



Corporate Finance Interest Group (CFIG) "Practitioners meeting Regulators" series – Discussion Forum on Statutory Codification of Price Sensitive Information Disclosure Requirements

About the forum

The government released a consultation paper on 29 March to seek the market's views on the proposed statutory codification of price sensitive information disclosure requirements. An executive summary and a list of questions for consultation are reproduced and attached to this flyer. For the full detailed proposals, please refer to the consultation paper, which can be downloaded at: http://www.fstb.gov.hk/fsb/ppr/consult/doc/consult_psi_e.pdf.

The Institute is currently studying the consultation paper. Given that the proposals will have an impact on the practices of listed companies, company officers and advisers, the CFIG is organising this discussion forum to explain and facilitate a better understanding of the proposals, and to provide a forum for exchange of views between practitioners and the regulators.

At the forum, representatives from the Financial Services and the Treasury Bureau and the Securities and Futures Commission will give an overview and explanation of the proposals. This will be followed by a discussion session, in which participants are encouraged to take this opportunity to raise questions and express views.

About the programme

Date & Time	24 May 2010, Monday 12:45 p.m. – 2:15 p.m.	Rundown
Venue	HKICPA Conference Centre 27 th Floor, Wu Chung House 213 Queen's Road East, Wanchai	12:15pm Registration (Sandwiches & drinks provided)
Fee	HK\$ 150 per person for CFIG members HK\$ 250 per person for Non-CFIG members <i>Priority is given to CFIG members.</i> <i>Not a CFIG member? Click HERE to join.</i>	12:45pm Introduction
CPD credit	1.5 hours	12:50pm Presentation by speakers
CPT credit	Check with the compliance officer or other relevant personnel of your firm, as this event may be acceptable for CPT recognition for SFC licensed persons.	1:30pm Q&A / Discussion
Language	English	2:15pm Closing remarks
Competency/ Rating	Business Finance*/ Advanced level*	Chairman
Application deadline	18 May 2010	Mr. Richard Winter Chairman Corporate Finance Committee

* Please refer [here](#) for descriptions of the various competencies and ratings.

About the speakers

Mr. Cheng Yan Chee, JP
Deputy Secretary (Financial Services)
Financial Services Branch
Financial Services and the Treasury Bureau
The Government of the HKSAR

Mr. Brian Ho
Executive Director
Corporate Finance Division
Securities and Futures Commission

Registration

The number of places is limited. In the event of over-subscription, **places will be allocated on a first-come-first-served basis with priority given to CFGI members**. If you are not a CFGI member, click [HERE](#) to download a CFGI membership application form. **If you sign-up now, your CFGI membership will start immediately and last until end of June 2011. You can also enjoy the members' rate and have priority to register for this and future CFGI events.**

To register:

- **Online registration:** For the time being, this facility ([click here](#)) is available only to members who are both Institute and CFGI members. If you are not both, please reply by post or fax. As seats may still be available when online enrolment is full, please reply by post or fax.
- **By post or fax:** Complete the attached reply slip and return it to the Institute on or before 18 May 2010, together with a cheque made payable to the "Hong Kong Institute of Certified Public Accountants". Fax registration will be accepted for payment by any Visa/Master credit card. Confirmation of registration will be sent by e-mail. If confirmation has not been received by 20 May 2010, please contact Ms May Hung at 2287 7009 / Ms Canace Leung at 2287 7089.

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

Executive Summary

1. The Administration supports the cultivation of a continuous disclosure culture among listed corporations. A way to achieve this is to oblige timely disclosure of price sensitive information (“PSI”) under our statute, instead of relying on the existing non-statutory Listing Rules administered by the Stock Exchange of Hong Kong (“SEHK”). The proposed legislation will oblige listed corporations to make available necessary information for investors in making their investment decisions on listed corporations. Through continuous improvement of the regulatory regime in respect of listing, we are enhancing our market transparency and quality. This will also help sustain Hong Kong as a leading international financial centre and the premier capital formation centre in the region.
2. We propose codifying certain requirements for listed corporations to disclose PSI in the statute, by adopting the existing concept of “relevant information” as defined under the Securities and Futures Ordinance (“SFO”) (Cap. 571) (to be referred to as “inside information” under our proposal) to define PSI. This concept has been used for two decades in the statutory “insider dealing” regime and the market is familiar with it. Under this approach, it will be the same set of information which is prohibited from being used for insider dealing and which is required to be disclosed to the public. The European Union (“EU”) adopts the same approach.
3. We propose specifying in the law that a listed corporation be obliged to disclose to the public as soon as practicable any “inside information” that has come to the knowledge of the listed corporation. We also propose that directors and officers must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent the corporation from breaching the statutory disclosure requirements. Should a listed corporation be found to have breached the statutory disclosure requirements, and that such a breach is a result of any intentional, reckless or negligent act or omission on the part of any individual director or officer, or that any individual director or officer has not taken all reasonable measures to prevent the breach, the director/officer would also be in breach of the statutory disclosure requirements.
4. We recognise the need to strike a reasonable balance between ensuring market transparency and fairness in the provision of information to all investors, and safeguarding the legitimate interests of listed corporations in preserving certain information in confidence to facilitate its operation and business developments. Hence, we propose that certain safe harbours be provided to cater for legitimate circumstances where non-disclosure or delay in disclosure would be permitted. These circumstances are -
 - (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; and
 - (d) when the Government’s Exchange Fund or a central bank provides liquidity support to the listed corporation. This safe harbour will allow a listed banking institution to recover from its liquidity difficulties to the benefit of its depositors, other creditors and shareholders and the overall stability of Hong Kong’s financial markets.
5. To allow the statutory disclosure regime to evolve with future market development, we propose to empower the Securities and Futures Commission (“SFC”) to create new safe harbours through subsidiary legislation to be made under the SFO.

6. Our proposal will not oblige listed corporations to respond to mere rumours. Otherwise, they may be under an undue burden of responding to rumours from time to time. However, where rumours indicate that the inside information intended to be kept confidential has been leaked, the listed corporation would need to disclose the inside information.
7. To facilitate compliance, we propose that the SFC should promulgate guidelines to provide guidance on what constitutes “inside information” and when the safe harbours would be applicable. We also propose that the SFC should provide an informal consultation service on the disclosure requirements.
8. We propose that the SFC be the enforcement authority. It will, upon receipt of a referral from the SEHK of possible breach or upon detection of a possible breach at its own initiative, carry out investigation and pursue follow-up proceedings of the case with investigatory powers under the SFO.
9. We propose that one or more than one of the following civil sanctions be imposed on those breaching the disclosure requirements-
 - (a) a regulatory fine up to \$8 million on the listed corporation and/or the director;
 - (b) disqualification of the director or officer from being a director or otherwise involved in the management of a listed corporation for up to five years;
 - (c) a “cold shoulder” order on the director or officer (i.e. the person is deprived of access to market facilities) for up to five years;
 - (d) a “cease and desist” order on the listed corporation, director or officer (i.e. an order not to breach the statutory disclosure requirements again);
 - (e) an order that any body of which the director or officer is a member be recommended to take disciplinary action against him; and
 - (f) payment of costs of the civil inquiry and/or the SFC investigation by the listed corporation, director or officer.
10. Since the Market Misconduct Tribunal (“MMT”) has experience in dealing with cases concerning “inside information” and in considering orders (b) to (f) above, we propose extending the jurisdiction of MMT to breaches of the statutory disclosure requirements. We further propose to empower the SFC to institute proceedings on breaches of the disclosure requirements direct before the MMT, without having first to report to the Financial Secretary for his decision to do so. This will help streamline the process in implementing the civil regime.
11. In addition, we propose that persons suffering pecuniary loss as a result of others breaching the disclosure requirements could rely on the MMT findings to take civil actions to seek compensation from those having breached the disclosure requirements.
12. The SFC may also, where appropriate, take action under existing provisions of the SFO to apply for injunctive and disqualification orders.
13. We aim to formulate a proposal that would promote effective compliance with, and allow effective enforcement of, the disclosure obligations, to be underpinned by adequate measures to protect the investing public against a breach of these statutory obligations. After carefully considering market comments, we propose adopting an evolutionary approach in developing a statutory disclosure regime, by focussing on inside information and civil sanctions. We would keep under review the effectiveness of the regime, and consider the need for introducing other disclosure requirements and additional sanctions, including criminal sanctions, in the light of local and international market experience.

14. To facilitate the public and market participants in making comments on our proposal, we have attached at **Annex 1** to this consultation paper indicative draft legislative provisions on the statutory disclosure requirements and safe harbours. The SFC has prepared draft guidelines on disclosure of inside information and is consulting the public separately. The SFC's consultation paper is attached at **Annex 2** for reference. The Government will carefully consider the comments received during this consultation exercise. Subject to public comments, our plan is to introduce a bill to the Legislative Council to codify such disclosure requirements in the SFO in the 2010/11 legislative session.

List of Questions for Consultation

- Chapter 2 Question 1 (a) Do you agree with the proposal to adopt the existing definition of “relevant information” from the insider dealing regime under the SFO to define PSI?
- (b) Do you agree that a listed corporation should be obliged to disclose to the public as soon as practicable any “inside information” that has come to its knowledge, and that it should be regarded to have knowledge of the inside information if a director or an officer has come into possession of that information in the course of the performance of his duties?
- (c) Do you agree with the proposal that the disclosure must be made in a manner that can provide for equal, timely and effective access by the public to the information disclosed?
- Question 2 (a) Do you agree to the provision of the four proposed safe harbours?
- (b) Do you agree that the SFC should be empowered to grant waivers, and to attach conditions thereto?
- (c) Do you think that the legislation should provide for additional safe harbours? If so, what are these additional safe harbours?
- (d) Do you agree that the SFC should be empowered to prescribe further safe harbours in the form of rules under the SFO?
- Question 3 (a) Do you agree to extend the jurisdiction of the MMT to handle breaches of the statutory disclosure requirements?
- (b) Do you agree with the proposed range of civil remedies as set out in paragraphs 2.31, 2.35 and 2.36?
- (c) Do you agree to grant the SFC direct access to the MMT to institute proceedings on breaches of the statutory disclosure requirements?
- Chapter 3 Question 4 Do you agree that the SFC should provide informal consultation for the listed corporations with regard to the statutory disclosure requirements, initially for a 12-month period?
- Question 5 Do you think the administration and enforcement arrangements proposed by the SFC and SEHK in paragraphs 3.8 – 3.9 are appropriate? Do you have any comments on the respective roles of the SFC and SEHK to further enhance clarity?