation on trading halts.

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.

Our comments, if any, are reserved for the separate consultation on trading halts.

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.

We agree to this in principle. However, we suggest that the issuer should only be required to take reasonable precautions for preserving the confidentiality of the information and exemptions should be available. Reference can be made to Sections 307D(2)(a) and 307D(3) of the Ordinance and also to the other provisions in the Rules (e.g. the existing Rule 14.44(2) and the existing Note 2 to Rule 14.43).

## 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.

N/A



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.

N/A

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.

Our comments, if any, are reserved for the separate consultation on trading halts.

### **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.

N/A

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.

In principle, we agree that only one concept of "inside information" should be referred to in the Ordinance and the Rules. The use of the original term "price sensitive information", the meaning of which is similar to (but not the same as) the definition of "inside information", may create confusion. However, for such new provision to be operable, the Exchange may wish to clarify the respective roles and responsibilities of the Exchange and the Commission. Please see our comments on Question 1 above.

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.

N/A

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.

N/A

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.

Our comments above, to the extent applicable, similarly apply to the provisions relating to debt securities.

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.

N/A

### 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.

The new Rule 13.51(2)(v) - we suggest to remove references to "manager" and "officer" as they are generic terms that are hard to define. Further, the inclusion of these positions would make the disclosure obligations too burdensome given the provision seeks to include all historical findings of Market Misconduct Tribunal without any time limit.

