



**CHARTERED  
SECRETARIES**

特許秘書

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潛能. 超越所見.

10 October 2012

Corporate Communications Department  
Hong Kong Exchanges and Clearing Limited  
12<sup>th</sup> Floor, One International Finance Centre  
1 Harbour View Street  
Central  
Hong Kong

Dear Sirs,

**Re: Consultation Paper on Rule Changes Consequential on the Enactment of the Securities and Futures (Amendment) Ordinance**

The Hong Kong Institute of Chartered Secretaries (HKICS) is at the forefront of promoting the interests of the Chartered Secretary profession (with over 5,600 members and 3,200 students), the role of company secretaries and good corporate governance.

In relation to the Consultation Paper on Rule Changes Consequential on the Enactment of the Securities and Futures (Amendment) Ordinance we support the proposal as it serves to clarify the roles of The Exchange and the Securities and Futures Commission relating to market misconduct and false market and the referral system in place. More importantly, we welcome The Exchange's continued role as front line regulator in dealing with listed issuers and added co-ordination role with the SFC for an orderly market and market integrity.

We ask The Exchange to review the drafting of the rules and to reinforce the element of reasonableness. For example, "due enquiry" should be referred to as "reasonable enquiry" under the new form of announcement under Rule 13.10 of the Listing Rules. This is important in the context of the risk exposures of directors under the new Part XIVA of the Securities and Futures Ordinance.

We have no objection to your disclosing our Institute's submission in whole or in part to members of the public. Please feel free to contact me or \_\_\_\_\_ at \_\_\_\_\_ if there are any questions.

Yours sincerely,

## 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 is welcomed and serves to clarify the roles and responsibilities of The Exchange and the SFC.

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 with the deletion as it serves to clarify the respective roles and responsibilities of The Exchange and the SFC from a technical rules perspective.

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 with the revised drafting and deletion of the unnecessary notes and elevation of the relevant notes to rules.

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 changes, subject to the reasonableness approach as expounded in our cover letter. For example, "due enquiry" should read "reasonable enquiry" or otherwise qualified.

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 answer to Question 4.

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.

Please see answer to Question 4.

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 do not see how the directors are in a position to correct a false market as the market has its own behaviour. It is for the regulators to take such steps they deem appropriate within their powers where such circumstance exists.

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 useful guidance 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.

Please see answer 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.

The maintenance of confidentiality is an aspect of market integrity and important in dealing with unpublished inside information.

## 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 welcome the definition as price sensitive information was previously undefined. We also welcome the SFC Guidelines on Disclosure of Inside Information which serves further to clarify the 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 to the changes.

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 to the definition of the terms under the proposed Rule changes.

#### **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 welcome the use of a defined term under the SFO within the context of the Listing Rules.

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.

As front line regulator, The Exchange should interpret the term "inside information" under the relevant circumstances.

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.

This is in line with the clarification of the roles of The Exchange and the SFC.

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.

Please see answer to Question 16.

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 consequential 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.

Please see answer to Question 18.

### **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.