

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 agree, in general, with the inclusion of the statements. However, we submit that it is not apparent from the proposed Rules 13.05(3) and 13.06(1) whether, in the event that an issuer breaches both Part XIVA of the SFO and the obligation to correct or prevent a false market under amended Rule 13.09(1), both the SFC and the Exchange will take disciplinary action.

In addition, we suggest that the proposed Rule 13.05(1) be combined with the proposed Rule 13.06(3) as they both relate to how the discharge of the Exchange's duty under section 21 of the SFO will affect the issuer's continuing obligations (which is the subject of Chapter 13).

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.

We agree that the rules should be deleted as the SFO will contain the requirements in respect of the disclosure of relevant information covering information referred to in Rules 13.09(1)(a) and 13.09(1)(c).

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 agree that the majority of the notes to Rule 13.09(1) should be deleted. It would be more appropriate for any notes assisting in the interpretation of the obligation to disclose price-sensitive information to be included in the SFC's Guidelines on Disclosure of Inside Information.

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

Yes

No

Please give reasons for your views.

We agree with the proposed changes.

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, in general, with the form of standard announcement except the confirmation regarding "relevant information concerning the subject matter of the Exchange's enquiry". We submit that there may be circumstances where an issuer is aware of relevant information concerning the Exchange's enquiry but the information does not fall within the disclosure obligations under the Listing Rules or the SFO, for example, where the information is not material or a safe harbour applies. In these cases, it may not be appropriate for the issuer to confirm that they are not aware of the relevant information.

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.

We generally understand the rationale of retaining Rule 13.09(1)(b) as the correction or prevention of a false market is not covered under the definition of "inside information" in the SFO. However, the obligation to correct or prevent a false market would also be considered a "general" disclosure obligation. Would the Exchange consider issuing guidance on how an issuer could comply with two sets of general disclosure requirements and dealing with two regulators, in particular, whether and in what circumstances the regulators will take action where there is a potential breach of both Part XIVA of the SFO and the revised Rule 13.09(1) (please see our comment on question 1 above)?

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.

We agree with the proposed drafting of the provision.

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.

We agree with the clarification of the obligation to apply for a trading halt.

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.

We agree that a trading halt should be required. We submit that the circumstances where the proposed Rule 13.10A(2) applies would already be covered under the proposed Rule 13.10A(1), as Rule 13.09(2)(a) would require an issuer to disclose inside information under Part XIVA of the SFO. We submit that the requirement under Rule 13.10A(2) should be triggered when there is an obligation to disclose under Part XIVA of the SFO, rather than a "reasonable belief" that there is inside information. Similarly, the second point under the revised paragraph 3 of Practice Note 11 would be covered under the first point under paragraph 3.

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 on the obligation to preserve confidentiality of inside information until disclosure, as the obligation relates to the principle of avoiding selective disclosure.

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.

We agree with the proposed definition.

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.

We agree in principle with the proposed changes. In the long term, the Exchange may wish to consider adopting one term throughout the Listing Rules to define a single concept for the purpose of consistency and in line with the Exchange's plain language initiative.

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.

We agree with the proposed definition, as this is the generally understood meaning of the term.

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.

We agree with the amendment as it is consistent with the term used in Part XIVA of the SFO.

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.

We agree with the replacement of the term.

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.

We agree with the deletion of the references.

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.

We agree with the creation of the specific rules as they relate to specific matters. In relation to the proposed Rule 13.24A, as the Exchange intends the rule to apply to circumstances where an issuer fails to comply with Rule 13.24 (paragraph 31(c) of the Consultation Paper), we suggest that Rule 13.24A expressly refers to the fact that the suspension is as a result of the failure to comply with Rule 13.24.

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.

We agree with the proposed changes.

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.

We agree with the proposal.

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.

We, in general, agree with the plain language amendments. We have the following additional observations and comments:

(a) the proposed Rule 13.06(1) uses the term "specific circumstances" in relation to disclosure obligations under Chapter 13, however, the revised Rule 13.09(1) is a general disclosure obligation; and

(b) the obligation under the proposed Rule 13.24A is not intended to catch all suspensions and should be limited to suspensions as a result of a failure to comply with Rule 13.24 (please see our comment on question 17 above).