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**by e-Mail**

*April W. Y. Chan*

*President*

The Securities and Futures Commission  
8/F Chater House  
8 Connaught Road Central  
Hong Kong

28 June 2010

Attention: Corporate Finance Division

Dear Sirs,

**Re: Consultation Paper on the Draft Guidelines on Disclosure of Inside Information**

We are pleased to enclose our submission in response to the above consultation paper.

We have no objection to your disclosing our submission to the public.

Thank you for your attention.

Yours faithfully,

April W. Y. Chan FCIS FCS(PE)

President

Enclosure

The Hong Kong Institute of Chartered Secretaries  
Submission on the Consultation Paper on the Draft Guidelines on Disclosure of Inside Information

Introduction and Background	Comments
	<p>While we appreciate that the Guidelines do not have the force of law (paragraph 3), it is hoped that they are at least binding on the SFC and represent a harmonised position to be followed by market participants.</p> <p>We expect the Guidelines to be updated regularly to reflect the SFC's latest views and its administrative position.</p> <p>Consideration should also be given to publish guidelines to assist directors and officers to comply with their obligations under the proposed legislation.</p> <p>As stated in paragraph 10 of the Guidelines, 'the SFC is not in a position to judge whether in the circumstances of a particular corporation certain information is likely to materially affect the price of a corporation'. Inside information is never an easy subject. To this end, we recommend that the SFC should give due regard to a listed corporation's business judgment by adding the following to paragraph 10 of the Guidelines (suggested additions in italics):</p> <p style="padding-left: 40px;">'The SFC is not in a position to judge whether in the circumstances of a particular corporation certain information is likely to materially affect the price of a corporation, and accordingly, <i>the SFC will not review a listed corporation's decision on whether a particular piece of information is inside information if the decision is made in good faith and the officer making the decision: (1) is not interested in the subject of his judgment; (2) is informed with respect to the subject of the judgment to the extent the officer reasonably believes to be appropriate under the circumstances; (3) rationally believes that the judgment is in the best interests of the listed corporation.</i>'<sup>1</sup></p>
What may constitute inside information	<p>While we welcome the SFC's proposal to provide a consultation service to assist corporations with regard to the statutory disclosure requirements, it is our view that this service should not be restricted to a 12-month period but should continue if it proves appropriate and helpful to do so.</p> <p>It is important that when deciding what may constitute 'inside information', deference should be given to a listed corporation's business judgment. See our above comments under 'Introduction and Background'.</p>

<sup>1</sup> American Law Institute, Principles of Corporate Governance, 4.01(c).

The Hong Kong Institute of Chartered Secretaries  
Submission on the Consultation Paper on the Draft Guidelines on Disclosure of Inside Information

Responsibility for compliance and management controls	<p>Paragraph 43 In our response to the Government's legislative proposals, we have suggested that the definition of an officer should not include 'or any other person involved in the management of the listed corporation'. Should the Government decide not to amend the proposed definition, it would be helpful if the SFC could include in the Guidelines its views (with examples) of such persons involved in the management of the listed corporation.</p>
Safe Harbours that allow non-disclosure of inside information	<p>Paragraph 55 – Where information concerns incomplete proposal or negotiation</p> <p>By reference to whether premature disclosure may prejudice the negotiations or developments, the SFC's reading of Safe Harbour B seems to be more stringent than SEHK's current rule which provides that no disclosure is needed until 'it is the subject of a decision by the directors or senior management of the issuer'.<sup>2</sup></p> <p>SEHK's current rule seems cleaner and easier to follow.</p>
	<p>Paragraph 59 – Where disclosure is waived by the SFC</p> <p>We believe the SFC should be empowered to grant waivers to cover other circumstances and attach conditions thereto (instead of restricting to disclosure prohibition arising from court orders or legislation of another jurisdiction).</p>
	<p>In our response to the Government's legislative proposal, we have suggested the following additional safe harbours:</p> <ul style="list-style-type: none"> <li>(i) To cover information provided to or by the Government of the Hong Kong Special Administrative Region (or any department or authority within Government).</li> <li>(ii) It should be a safe harbour that the individual concerned considered on reasonable grounds that a particular piece of information did not constitute 'inside information'. That is to say, any individual director or officer who has given proper consideration to a decision whether to release 'inside information' and, on reasonable grounds, came to the decision not to disclose that information, should not be found to have breached the statutory disclosure requirements.</li> <li>(iii) Where the information is of a defamatory nature the disclosure of which may subject the listed corporation to claims by the concerned parties for defamation (with potential liability to the listed corporation).</li> <li>(iv) Where the information is generated only for the listed corporation's internal management purposes.</li> <li>(v) During the time when trading of the listed corporation's securities are suspended by SEHK.</li> </ul>

<sup>2</sup> Hong Kong Exchanges and Clearing Limited, *Guide on disclosure of price-sensitive information*, January 2002, para 15, p 7.