

The Securities and Futures Commission
8/F Chater House
8 Connaught Road Central
Hong Kong
Attention: Corporation Finance Division

Fax: 2810 5385

Dear Sir

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

I refer to the above consultation paper released in March 2010 (the "SFC Consultation Paper"). I am in general agreement with the draft Guidelines on Disclosure of Inside Information (the "Guidelines") as set out in the Appendix to the SFC Consultation Paper. However, there are certain areas which I wish to bring to your attention.

I set out my comments below for your consideration. The item numbers below correspond to the paragraph numbers in Guidelines.

2. I appreciate that the obligations to disclose inside information depend on the facts of individual case and that corporations should seek independent legal advice if they are in doubt. However, the purpose of the Guidelines should not only aim at assisting the corporations but it should also assist the market practitioners (include legal advisers) to understand the liability and obligations under Part IIIA of the SFO.

Further, according to paragraph 3.6 of the Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations (the "FSTB Consultation Paper") issued by Financial Services and the Treasury Bureau in March 2010, it was proposed that informal consultation with SFC will be available for an initial period of 12 months, starting from one month before the commencement of the statutory regime. I believe corporations may prefer seeking informal consultation with SFC to seeking independent legal advice during the proposed 12-month-period.

Therefore, I suggest that a statement like "Informal consultation with the SFC regarding the statutory PSI disclosure requirements are most welcome. Please contact Mr [*] of the SFC at [*]."

4. I consider that the use of the words "inside information" may be confusing for the purposes of Part IIIA of the SFO. Corporations, market practitioners and the like may believe that "inside information" relates to "insider dealing". Insider dealing under Part XIV of the SFO is a criminal offence whereas

breaches of statutory requirements under Part IIIA of the SFO would only be subject to civil liability.

Ideally, the words "relevant information" in section 245 of the SFO should be replaced by the words "inside information" so that the words "relevant information" could be used for the purposes of PSI in Part IIIA of the SFO. I think the proposed codification of disclosure requirements for PSI in Part IIIA of the SFO must be carefully drafted to avoid any confusion with insider dealing offence under Part XIV of the SFO.

5. I suggest that the sentence "However, this Guidelines is to be updated from time to time to reflect the latest development for compliance with Part IIIA of the SFO." should be added to the end of this paragraph. Whereas, the words ", and may not represent the latest legal authority" should be deleted.
6. The use of the words "inside information" may cause confusion to corporations and market practitioners. Please see my comments on Item 4 above.
10. I suggest that the proposed informal consultation should be on permanent basis instead of only 12 months' period.
43. I agree that a corporation should be considered to have knowledge of the inside information when any of its officers come into possession of that information during the course of performing his or her duty.

However, I consider that the corporation should also be considered to have such knowledge when any of its officers becomes aware of such information only by virtual of his or her capacity as an officer of that corporation even though he or she is not performing his or her duty (eg on holidays).


59. I think the time required for the SFC to consider and grant the waiver submitted by a corporation is very important. I suggest that the SFC should set out a performance pledge for granting such waiver.

Attached please also find my comments on the FSTB Consultation Paper for your reference.

I hope my comments above would be helpful to you.

Should you have any questions, please feel free to call me at 9302 6084. I have no objection for my name and comments to be published, in whole or in part on the SFC's website and/or in other documents to be published by the SFC.

Yours faithfully



SUEN Chi Wai
Solicitor of HKSAR
HKICPA

Enclosure: comments on FSTB Consultation Paper

Enclosure

Division 2, Financial Services Branch
Financial Services and the Treasury Bureau
18/F, Tower I
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18, Harcourt Road
Hong Kong

Fax: 2529 2075

Dear Sir

Re: Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations

I refer to the above consultation paper released in March 2010 (the "Consultation Paper") and would like to set out my comments below for your consideration. The item numbers below correspond to the question numbers in page 25 to page 26 of the Consultation Paper.

- 1 (a) Yes
- (b) Yes, but a director or an officer should not only be regarded as to have knowledge of the inside information when he is in possession of that information in the course of the performance of his duties but he must also be deemed to have the knowledge of the inside information if he becomes in possession of that information by virtue of his capacity as a director or an officer of that listed corporation.
- (c) Yes
- 2 (a) Yes, but it seems that Safe Harbour B would likely to be the most frequently used safe harbour for non-disclosure. I consider that Safe Harbour B is too wide and too subjective. Certain objective yardsticks may need to be built into Safe Harbour B.
- (b) Yes, but I have two concerns. First, the timing of the granting of waiver by SFC. SFC may not be able to act quickly enough to respond/grant the waiver. Listed corporations need to receive SFC's respond within a very short period of time as to whether or not it will grant the waiver. Secondly, I am not quite agreeable to the argument that "user pays" principle would help deter abusive use of waiver application. The FSTB did not propose the level of fee in the Consultation Paper that it considers would deter such abusive use of waiver application.

- (c) No, safe harbours must be limited to a very few situations where disclosure of PSI is not required.
- (d) Yes, it may leave the SFC with flexibility in case additional safe harbours are justifiable.
- 3 (a) No
- (b) No, I consider that criminal action should be taken, instead of civil action, against any person for breaching the statutory disclosure requirements. It is clear that the SFC has been using criminal proceedings as an important facet to combat various market misconducts such as insider dealing. The proposed civil action does not seem to be compatible with the SFC's current approach.
- (c) No
- 4 Basically I agree that SFC should provide informal consultation for listed corporations with regard to the statutory disclosure requirements. However, according to my past experience with SFC, the officers would not be able to provide any useful guidance to the listed corporations. The officers would merely tell the listed corporations to seek legal advice. Alternatively, the officers will simply tell the listed corporations to make a written submission to the SFC for their consideration. As I mentioned in 2(b) above, timing for statutory disclosure is very important. Unless SFC is really willing to help the listed corporations when it is being consulted, otherwise the proposed informal consultation would not be helpful at all to the listed corporations
- 5 Yes, but in paragraph 3.9, I suggest that SFC should be able to conduct investigation where it "appears to the SFC that...." instead of where it "has reasonable cause to believe that....". FSTB may consider the wordings in section 179 of the SFO (Cap 571).

I hope my comments above would be helpful to you.

Should you have any questions, please feel free to call me at 9302 6084. I have no objection for my name and comments to be referred to in other documents you publish and disseminate through different means after the consultation.

Yours faithfully

SUEN Chi Wa
Solicitor of HK
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