

Press release

Government proposes requirements on disclosure of price sensitive information by listed corporations

Monday, March 29, 2010

The Secretary for Financial Services and the Treasury, Professor K C Chan, announced today (March 29) a proposal to oblige listed corporations to disclose price sensitive information (PSI) in a timely manner to facilitate investors in making informed investment decisions. The public are welcome to give their views before the end of the consultation on June 28, 2010.

Speaking to the media in releasing a Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose PSI by Listed Corporations, Professor Chan said that the Government supported the cultivation of a continuous disclosure culture among listed corporations. Therefore, it is proposed to specify in the law that a listed corporation be obliged to disclose to the public as soon as practicable PSI that has come to the knowledge of the corporation.

In defining "PSI", the Government proposes following the approach of the United Kingdom and other countries of the European Union - that is, to adopt the concept of "inside information" currently used in the insider dealing regime, and to oblige listed corporations to make timely disclosure of such "inside information". In other words, PSI will be equivalent to the information currently prohibited from being used in insider dealing under the Securities and Futures Ordinance. This concept has been in use under the law for 20 years, and the market is familiar with it.

"We propose that the directors and officers of listed corporations must take reasonable measures from time to time to ensure that proper safeguards exist to prevent the corporation from breaching the statutory disclosure requirements," Professor Chan said.

He stressed that the Government recognises the need to strike a reasonable balance between ensuring market transparency and fairness in the provision of information to investors, and safeguarding the legitimate interests of listed corporations in preserving certain information in confidence to facilitate its operation and business development.

Accordingly, the consultation proposal sets out a number of safe harbours to allow listed corporations to not disclose or delay disclosing certain PSI -

(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.

"The proposed disclosure regime would create a statutory framework with a clearer set of PSI disclosure obligations and safe harbours for compliance by listed corporations, instead of relying on the existing Listing Rules - a contractual relationship between the Stock Exchange of Hong Kong (SEHK) and each listed corporation.

"It would help demonstrate to the market our commitment to enhancing market transparency and quality, thereby enhancing Hong Kong's position as an international financial centre and the premier capital formation centre in the region," Professor Chan explained.

The Government proposes that the statutory disclosure requirements be enforced by the Securities and Futures Commission (SFC). The SFC would promulgate guidelines on what constitutes PSI and when the safe harbours would be applicable to facilitate compliance by listed corporations. The SFC is in parallel consulting the public on its draft guidelines.

Since the Market Misconduct Tribunal (MMT) has experience in dealing with cases concerning "inside information", the Government proposes extending the jurisdiction of the MMT to deal with breaches of the PSI disclosure requirements.

"We propose a range of civil sanctions, including a regulatory fine up to \$8 million on the listed corporation and/or the director, disqualification of the director or officer from being a director of or managing a listed corporation for up to five years, issuing a 'cold shoulder' order on the director or officer (i.e. deprived of access to market facilities) for up to five years, issuing a 'cease and desist' order on the listed corporation, director or officer (i.e. an order not to breach the statutory disclosure requirements again), issuing a recommendation order that the director or officer be disciplined by any body of which that person is a member, and payment of costs of the civil inquiry and/or the SFC investigation.

"As the SEHK which administers the Listing Rules does not have investigatory power and may only resort to certain disciplinary actions such as private reprimand or public censure, the proposed statutory regime would mark an important step forward by allowing the SFC to conduct more effective investigation into a suspected breach of these statutory requirements, and the MMT to impose a range of civil sanctions," Professor Chan said.

Subject to public comments, the Government plans to introduce a bill to the Legislative Council to codify such disclosure requirements in the Securities and Futures Ordinance in the 2010/11 legislative session.

The consultation document will be uploaded onto the website of the Financial Services and the Treasury Bureau (www.fstb.gov.hk/fsb/ppr/consult/index.htm). The public are welcome to submit their written comments by mail to the bureau at 18/F, Tower I, Admiralty Centre, 18, Harcourt Road, Hong Kong; or by email to psi_consultation@fstb.gov.hk; or by fax to 2529 2075.

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