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Securities and Futures Commission  
(Electronic Submission of DI Notices)  
8/F, Chater House  
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Central  
Hong Kong

Attention: Supervision of Markets Division

Dear Sirs,

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

We enclose our comments on the Consultation Paper on the Proposal to Mandate Electronic Submission of Disclosure of Interests Notices.

Yours faithfully,



Deacons

Encl.

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## **Comments from Deacons on the Consultation Paper on the Proposal to Mandate Electronic Submission of Disclosure of Interests Notices**

The following are our comments on the Consultation Paper. We hope that these comments are helpful. Please feel free to contact Alex Que if you have any questions on our submissions.

Generally, we support the SFC's proposal to improve the timeliness of disclosures of interests and at the same time reduce the burden of having to file with both SEHK and the listed corporations. We also support the SFC's proposal to remove the strict requirements on the timing and manner by which registers of interests in shares and short positions and registers of directors' and chief executives' interests and short positions are to be kept by listed corporations.

We comment below on the detailed proposed changes and the views sought under the Consultation Paper, adopting where relevant the paragraph numbering used therein.

### **22. The Proposed Model for Mandatory Electronic Filing**

It is proposed that Option B(2) of the five different models put forward be adopted. Under 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 relevant listed corporations.

Our views are as follows:

- (i) Subject to the important points below, we support the proposal for mandatory electronic filing, which would be conducive to timely dissemination of information which could potentially be price sensitive. It would also clarify the requirement of the means by which DI notices should be filed.
- (ii) We agree with the SFC's proposal that DI notices would be required to be submitted to SEHK only, which would forward them on to the relevant listed corporations. This would simplify the filing procedure and would help avoid errors resulting from filers wrongly assuming (which we believe is not uncommon) that DI notices need only be filed with SEHK and not with the listed corporations involved.
- (iii) While we are of the view that access to the Internet, which would be required for electronic filing of DI notices, should not be an issue nowadays, we are concerned that allowing for electronic filing only, in all circumstances, is potentially too restrictive. For example, an earthquake in Taiwan near the end of 2006 caused major disruption to Internet access in Asia, which could have resulted in unavoidable breaches of the requirements if electronic filing were mandatory then. Given that failures to file in time would be breaches of criminal law, it must be wrong to impose an exclusive system which is by no means failsafe. We would therefore propose that electronic filing shall be mandatory "save in exceptional circumstances", to cater for such and similar events. (The Outline of Pt XV could then enlarge on what those exceptional circumstances would be envisaged to be.) This puts the

onus on the filer to be confident that the relevant circumstances justify alternative filing, which would ensure that such filings are only occasional. It would require a system for filing by other means to be maintained, but that seems to us to be unavoidable in order to maintain a fair system. (We would recommend, however, that the law be amended to make it clear that the SEHK must receive any alternative filings within the 3 day filing period.)

- (iv) As regards the way by which the electronic DI notices can be filed, we note the proposal that the electronic forms presently available will be retained, and a web-based system and web-based forms will be developed by HKEx. We assume the distinction is that the electronic forms presently available can be filed through the HKEx website by uploading Excel files prepared offline, whereas the web-based system and web-based forms will require the input of information on a web interface at the time of submission. We support this approach, as use of a web-based system and web-based forms alone is unlikely to be feasible in certain circumstances. For example, it is essential that advisors preparing forms on behalf of their clients be able to prepare forms offline so that they can be sent to the clients for review and approval. Offline preparation of forms is also likely to be much more efficient when a large number of forms are required. In some cases, our clients have had to file hundreds of forms at once.
- (v) While we note the new system is yet to be developed, it would appear that the system will need to be designed to cater for amendment and withdrawal of DI notices after they have been filed. Presumably it would also need to allow partially completed forms to be saved for later completion.

## **28. Publication of DI Notices on HKEx's website**

In view of the potentially price sensitive nature of DI notices, subject to the points, generally we agree that the way that DI notices are published on the HKEx website should be consistent with that of price sensitive information, and that the timing of publication of DI notices should be revisited when HKEx changes its practice on publication of price sensitive information during market trading hours.

Regarding restrictions on timing for submission of DI notices, it is stated on page 7 of the Consultation Paper that 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". Further, it is stated that the SFC is of the view that the publication of DI notices should be regarded and handled in the same manner. In view of the large and diverse group of people (some in overseas time zones) who must submit DI notices, and to keep the filing procedures simple and user friendly, we strongly recommend that the system should be open to accept DI notices at all times. Updates would nonetheless only be published at a certain time (or within certain time slots) after trading hours.

We query, however, whether this system will be sufficiently flexible to cater for important and obviously price-sensitive filings. The only alternatives appear to

be:

- a suspension of dealings, a request for which will normally be expected to come from the company (but which the company may not be in a position to request, as it may not know about the information), or
- disclosure after trading hours, with the risks of a false/uninformed market that that inevitably carries?

Given that suspension can only happen if the company concerned knows of the information, the only method available, where it does not have that information, is after-hours disclosure, which may not be sufficient where price-sensitive information is filed. We note, however, that transactions which may have certain consequences to which the Takeover Code relates are subject to detailed requirements, so it may be that the range of situations in which this is likely to be an issue are limited. We recommend the SFC considers whether a structure for urgent publication/announcement should be established.

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

We note the SFC's findings that records maintained by listed corporations are mainly used for internal purposes, and we believe members of the public would normally prefer to visit the HKEx website for disclosed information, which is free and easily accessible. We support the SFC's proposal to reduce the burden for listed corporations in maintaining registers of interests and short positions. As the information required to be maintained by listed corporations will essentially be available on the HKEx website, we question what benefits it would bring to maintain the statutory requirement for listed corporations to keep such registers, especially if SFC's proposal is to consider removing restrictions on timing to update the registers, how they are kept and the right of inspection by the public.

It will, however, be essential to ensure that all information which might, under the existing regime, be retained by the company (but not filed with the SEHK) and which an inspection of the books might reveal, will be filed with the SEHK and published by it in the future. Example of this are the results of S.329 and S.331 investigations, which are required to be filed with the SEHK, but the manner of their publication is currently unspecified but will need to be clear in the future, as this will be the public's only access to such information in future.

While this is not directly related to the issues being consulted by the SFC, we would recommend that listed corporations be required to notify the HKEx in a timely manner (perhaps within a specified time limit) in respect of all changes to their issued share capital. Further, we recommend that historical changes to the issued share capital be made available on the HKEx website. Such information would be very useful in handling DI related issues from time to time. It is a significant failing of the current system that the HKEx website does not carry complete, user-friendly historical information on issued share capital, as it can be very difficult to obtain such information elsewhere. It can also be difficult to obtain current issued share capital data, in particular because the information on the HKEx website is not always up to date. We recommend that it be clarified that substantial shareholders be entitled to rely on the issued share capital data appearing on the HKEx website, except where the substantial shareholder is aware that it is incorrect or out of date, and is aware

of the correct information.

### **Disclosure forms**

We recommend that the disclosure forms are generally updated and improved at the same time that the regime is revised as per the conclusions of this consultation exercise. In particular, it is a major failing that the current system does not cater for explanatory notes to forms making complex disclosures: many filings can be very opaque as a result of the straitjacket imposed by the current structure and forms: this is a fundamental systemic problem which needs to be urgently addressed.

Moreover, there are a number of problems with the current electronic forms, that will need to be addressed if paper-based filing is disallowed. For example, the validation checks (mentioned at paragraph 13 of the SFC consultation paper) can be a hindrance when preparing draft forms before all the details are known, information entered into the forms is sometimes automatically deleted and codes are sometimes automatically changed when the draft forms are saved, and sending the forms through some email systems could cause the user's computer to crash.

### **Miscellaneous points**

The expression "mandate" electronic filing is somewhat ambiguous, as it can mean "enable". Can we recommend that "make mandatory" is used, where appropriate, in subsequent papers?

**Deacons**  
8.1.08