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24 June 2010

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Attn: Corporate Finance Division

Dear Sir

Matter: Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations (“Consultation Paper”)

We write in relation to the Consultation Paper; we have considered the proposed legislation and guidelines and seek confirmation and make the submissions as set out below.

1 Interpretation of proposed section 101B (Requirement for listed corporations to disclose inside information)

We have reviewed the proposed amendments to the Securities and Futures Ordinance, in particular section 101B set out in Annex 1 of the Consultation Paper and have concluded that the effect of that proposed section is that the board of directors of a listed corporation (“**Board**”):

- (i) does not need to determine whether information is “inside information”; and
- (ii) does not need to determine whether such inside information should be disclosed.

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The wording of the proposed section 101B(1) and (2) does not suggest that the *Board* is responsible for making the disclosure.

The proposed section states that a *listed corporation* must, as soon as practicable after any inside information has come to its knowledge, disclose the information to the public and that inside information has come to the knowledge of a listed corporation if an officer of the corporation has, or ought reasonably to have, come into possession of the information in the course of the relevant officer performing his or her functions as an officer of the corporation. Prima facie, it appears that it is the responsibility of the *individual officer* of the listed corporation to discharge his or her duties effectively by ensuring that a disclosure is made, albeit a listed corporation should ensure that there are adequate procedures in place internally to enable its officers to comply with their duty.

Please confirm that our interpretation of proposed section 101B is correct.

2 Suggested clarification of the proposed legislation

In the alternative to point 1 above, we suggest that the proposed legislation (in particular, proposed section 101B) is amended to ensure greater clarity in relation to *who* within the listed corporation is responsible for ensuring the listed corporation complies with its obligations. We have prepared the below draft wording (which can be inserted after section 101B(4) as new section 101B(5) and the remaining section re-numbered accordingly) for your consideration:

For the avoidance of doubt, a listed corporation may execute its functions through any of its authorised representatives (which includes its officers, directors, board of directors, committee of directors or any other person or committee to whom authority has been delegated) in connection with the discharge of its obligations under section 101B.

We believe that the *listed corporation* should determine where the authority (to assess whether information is inside information and whether it should be disclosed) resides within its operations. Some listed corporations may like to delegate these functions to specified individual persons whereas others may prefer for the authority to be delegated to a specially formulated Board committee.

3 Responsibility for compliance and management controls

We have reviewed the “Guidelines on Disclosure of Inside Information” in the Appendix to the SFC’s consultation paper at Annex 2 of the Consultation Paper (“**Draft Guidelines**”) and submit that paragraph 44 of the Draft Guidelines be amended along the following lines:

The corporation should establish and maintain appropriate and effective systems and procedures to ensure any material information which comes to the knowledge of one or more of its officers be promptly identified, assessed and disclosed in accordance with any internal disclosure and reporting policy to enable each and every officer of the corporation to comply with his or her obligation.

We believe that by removing the need for an officer to escalate information to the Board would enhance the effectiveness of disclosure, in light of the requirement under proposed section 101B(1)

that a listed corporation discloses inside information, *as soon as practicable*. Some listed corporations may not be able to organise Board meetings at short notice. Further, bringing a matter before the Board for its consideration may be inefficient due to practical reasons for some listed corporations.

Given that section 101B(2) imputes the knowledge of an officer of the listed corporation to the listed corporation (i.e., by stipulating that inside information comes to the knowledge of the listed corporation if an officer or the corporation has come into possession of the information), the officers of the corporation should be responsible for making, and indeed should be empowered to make, the relevant disclosures as and when they become privy to any relevant inside information rather than refer a matter to the Board for assessment which would not only cause undue delay in the disclosure but could also impede the Board from effectively discharging its other duties due to the amount of time which may need to be spent in making an assessment.

We also submit that paragraph 45 of the Draft Guidelines would need to be amended to clarify that the individual officers of the listed corporation should determine whether or not information is inside information and whether or not it should be disclosed.

4 Delegation to a Board Committee

In the alternative to point 2 above, we submit that there is no need for a matter to be escalated to the *Board* to assess whether information is “inside” and whether disclosure is required; instead, the Board could delegate any such responsibility to a specifically designated committee of the Board (“**Board Committee**”). As discussed in point 3 above, in light of the fact that some listed corporations cannot convene Board meetings at short notice, we believe that either the proposed legislation or the Draft Guidelines should contain adequate provisions so that the *authority* to determine (i) whether or not information is inside information and (ii) whether or not it should be disclosed should be able to be *delegated*.

Delegation to a Board Committee could enhance the effectiveness of disclosure with the advantage that information could be assessed and evaluated more expeditiously by a smaller number of people who are more experienced in dealing with such matters without detracting the focus of the Board from the day to day operations of the listed corporation.

Escalating a matter to the Board may, in addition to resulting in a delay in the disclosure of inside information (which we believe to be unnecessary), may impede on the ability of the Board to carry out the business of the corporation and fulfil its other obligations.

As stated in point 2 above, we are of the view that the listed corporation should be able to determine the residence of the authority to decide on inside information and disclosure.

MALLESONS STEPHEN JAQUES

萬盛國際律師事務所

Financial Services and Treasury Bureau and
Securities & Futures Commission

24 June 2010

We look forward to your response. In the meantime, should you have any enquiries or require any further information in this regard, please do not hesitate to contact Mr Dieter Yih on 3443 1010 or Ms Nicola Wakefield-Evans on 3443 1190 of this office.

Yours faithfully

Malleons Stephen Jaques