



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

A Consultation Paper on the Proposal to Mandate Electronic Submission of Disclosure of Interests Notices

Hong Kong
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Executive Summary

Purpose of this Consultation

1. The purpose of this consultation is to invite comments from the public on the proposal to make electronic submission of Disclosure of Interests (“DI”) notices mandatory (the “Proposal”). This Consultation Paper will be of particular interest to persons who are obliged to make DI notifications, their advisors and users of the DI information.

Summary of the Proposal

2. The key of the Proposal set out in this Consultation Paper is, in short, proposing changes to the current filing system mandating the electronic filings of DI notices. Electronic filing of DI notices will improve significantly the timeliness of publication of potentially market sensitive DI information on the website of Hong Kong Exchanges and Clearing Limited (“HKEx”).
3. The Proposal has been discussed informally in the last few months with selected parties including persons responsible for filing and / or collecting DI notices and other market participants. We are now seeking the comments and views from a wider public audience.

Views Sought

4. As discussed in detail in subsequent paragraphs, we would like to seek the views of the public on the following:
 - (a) We propose to mandate electronic submission of DI notices to The Stock Exchange of Hong Kong Limited (“SEHK”) and SEHK will in turn provide electronic copies of the notices to the listed corporations. We would like to seek the views on whether the public supports using this model or if there are any reasons as to why the proposed model should not be adopted (please refer to paragraphs 16-21 for details);
 - (b) We propose to retain the current practice to update the DI pages on HKEx’s website only once a day at approximately 5pm on a business day until such time when HKEx changes its practice on publication of price sensitive information during market trading hours. We would like to seek the views on whether the public supports this approach or if there are any reasons why this approach should not be retained (please refer to paragraphs 23-27 for details); and
 - (c) We are 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 timing and how they are being kept nor to impose the right of inspection by the public. In this regard, we would like to seek the 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 (please refer to paragraphs 29-37 for details).

The Consultation Period

5. The SFC invites interested parties to submit written comments on the Proposal and its associated issues discussed in this Consultation Paper. Comments should reach us no later than 11 January 2008. Any person wishing to comment should provide details of the organisation(s) whose view he represents.
6. Please note that the names of the commentators and the whole or part of the contents of their submissions may be published on the SFC's website and in other documents to be published by the SFC. In this regard, please read the SFC's policy on handling personal data set out in the Personal Information Collection Statement attached to this Consultation Paper.
7. If you do not wish your name to be published by the SFC, please state in your submission that you would like your name to be withheld from publication.
8. Comments may be submitted by the following means:

Email : e-DI@sfc.hk

On-line submission : <http://www.sfc.hk>

Fax : (852) 2521-7917

Mail : SFC (Electronic Submission of DI Notices)
8/F, Chater House
8 Connaught Road
Central, Hong Kong

Attn: Supervision of Markets Division

Background

9. The DI regime is set out in Part XV of the Securities and Futures Ordinance (the “SFO”). The principal objective of the disclosure regime is to improve market transparency by providing investors with information regarding corporate insiders (i.e. directors and chief executives) and substantial shareholders in relation to their interests in shares of the listed corporation on a timely basis.

The Current Filing System

10. Currently, under Part XV, DI filers have the option to submit DI notices to SEHK and the relevant listed corporation either by electronic means or in hard copy form by fax, by post, by hand-delivery.
11. If the DI notices are submitted to SEHK in hard copy form, SEHK needs to retype them into an electronic form that can be posted on HKEx’s website and proof-read the retyped form before publishing the information. Depending on the timing of receipt of the DI filings, the information will usually be posted on HKEx’s website one to two business days later. HKEx updates the DI information on its website once a day after market trading hours.
12. Recently, the number of DI filings has increased substantially. However, over 80% of the filings are submitted in hard copy form. A very substantial number of DI notices have to go through the manual transcription process described in paragraph 11 above before publication. Thus the information cannot reach the market as promptly as desired.
13. In addition, there are a number of prevalent problems with filings submitted in hard copy form via fax, post and hand-delivery, which result in further delay in publication of the information: -
 - When DI notices are submitted via post, particularly from overseas, it takes a while for them to reach SEHK;
 - DI filers using hard copy submission may make errors and omissions which need to be followed up since hard copy forms do not have built in validation checks similar to those for electronic forms; and
 - Hand-written forms are sometimes illegible and need to be followed up.

Reasons to Mandate Electronic Filing of DI Notices

14. The Report on the Economic Summit on China’s 11th Five Year Plan and the Development of Hong Kong released in January this year reported that the Focus Group on Financial Services considered that encouraging electronic filing and dissemination would “*improve not only environmental friendliness, but also efficiency and security of the market as a whole.*” It was recommended that the SFC and HKEx should mandate, to the extent possible, electronic filing and dissemination in a number of areas and one of them is DI filings. The SFC and

HKEx are committed to promoting the wider use of electronic filing and dissemination of DI notices.

15. Mandatory electronic submission of DI notices to SEHK will improve significantly the timeliness of publication of the information to the market:
 - Electronic DI notices will reach SEHK almost instantaneously, thus electronic submission is much more efficient as a mode of filing as compared to submission by post, fax or hand delivery;
 - The labour intensive and time consuming manual process of transcribing the data in hard copy DI notices into electronically publishable form will no longer be necessary; and
 - Delays arising from following up errors, omissions or illegible data in hard copy DI notices will be eliminated since electronic filing of DI notices will have to pass all built in data input logic and validation before they are accepted.

The Proposal

16. For this Proposal, the electronic form presently available will be retained for the benefit of filers who are using them currently in addition to a web-based system and web-based forms that will be developed by HKEx to facilitate electronic filing. HKEx has also committed to carry out the necessary enhancements to make the electronic filing system of DI notices more user-friendly.

The Possible Models for Mandatory Electronic Filing

17. Having regard to the current filing practice and the legal framework set out in Part XV of the SFO, we have considered 5 different models for the introduction of electronic filing of DI notices:
 - (i) **Option A:** electronic submission of DI notices to both SEHK and the listed corporations will be made mandatory;
 - (ii) **Option B:** DI notices will only be required to be filed with one party - either SEHK or the listed corporation. In so far as the legal obligation on the filer to file with both SEHK and the listed corporation is concerned, the law will be amended to provide that DI notices filed with the specified party will be deemed to have been filed with the other party. The specified party that receives the DI notices has the responsibility to forward the DI notices received to the other party. In relation to this model, there are two possible variations:
 - (a) **Option B (1):** DI notices will be filed with listed corporations via the various means of filing currently acceptable and the listed corporations will provide electronic copies of the notices to SEHK; or

- (b) **Option B (2)**: electronic submission of DI notices to SEHK will be made mandatory and SEHK will provide electronic copies of the notices to the listed corporations;
 - (iii) **Option C**: electronic filings of DI notices to SEHK will be made mandatory and the legal obligation to file with the listed corporations will be removed; and
 - (iv) **Option D**: electronic filing of DI notices to SEHK will be made mandatory and the different means of filing currently acceptable will continue to apply in respect of filing with the listed corporations.
18. The Proposal and the 5 different models set out in this Consultation Paper have been discussed informally in last few months with selected parties including persons responsible for filing and / or collecting DI notices and other market participants. They, in general, support mandatory electronic filing of DI notices.
19. Based on the feedback we received, among the 5 different models put forward, **Option B (2)** gained the most support for reasons stated below. The comments and concerns raised in relation to the other 4 models are:
- (i) **Option A** - mandating electronic submission of DI notices to listed corporations may raise a host of operational (and resources related) issues for some listed corporations as they may not have the resources to put in place a proper system to receive DI notices around the clock and acknowledge receipt on a real time basis. Consequently it may take much longer for every listed corporation to be ready in order to implement electronic filing under this option.
 - (ii) **Options B (1) and D** – continuing with filing in hard copy form runs contrary to one of the principal motives behind this initiative which is to promote environmental friendliness. In addition for Option B (1), there may be a time lag between the receipt of the DI notices by the listed corporations and the listed corporations sending copies of the notices to SEHK, contributing to further unnecessary delay in the publication of the information. Option D is not quite user-friendly as the filers may need to do additional work in printing the DI notices for submission to the listed corporations.
 - (iii) **Option C** – the general view is that filers’ obligation to submit DI notices to listed corporations should not be removed as listed corporations would like to be kept informed about their shareholders and dealings relating to their shares.

The Proposed Model

20. As mentioned, Option B (2) is preferred. This is for the following reasons:
- (i) It is environmentally friendly;

- (ii) Electronic filing to SEHK will reduce much of the delays and errors as mentioned in paragraphs 11-13 above and thus improve the timeliness of publication of potentially market sensitive information contained in DI notices;
 - (iii) It is convenient for filers as they only need to file with SEHK; and
 - (iv) Listed corporations will retain the benefit of receiving DI notices. Although they will also receive DI notices electronically, all they have to do is to have an email address to receive the information from SEHK. There is no need for listed corporations to set up a system to deal with receiving electronic filings such as acknowledging receipt.
21. In view of the above, we propose to use the Option B (2) model to introduce mandatory electronic filing of DI notices. We envisage this will include:
- (i) Filing of DI notices will be done via the currently available electronic means or a web-based system and web-based forms to be developed by HKEx. The electronic form presently available will be retained for the benefit of those using them currently. HKEx will also carry out the necessary enhancements to make the electronic filing system of DI notices more user-friendly;
 - (ii) SEHK will forward to the listed corporations the DI notices in the state as they have been filed with SEHK i.e. the information sent by SEHK to the listed corporations will be identical to the information received by SEHK from the filers;
 - (iii) For the purpose of receiving and forwarding DI notices, the listed corporations and SEHK will have to maintain a specific email account dedicated for dealing with DI notices. Having known the SEHK's specifically assigned email address, the listed corporations will be able to set their spam filters (where necessary) accordingly;
 - (iv) Copies of the information received by listed corporations in pursuance of their power to investigate ownership of interests in its shares and the reports prepared by listed corporations on the conclusion of an investigation will also have to be submitted electronically to SEHK and the SFC, and also the Hong Kong Monetary Authority if appropriate; and
 - (v) Corporations partially exempted by the SFC from the provisions of Part XV but are required to file with SEHK any disclosure of interests made in another jurisdiction will also be required to file their disclosures of interests electronically.

Views Sought

22. We would like to hear from the public whether they support Option B (2) as the model for mandating electronic filing of DI notices or if there are any reasons as to why the proposed model **Option B (2)** should not be adopted.

Publication of DI Notices on HKEx’s website

Publication on a Real Time Basis

23. With electronic filing, DI notices can be published straight through upon receipt by SEHK (“Straight-through Approach”). The key advantage in doing so is that the public will have access to DI information available on HKEx’s website on a real time basis.
24. However two concerns have been raised in relation to the Straight-through Approach:
- (i) Potentially price sensitive information may reach the market while the market is open. Any erroneous DI notices may cause confusion and potentially impact the market; and
 - (ii) As the DI information on HKEx’s website is being updated constantly, interested investors may need to keep referring to HKEx’s website to know the latest changes in the interests in shares of corporate insiders and substantial shareholders of the relevant listed corporations.

The Existing Publication Practice

25. The existing practice of HKEx is to update the DI pages on its website only once a day at approximately 5 pm on a business day (the “Existing Approach”). The Existing Approach addresses the two concerns referred above:
- (i) As DI notices will not be published until after market trading hours, there will be the opportunity to clarify any erroneous filings before market opens again if the need arises; and
 - (ii) Investors only need to refer to the DI pages on HKEx’s website once a day, after the information has been updated, to learn about the movements in the interests in shares of corporate insiders and substantial shareholders of the relevant listed corporations.

Our Proposal to retain the Existing Approach

26. We propose to retain the Existing Approach under model Option B (2). This is consistent with HKEx’s current practice regarding publication of potentially price sensitive information. Under HKEx’s Electronic Disclosure Project, announcements and notices from listed corporations (which are potentially price sensitive information) are not to be submitted to HKEx for publication between 9.00 a.m. and 4.15 p.m. on a business day with certain limited exceptions. We

are of the view that the publication of DI notices, which are also potentially price sensitive information, should be regarded and handled in the same manner.

27. However, it should be noted that HKEx has indicated in its “Exposure Conclusion on the Abolition of Requirement for Main Board Issuers to Publish Paid Announcements in Newspapers and Related Matters” (July 2006) that the abolition of the paid announcement requirement lays the foundation for a new dissemination model (being considered for the medium term) whereby issuers’ announcements are released at any time during the day, including during trading hours, and the majority of announcements are not vetted prior to their release. Such a model will facilitate the full and timely disclosure of price-sensitive information. We intend to review the need for real time publication of DI information when HKEx changes its practice in relation to publication of price sensitive information during market trading hours.

Views Sought

28. We would like to invite the public to comment on whether they support retaining the Existing Approach in relation to publication of DI notices on HKEx’s website until such time when HKEx changes its practice on publication of price sensitive information during market trading hours or if there are any reasons that the Existing Approach should not be retained.

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

29. The SFO requires every listed corporation to keep a register of interests in shares and short positions and a register of directors’ and chief executives’ interests and short positions.
30. Whenever a listed corporation receives information from a person given in performance of his obligations imposed on him by Part XV, it is under a duty to record in the register, against the name of the person interested in the shares or having a short position, the information received and the date of entry.
31. When a listed corporation grants to a director or chief executive a right to subscribe for shares in or debentures of the listed corporation, it is obliged to record in the register of directors’ and chief executives’ interests, against the name of the relevant director or the chief executive, certain information about the right to subscribe for shares or debentures. If the relevant director or chief executive exercises the right, the listed corporation has to record the exercise of such right in the register.
32. The listed corporation’s duty to record the information in the respective registers mentioned above has to be performed within 3 business days after the day on which the duty arises.
33. In addition, the listed corporation is also required to keep an index of the names recorded in each register unless each of the registers is kept in such form as to

constitute in itself as an index. If the listed corporation keeps a separate index, whenever it enters in or removes from its relevant register a name, it has to update the relevant index within 10 business days.

34. The listed corporation is further required to make available the register of interests in shares and short positions and the register of directors' and chief executives' interests and short positions for inspection, during business hours, by any member of the corporation without charge or by any other person on payment of a fee.
35. Based on the feedback that we received, the registers kept by listed corporations are used mainly for internal purposes such as the preparation of information relating to interests of directors, chief executives and substantial shareholders in the annual and interim reports. Under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Listing Rules") each listed corporation is required to include in its listing document and in each annual report a statement showing the interests and short positions of each director, chief executive and substantial shareholder as recorded in the registers required to be maintained under Part XV of the SFO. Similar information is also required to be included in a circular required to be published when the corporation enters into a notifiable transaction.
36. Given that SEHK will be the primary recipient of DI notices under our proposed model and the information contained in these registers are essentially available on the website of HKEx, there is a question on whether it is necessary to require listed corporations to continue to maintain these registers. We have been told that these registers are likely to be maintained for internal purposes regardless of whether there is a statutory requirement to do so as many company secretaries prefer to maintain their own record of interests and short positions of directors, chief executives and substantial shareholders. In addition, as the Listing Rules make reference to information contained in these registers, it makes more sense to maintain the statutory requirement for listed corporations to keep registers.
37. Nevertheless, we are of the view that so long as listed corporations keep their registers up-to-date and maintain them in proper order, it may not necessary to impose strict requirements on the timing and how they are being kept nor to impose the right of inspection by the public. We are happy to work with listed corporations to lessen the requirements if there is a need to do so.

Views Sought

38. We would like to hear the views from the public as to whether there is a need to lessen specific requirements on registers of interests and short positions kept by listed corporations and suggestions that they have on how this can be proceeded.

Personal Information Collection Statement

1. This Personal Information Collection Statement (“**PICS**”) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data¹ will be used following collection, what you are agreeing to with respect to the SFC’s use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance, Cap 486 (“**PDPO**”).

Purpose of Collection

2. The Personal Data provided in your submission to the SFC in response to this Consultation Paper may be used by the SFC for one or more of the following purposes:
 - to administer the relevant provisions² and codes and guidelines published pursuant to the powers vested in the SFC;
 - in performing the SFC’s statutory functions under the relevant provisions;
 - for research and statistical purposes;
 - for other purposes permitted by law.

Transfer of Personal Data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere, as part of the public consultation on this Consultation Paper. The names of persons who submit comments on this Consultation Paper together with the whole or part of their submission may be disclosed to members of the public. This will be done by publishing this information on the SFC website and in documents to be published by the SFC during the consultation period or at its conclusion.

Access to Data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this Consultation Paper. The SFC has the right to charge a reasonable fee for processing any data access request.

¹ Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance.

² Defined in Schedule 1 of the SFO to mean provisions of the SFO and subsidiary legislation made under it; and provisions of Parts II and XII of the Companies Ordinance (Cap. 32) so far as those Parts relate directly or indirectly, to the performance of functions relating to: prospectuses; the purchase by a corporation of its own shares; a corporation giving financial assistance for the acquisition of its own shares etc.

Retention

5. Personal Data provided to the SFC in response to this Consultation Paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this Consultation Paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer, The Securities and Futures Commission
8/F Chater House, 8 Connaught Road Central, Hong Kong.

A copy of the Privacy Policy Statement adopted by the SFC is available upon request.