

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 the general statements in the new Rule 13.05 (1) and (2). We have reservation on the "reserved jurisdiction" in Rule 13.05 (3). We stress the importance of enforcement clarity and certainty. Issuers will consult the enquiry hotline of the SFC.

When issuers act honestly in reliance on the guidance and directions of the SFC on an inside information provision issue, there should not be any lingering doubt on whether or not the Stock Exchange has a second view. There must be finality on the same issue. It is hard to see how the Stock Exchange can institute disciplinary action on an issue when the SFC has already decided, on that very same issue, no action is to be pursued under Part XIVA of the SFO.

In paragraph 12 of the Consultation Paper, the suggestion seems to be that the Stock Exchange will take action for breach of "other" specific disclosure obligations under the Listing Rules. That makes more sense if the issue is in breach of other Listing Rules obligations in addition to the Part XIVA disclosure obligation. In that case, the Stock Exchange should have jurisdiction over these other breach. If this is the intention, the drafting needs to make it clear, which is the SFC has sole jurisdiction on breach of inside information provision issue but the Stock Exchange retains right to discipline if there is also breach of other obligation under the Listing Rules. If not, we ask the Exchange to specify under what circumstances, they consider disciplinary action appropriate when the SFC decides not to pursue action under Part XIVA.

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 paragraph 13 of the Consultation Paper.

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.

The Stock Exchange may perhaps consider retaining the part of the old Note 2 (from "In the case of an approach which may lead to an offer" to the end as a Note to the new Rule 13.09 (1).

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

☒ Yes

☐ No

Please give reasons for your views.

Perhaps can the Stock Exchange elaborate, by a Note to the new Rule 13.10, what it is expecting when it requires "due enquiry" having been made on (supposedly) all the directors. Particular difficulty can happen if the issuer's board is big with a number of directors who are overseas. Should some time tolerance be favorably considered if issuer's directors are operating overseas with different time zone?

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.

Yes, but subject to the observation as in answer 4 above.

We see no need to include an obligation for the issuer to "correct" false market. By announcing, or confirming that it ahs nothing to announce, the development of a false market should have already been prevented. Please also see our observations in answer to question 7 below.

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.

Part XIVA does not deal with market activities, which will leave a regulatory gap had the obligation in Rule 13.09(1)(b) not been there.

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.

It is correct to require issuers to announce information to avoid/prevent the development of a false market on its securities. What is the obligation to "correct" a false market? The issuer can prevent a false market situation from developing by disclosing, or confirming in the Rule 13.10 announcement that it has nothing material to disclose. Baring inside trading/market manipulation possibility, how can an issuer intervene to "correct" market activities? It is submitted that the obligation to prevent the development of a false market is wide enough. The issuers should not be put under a Listing Rules obligation to do something which are beyond their control.

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 rationale given in the Consultation Paper in this regard.

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 agree with the rationale given in the Consultation Paper in this regard.

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 with the rationale given in the Consultation Paper in this regard.

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.

For consistency, yes.

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 suggest defining the Securities and Futures Ordinance as the "SFO" rather than as the Ordinance.

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 suggest spelling out the requirement that the trading halt should last no longer than two days in the body part of the Rule 13.10A, instead of leaving this important feature obliquely in the definition section of Chapter 1.

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.

For consistency, yes.

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.

We suggest having a Note stating that the Exchange will apply the same set of principles as in the SFC Guidelines. When there is new development following a MMT decision, we suggest the Exchange issues circular or guidance note to advise the industry as a whole.

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.

Is this a duplication of Question 2 above?

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.

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.