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3 October 2012

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Corporate Communications Department
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Central, Hong Kong

Dear Sirs

**Re: Consultation Paper on Rule Changes Consequential on the
Enactment of the Securities and Futures (Amendment) Ordinance 2012**

The Hong Kong Institute of Directors (“HKIoD”) is pleased to forward our response to the captioned paper.

HKIoD is Hong Kong’s premier body representing directors to foster the long-term success of companies through advocacy and standards-setting in corporate governance and professional development for directors. We are committed to contributing towards the formulation of public policies that are conducive to the advancement of Hong Kong’s international status.

In developing the response, we have consulted our members and organised focused discussions.

Should you require further information regarding our response, please do not hesitate to contact me on tel no. 2889 9986.

With best regards

Yours sincerely
The Hong Kong Institute of Directors



Dr Carlye Tsui
Chief Executive Officer

cc: Dr Kelvin Wong, Chairman of Council, HKIoD
Mr Henry Lai, Deputy Chairman, HKIoD & Chairman,
Corporate Governance Policies Committee

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Consultation Paper on the Rule Changes Consequential on the Enactment of the Securities and Futures (Amendment) Ordinance 2012 to Provide Statutory Backing to Listed Corporation's Continuing Obligation to Disclose Inside Information
(the "PSI Codification Consequential Rule Changes Consultation Paper", or the "Consultation Paper")

In relation to the PSI Codification Consequential Rule Changes Consultation Paper, the Hong Kong Institute of Directors ("HKIoD") is pleased to present its views and comments.

Capitalised terms used herein but are not otherwise defined shall have the meanings ascribed to them in the Consultation Paper.

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General comments

The HKIoD supports efforts to improve and promote compliance among listed corporations so that we can maintain a capital market that prides itself on transparency and quality. We support the cultivation of a continuous disclosure regime that will enable all investors to make informed decisions.

With the passage of the Securities and Futures (Amendment) Ordinance 2012, the current obligation to disclose price-sensitive information (under Rule 13.09 in particular) will henceforth be under the new legislation. The PSI Codification Consequential Rule Changes Consultation Paper covers changes to the Listing Rules that are necessary in light of the introduction of the statutory scheme.

The Rule 13.09 scheme has been in operation for some years now. The HKIoD is confident that listed company directors who have been following good disclosure practices under the Listing Rules and the Exchange's Guide on Disclosure of Price-Sensitive Information (January 2002) would be in a good position to prepare themselves for compliance under the statutory regime.

The introduction of the statutory regime should nonetheless be an impetus for issuers to step up and keep up their disclosure practices. Issuer boards should ensure that appropriate systems and procedures are put in place so that material information is identified and escalated to the board for decisions about the need to disclose. These systems and procedures must be reviewed periodically. There must also be mechanisms to oversee the proper implementation and functioning of the systems and procedures on an on-going basis, so to ensure material deficiencies are detected and resolved in a timely manner. Boards are well-advised to devise a company policy on the handling and disclosure of non-public information. In close connection is a company policy on the handling of company communications with external parties and on the monitoring of market information about the company.

HKIoD organises training sessions on this topic for its members. We also encourage issuers to organise appropriate training sessions for their board members so they are up to speed with the new requirements. In turn, issuers should also provide regular training to employees to

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help them understand the policies and procedures as well as their relevant disclosure duties and obligations.

We note the Exchange's January 2002 guide will be repealed, but in its place, the SFC has published in June 2012 Guidelines on Disclosure of Inside Information. We encourage board members and other company personnel who will be dealing with non-public information to be familiar with its content.

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Responses to consultation questions

Subject to our general comments above, we state our responses to specific questions as set out in the PSI Codification Consequential Rule Changes Consultation Paper as follows:-

Main Features of Proposed New Rules

Question 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?

HKIoD Response:

- We agree with the proposal to include express statements regarding the division of SFC's and the Exchange's role and responsibilities. We note that the statutory scheme is to vest jurisdiction to enforce Statutory Disclosure Obligation with the SFC.

Question 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))?

HKIoD Response:

- We agree with the deletion of the said provisions pertaining to certain positive continuing disclosure obligations. We note that the statutory scheme is to vest jurisdiction to enforce Statutory Disclosure Obligation with the SFC.
- However, the Exchange still has responsibility under section 21 of the SFO to ensure an orderly, informed and fair market. On this basis, we can agree that those positive continuing disclosure obligations be retained in the Listing Rules, so long as they are consistent with the Inside Information Provisions and there is a clear delineation of enforcement duties between the SFC and the Exchange.

Question 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?

HKIoD Response:

- We agree with the proposal to elevate Note 1 to Rule 13.06B. We agree with the notion of not taking away elements of investor protection unless the SFO expressly covers that area.
- We agree with the proposal to elevate Note 2 to Rule 13.06A. We believe the obligation to maintain strict confidentiality of price sensitive information until it is announced is conducive to maintaining an orderly and fair market where investors have equal access to company information.

- We agree with the proposal to elevate Note 9 and Note 10 to Rule 13.24B(1) and (2), respectively. Events which significantly impact on profit forecasts made by issuers, including the assumptions upon which they are made, are important information for investors and other stakeholders to appraise the position of an issuer and can reasonably be expected to materially affect market activity in and the price of its securities.
- We agree with the proposal to delete Note 3 to Note 8, Note 11 and the paragraph below Note 11 under Rule 13.09(1) as a result of the implementation of Part XIVA of the SFO.

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

HKIoD Response:

- The proposal requires directors to have made “due inquiry”. This is a rather harsh burden to impose. We suggest changing to “reasonable inquiries” instead.

Question 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?

HKIoD Response:

- See our response to Question 4.

Question 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?

HKIoD Response:

- We agree the obligation under Rule 13.09(1)(b) (GLR17.10(2)) should remain in the Rules despite implementation of Part XIVA of the SFO. The obligation is necessary to avoid a false market.

Question 7: Do you agree with the drafting in the proposed new MB Rule 13.09(1) (GLR17.10(1))?

HKIoD Response:

- The notion “... where there is likely to be a false market” is rather ambiguous. Issuers will rightly have concern about how such is to be determined, and by whom. We think the Exchange needs to give further explication on this aspect.

Question 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)?

HKIoD Response:

- We agree to clarify the obligation to apply for a trading halt.
- As to the lead-in text of Rule 13.10A, we suggest changing to a “without prejudice to the Exchange’s ability to direct ...” construction.
- We suggest that trading halts should also be applicable to all disclosure obligations expected of an issuer under Chapter 14 and 14A of the Listing Rules.
- See also our response to Question 9.

Question 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))?

HKIoD Response:

- If one or more safe harbours apply, why is there still a need to disclose? Exchange needs to give further explication on this aspect. We recognise that if confidentiality is ever lost, the issuer needs to make a disclosure.

Question 10: Do you agree to include MB Rule 13.06A (GLR17.07A) which imposes an obligation to preserve confidentiality of inside information until disclosure?

HKIoD Response:

- See our response to Question 3.

Other Changes

Part A: New Defined Terms and Revise Some Defined Terms

Question 11: Do you agree that we should define Part XIVA of the SFO as “Inside Information Provisions”?

HKIoD Response:

- We agree. Consistent defined terms and references should be a helpful feature.

Question 12: Do you agree with the proposed changes to the defined terms set out in paragraphs 26(b) and 26(c)?

HKIoD Response:

- As to paragraph 26(b), we agree with the proposed changes, which we believe would provide for convenient and appropriate short hand references to the Main Board Listing Rules and the GEM Rules, respectively.
- As to paragraph 26(c), we agree with the proposed changes, which we believe would provide for convenient and appropriate short hand references to the Securities and Futures Ordinance.

Question 13: Do you agree with the proposed definition of the term “trading halt” and its use in the proposed Rule changes?

HKIoD Response:

- We agree with the proposed definition of the term “trading halt”, which refers to an interruption of trading for no more than two trading days. We note that an interruption extending for over two days would become a “suspension”.

Part B: Other Consequential Changes

Question 14: Do you agree with our proposal to replace the term “price sensitive information” in the Rules with the term “inside information”?

HKIoD Response:

- We agree with the proposal to replace the term “price sensitive information” with the term “inside information”. Consistent defined terms and references should be a helpful feature.

Question 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?

HKIoD Response:

- We agree with the proposal to retain those provisions such as MB Rules 10.06(2)(e) and 17.05 (GLR13.11(4) and 23.05), even though their enforcement would require the Exchange’s interpretation of whether certain information is inside information. We believe this is desirable for the Exchange to discharge its responsibility under section 21 of the SFO, to ensure an orderly, informed and fair market. We note that the Exchange will seek to minimize inconsistency in interpretation and application of these provisions by committing to apply published Market Misconduct Tribunal decisions and SFC guidelines.

Question 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)?

HKIoD Response:

- See our response to Question 2.

Question 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?

HKIoD Response:

- We agree with the proposal to create specific rules in respect of disclosure regarding sufficiency of operations (Rule 13.24A and PN17). The periodic announcements are important information for investors and other stakeholders to assess the prospect of the issuer and to make investment decisions accordingly.
- We agree with the proposal to create specific rules in respect of disclosure regarding spin-offs (PN15). The fact of a spin-off listing application is of material, price sensitive effect for an existing issuer.
- We agree with the proposal to create specific rules in respect of disclosure regarding profit forecasts (Rule 13.24B). See our response to Question 3.

Question 18: Do you agree with our proposed changes to the provisions and the Listing Agreements in respect of the issue of debt securities?

HKIoD Response:

- We agree. Investors in debt securities should also have equal, timely and effective access to information that could affect their investment decisions.

Question 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?

HKIoD Response:

- We agree with the proposal to clarify the disclosure obligations of guarantors of debt securities. Investors in debt securities should also have equal, timely and effective access to information that could affect their investment decisions. Information which may have a material effect on the guarantors ability to meet obligations under the debt securities is important for investors to make investment decisions regarding the debt securities.

Part C: Plain Writing Amendments

Question 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.

HKIoD Response:

- We agree that plainer writing amendments will enable market participants and investors to better understand the Listing Rules.

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