



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

Consultation Conclusions on the Draft Guidelines on Disclosure of Inside Information

February 2011



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Introduction

1. In parallel with the Government's publication of proposals to impose a statutory obligation on listed corporations to disclose price sensitive information, the Securities and Futures Commission ("**SFC**") issued a Consultation Paper on 29 March 2010 to invite public comments on the draft Guidelines on Disclosure of Inside Information ("**Guidelines**").
2. The proposed Guidelines seek to assist listed corporations to comply with the disclosure obligations to be enshrined in Part IIIA of the Securities and Futures Ordinance ("**SFO**"). The Guidelines provide guidance on the interpretation of inside information, a new term used in the legislation to mean price sensitive information, and explain the application of safe harbours.
3. The consultation period ended on 28 June 2010. The SFC received a total of 19 written submissions, including a few that were received after the end of the consultation period. A list of the respondents is set out in **Appendix 1**. The Consultation Paper, the responses and this Conclusions Paper are available on the SFC website at www.sfc.hk.
4. Respondents welcomed the issue of the Guidelines and generally commented that the guidance provided is helpful and practicable. Most comments received relate to seeking further guidance on specific matters and clarifying certain provisions of the draft Guidelines.
5. This paper summarises the major comments received in the consultation process, the SFC's responses and the proposed revisions to the draft Guidelines.
6. The Government is preparing the Securities and Futures (Amendment) Bill 2011 ("**Bill**") to codify the requirements on listed corporations to disclose inside information. We will revise the Guidelines in light of this Conclusions Paper, subject to the Bill to be published by the Government, and will finalise the Guidelines when the legislation is settled.
7. This paper should be read in conjunction with the Government's "Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive information by Listed Corporations – Consultation Conclusions" and the related consultation paper, copies of which are available on its website at www.fstb.gov.hk.



Comments Received and the SFC's Responses

8. The substantive comments are discussed below in the same order in which the issues were presented in the draft Guidelines.

Introduction

Status of the Guidelines

Public comments

9. Most respondents welcomed the issue of the proposed Guidelines. They commented that the proposed Guidelines are helpful, especially in explaining what constitutes inside information whilst others found the illustrative examples useful in clarifying issues on particular circumstances.
10. However, a few respondents noted that the proposed Guidelines cannot be relied upon as an authoritative legal opinion and are not legally binding. They queried the status of the Guidelines and the consequence of compliance or non-compliance with them.

SFC's response

11. The Guidelines will be issued under section 399 of the SFO to assist listed corporations and their officers to fulfil their obligations under Part IIIA. They explain the interpretation and application of the new requirements and serve as a practical guide for listed corporations to comply with the statutory disclosure obligations. As with all other guidance, the Guidelines will not have the force of law. A failure to comply with the Guidelines will not in itself be treated as a breach of the law, but will be taken into account in considering whether the statutory disclosure requirements have been complied with and hence the need for possible enforcement. Compliance with the Guidelines assists listed corporations in meeting the applicable standards and minimises the risk of breaching the relevant law.

Application of the Guidelines in relation to the insider dealing regime

Public comments

12. One respondent sought clarification on how the Guidelines would impact upon the operation of the insider dealing regime given that "inside information" was defined in the same terms as "relevant information" under Part XIII and Part IV of the SFO. The respondent queried how specific guidance given on particular situations under the disclosure regime under Part IIIA should correspondingly apply to the insider dealing regime under Part XIII and Part XIV of the SFO. It requested guidance on the interaction between the disclosure regime and the insider dealing regime.

SFC's response

13. To avoid confusion, we wish to clarify that the Guidelines are primarily intended to assist listed corporations and their officers to fulfil their obligations under Part



IIIA. As the Guidelines do not concern the provisions of Part XIII and Part XIV other than the definition of “relevant information”, they have no application to the operation of Part XIII and Part XIV of the SFO. The Guidelines will be amended to make clear this point.

SFC’s consultation service

Public comments

14. All the respondents welcomed the SFC’s proposal to provide a consultation service to assist listed corporations with regard to the statutory disclosure requirements. However, most respondents would like the service to extend beyond the initial 12-month period. A number of respondents were concerned that the consultation service would be confined to the application of safe harbours and that the SFC would refrain from giving advice as to whether a particular piece of information is inside information.

SFC’s response

15. When providing the consultation service, the SFC would endeavour to explain the key elements of the test to determine when information constitutes inside information and the availability of safe harbours under certain circumstances. The listed corporation may also clarify any issues about its obligations and the applicable procedural requirements. Nonetheless, a listed corporation is obliged to make its own judgement in deciding whether a piece of information amounts to inside information in the context of its own affairs and based upon its own facts and circumstances.
16. As regards the duration of the consultation service, in view of the comments received, we propose to extend the service to an initial period of 2 years and review whether it is appropriate to continue such service thereafter. This would provide an adequate period of time for market participants to familiarise themselves with the new requirements after the statutory disclosure regime takes effect.

What may constitute inside information?

Guidance from the views expressed by the tribunals in handling past insider dealing cases

Public comments

17. The purpose of the guidance in this area is to explain the interpretation of the various elements of the test under the law in determining when information constitutes inside information by summarising the views expressed by the tribunals in handling past insider dealing cases. A respondent commented that whilst the summary of the tribunals’ decisions the SFC cited is fair, the list of cases as set out in Appendix A to the draft Guidelines appears to be incomplete e.g. the case on Tingyi (Cayman Islands) Holding Corp.¹ has not been included. It is suggested that the Guidelines should include the key principles

¹ The case is set out in the Insider Dealing Tribunal report dated 11 January 2007 on Tingyi (Cayman Islands) Holding Corp.



regarding the interpretation of inside information in relation to the Tingyi case.

SFC's response

18. The Guidelines have summarised, as far as practicable, the key aspects of information which has been viewed by the tribunals as constituting “relevant information” in handling past insider dealing cases. It should be noted that the summary of the guidance should not be taken as an exhaustive or authoritative list of what inside information means. Each case must be assessed on its particular facts and circumstances.
19. As regards the Tingyi case, we note the tribunal concluded that the information in question did not satisfy the test for “relevant information” and as a result no insider dealing was found. In our view, many comments expressed by the tribunal in relation to the Tingyi case were case-specific and might not be capable of general application. Accordingly, it would be inappropriate to incorporate these comments in the Guidelines.
20. For readers' reference, we will update Appendix A to the Guidelines to include all inside dealing cases handled and published by the tribunals. Readers are encouraged to refer to the tribunals' rulings on these and future cases, full details of which are available on the websites of the tribunals.

Whether the information is regarded as information that is generally known

Public comments

21. Two respondents raised concerns that analysts' research reports, electronic subscription news and wire services may not be regarded as generally known information. In their view, these reports and news are widely circulated in the institutional investor community and should be accepted as generally known information.

SFC's response

22. As stated in paragraph 17 of the draft Guidelines, the tribunals viewed that the investor group who is accustomed or would be likely to deal in the listed securities of the corporation includes not just the institutional investors but also the small, unsophisticated investors. Although electronic news and wire services are commonly available to institutional investors, these services for which a subscription is required may not necessarily be readily available to unsophisticated retail investors. Therefore electronic news and wire services cannot automatically be accepted as generally known information as these sources do not necessarily disseminate information to the wider investing public.
23. According to clause 101B(3)², information disclosed by a listed corporation must not be false or misleading as to a material fact, or false or misleading through the omission of a material fact. Accordingly, a listed corporation must

² Please refer to the indicative draft legislative provisions as set out in Annex 1 to the Government's "Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations".



disclose information which is accurate and complete and not misleading or deceptive and there are no material omissions which would make the information misleading. The information must be presented in a clear and balanced way, which requires disclosure of the relevant facts, regardless of whether they are positive or negative.

24. By virtue of the definition of inside information and the requirement under clause 101B(3), in deciding whether information is generally known if it is being the subject of media comments, covered in analysts' reports or carried on wire services, a listed corporation should consider not only how widely the information has been disseminated but also the accuracy and completeness of the information disseminated and the reliance that the market can place on such information. The corporation should consider in particular whether these sources contain the full information that would need to be disclosed as required under clause 101B(3), whether the market will realise that the information in these sources reflects the information known to the corporation and whether the information will be regarded as speculation or opinion of persons outside the corporation. Where the information available to the market by way of media comments, analysts' reports or wire services is incomplete, contains material omissions or whose bona fides is in doubt, such information cannot be regarded as generally known or not misleading and accordingly full disclosure by the corporation is necessary.
25. We will expand the Guidelines to provide further guidance regarding the publication of information in various circumstances.

Whether the information is likely to have a material effect on the price of the listed securities

Public comments

26. In assessing whether the information is likely to have a material price effect, paragraph 21 of the draft Guidelines explains that inside information is information which is likely to cause a change in the price of the securities of sufficient degree to amount to a material change. In addition to such "price impact" test, a respondent suggested an alternative approach to assess the materiality of the information whereby the focus is on whether there is a substantial likelihood that a reasonable investor would consider the information important in making his investment decision, or otherwise referred to as the "investor decision" test.

SFC's response

27. We note that when the tribunals considered whether a piece of information had a material impact on the price of the securities in a number of insider dealing cases, the tribunals had invariably cited a passage in the judgement of *Public Prosecutor v Alan Ng Poh Meng [1990] 1 MLJ* in which the Malaysian court considered that "the standard by which materiality is to be judged is whether the information on the particular share is such as would influence the ordinary reasonable investor, in deciding whether or not to buy or whether or not to sell



that share”.³ It seems the view expressed by the Malaysian court with regard to materiality is not dissimilar to the “investor decision” test as suggested, that is, a piece of information is regarded as material if that information is likely to impact on a reasonable investor’s decision in dealing in the shares. We further note that the European Union adopts a similar approach in considering materiality where information would be likely to have a significant effect on the prices of financial instruments shall mean information a reasonable investor would be likely to use as part of the basis of his investment decisions⁴.

28. Accordingly, we propose to incorporate in the Guidelines the “investor decision” test based upon the relevant court judgement cited by the tribunals, as discussed in paragraph 27 above.

Management accounts

Public comments

29. In the context of when the management accounts of a listed corporation would amount to inside information, two respondents raised concerns as to how the corporation should deal with research reports and financial journals. In particular, paragraph 28 of the draft Guidelines states that in assessing what results the market might predict for a corporation, reference should be made to profit projections by analysts and information about the corporation in financial journals and publications from which a sophisticated investor may logically deduce the corporation’s results. However the same paragraph also states that it would be inadvisable to consider these research reports or financial publications to be generally known to the market. It thus becomes unclear whether a corporation is obliged to disclose if the results the directors know and the results the research analysts predict do not significantly differ.
30. One respondent commented that a listed corporation might be overburdened by the disclosure requirements when the market is volatile and fair values fluctuate significantly. Another respondent considered when a listed corporation faces a temporary setback in its business as revealed by its management accounts and believes on reasonable grounds that the setback is merely seasonal or temporary, it should not be required to disclose the setback.

SFC’s response

31. In our view, an assessment of what results the market might predict should be made by considering what has been announced by the listed corporation and other materials or reports circulated in the community. Therefore financial publications and research reports provide some of the views of the market but may not necessarily be a conclusive assessment of what the market generally expects.
32. It is not unusual to find that profit forecasts made on the same corporation by different analysts vary considerably and media reports contain inconsistencies.

³ Please refer to p.41 of the insider dealing report dated 5 March 1997 on Hong Kong Parkview Group Limited.

⁴ Please see Article 1 of Commission Directive 2003/124/EC.



As such analysts' reports, financial journals and media reports may fall short of providing information which is accurate, complete and not misleading or deceptive. Accordingly, a listed corporation should not normally treat information from these sources as generally known and disclosure of inside information would be still necessary. This point will be elaborated in the Guidelines.

33. Public disclosures made by a corporation may not necessarily be consistent with the information carried in analysts' reports and media publications. Where the analysts' reports and media publications contain errors or omissions due to the use of inappropriate assumptions or misquote or misinterpretation of historical information, unless the corporation knows some inside information which has not been disclosed, strictly speaking the corporation is not obliged to make correction or clarification under the proposed legislation. However, for good practice, it may be appropriate for the corporation to correct fundamental errors in analysts' assumptions or clarify historical information to the extent that they may mislead the market, provided any clarification is confined to drawing the analyst's attention to information that has already been made available to the market. Under the Listing Rules ("**Listing Rules**") of the Stock Exchange of Hong Kong Limited ("**Stock Exchange**"), the Stock Exchange may require a corporation to make disclosure or clarification beyond that required by the law as is necessary to ensure a fair and orderly market. Where a corporation becomes aware of inside information that would correct a fundamental misconception in the reports, public disclosure by the corporation would be necessary. The Guidelines have been expanded on these points.
34. As to whether a listed corporation should disclose temporary setbacks in its operating results or fluctuating valuations of its financial assets, the corporation should assess whether the types of events or circumstances contributing to the relevant setbacks or fluctuations have been disclosed previously and whether the magnitude of the gains or losses envisaged would be significant. A corporation with a seasonal business trend which largely follows patterns of previous years may not need to disclose fluctuations of its monthly results. On the contrary, if a listed corporation faces a massive change in the fair value of its financial instruments due to changes in market conditions, this may constitute inside information.

Examples of possible inside information concerning the corporation

Public comments

35. A few respondents commented that the list of events and circumstances which might constitute inside information as set out in paragraph 29 of the draft Guidelines overlap with the disclosure requirements for notifiable transactions as stipulated in Chapter 14 and Chapter 14A of the Listing Rules. In their view, certain requirements under these two chapters of the Listing Rules were thus indirectly codified in the statute. Several respondents suggested that the event of "pledge of the corporation's shares by controlling shareholders" be removed from the list given that the relevant event was already governed by the disclosure of interest regime under Part XV of the SFO.
36. Some other respondents considered that the examples given are extremely



broad and far-reaching, encompassing almost all possible corporate actions and events and requested further elaboration on how such events or actions might or might not constitute inside information under different circumstances. Lastly, a few respondents suggested that the Guidelines should specify that inclusion on the list creates no presumption that it is inside information and failure to disclose any of these items would not in itself constitute a breach of the statutory disclosure rules.

SFC's response

37. The list of examples as set out in paragraph 29 of the draft Guidelines sought to give an indication of the wide range of circumstances in which the disclosure requirements may apply. The list is for illustrative purposes, without prejudice to the statutory definition or amending the scope of disclosure. It is as stated a non-exhaustive and purely indicative list. Inclusion of an event or a set of circumstances in the list does not mean that it is automatically inside information, nor does exclusion from the list indicate that it cannot be inside information. The Guidelines have already made clear this point.
38. Chapter 14 and 14A of the Listing Rules deal with transactions that because of their nature and size are required to be disclosed to investors and the market and in some cases also require shareholder approval before the listed corporation can proceed with the transaction. It is thus to be expected that details of some of these transactions will also be inside information. The SFC considers the fact that the same transaction is both inside information and a matter that the Listing Rules require a listed corporation to disclose does not represent indirect statutory codification of the Listing Rules.
39. While some pledges of shares in a listed corporation by a controlling shareholder need to be disclosed in accordance with the requirements of Part XV of the SFO, not all pledges so disclosed will be inside information. Accordingly where the pledge is inside information this needs to be disclosed so investors can distinguish those actions that are inside information.
40. We reiterate that the list is not intended to be exhaustive or definitive and is provided for illustrative purposes. There appear to be no strong reasons to amend or take out the examples as provided in the list.

When and how should inside information be disclosed?

“As soon as practicable” versus “immediately”

Public comments

41. Paragraph 32 of the draft Guidelines states that ‘For this purpose, “as soon as practicable” means that the corporation should immediately take all necessary steps that are reasonable in the circumstances to disclose the information to the public’. In this connection, a number of respondents took the view that there were inconsistencies between the notions “as soon as practicable” and “immediately” and corporations might face difficulties in complying with the provisions concurrently. Other respondents sought clarification as to whether a corporation would be allowed time to carry out relevant steps such as



investigation of the matter, engagement of legal advisers and verification of information etc before making an announcement.

SFC's response

42. In the Government's Consultation Conclusions, it is proposed that the disclosure timing of "as soon as practicable" in clause 101B(1) be amended into "as soon as reasonably practicable". To fulfil this obligation, paragraph 32 of the draft Guidelines explains that the listed corporation should "immediately take all necessary steps that are reasonable in the circumstances to disclose the information to the public". We therefore do not see any inconsistencies between the use of the expressions "as soon as reasonably practicable" and "immediately" given the contexts in which they are respectively used – "as soon as reasonably practicable" refers to the act of disclosure whilst "immediately" refers to the act of necessary steps leading up to the disclosure.
43. We will clarify that a listed corporation will be given the practical opportunity to take relevant actions in the lead up to the disclosure. For example, if a listed corporation faces an event that might significantly impact upon its operations, the corporation should immediately ascertain sufficient details, internally assess the matter to decide whether any inside information has arisen and the likely impact, and where necessary undertake due diligence to verify the facts prior to making an announcement.

Responsibility for compliance and management controls

Definition of "officers"

Public comments

44. According to Part 1 Schedule 1 of the SFO, an "officer" is defined as, "in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation". We received substantial comments in relation to the definition "officers" which is considered to have cast the net too wide and may potentially cover many relatively junior managers in a sizeable organisation who do not necessarily have the authority to influence the decision to disclose inside information. Whilst some respondents suggested replacing the reference to "officers" by "directors", the general comments were to confine the definition of "officers" to directors and the senior management of the listed corporation. Many respondents recommended the adoption of the United Kingdom approach in specifying the scope of "officers".

SFC's response

45. We note that the definition of "officers" to which the draft legislation refers has been used in the SFO for years and believe that the respondents might have misinterpreted the meaning of "managers" to literally cover any person bearing a job title of manager. The Government clarifies that the policy intention is to catch directors and high-level individuals responsible for managing the listed corporation, but not middle management or low-ranking staff.



46. To provide clarity, we will explain in the Guidelines that as a general principle, one must look to the objective of the legislation and the context to determine the meaning of the term “manager”. In the context of Part IIIA, in considering whether a person is a “manager” or “involved in the management of the corporation”, the person’s actual responsibilities are more important than the person’s formal title. A “manager” normally refers to a person below the board level who is charged with management responsibility affecting the whole of a corporation or a substantial part of the corporation. A person may be regarded to be “involved in the management of the corporation” if the person discharges the role of a “manager”.
47. The guidance on the meaning of “managers” we will provide is broadly in line with the concept of “person discharging managerial responsibilities within an issuer” adopted in the United Kingdom.

Reasonable measures to ensure proper safeguards exist to prevent a breach of a disclosure requirement

Public comments

48. A number of respondents commented that there is inadequate guidance as to what reasonable measures directors and officers are expected to take in order to ensure appropriate safeguards exist to prevent a breach of the disclosure requirements in relation to a listed corporation. They requested more detailed guidance to assist directors and officers to comply.
49. Another respondent was of the view that the responsibility of the board of a listed corporation in discharging the statutory disclosure obligations should be delegable. The respondent believed that, due to practicable reasons, organising board meetings to consider whether possible inside information arises may cause delay in the disclosure and impede the board from discharging its other functions. It was suggested that delegation of the responsibility to a dedicated committee experienced in such matters would expedite the disclosure process and enhance the effectiveness of the board as a whole.

SFC’s response

50. We consider a listed corporation through its officers needs to establish proper procedures and practices to manage its disclosure obligations and minimise the risk of breaching the provisions. Each corporation needs to exercise its own judgement and develop a disclosure regime that meets legal requirements and its own needs and circumstances.
51. By way of issuing “frequently asked questions”, we will provide some suggestions for practical steps which a listed corporation might take into account when developing its own procedures and systems. These steps include, for example, installing systems to monitoring business and corporate developments and events, establishing financial reporting procedures to ensure a structured and timely flow of key financial information, and authorising designated officers through whom any potential inside information will be reported and escalated to the attention of the board, etc.



52. It is ultimately the responsibility of the officers to ensure that a listed corporation complies with the statutory disclosure obligation. Accordingly, the responsibility of the officers in discharging the statutory disclosure obligations cannot be delegable. While a corporation may appoint a designated committee comprising officers and other executives to handle matters concerning the disclosure of inside information, the delegation of the relevant duties to such committee does not exonerate the responsibilities or liabilities of the officers to fulfil the disclosure obligations. If a breach committed by the corporation is attributable to a failure to take all reasonable measures to ensure proper safeguards exist by, or to any intentional, reckless or negligent conduct of, any officers, the officers concerned would be held liable.

Safe harbours that allow non-disclosure of inside information

Disclosure of inside information to selected persons when withholding disclosure by virtue of a safe harbour

Public comments

53. A respondent observed that under clause 101D(2), where a listed corporation avails itself of a safe harbour, it may disclose the information to another person who requires the information to perform the person's functions in relation to the corporation provided that the person owes the corporation a duty of confidentiality. The respondent requested more detailed elaboration in the Guidelines of this specific exception relating to the disclosure of information to selected third parties.
54. Another respondent commented that where inside information of a listed subsidiary may concurrently constitute inside information of a listed parent, precluding the listed subsidiary from divulging the information to any other party (including the listed parent) prior to public disclosure would preclude the listed parent from making disclosure on a timely basis. The respondent suggested that under these circumstances, the listed subsidiary should be permitted to disclose inside information to the listed parent or its major shareholders ahead of public disclosure.

SFC's response

55. We note the respondent's comments and believe it useful to provide elaboration in the Guidelines on the circumstances in which a listed corporation may disclose inside information to other parties when withholding disclosure in accordance with one of the safe harbours. For example, a corporation contemplating a significant transaction which requires shareholder support or which could significantly impact its lending arrangements may selectively disclose details of the proposed transaction to its major shareholders and/or its lenders as long as the recipients are bound by a duty of confidentiality.
56. Accordingly, a listed corporation may, depending on the circumstances, disclose inside information to certain categories of recipients who require the information to perform their functions in relation to the corporation. We will amend the Guidelines to explain the circumstances in which, and the categories of recipients to whom, the information may be disclosed.



57. A listed corporation may share information with its parent company as part of a group's normal reporting procedures. Such sharing may enable the corporation and its listed parent to make simultaneous disclosure of information that constitutes inside information for both entities. However, once the information is determined to be inside information, the publication of the inside information by one corporation cannot be delayed on the grounds that simultaneous disclosure of inside information by two corporations is desirable.

Where information concerns an incomplete proposal or negotiation

Public comments

58. Some commentators queried whether a listed corporation in financial difficulties could rely on the Safe Harbour B to withhold disclosure of its financial condition on the grounds that the corporation is in the course of negotiations for funding to rescue the corporation. They were concerned that disclosure of the financial condition would undermine the financial viability and recovery of the corporation, which might seriously prejudice the interests of the corporation and its existing shareholders. It was pointed out that in these circumstances the interests of the existing shareholders of the corporation might not align with the interests of the general investing public.

SFC's response

59. According to paragraph 56 of the draft Guidelines, the Safe Harbour B provides relief for disclosure in respect of the negotiations and actions intended to address the financial problems, but not the fact that the listed corporation is in financial difficulty. In other words, the corporation has to make timely disclosure of its financial condition, although it might withhold information on negotiations or actions being taken to rescue the corporation.
60. After careful consideration of the comments, we remain of the view that the listed corporation should not withhold disclosure of its financial difficulties since this would compromise the integrity of the market. Some commentators might argue that the disclosure of the financial difficulties would adversely affect the interests of the existing shareholders of the corporation, however it would equally jeopardise the interests of potential investors, who would base their investment decisions on incomplete information if the relevant disclosure was withheld.
61. The approach addressed in the Guidelines is consistent with the practice adopted in the United Kingdom where a listed corporation with financial problems can only delay disclosure of the negotiations but not the state of its financial difficulties.

Where information concerns a trade secret

Public comments

62. A number of respondents commented that the term "trade secret" is vague and requested further elaboration of the term. Some respondents sought clarification that "trade secret" should cover commercially sensitive information in agreements or terms of business in addition to proprietary information or



intellectual property rights. Conversely, another respondent was concerned that the term might be interpreted too widely, giving blanket immunity to any information which a listed corporation regards as “trade secret”.

SFC's response

63. In light of respondents' comments, we will expand the Guidelines to enhance the clarity of the term “trade secret”. In general, a trade secret refers to proprietary information owned by a listed corporation (i) used in a trade or business of the corporation; (ii) which is confidential (i.e. not in the public domain); (iii) which, if disclosed to a competitor, would be liable to cause real or significant harm to the corporation's business interests; and (iv) which the corporation must limit its dissemination. To avoid any misinterpretation, we will clarify in the Guidelines that a listed corporation cannot regard the commercial terms and conditions of a contractual agreement or the financial information of a company as trade secrets since these are not proprietary information or rights owned by the corporation.

Where disclosure is waived by the SFC

Public comments

64. Several respondents suggested that the SFC provides guidance on the process by which it exercises its power in granting a waiver from disclosure of inside information and how an aggrieved party can appeal against a decision. One respondent suggested that details of the waivers granted be published to enhance transparency.

SFC's response

65. In light of respondents' comments, we will expand the Guidelines to provide more details of the process by which the SFC grants a waiver and the applicable appeal mechanism in relation to the decisions.
66. As regards the respondent's suggestion to publish details of the waivers granted, we consider it inappropriate to do so in view of the sensitivity and confidentiality of the information to which a waiver on inside information relates.



Next Steps

67. The Government is preparing the Bill to codify the requirements on listed corporations to disclose inside information for introduction to the Legislative Council in the 2010/11 legislative session. We will revise the Guidelines to take into account respondents' comments and the text of the Bill, and will publish a revised draft of the Guidelines when the Bill is gazetted. These Guidelines will be finalised once the final form of the Bill is settled after its passage through the Legislative Council.



Appendix 1

List of Respondents

(in alphabetical order)

1. Association of Chartered Certified Accountants
2. Cheung Kong (Holdings) Limited
3. Clifford Chance and Linklaters
4. CLP Holdings Limited
5. CompliancePlus Consulting Limited
6. Great Eagle Holdings Limited
7. Hong Kong Federation of Women Lawyers
8. Hong Kong Investment Funds Association
9. Hutchison Harbour Ring Limited
10. Hutchison Telecommunications Hong Kong Holdings Limited
11. Hutchison Whampoa Limited
12. KPMG
13. Mallesons Stephen Jaques
14. Ricky Chan
15. Suen Chi Wai
16. The Chamber of Hong Kong Listed Companies
17. The Hong Kong Institute of Chartered Secretaries
18. The Hong Kong Society of Financial Analysts
19. The Law Society of Hong Kong