



2010 JUN 18 PM 5:47

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

**Circulated on**  
**18 JUN 2010**  
**by e-Mail**

Attention: Corporate Finance Division

17 June 2010

Dear Sir

**Consultation Paper on Draft Guidelines on Disclosure of Inside Information  
(Draft Guidelines)**

On behalf of ACCA (Association of Chartered Certified Accountants) Hong Kong, we refer to the above Draft Guidelines and would like to submit our comments as below for your consideration.

We welcome the proposed guidelines to listed corporations regarding what may constitute inside information. However, we note some practical issues in particular relating to the following issues:

*Management accounts*

According to paragraph 27 of the Draft Guidelines, mere knowledge of the likely internal management accounts would not be specific information. However, knowledge of substantial losses or profits made by a corporation even though the precise magnitude is not yet clear would be specific information and accordingly may be inside information. It is also stated that the difference between the results which the market might predict and the results the directors or officers know must be significant in order to constitute inside information.

The Draft Guidelines appear to be silent as to whether "internal management accounts" refer to monthly management accounts. Should this be the case, listed corporations could be overburdened by the disclosure requirements when the market is volatile and fair values fluctuate significantly. The issue could also be complicated by the fact that there is no concrete guideline on how to determine what constitutes timely disclosure.

Another practical difficulty a listed corporation may come across is when being a listed subsidiary, it has to provide its management accounts to its listed parent for consolidation and / or planning purposes. Assuming that the listed corporation is a material subsidiary of the listed parent, in a situation where its

management accounts constitute inside information, it will be under an obligation to make timely disclosure of such inside information (e.g. a profit warning) and, strictly speaking, it should not divulge such information to parties outside the listed corporation itself. However, the listed parent may also be obliged to issue a profit warning under this circumstance (as the market may be able to deduce the likely impact on the listed parent from the profit warning of the listed corporation) and be required to make timely disclosure to the public. The ideal situation would be for both companies to issue profit warnings at the same time. However, the listed corporation may refrain from providing such inside information to the listed parent (before publishing such information) in light of the rules governing inside information. Given that it is not uncommon to have multiple listed corporations within a group, we suggest that the Commission provide more guidance to deal with situations involving more than one listed corporations within a group. It would also be helpful if the Commission would distinguish between situations involving a parent / subsidiary relationship (or statutory control situations) and those involving a substantial shareholder / associated company relationship (or significant influence situations).

We note from the first part of paragraph 28 that in assessing what results the market might predict for a corporation, reference should also 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, it is stated in the second part of the same paragraph that "it would however be inadvisable to consider these research reports or financial publications to be information generally known to the market." We find this paragraph confusing in helping corporations to determine their disclosure obligation. Where there is no significant difference between the results the directors or officers know and what the "market predicts" based on the financial journals or publications, the disclosure obligation of the corporation becomes unclear as it is "inadvisable" to consider the financial journals and publications as information generally known to the market.

We would be grateful if the Commission could make further clarification on the above issues and consider providing a set of more concrete and detailed guidelines on management accounts.

### *Safe Harbour*

We also wish to highlight the practical difficulty faced by a listed corporation where disclosure of information is prevented by a contractual duty. Under paragraph 54 of the Draft Guidelines, it explicitly sets out that "the Safe Harbour does not apply to information the disclosure of which is prevented by a contractual duty", and "the terms and conditions of a contract do not override the requirement of the statutes".

Under most circumstances, the parties enter into a contract of confidentiality when a deal is being negotiated. However, where there is any leakage before the negotiations or proposals are concluded, the listed corporation is obliged to disclose the inside information. Such a disclosure will therefore breach the contract of confidentiality as well as impact the completion of the deal.

We have also raised this issue in our submission to the Financial Services and the Treasury Bureau on the Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations. However, we would also like to clarify with the Commission on how to ensure compliance with the statutory disclosure requirement whilst avoiding any breach of the contractual liability in practice.

#### *Analysts' reports*

In paragraph 67 of the Draft Guidelines, it says that "a corporation should ensure that only public information is given when answering an analyst's questions or reviewing an analyst's draft report". We understand that the underlying rationale of such requirement is to ensure the analysts do not obtain inside information. Given that one key element of "inside information" is that the information would, if so known, be likely to have a material effect on the price of the corporation's securities, we consider that some non-public information may not be price-sensitive. As such, to ensure consistency with the underlying principle, we suggest that the wordings of the first sentence of paragraph 67 be amended to avoid confusion where the non-public information given to analysts is not price-sensitive.

Should you wish to further discuss the above, kindly please feel free to contact us at 2524 4988.

Yours faithfully



Rosanna Choi  
*Chairman*