

29 JUN 2010

To : the Securities and Futures commission
Via : online submission/email.

28 June 2010

Submission re : Consultation Paper on the
Draft Guidelines on Disclosure of Inside Information ("**PSI Guidelines**") by
the Securities & Futures Commission also of March 2010

Comments on the PSI Guidelines as follows, adopting the same paragraph numbering as in the SFC draft:

1. Paragraph 11 through 28 – a summary of the meaning of “relevant information” as enunciated over the years by the Insider Dealing Tribunal (**IDT**) is not helpful as it invariably gives the impression that price sensitive information (**PSI**) under Part IIIA is the same concept of relevant information under insider dealing laws. Those IDT cases deal with a situation when one deals in (or counsel/procure others to deal in) listed securities, invariably, to make profits. PSI disclosure is regulatory compliance in nature and does not necessarily involve element of personal profit. The interpretation of what constitutes or not relevant information for IDT purpose is conducted forensically by evidence after the facts of securities dealing has been established. Whether or not a piece of information is PSI (and falls to be disclosed as soon as practicable) is to be decided at the spot. It is wrong to equate PSI with the same concept under insider dealing laws.

2. Take for instance, paragraph 16 (c) – this seems to be at variance with the discussion in paragraph 55 on how Safe Harbor B is to be operated. According to paragraph 55, there is no PSI disclosure obligation as long as the contract, under negotiation, is yet to be finalized. This is practical and sensible. Day-in and day-out, senior management of listed corporation (**LISTCO**) works on transactions of all type – business deals and financing deals and handles matters which have varying degree of impact on the LISTCO. Some negotiation may eventually bear fruit while many are no more than talks never getting beyond exploratory stage. Heads of business units may be soliciting MOU/LOI with a view to consider business JV or assets disposal. These MOU/LOI often are expressed to be non-binding. Some may contain key commercial terms while others only set out exclusivity period and agreement to allow due diligence investigations. It is hoped that the PSI Guidelines should specify that non-binding MOU/LOI limited to exclusivity and due diligence is not PSI disclosable.

3. Paragraphs 21 – 25. Is it possible for the PSI Guidelines to at least recommend an indicative range, e.g. plus or minus 10% movement in price and/or volume during the last 20 trading day of the shares of the LISTCO concerned?

4. Paragraph 28 – is it possible for the PSI Guidelines to at least recommend an indicative range, e.g. plus or minus 25% from the profits/loss figures last published?

5. Paragraph 29 – it is suggested that there should be a de minimis threshold. If the financial impact of the event as enunciated in paragraph 29 is likely to cause a diminution in assets, profits or turnover of LISTCO by less than 5%¹, or is a transaction the value of which represents less than 5% of the market capitalization of the LISTCO concerned, then the information should not be regarded as price-sensitive and hence exempts from PSI disclosures. Pledge of shares by controlling shareholder, if less than 5% of the total shares in issue of LISTCO, should also benefit from this de minimis exemption.

6. Change in value of real property – if solely occasioned by the fair value requirements under HKFRS – should not be counted as a PSI event. It is non-cash, and may fluctuate from year to year. However, diminution in value on impairment charges is permanent and therefore should count as PSI event and disclosable once ascertained.

7. Paragraph 55 – please clarify situation when (non-binding) MOU/LOI has already been entered into but parties are yet to negotiate on the terms of the definitive agreement. Please also add rights issue and negotiation with a view to issue convertible bonds to the safe harbor under paragraph 55, which are corporate finance activities as legitimate as placings.

8. Paragraph 63 & 64 – isn't internal matters are trade secrets of LISTCOs? Disclosures may put LISTCOs in disadvantageous position vis-à-vis its (non-Hong Kong listed or non-listed) competitors? It is suggested that the instances listed under paragraph 63 & 64 should instead be clarified as trade secret and protectable PSI under paragraph 57.

9. Submission on other matters not canvassed in the PSI Guidelines but commented upon in relation to the FSTB Consultation Paper is also attached for completeness.

Submission by:

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¹ This brings in line the requirements of the Chapter 14 regime on notifiable transaction disclosures.

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