

SEHK Consults on Listing Rules Changes Resulting from the New Inside Information Disclosure Regime

Quick Read

As explained in our two previous Legal Updates, *“New Statutory Price Sensitive Information Disclosure Regime to Take Effect on 1 January 2013”* and *“A Quick Look at the New SFC Guidelines on Disclosure of Inside Information”*, the new statutory price sensitive/inside information disclosure regime (**New Disclosure Regime**) will become effective on 1 January 2013.

In line with the New Disclosure Regime, The Stock Exchange of Hong Kong Limited (**SEHK**) published its *“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”* (**Consultation Paper**) on 3 August 2012 to propose amendments to the Rules Governing the Listing of Securities on SEHK (**Listing Rules**). Corresponding amendments are also proposed to the Rules Governing the Listing of Securities on the Growth Enterprise Market of SEHK.

Comments in response to the Consultation Paper should be submitted by 3 October 2012.

Major Proposals

SFC TO TAKE UP THE PRIMARY RESPONSIBILITY FOR ENFORCING THE NEW DISCLOSURE REGIME

Upon the implementation of the New Disclosure Regime, the Securities and Futures Commission (**SFC**) will take up the primary responsibility to enforce its requirements. Generally, all possible breaches will be handled by SFC and SEHK will not provide guidance on the interpretation or operation of the New Disclosure Regime. SEHK will take disciplinary action in relation to other specific disclosure obligations under the Listing Rules only if

SEHK considers such action appropriate and SFC has indicated that it will not take any action under the New Disclosure Regime.

DELETION OF A SUBSTANTIAL PART OF RULE 13.09(1)

The current Rule 13.09(1) of the Listing Rules requires that an issuer should keep SEHK and its shareholders informed as soon as reasonably practicable of any information relating to the group which:

- (a) is necessary to enable them and the public to appraise the position of the group; or
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.

In view of the roles of SFC and SEHK under the New Disclosure Regime as explained above, paragraphs (a) and (c) under Rule 13.09(1) will be deleted in order to avoid duplication with the New Disclosure Regime requirements. However, SEHK still maintains the responsibility under section 21 of the Securities and Futures Ordinance (**SFO**) to ensure, as far as reasonably practicable, an orderly, informed and fair market in securities that are traded on SEHK. Accordingly, paragraph (b), which requires disclosure of information to avoid the establishment of a false market in an issuer’s securities, will be retained but modified.

The current wording of paragraph (b) implies that the obligation is limited to avoiding the creation of a false market. Under the Consultation Paper, it is proposed that the obligation to correct a false market should also be included. The proposed amendment to the wording of paragraph (b) is as follows (**False Market Provision**):

“where there is or there is likely to be a false market in an issuer’s securities, the issuer must, as soon as reasonably practicable, announce the information necessary to correct or prevent a false market in its securities.”

In order to satisfy its regulatory responsibility under the SFO, SEHK will be required to monitor the market and where necessary, take appropriate actions. Also, obligations will be imposed on issuers to assist SEHK in discharging its duty.

OBLIGATIONS OF ISSUERS IN RESPONSE TO SEHK’S REGULATORY RESPONSIBILITY

The obligations which issuers will be subject to in response to SEHK’s regulatory responsibility are:

| DESCRIPTION | DETAILED PROPOSALS |
|---|---|
| <i>Making prompt response to SEHK’s enquiries</i> | <p>SEHK will monitor the market through making enquiries about 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 in one of the following two ways:</p> <ul style="list-style-type: none"> • provide to SEHK and, if SEHK requires, make an announcement disclosing any information relevant to the subject matter available to it; or • if appropriate, and if SEHK requires, confirm with an announcement that, the directors, having made due enquiry, are not aware of any information that is or may be relevant to the subject matter or of any inside information which should be disclosed under the SFO. <p>SEHK may demand a trading halt of the issuer’s securities if an appropriate announcement cannot be made promptly.</p> |
| <i>Making due enquiry before issuing a negative announcement</i> | <p>As explained above, directors are required to make “due enquiry” before confirming that they are not aware of any relevant information in relation to the SEHK’s enquiries or there is no undisclosed inside information. The proposed new Listing Rules contain a standard form announcement which issuers should use:</p> <p><i>“This announcement is made at the request of The Stock Exchange of Hong Kong Limited.</i></p> <p><i>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 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.</i></p> <p><i>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.”</i></p> |

| DESCRIPTION | DETAILED PROPOSALS |
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| <i>Making application for a trading halt in specified circumstances</i> | <p>An issuer is required, as soon as reasonably practicable, to apply for a trading halt in any of the following circumstances where an announcement cannot be made promptly:</p> <ul style="list-style-type: none"> • it has information which must be disclosed under the False Market Provision; • it reasonably believes that there is inside information which must be disclosed; or • situations exist where confidentiality may have been lost in respect of inside information which: <ul style="list-style-type: none"> » is the subject of an SFC waiver application; or » falls within any of the specified New Disclosure Regime safe harbours under the SFO. <p>Accordingly, an issuer is required to form a reasoned view as to whether the subject information is inside information.</p> |
| <i>Making effort to preserve confidentiality</i> | <p>An issuer and its directors are obligated to maintain strict confidentiality of inside information until it is announced. They must ensure that the strictest security of the information is observed within the issuer and its advisers.</p> |
| <i>Not disclosing information unfairly</i> | <p>An issuer must not disclose any information in such a way which would result in:</p> <ul style="list-style-type: none"> • any person having a privileged dealing position; or • any SEHK transactions being entered into at prices which do not reflect the latest available information. |

DISCLOSURE OBLIGATIONS ON SPECIFIED MATTERS

At present, obligations are imposed on an issuer to disclose certain matters which arise out of the general disclosure obligation under the Listing Rules, such as obligations to:

- disclose events which significantly impact on profit forecast made by the issuer, including the assumptions upon which it was made;
- announce spin-off listing application; and
- publish periodic announcements of its developments after trading in the issuer's securities has been suspended as a result of failing to comply with the relevant Listing Rules in relation to sufficient operations.

Since a substantial part of the general disclosure obligation under the Listing Rules will be deleted as explained above, SEHK proposes to create a specific Listing Rules provision to impose disclosure obligation for each of abovementioned matters after implementation of the New Disclosure Regime.

Issuers Should Comply With The Requirements Under Both Regimes

Issuers should note that the disclosure requirements under the Listing Rules are distinct and separate from the New Disclosure Regime and the information required for disclosure under the Listing Rules may or may not constitute inside information. **Issuers are required to comply with the relevant disclosure requirements under both the Listing Rules and New Disclosure Regime.**

You may download copies of the Consultation Paper via the link below:

<http://www.hkex.com.hk/eng/newsconsul/mktconsul/Documents/cp201208.pdf>

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