

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 suspensions on-a-day-to-day basis. We believe that 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.

It is important for listed issuers to be clear about which authority they will be dealing with, 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 Conclusions, 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.

The proposed deletion avoids duplication with the new statutory disclosure obligation under the 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.

They are sensible amendments consequential on the enactment of the new legislation.

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

Yes

No

Please give reasons for your views.

We generally support the proposed changes to Rule 13.10 but would urge the Exchange to clarify in the proposed Rule 13.10(2) and the form of the standard announcement that "due enquiry" shall mean "such enquiry as is reasonable in 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.

Please see our response to Q4 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.

We consider the proposed changes sensibly support the Exchange's statutory obligation to ensure an orderly, informed and fair market. We would however urge the Exchange to add in the Listing Rules a new definition on "false market" to provide clarity on the point.

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.

To be consistent with the new statutory PSI disclosure regime, we consider it sensible to clarify in the proposed new rule that the disclosure obligation should only be triggered if the issuer is aware of any or any possible false market in its securities.

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 believe that it is sensible and helpful to provide clarification on this point.

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 see our response to Q8 above.

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 consider the proposed changes sensibly support the Exchange's statutory obligation to ensure an orderly, informed and fair market.

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.

We consider it sensible for the Listing Rules and SFO to adopt the same definition, and agree that, to minimise any inconsistency in the interpretation and application of this defined term, the Exchange should apply published Market Misconduct Tribunal decisions and SFC guidelines.

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.

Please see our response to Q14 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.

They are sensible amendments consequential on the enactment of the new legislation.

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.

They are sensible amendments consequential on the enactment of the new legislation.

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 consider it sensible to clarify this point in the Listing Rules and the Listing Agreement.

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.

Please see our response to Q18 above.

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.