

Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations

Presentation to
Legislative Council Panel on Financial Affairs
3 May 2010

1

Objectives

- Cultivate a continuous disclosure culture among listed corporations
- Enhance market transparency and quality
- Sustain HK's position as an international financial centre and a premier capital formation centre

2

Price Sensitive Information (PSI)

- “Inside information” - borrowed from the concept of “relevant information” in the insider dealing regime (used since 1990)
- Same set of information which is prohibited from being used for insider dealing and which is required to be disclosed
- Same as the approach adopted by UK and other EU countries

3

Disclosure Requirements

- Listed corporation must disclose to the public as soon as practicable any “inside information” that has come to its knowledge
- Directors and officers involved in the management of the listed corporation must take all reasonable measures from time to time to ensure compliance

4

Disclosure Requirements

- Listed corporations not complying with the disclosure requirements would be in breach of the law

- Individual directors and officers liable if
 - The listed corporation has breached the disclosure requirements and
 - The breach is a result of any intentional, reckless or negligent act on the part of any individual director or officer

5

Safe Harbours

- (A) when the disclosure would constitute a breach against an order made by a Hong Kong court or any provisions of other Hong Kong statutes;

- (B) when the information is related to impending negotiations or incomplete proposals the outcome of which may be prejudiced if the information is disclosed prematurely

- (C) when the information is a trade secret

- (D) when the Government's Exchange Fund or a central bank provides liquidity support to the listed corporation

6

Safe Harbours

- Propose to empower Securities and Futures Commission (SFC) to make rules under Securities and Futures Ordinance (SFO) to prescribe further safe harbours

7

Rumours

- Not to oblige listed corporations to respond to mere rumours
- Unless there is leakage

8

Guidelines

- SFC will promulgate guidelines on what may constitute inside information and when would safe harbours be applicable, to facilitate compliance
- Listed corporations may consult SFC on how to apply the disclosure provisions

9

Civil Sanctions

- The Market Misconduct Tribunal (MMT) may impose-
 - (1) regulatory fine up to \$8 million on the listed corporation and/or director
 - (2) disqualification of the director or officer from being involved in the management of a listed corporation for up to five years
 - (3) “cold shoulder” order on the director or officer for up to five years
 - (4) “cease and desist” order on the listed corporation, director or officer

10

Civil Sanctions

- (5) a recommendation order that the director or officer be disciplined by any body of which that person is a member
- (6) payment of costs of the civil inquiry and/or the SFC investigation by the listed corporation, director or officer

11

Civil Sanctions

- Regulatory fine
 - Target listed corporations and/or directors
 - Maximum \$8 million
 - To comply with the principle of proportionality when determining the amount of regulatory fine to be imposed, by reference to the circumstances in the case

12

Civil Sanctions

- The MMT has experience in dealing with cases relating to “inside information” and in considering various civil orders
 - Chairman is a judge and appointed by the Chief Executive
 - Chairman assisted by two persons from the business sector or professional bodies
 - Proceedings adopted the civil standard of proofs and conducted in inquisitorial approach

13

Other Remedies

- Persons suffering pecuniary loss as a result of others breaching the disclosure requirements may rely on the results of the MMT proceedings to take civil actions for compensation
- To keep under review the effectiveness of the regime, and consider the need for creating new requirements and additional sanctions, in the light of local and international market experience

14

Enforcement

- SFC as the enforcement authority, with existing investigation power under SFO
- SFC may institute proceedings before the MMT direct

15

Compared with Existing Listing Rules of the Stock Exchange of Hong Kong

- (1) Create a formal statutory obligation for compliance
- (2) Provide a clear set of PSI disclosure requirements with obligations and safe harbours explicitly set out in the law and SFC's guidelines to facilitate compliance
- (3) Allow SFC to resort to its powers under the SFO to conduct more effective investigation
- (4) Enable all alleged breaches to be heard by an independent statutory body (the MMT)
- (5) Allow a streamlined process for hearings of alleged breaches

16

Compared with Existing Listing Rules of the Stock Exchange of Hong Kong

- (6) Enable persons suffering pecuniary loss to rely on the results of the MMT proceedings to take civil actions for compensation

- (7) Impose a wide range of statutory civil sanctions
 - Demonstrate our commitment to enhancing market transparency and quality
 - Enhance HK's position as an international financial centre

17

Timetable

- Consultation period: 29 March – 28 June 2010
- Subject to public views, submit Securities and Futures (Amendment) Bill to Legislative Council in the 2010/11 legislative session

18

Thank You

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19