

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.

This has made clearer the SFC's and the Exchange's role and responsibilities for enforcement of the obligation to disclose inside information under the SFO.

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.

To avoid duplication or even potential different interpretations in the Listing Rules and SFO.

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.

For relevancy reason.

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

Yes

No

Please give reasons for your views.

The notion of “due enquiry” must itself be linked to or constrained by the parallel obligation to disclose promptly. The phrase “due enquiry” offers no guidance as to what is expected to be enquired and of whom. This is particularly relevant since the enquiry must be relative to recent increases or decreases in the issuer’s share price but directors cannot and presumably are not expected to enquire of the reasons for market behaviour — afterall they have no basis on which to form any judgment as to why shareholders are selling shares or investors are buying them.

So we suggest it should be either due enquiry of the issuer’s management or reasonable enquiry in all the 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.

Subject to comments set in our response to Question 4 above and the deletion of "to correct or" from the negative statement for the same reason as set out in the answer to Question 7.

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.

Subject to comments as set out in the answer to Question 7.

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.

The words "correct or" should be deleted from the drafting. It is not practicable for an issuer to correct a false market - the market is the market and behaves as it wishes, not at directors' behest. This appears to be the regulator's responsibility to maintain an orderly, informed and fair securities 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.

It seems to us an obligation to notify promptly is at odds with the regime whereby announcement cannot be made during trading hours without a trading halt. Unless the regulatory regime is aligned in this regard, position arises where an issuer is given a choice between two unwelcome outcomes — either declaring a trading halt thereby denying shareholders their right to deal with their property or wait until trading has ended and run the risk of falling foul of the promptness of disclosure.

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.

Please refer to our response to Question 8.

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.

For the reasons set out in paragraphs 24 and 25 of the Consultation Paper.

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.

Sensible shortform.

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.

Sensible shorthand.

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.

Sensible shorthand.

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.

Consistent with the statutory regime.

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.

For the reasons set out in paragraphs 29 and 30 of the Consultation Paper.

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.

Consistent with the statutory regime.

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.

For the reasons set out in paragraphs 32 and 33 of the Consultation Paper.

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.

For the reasons set out in paragraphs 34 and 35 of the Consultation Paper.

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.

For the reasons set out in paragraphs 34 and 35 of the Consultation Paper.

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.