

Press release

LCQ3: Regulation of listed companies

Wednesday, November 12, 2008

Following is a question by the Hon Albert Ho Chun-yan and a reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (November 12):

Question:

On the 20th of last month, CITIC Pacific Limited issued a profit warning revealing that the company had incurred huge losses due to the holding of leveraged foreign exchange contracts, even though the company had become aware of the exposure arising from such contracts as early as September 7. This incident has aroused the concern of the public and investors, and the Securities and Futures Commission (SFC) has also commenced investigation. In this connection, will the Government inform this Council:

(a) whether it has found out if there are other listed companies in Hong Kong which have incurred losses due to the holding of similar contracts; if so, whether these listed companies have made timely announcements; if not, the reasons for that;

(b) whether it knows, over the past three years, the number of profit warnings issued by companies listed in Hong Kong, the number of cases of whether listed companies have made timely announcements of price-sensitive information investigated by SFC, and if SFC has imposed penalties on the listed companies of the substantiated cases; if penalties have been imposed, of the details; if not, the reasons for that; and

(c) whether it will step up regulation on listed companies to ensure that they strictly comply with the relevant legislation and the Listing Rules and disclose information properly to eradicate insider trading, and hence safeguard investors' interest?

Reply:

President,

In response to Hon Albert Ho's question, we have consulted the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Ltd (HKEx) for comments and our reply is as follows -

(a) Consistent with the approach taken in other international securities markets with respect to similar obligations, the Listing Division of the Stock Exchange of Hong Kong (SEHK) monitors listed issuers' compliance with their general disclosure obligations through a number of means, including:

(i) monitoring of press, market rumours and stock analysis reports;

(ii) following up with listed issuers on possible untimely or omission of disclosure of price sensitive information when information is available (e.g. upon receipt of complaints);

(iii) reviewing of issuers' periodic financial results to look into whether issuers are in breach of the Listing Rules; and

(iv) reviewing and commenting on listed issuers' ad hoc regulatory announcements to monitor whether issuers are in compliance with the Listing Rules.

Where the Listing Division is made aware that a general disclosure obligation is triggered, for example, where an issuer has incurred or is exposed to the risk of a significant financial loss from an investment in a derivative currency instrument, the Listing Division will request the issuer to make an immediate disclosure, or else trading suspension may be necessary.

All in all, the regulatory authorities have kept watch on the disclosure made by Hong Kong listed companies through their monitoring activities and have considered, in reviewing disclosures by listed companies, whether these listed companies have made timely announcements. Relevant figures will be provided in part (b) of the reply.

(b) The SEHK is responsible for enforcing the Listing Rules and promoting compliance, while the SFC will take enforcement actions when listed companies are suspected of having breached the Securities and Futures Ordinance (e.g. providing false or misleading information).

The SEHK makes several hundred enquiries and investigations every year to verify if listed issuers are in breach of the Listing Rules. Some of these enquiries and investigations involve possible failure of listed companies in making timely and accurate continuing disclosure of material price sensitive information as required.

According to information provided by SEHK, listed companies have issued 173 "profit warning" notices in the first 10 months of this year. The Listing Division has made follow-up enquiries in 39 cases, and so far has commenced disciplinary investigations in six cases. Figures relating to the number of "profit warning" notices issued by listed issuers and the number of follow-up enquiries or disciplinary investigations conducted in the past three years are tabulated at Annex.

During 2006 and 2007, the Exchange had publicly censured or criticised three listed issuers and their relevant directors for breaches of the Listing Rules in their failure to comply with their general disclosure obligations to make timely disclosure of price sensitive information.

(c) The SEHK, in conjunction with the SFC, seeks to review the rules and requirements applicable to listed issuers from time to time to ensure that they address the developments in the market and keep up with the international best practice, and would closely monitor market developments and where appropriate provide further interpretation and guidance to listed companies regarding matters that might impact upon their listing and disclosure obligations.

The SEHK issued the "Guide on Disclosure of Price Sensitive Information" in 2002, which included guidelines on what is price sensitive information, when and how price sensitive information should be disclosed and the formulation of communications policy and procedures, etc. Separately, the SEHK issues consultation documents on further improving the corporate governance of Hong Kong listed companies from time to time, such as enhancing the transparency of disclosure.

The global financial tsunami has caused market concern that the recent economic developments will have an adverse impact on the operations, financial performance and financial conditions of listed issuers. Against this background, the SEHK has on October 31, 2008 sent a letter to all listed companies reminding them of the continuous disclosure obligation under the Listing Rules which provides for timely disclosure by listed issuers of any price sensitive information.

The Government and our financial regulators attach great importance to the corporate governance of the listed companies in Hong Kong. We will continue to enhance the quality of corporate governance of Hong Kong listed companies and adopt appropriate measures to safeguard investors' interests.

Ends