



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會

## Consultation Conclusions on the Proposal to Make Electronic Submission of Disclosure of Interests Notices Mandatory

Hong Kong  
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## **Introduction**

1. On 30 November 2007, the SFC issued a consultation paper (“Consultation Paper”) inviting comments on the proposal to make electronic submission of Disclosure of Interests (“DI”) notices mandatory (“Proposal”).
2. The Consultation Paper proposed:
  - (a) making electronic submission of DI notices to The Stock Exchange of Hong Kong Limited (“SEHK”) mandatory and SEHK in turn providing electronic copies of the DI notices to the listed corporations;
  - (b) retaining the current practice of updating the DI pages on the website maintained by Hong Kong Exchanges and Clearing Limited (“HKEx”) once a day at approximately 5.00pm on each business day until such time as the HKEx changes its practice of not publishing price sensitive information during market trading hours; and
  - (c) considering whether there is a need to lessen specific requirements on registers of interests and short positions kept by listed corporations and if so, suggestions on how this can be proceeded. The SFC is of the view that as long as listed corporations keep their register of interests in shares and short positions and register of directors’ and chief executives’ interests and short positions up-to-date and maintain them in proper order, it may not be necessary to impose strict requirements on the specific timing of different steps in updating these registers and how they are kept nor to impose the right of inspection by the public.
3. The consultation period ended on 11 January 2008. The SFC received a total of 12 written submissions from a wide spectrum of respondents which represented comments and views from various market segments. These submissions are available on the SFC’s website and a list of the respondents is given in Annex A to this paper.
4. The SFC has considered the various comments and suggestions put forward. This consultation conclusions paper, which should be read in conjunction with the Consultation Paper, summarises the key comments and the SFC’s response to them.

## **Key Comments and the SFC’s response**

### ***The Model for Mandatory Electronic Submission of DI Notices***

5. The SFC proposed to make electronic submission of DI notices to SEHK mandatory with the SEHK in turn providing electronic copies of the notices to the listed corporations (referred to as model Option B(2) in the Consultation Paper). The SFC sought views on whether the public supports Option B(2) as the model for mandatory electronic filing of DI notices or if there are any reasons as to why the proposed model Option B (2) should not be adopted.

6. One respondent did not indicate a preference although he supports mandatory electronic submission of DI notices. Another respondent prefers model Option C. All other respondents support the model Option B(2) put forward in the Consultation Paper as the preferred model for mandatory electronic submission of DI notices.
7. One of the respondents who chose model Option B(2) indicated that although it supports electronic submission of documents for regulatory purposes, it is of the view that electronic submission of documents is currently not appropriate for DI notices. The respondent felt that the filing system of DI notices should have some level of flexibility which the proposal of electronic submission of DI notices may not provide as compared to the current system. According to this respondent, the current system provides flexibility in two ways as follows:-
  - (i) The ability to complete DI forms in manuscript allows filers to disclose complex matters that may fall outside the designs of the DI forms; and
  - (ii) The one to two days delay in uploading the DI notices onto the website maintained by HKEx provides the opportunity to clarify any difficult and erroneous filings.
8. In the Consultation Conclusions on the Review of the Disclosure of Interests Regime under Part XV of the Securities and Futures Ordinance released in 2005 (“2005 Consultation Conclusions”), the SFC has already proposed to provide a “narrative” box in the DI form. The SFC believes that having such a “narrative” box will enable filers to add any additional information necessary to explain complex transactions. This will address the respondent’s concern regarding reporting of complex transactions.
9. Given that the SFC is proposing to retain the current practice of updating the DI pages on the website maintained by HKEx only once a day at approximately 5pm on a business day (please see below for discussion about publication of DI notices on the website maintained by HKEx), it is envisaged that there will be opportunity for filers to clarify any erroneous filings (if the need arises) before the DI notices are uploaded onto the website maintained by HKEx.

*The Final Model for Mandatory Electronic Submission of DI Notices*

10. As a majority of respondents have indicated their support of model Option B(2), the SFC recommends adopting model Option B(2) for mandatory electronic submission of DI notices.

***Publication of DI Notices on the website maintained by HKEx***

11. The SFC proposed retaining the current practice of updating the DI pages on the website maintained by HKEx only once a day at approximately 5.00pm on each business day (referred to as the “Existing Approach” in the Consultation Paper) until such time as the HKEx changes its practice of not publishing price sensitive information during market trading hours. The SFC sought views on whether the public supports this approach or if there are any reasons why this approach should not be retained.

12. A majority of respondents support retaining the Existing Approach in relation to the publication of DI notices on the website maintained by HKEx.
13. The SEHK (one of the respondents) stated in its written submission that since the implementation of the Electronic Disclosure Project (“EDP”), it is now moving towards publishing all types of announcements, including price sensitive information announcements, between 12.30pm and 2.00pm, on a business day. The Listing Committee has also approved an amendment to the suspension policy to allow the publication of price sensitive information announcements between 6.00am to 9.00am and between 12.30pm and 2.00pm, without imposing a suspension. The purpose of these changes is to speed up the rate at which information from issuers is disseminated to investors and to provide investors with the opportunity to trade earlier on the information which is available. It recommended that the SFC consider, in line with the proposed changes to be made to the EDP, introducing additional publication batches at say 9.00am and 2.00pm on any business day, in addition to retaining the 5.00pm batch publication.
14. The SFC notes the SEHK’s recommendation and intends to review whether there is a need to have additional publication batches of DI notices after amendments to the EDP have been successfully implemented for a period of time.
15. A respondent raised the point on whether urgent publication of DI notices should be allowed in exceptional circumstances for obviously price sensitive filings. The SFC does not intend to recommend doing so as this will require manual interference with the automated system for SEHK to review all DI notices and decide whether or not to publish the DI notices on an urgent basis. However, as listed corporations will also receive the filings from SEHK, they can exercise their judgement as to whether there is an urgent need to publish the information via the normal channel for listed corporations to publish price sensitive information.
16. Another comment made in connection with timing of publication is that all DI submissions for a relevant event should be released on the same day (i.e. the 4<sup>th</sup> business day after the relevant event) so as to minimise any impact on market transparency as a result of different timing of filings (and hence different timing of publication). The SFC is of the view that holding back DI notices filed earlier than the deadline would run counter to one of the main reasons for introducing mandatory electronic filing of DI notices, which is to improve the timeliness of publication of the DI information to the market.

*The Final Approach to be taken for Publication of DI notices on the website maintained by HKEx*

17. Based on the market feedback, the SFC recommends retaining the Existing Approach in relation to publication of DI notices on the website maintained by HKEx and will review whether there is a need to have additional publication

batches of DI notices as recommended by SEHK, after amendments to EDP have been successfully implemented for a period of time.

***Requirements relating to Registers of Interests and Short Positions kept by listed corporations***

18. The SFC is of the view that so long as listed corporations keep their register of interests in shares and short positions and register of directors' and chief executives' interests and short positions up-to-date and maintain them in proper order, it may not be necessary to impose strict requirements on the specific timing of different steps in updating these registers and how they are kept nor to impose the right of inspection by the public. In this regard, the SFC sought views on whether there is a need to lessen specific requirements on registers of interests and short positions kept by listed corporations and suggestions on how this can be proceeded.
19. On the whole, the respondents support a move towards lessening the specific requirements imposed by the Securities and Futures Ordinance ("SFO") on listed corporations in relation to the maintenance of the registers.
20. A few of the respondents felt that, having regard to the proposed filing model Option B(2), information contained in these registers will essentially be available on the website maintained by HKEx, so it should not also be necessary for listed corporations to continue keeping and maintaining these registers. However, there are also some respondents that maintain the view that listed corporations should continue to keep these registers.
21. The SFC notes the two different views. As stated in the Consultation Paper, we have been informed that some company secretaries prefer to maintain their own record of interests and short positions of directors, chief executives and substantial shareholders for internal purposes. Hence we do not see an urgent need to remove the obligation to maintain the registers.

***The Plan Going Forward***

22. Going forward, the SFC recommends that listed corporations' obligation to keep and maintain the registers should remain. The SFC will continue to work with the market including listed corporations and their company secretaries on the proposal to lessen the specific requirements in relation to the maintenance of the registers.

***Other Comments***

23. Some other comments relating more to operational aspect of electronic filing of DI notices have also been raised.

***Filing by Other Means in Exceptional Circumstances***

24. Some respondents raised the point that filing of DI notices by other means should be allowed in exceptional circumstances. There may be situations where

filers may not be able to submit DI notices electronically within the stipulated legal time period. An example of such a situation cited was the earthquake in Taiwan back in 2006 which caused major disruption to Internet access in Asia.

25. The SFC takes the point that there may be such exceptional circumstances where filers may not be able to file DI notices electronically within the stipulated legal time frame. In this connection, the SFC will take into account the various suggestions put forward by the respondents and will clarify in the Outline of Part XV the types of circumstances which will be acceptable as a reasonable cause for delay in making electronic filing.

*The Web-based system and DI forms*

26. Comments have been made that the web-based filing system should have the following features:
  - Filing of DI notices at all times;
  - Saving of partially completed forms (for later completion and/or filing);
  - Previewing of completed forms before filing;
  - Cut and paste function;
  - Providing information to the filers on the status of filings submitted and acknowledgement of receipt; and
  - Permit the printing of forms.
27. One of the respondents has also pointed out the new web-based system should be compatible with as broad a range of platforms as possible.
28. Another comment made is that the electronic EXCEL forms presently available and the new web-based forms should be the same in terms of information required and the manner in which the information is to be provided.
29. Another point raised is that HKEx should enhance its system to enable the batch upload of multiple forms to avoid the time-consuming process of uploading forms one-by-one under the current electronic filing system.
30. The respondents also suggested a number of improvements to the DI forms such as:
  - Providing additional codes;
  - Providing a “narrative” box;
  - Providing the full meaning of codes on the form itself;
  - Allowing both long and short positions to be disclosed in the same box; and
  - Allowing substantial entries in Box 22 to cater for filers that have complex group structures.
31. As far as possible and practical, the SFC and HKEx will take into account all suggestions provided by the respondents in the development of the web-based system and the web-based forms. In fact, the SFC and HKEx have already been working on some of the suggested improvements on DI forms. It is now possible to disclose both long and short positions in the box entitled “Details of relevant event”. Other suggestions (such as the provision of additional codes and

“narrative” box) are covered in the 2005 Consultation Conclusions which the SFC has committed to change. The SFC will study the remainder to establish the best way to address the concerns raised.

32. A few respondents have commented that listed corporations should be required to notify SEHK of all changes to their issued share capital and the electronic filing system of DI should also provide information about the nominal value of the equity share capital of listed corporations. In response, the SFC would like to point out that under the SEHK’s current practice, all listed corporations are under a standing request to lodge a monthly return on the movements in the listed corporation’s issued shares with SEHK. This information is made available on the website maintained by HKEx (on the main DI search page, item 3 - “Latest issued share capital of listed corporations”). SEHK is currently consulting the market on its proposal to formalise this current practice as a Listing Rules requirement.

#### *Publication of Sections 329 and 331 Investigation Reports*

33. A couple of respondents commented that currently there is no specified form in which information obtained by listed corporations in the exercise of its investigation powers under section 329 of the SFO must be provided. They suggested that the SFC should clarify its expectations in this regard.
34. The SFC notes the comment and is working with HKEx to develop a standard format for listed corporations to furnish and publish the information received in pursuance of their power under section 329 of the SFO. The SFC may in future specify the form to be used under section 402 of the SFO.

#### *Abolishing Listing Rule Requirements to Publish DI Information*

35. A respondent has requested consideration be given to abolishing the Listing Rules requirements to publish the information relating to the interests and short positions of directors, chief executives and substantial shareholders in the printed version of listed corporations’ corporate documents such as annual/interim reports.
36. At this point, the SFC does not consider it appropriate to remove the Listing Rules requirements as stated above. Corporate documents of listed corporations are an important alternative source of information through which investors can find out about the interests in shares and short positions of directors, chief executives and substantial shareholders.

#### *Exclude Saturday as a “Business Day”*

37. One respondent proposed that the definition of “business day” should be changed to exclude Saturday for the purposes of determining the timing of filing of DI notices.

38. It has already been proposed in the 2005 Consultation Conclusions that the law will be amended to exclude Saturday as a business day. The SFC is working with the government on implementing the necessary changes to the legislation.

#### *The Role of SEHK*

39. From some of the written submissions received, there appears to be a general expectation that SEHK would vet all the DI notices submitted before publication.
40. The SFC would like to clarify the role of SEHK – the SEHK administers the filing and publication of DI notices and it does not, nor is required to, vet or verify the accuracy of the information on the DI notices submitted to them.
41. Given that the SFC is responsible for the administration and enforcement of Part XV of the SFO under which DI notices are filed, SEHK has suggested in its submission that the SFC bring the DI filing and publication operation in house. The SFC will discuss this recommendation and the other related issues with HKEx as part of the ongoing dialogue between the two organisations in reviewing the present DI regulatory regime.
42. One respondent has also proposed that under model Option B(2), SEHK should only provide electronic copies of the DI notices to the listed corporations after SEHK has published the DI notices, so as not to give listed corporations an unfair advantage of having the potentially price sensitive information before the market. The SFC does not support this suggestion. Under the current law, a DI notice must be given to the listed corporation and SEHK at the same time or (if it is not practicable to do so) one immediately after the other. Based on the experience drawn from the current system, the SFC is of the view that, at this stage, there does not appear to be any need to impose any requirement that DI notices be given to listed corporations only after they have been published.

#### **Concluding Remarks**

43. The SFC aims to implement the Proposal as soon as possible and will work with the government and the market on the practical implementation details.
44. The SFC would like to thank all respondents for their time, efforts and valuable comments and suggestions in response to the Consultation Paper.



## **Annex A**

### **List of Respondents**

1. Alexis Wong
2. Name withheld as requested by respondent
3. Swire Pacific Limited, Cathay Pacific Airways Limited and Hong Kong Aircraft Engineering Company Limited
4. Norton Rose Hong Kong
5. CLP Holdings Limited
6. Clifford Chance
7. Deacons
8. T. Rowe Price International, Inc.
9. The Law Society of Hong Kong
10. Linklaters on behalf of (i) Citigroup Global Markets Asia Limited; (ii) Goldman Sachs (Asia) L.L.C.; (iii) J. P. Morgan Securities (Asia Pacific) Limited; (iv) Morgan Stanley Asia Limited and (v) UBS AG
11. The Chamber of Hong Kong Listed Companies
12. The Stock Exchange of Hong Kong Limited