HKFi
The Hong Kong Federation of Insurers
香港保險業聯會

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28 September 2011

Honorable Chan Kam-lam, SBS, JP
Chairman of the Bills Committee
Legislative Council
Legislative Council Building
8 Jackson Road
Central, Hong Kong

Dear Honorable Chan

Securities and Futures (Amendment) Bill 2011

Thank you for your letter dated 25 July 2011 inviting the Hong Kong Federation of Insurers to give views on the captioned Bill. We have collected views from our Member Companies and would like to set out below for your consideration:

1. Section 307A
Referring to disclosure regime under the Canadian securities law, the definition of "inside information" is based on a market impact test similar to the "materiality" standard used in Canada.

However, as stated in section 307A, the definition of "inside information" separately lists information regarding "a shareholder or officer of the corporation" from the information about the corporation. It is suggested that the inside information about a corporation's shareholders or officers should relate to the business, operations or capital of the corporation and accordingly would be sufficiently covered as information about the corporation. It would be difficult for a corporation to monitor or be aware of inside information about its shareholders and officers that do not directly relate to the corporation. As such, deletion of the subsection (a)(ii) is recommended.

2. Section 307B to 307F
Compared to Listing Rule 13.09, the additional clarity on the Price Sensitive Information ("PSI") (named as "inside information" in the Bill) disclosure requirement the Bill provides through defining PSI information and introducing a reasonableness test for determining when a listed corporation is obligated to disclose the information to the public is welcomed.

3. Section 307D
We welcome the proposed "safe harbours" as stated in this section, which shall bring clarity for market participants. However, there is no safe harbour relating to financial information.

It appears that listed corporations are expected to disclose financial information when it falls under the definition of "inside information" i.e. when such information may materially affect the price of the listed securities. This may become a difficult question for listed issuers of the scope of "financial information" and the related question of what procedures are expected to be in place to ensure that "financial information" is reviewed on an ongoing basis to identify potential "inside information".

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4. Subsection (4)(a) of Section 307D
It is believed that the word "monitor" should be replaced by "preserve" so that it would be written as "(a) the corporation has taken reasonable measures to preserve the confidentiality of the information."

5. Section 307G
This section lists the duty of officers of listed corporations that every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.

Referring to subsection (2), if a listed corporation has breached the disclosure requirement, an officer is also in breach if (a) his intentional, reckless or negligent conduct has resulted in the breach; or (b) he has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach, is also in breach of the disclosure requirement.

Generally in a large organization, not every officer will have responsibility for implementing the corporation's disclosure policies and safeguards (though they are required to comply with such policies and safeguards). It is concerned that this subsection would allow officers of a corporation to be found in breach of a disclosure requirement even if they had no knowledge of, or involvement in, a specific disclosure breach by the corporation.

Moreover, since the definition of "officers" is wide, more guidelines should be provided to market participants, in particular listed issuers, to help them determine which officers or employees are meant to fall within the ambit of the legislation.

6. Section 307Z
Under this section, civil penalties would be introduced and it obviously represents a noticeable change to the liability of listed corporations and their officers.

In general, it does not consider that civil sanctions as may be imposed by the Market Misconduct Tribunal ("MMT") to be unreasonable since the disclosure requirement may be breached with varying degrees of seriousness, having the MMT to determine the sanction after having regard to the facts and circumstances of each case should be valuable in ensuring appropriate sanctions or penalties are imposed.

Thank you for your attention.

Yours sincerely

Thomas Lee
Chairman
Life Insurance Council

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