

立法會
Legislative Council

LC Paper No. CB(1)1262/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/11/10/2

Bills Committee on Securities and Futures (Amendment) Bill 2011

**Fourth meeting on
Monday, 7 November 2011, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP

Member absent : Hon Abraham SHEK Lai-him, SBS, JP

**Public officers
Attending** : Miss Salina YAN
Deputy Secretary for Financial Services and the
Treasury (Financial Services) 1

Miss Belinda KWAN
Principal Assistant Secretary for
Financial Services and the Treasury (Financial Services) 1

Mr Anthony LI
Principal Assistant Secretary for
Financial Services and the Treasury (Financial Services) 2

Ms Jane LEE
Assistant Secretary for Financial Services and the
Treasury (Financial Services)(2) 1

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Attendance by invitation : Mr Brian HO
Executive Director, Corporate Finance Division
Securities and Futures Commission

Ms Jennifer LEE
Associate Director, Corporate Finance Division
Securities and Futures Commission

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Miss Winnie LO
Assistant Legal Adviser 7

Mr Noel SUNG
Senior Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

I Meeting with the Administration

Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)261/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 17 October 2011

LC Paper No. CB(1)261/11-12(02) — Administration's paper on "Definition of Price Sensitive Information"

- LC Paper No. CB(1)261/11-12(03) — Administration's paper on "Information on Prosecutions and Convictions of Financial analysts relating to Release of False, Misleading or Deceptive Information"
- LC Paper No. CB(1)100/11-12(01) — Administration's powerpoint presentation materials for the meeting on 17 October 2011
- LC Paper No. CB(1)109/11-12(01) — Paper on examples of announcements made by listed corporations provided by Hon Paul CHAN
- LC Paper No. CB(1)135/11-12(01) — Administration's paper on "Draft Guidelines on Disclosure of Inside Information"
- LC Paper No. CB(3)952/10-11 — The Bill
- LC Paper No. CB(1)17/11-12(01) — Marked-up copy of the Bill prepared by the Legal Service Division)

Discussion

The Committee deliberated (Index of proceedings attached at **Appendix**).

Admin

Follow-up action to be taken by the Administration

2. The Administration was requested to further consider the feasibility of specifying quantitative criteria (which might be expressed in terms of ranges) in the legislation for determining what information was price sensitive, or adopting such quantitative criteria in the future "Guidelines on Disclosure of Inside Information" to facilitate compliance by listed corporations with the disclosure requirements.

II Any other business

Date of next meeting

3. The Chairman informed members that the next meeting would be held on 24 November 2011, at 4:30 pm.

4. There being no other business, the meeting ended at 5:25 pm.

Council Business Division 1
Legislative Council Secretariat
8 March 2012

**Proceedings of the
Bills Committee on Securities and Futures (Amendment) Bill 2011
Fourth meeting on Monday, 7 November 2011, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000303 – 000400	Chairman	Introductory remarks	
000401 – 001233	Administration	Briefing by the Administration on the paper on "Definition of Price Sensitive Information" (LC Paper No. CB(1)261/11-12(02))	
001234 – 003327	Mr Andrew LEUNG Securities and Futures Commission (SFC) Administration	<p>Mr Andrew LEUNG opined that the draft "Guidelines on Disclosure of Inside Information" ("the Guidelines") did not provide specific guidelines or concrete examples on the types of information which were required to be disclosed, and therefore could offer little help to listed corporations to facilitate their compliance with the disclosure requirements. Mr LEUNG quoted as an example that his friend's listed corporation had a factory in Thailand. In view of the recent flooding in Thailand, the listed corporation had been approached by the Stock Exchange of Hong Kong ("the Exchange") to consider whether a disclosure should be made about the impact of the flooding on the factory and the business of the corporation. The corporation had checked the situation of the Thailand factory and understood that, despite the flooding there, the factory had sufficient raw materials for continuation of production for the next seven weeks. The corporation had relayed the circumstances to the Exchange, which advised that the corporation did not need to make a disclosure of the situation of its factory in Thailand, as the fact that the corporation had a factory in Thailand had already been made known in the listing documents, and the corporation's operation would not be affected by the flooding in Thailand.</p> <p>Mr LEUNG was concerned that in the above example, if the situation had changed later and the factory's operation was adversely affected by the flooding, the corporation might be accused of failing to disclose the information in a timely manner. Mr LEUNG opined that in the absence of clear criteria and guidelines in</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>the Bill and the draft Guidelines to define price sensitive information (PSI) relating to the daily operation of a listed corporation, listed corporations would have difficulty in complying with the disclosure requirements.</p> <p>SFC responded that before the Bill was enacted, the Exchange would continue to enforce the existing Listing Rules regarding disclosure of information by listed corporations. SFC drew members' attention to paragraph 84 of the draft Guidelines, which stated that "corporations were not expected to disclose general external developments, such as foreign currency rates, the market price of commodities or changes in a taxation regime. However, if the information has a particular impact on the corporation, this may be inside information that should be disclosed by the corporation with an assessment of the likely impact of those events". With reference to the example quoted by Mr LEUNG, SFC remarked that if the information of the corporation having a factory in Thailand had already been made known in documents in the public domain, e.g. listing documents or financial reports or other up-to-date announcements of the corporation and that the corporation's operation or business was not affected by the flooding in Thailand, then the listed corporation might not need to make further disclosure. However, if the information regarding the corporation having a factory in Thailand had not been disclosed before, and/or the "officers" of the corporation considered that the flooding in Thailand was likely to materially affect the price of the listed securities of the corporation, then a disclosure would be required. SFC remarked that SFC would provide a 24-month consultation service to listed corporations on the disclosure requirements after enactment of the legislation.</p> <p>The Administration remarked that the directors and senior staff of a listed corporation were in the best position to decide whether a piece of information in relation to the listed corporation was price sensitive. While SFC would provide consultation service after the proposed legislation was enacted, it was ultimately the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>responsibility of listed corporations to decide whether disclosures should be made. As in the case of other comparable jurisdictions, the proposed legislation would state the principles of the disclosure requirement and guidelines would be provided to facilitate compliance by listed corporation. Indeed, the Guidelines were not meant to be exhaustive nor definitive. Paragraph 35 of the draft Guidelines stated that "the above list of events or circumstances (in paragraph 34 of the draft Guidelines) should not be treated as definitive in terms of meaning that the information in question, if disclosed, will have a material price effect". The actual circumstances of each case had to be taken into account to determine whether a disclosure obligation had arisen. Relevant past cases handled by the Insider Dealing Tribunal and the Market Misconduct Tribunal and overseas practices showed that it was not advisable to adopt a single bright-line test or numerical figure for all listed corporations for determining PSI for continuous disclosure purposes.</p>	
003328 – 004304	Ms Audrey EU SFC	<p>Referring to the example cited by Mr Andrew LEUNG, Ms Audrey EU remarked that the investing public in general did not have knowledge about the production capacity of the Thailand factory in relation to the overall production capacity of the listed corporation. She considered that it might be helpful, both to the investing public and listed corporations, to lay down certain quantitative criteria, which might be expressed in terms of a range, in relation to the extent of business affected for determining whether a piece of information was price sensitive and hence should be disclosed. Ms EU also enquired whether listed corporations were required to make continuous disclosures regarding a particular piece of PSI.</p> <p>The Administration responded that it might be difficult to set a range on the percentage of business affected for listed corporations to determine what information should be disclosed, as there was great diversity in the size and types of business of listed corporations. Whether the upper or lower</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>limit of the range should be adopted in determining disclosures might also be subject to argument. However, the Administration could consider whether further elaboration could be given in the Guidelines to facilitate compliance by listed corporations with the disclosure requirements.</p> <p>Ms Audrey EU enquired what defence would be available to an "officer" if he had made in good faith a judgment that a piece of information should not be disclosed but the decision was wrong based on an objective test. Ms EU requested that a comparison between the proposals in the Bill and the practice in other jurisdictions on the defence provisions should be provided.</p> <p>SFC responded that based on proposed section 307B(2)(b), defence was available to an officer that he had acted as a reasonable person in deciding that the information was not inside information and therefore did not disclose the information. It was also a defence if from the view-point of a reasonable person who had traded the securities concerned, a piece of information would not materially affect the price of the securities concerned.</p> <p>The Administration remarked that pursuant to the concerns expressed by members at previous meetings, the Administration and SFC would provide a paper on the obligations and sanctions relating to the "officers" of listed corporations for discussion at the next meeting.</p>	
004305 – 004708	Mr CHIM Pui-chung Administration	<p>Mr CHIM Pui-chung expressed concern that while MF Global Holdings Limited in the US had filed a Chapter 11 Bankruptcy Petition, the Secretary for Financial Services and the Treasury declared that investors of the Hong Kong stock market would not be affected by the incident.</p> <p>The Administration responded that the Government and the regulatory bodies had closely monitored the situation, and the SFC and the Exchange had taken steps to ensure that the Hong Kong stock market would continue to operate orderly despite the incident.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Government and the regulatory bodies would continue to keep a close watch on the development of the incident and the situation of the Hong Kong stock market.</p>	
004709 – 005107	Mr Paul CHAN SFC	<p>Noting that the definition of PSI proposed in the Bill was similar to that adopted in the United Kingdom (UK) and Australia, but was different to that adopted in Singapore which covered information relating to the establishment of a false market as well, Mr Paul CHAN enquired about the reason for adopting a narrower definition of PSI in the Bill.</p> <p>SFC responded that the proposed definition of "inside information" in the Bill was borrowed from the concept of "relevant information" in the insider dealing regime which had been used since 1990 and was familiar to market participants. The rulings in past cases of insider dealings would provide useful references for the proposed statutory disclosure regime. The definition was also in line with the approach adopted by UK, Australia and other EU countries. Under the Singapore model, a listed corporation would be required to make clarification for any false or misleading information released by a third party. The Administration and SFC did not see good reasons for Hong Kong to adopt the Singapore model.</p>	
005108 – 005332	Administration	<p>Briefing by the Administration on the paper "Information on Prosecutions and Convictions of Financial analysts relating to Release of False, Misleading or Deceptive Information" (LC Paper No. CB(1)261/11-12(03))</p>	
005333 – 005536	Chairman	Date of next meeting	