

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.

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.

3. Do you agree to delete some of the notes to Rule 13.09(1) (GLR 17.10) and elevate some of them to rules, as proposed?

Yes, but please see suggested amendments to proposed new Rules 13.06A and 13.06B below.

No

Please give reasons for your views.

“13.06A An issuer and its directors ~~must~~ should use all reasonable endeavours to maintain strict confidentiality of inside information until it is announced. ~~They must and to~~ ensure that the strictest security of the information is observed within the issuer and its advisers.

13.06B An issuer ~~must~~ should use all reasonable endeavours not to:

(1) divulge any information in such a way as to place in a privileged dealing position any person or class or category of persons; ~~and~~

(2) ~~It must not~~ release any information in such a way that Exchange transactions may be entered into at prices which do not reflect the latest available information.”

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

Yes

No

Please give reasons for your views.

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, but please see below suggested amendments to proposed Rule 13.10 and the form of announcement in Note 1.

No

Please give reasons for your views.

“13.10 Where the Exchange makes enquiries concerning unusual movements in the price or trading volume of an issuer’s listed securities, the possible development of a false market in its securities, or any other matters, the issuer must respond promptly as follows:

(1) provide to the Exchange and, if requested by the Exchange, announce, any information relevant to the subject matter(s) of the enquiries which is available to it, so as to inform the market or to clarify the situation; or

(2) if, and only if, the directors of the issuer, having made due enquiry, are not aware of any information (including any inside information

which needs to be disclosed under the Ordinance) that is or may be relevant to the subject matter(s) of the Exchange's enquiries ~~or of any inside information which needs to be disclosed under the Ordinance~~, and if requested by the Exchange, make an announcement containing a statement to that effect (*see note 1 below*).

Notes:

1. The form of the announcement referred to in rule 13.10(2) is as follows:-

"This announcement is made at the request of The Stock Exchange of Hong Kong Limited.

We have noted [the recent increases/decreases in the price [or trading volume] of the [shares/warrants] of the Company] or [We refer to the subject matter of the Exchange's enquiry]. Having made due enquiry, we confirm that we are not aware of [any reasons for these price [or volume] movements] or [relevant information (including any inside information under Part XIVA of the Securities and Futures Ordinance that needs to be disclosed) concerning the subject matter of the Exchange's enquiry] or of any information which must be announced to correct or to prevent a false market in the Company's securities ~~or of any inside information under Part XIVA of the Securities and Futures Ordinance that needs to be disclosed~~.

This announcement is made by the order of the Company. The Company's Board of Directors collectively and individually accepts responsibility for the accuracy of this announcement."

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 are of the view that requirements for issuers to issue announcements under the Listing Rules should be specific, and general disclosure of potentially inside information and issue of related clarification announcement to prevent development of false market should be dealt with in the SFO and SFC's guidelines.

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.

Please see our comments in Question 6.

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.

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.

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.

Please also see our comments in Question 3.

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, but please see our comments below.

No

Please give reasons for your views.

While we agree with the proposed definition of “trading halt”, we wonder where the other features relating to trading halts as proposed in the HKEx’s “Consultation Paper on Trading Halts” will be reflected in the Listing Rules (e.g. minimum duration of a halt and minimum trading time after lifting of a halt). In addition, we have the following suggested amendments to Practice Note 11:

“3. Grounds for trading halt

A request for a trading halt will normally only be acceded to ~~in the following circumstances~~ where the situation falls within rule 13.10A.;

~~where inside information which needs to be disclosed under the Inside Information Provisions cannot immediately be disclosed.”~~

The second point is already covered in the proposed new Rule 13.10A(2).

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. Please also see our suggested amendments below.

No

Please give reasons for your views.

We suggest the following phrases in paragraph 5 of Practice Note 11 be replaced with the term “inside information” for consistency:

“5. Disclosure of information

The Exchange is also concerned to ensure issuers’ proper and timely disclosure of information. It condemns the practice of allowing information to leak before its announcement to “test” the market, or to affect the price of the relevant security before details of a proposal are formally announced. It is particularly concerned where ~~unpublished~~inside information is used to gain a personal advantage. It will not hesitate to direct a trading halt or suspend dealings where it considers that improper use is being made of inside information, whether by persons connected with the issuer or otherwise. It may require a detailed explanation from an issuer as to who may have had access to ~~unpublished~~inside information, and why security had not been properly maintained. If it considers the result of its enquiries justifies, it may publish its findings. It places great importance on the responsibility of the directors of an issuer to ensure proper security with regard to inside information, and that information is disclosed in a proper, equitable manner, in the interests of the market as a whole, not to the benefit of a select group or individual.”

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.

This is a difficult point but on balance, we suggest no change because the context is slightly different here (please also see paragraph 10(c) of your Consultation Paper). If the term “inside information” is used, we suggest a note to be included to state the Exchange expects to interpret “inside information” for the purpose of these rules in a way consistent with past practices.

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.

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 except Rule 13.24B.

No

Please give reasons for your views.

We are of the view that material matters impacting on profit forecasts are likely to be inside information under the SFO and, therefore, would best be left for interpretation by the SFC and its guidelines (e.g. paragraphs 30 to 34 on “management accounts”). Accordingly, we do not agree with elevating the requirements from notes to Rule 13.24B.

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.

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.

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.