

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 with including the express statements so that listed issuers would have greater clarity on the division of responsibilities between the SFC and the Exchange in relation to disclosure obligations and elsewhere under Part XIVA of the Securities and Futures Ordinance.

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 disclosure obligations under the current Rules 13.09(1)(a) and 13.09(1)(c) may duplicate the obligations under the statutory regime. As stated in the consultation paper, the responsibility for the enforcement of issuer's obligations under the statutory regime rests with the SFC. We therefore consider that the removal of these rules from the Listing Rules, which are intended to cover the same obligations as the new legislation, would be appropriate.

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.

These notes to Rule 13.09 (1) are related to the disclosure of price sensitive information. In line with our answers to Question 2, we consider it appropriate to remove these notes from the Listing Rules. We agree with the proposed elevation of notes 1, 9 and 10 to Rule 13.09(1) to new Rules 13.06B, 13.24B(1) and (2), respectively as these requirements promote a fair and informed market. However, we do not totally agree with the elevation of note 2 to Rule 13.09(1) to Rule 13.06A in its present proposed wordings. Please see our answer to Question 10 for our further comment on proposed Rule 13.06A.

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

☒ Yes

☐ No

Please give reasons for your views.

We agree that the directors of the issuer should make due enquiry before the issuer publishes the standard announcement. We also agree with the proposal of deleting the confirmation in the standard announcement that there are no negotiations and agreements relating to intended acquisitions and realizations discloseable under Rule 13.23 as such information may or may not be inside information.

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 consider it appropriate to require issuer to provide the four negative confirmations set out in the proposed new standard announcement so that there is a clear standard for announcements and investors could assess the issuer's status based on these negative confirmations.

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 that an issuer shall as soon as reasonably practicable prevent a false market in its securities. This is consistent with the existing duties already imposed on directors of listed companies.

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 consider it appropriate to require issuer to announce the information necessary to correct a false market in its securities as soon as reasonably practicable. This is consistent with the existing duties already imposed on directors of listed companies.

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 that issuers shall apply for trading halt under certain circumstances as stated in the proposed Rule 13.10A and consider it appropriate to clarify such obligation in the Rules so that issuers could understand their obligation more clearly.

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 consider that a trading halt in such circumstances is sensible as it prevents investors from trading the issuer's shares when they do not possess relevant material information of that issuer. We acknowledge that suspension only applies to the trading of shares on the Exchange and - as past disciplinary cases have confirmed - there may well be OTC and other off market dealings, but at least a population of retail investors who do not trade in off market products will benefit.

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 that an issuer and its directors have to exercise a high degree of care to ensure that inside information must be kept strictly confidential until it is announced. However, we consider that as long as an issuer has taken reasonable measures to monitor the confidentiality of the information, the issuer shall not be considered to be in breach of the proposed Rule 13.06A. We consider that this is in line with section 307D(4) of Part XIVA of the Securities and Futures Ordinance which provides: "Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if - (a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and (b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved."

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.

Defining Part XIVA of the SFO as "Inside Information" is a consistent use of terminology and is readily understandable.

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.

The proposed defined terms and corresponding changes make the Listing Rules easier to read.

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 of the term "trading halt" and its use in the proposed new/amended rules.

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 proposal as adoption of the same terminology as used in Part XIVA of the Securities and Futures Ordinance will avoid confusion.

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 respect of these rules, the Exchange needs to interpret whether certain information is to be deemed as inside information and whether the information has come to issuer’s knowledge at the relevant time. The interpretations on these two aspects are critical to determine whether or not an issuer has violated the disclosure obligations of inside information under Part XIVA of the Securities and Futures Ordinance. We consider that such interpretation should be made by the SFC / Market Misconduct Tribunal.

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 proposed deletion of MB Rules 13.09(1)(a) and (c) (please see our answer to Question 2). Following the same reason, we agree with deleting references to obligations under MB Rules 13.09(1)(a) and (c).

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.

This provides useful information to investors to assess the financial performance and position of issuers. The proposed Rule 13.24B and the revised Practice Note 15 could help preventing a false market in the securities of an issuer.

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.

In addition to the requirement on the guarantors of debt securities (please also see our answer to Question 19), the proposed changes mirror the rules applying to equity securities, which we consider appropriate.

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.

In practice issuance of debt through a SPV backed by a parent guarantee is done from time to time. This proposal will fill an important technical regulatory gap associated with such a structure.

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 are not aware of any unintended consequences arising from the plainer writing amendments.