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3 October 2012

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Submitted by email: response@hkex.com.hk

Dear Sirs

Response to Consultation Paper on Rule changes consequential on the enactment of the Securities and Futures (Amendment) Ordinance 2012 to provide statutory backing to listed corporations' continuing obligation to disclose inside information

We welcome the opportunity to comment on the Exchange's proposals to amend the Listing Rules in light of the enactment of the Securities and Futures (Amendment) Ordinance 2012. In general, we support the proposed amendments. Our specific comments in relation to the questions contained in the Consultation Paper are set out below.

Q1: 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 1?

Market participants are aware of the nature and extent of the obligations and powers of the Exchange and the SFC. Therefore, we do not believe the statements in the proposed new rules 13.05(1) and (2) are necessary. The proposed new rule 13.05(3) provides welcome confirmation that listed companies will not face dual regulatory action and should be retained.

Q2: 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, we agree with this proposed deletion.

Q3: 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, we agree with this proposal.

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Q4: Do you agree with the proposed changes to Rule 13.10 (GLR17.11)?

The new requirement under Rule 13.10(2), for the directors to make due enquiry and announce that they are not aware of any inside information which needs to be disclosed under the Ordinance, should be restricted to inside information concerning the subject matter of the Exchange's enquiries. An issuer should not be obliged to do a full audit and give a negative confirmation every time there is an enquiry, particularly where the enquiry originates out of entirely false information or reports or relates to matters other than unusual price / volume movements or the possible development of a false market.

Q5: 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?

In our view, only the first negative confirmation is necessary for the protection of investors.

The second confirmation provides no further comfort and requires a potentially difficult assessment of what is "relevant information". Is materiality to form part of this assessment and if so, is that materiality to be assessed in the context of expected price sensitivity?

Similar uncertainty arises in relation to the third confirmation, which we believe has no added value for investors. It is unclear what enquiries would be required in order to identify information which might potentially lead to a false market. A positive confirmation in a formal announcement would require the issuer to enquire about the existence (or non-existence) of *any* information that might have a false market impact. That information may or may not be relevant to the subject matter of the Exchange's enquiry. To make this confirmation, an issuer would have to search through the market, press or web for any rumours or information about itself and assess whether that information would constitute a false market in its securities. This is not reasonable, particularly when investors are already adequately protected by the new Rule 13.09(1).

In relation to the fourth confirmation, we do not believe it is necessary for a listed company to issue a public announcement to the effect that it is has not breached a statutory requirement. Investors are already sufficiently protected by the sanctions contained in the relevant legislation for failure to disclose. Requiring a statement of compliance potentially subjects an issuer to wider liability (for example, for issuing a misleading statement) than was ever intended by the legislators.

Q6: 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?

We recognise the Exchange's concern to retain some regulatory oversight in relation to price sensitive information. The Exchange has taken account of the difficulties that dealing with two separate regulators presents for listed companies and made appropriate proposals for addressing these issues. Therefore, in the circumstances, we agree with the proposal.

Q7. Do you agree with the drafting in the proposed new MB Rule 13.09(1) (GLR17.10(1))?

We do not agree that Rule 13.09(1) should be expanded to require an announcement to correct a false market. This would require listed companies to be permanently monitoring trading in their shares for evidence of a false market, which is an unreasonable expectation. A company should only be obliged to make an announcement to correct a false market following consultation with the Exchange under Rule 13.10.

Q8. 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, we agree with the proposed new rule.

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Q9. 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, we agree with the proposed new rule.

Q10: Do you agree to include MB Rule 13.06A (GLR17.07A) which imposes an obligation to preserve confidentiality of inside information until disclosure?

Yes, we agree with the proposed new rule.

Q11: Do you agree that we should define Part XVIA of the SFO as "Inside Information Provisions"?

Yes, we agree with this proposal.

Q12: Do you agree with the proposed changes to the defined terms set out in paragraphs 26(b) and 26(c) above?

We would prefer to see the Securities and Futures Ordinance defined using its full name, or as the "SFO". These terms are more familiar to readers and will avoid the need to turn to the definitions while reading. We suggest that the words "for the purposes of Part XIVA of the Ordinance" at the end of the definition of "inside information", are not required.

Q13: Do you agree with the proposed definition of the term "trading halt" and its use in the proposed Rule changes?

We agree with the definition and its use.

Q14: Do you agree with our proposal to replace the term "price sensitive information" in the Rules with the term "inside information"?

The proposed definition of "inside information" has a narrower meaning than the term "price sensitive information" because "inside information" does not include information that is necessary to avoid the establishment of a false market. Subject to our comments in response to Q15 below, the term "inside information" appears to be correct in the context in which it is used.

Q15: 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?

Substituting the term "inside information" in Rules 10.06(2)(e) and 17.05 restricts these Rules to information which would, if generally known, be likely to materially affect the price of the listed securities (i.e. the SFO definition). We suggest that guidance is given on the type of knowledge that is required (we presume, actual knowledge of the directors).

We are of the view that it is unavoidable that the Exchange is required to interpret whether certain information is "inside information" and we do not believe this causes any particular concern. We suggest that a note is added into the rules to the effect that the Exchange will apply published Market Misconduct Tribual decisions and SFC guidelines when interpreting the definition.

Q16: 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, we agree with this proposal.

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Q17: 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, we agree with this proposal.

Q18: Do you agree with our proposed changes to the provisions and the Listing Agreements in respect of the issue of debt securities?

Yes, we agree with the proposed changes.

Q19: 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, we agree with the proposals

Q20: Do you have any comments on the plainer writing amendments? Do you consider any part(s) of these amendment will have unintended consequences? Please give reasons for your views.

We welcome the plain English writing amendments.

Yours faithfully

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