Disclosure of Inside Information

This FAQ is prepared by the Corporate Finance Division and aims to provide guidance to listed corporations on the application of the provisions of Part XIVA of the Securities and Futures Ordinance (**SFO**) and the SFC Guidelines on Disclosure of Inside Information (**SFC Guidelines**).

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. The SFC reserves the right to exercise all powers conferred upon it under the law. Unless otherwise defined herein, all capitalised terms have the meanings given to such terms in the SFC Guidelines.

Q1: Should a listed corporation issue an announcement headed "voluntary" to disclose information?

A: A listed corporation should not use the heading of "voluntary announcement" to disclose information. Depending on the specific facts and circumstances, if a listed corporation issues an announcement that contains inside information under the heading of "voluntary announcement", it risks non-compliance with the requirement to disclose inside information that is accurate, complete and not misleading[1]. Moreover, to label any other announcement as "voluntary" is not helpful for investors to understand the relevance and significance of the information disclosed. In deciding the heading of an announcement, a listed corporation should use a heading that accurately reflects the substance of the information concerned.

Q2: Are there any content requirements for an inside information announcement?

A: Announcements of inside information should be clear, informative and comprehensible in order to enable investors to make well-informed decisions. Therefore an announcement should:

a. be factual, clear and expressed in a balanced and objective manner;
b. convey key messages that are clearly visible to and readily understandable by investors;
c. contain sufficient background information so that an announcement can be read without undue reference to other documents;
d. avoid boilerplate statements that tend to lengthen the document without providing meaningful information; and
e. contain sufficient quantitative information which has come to the knowledge of the listed corporation, the omission of which may cause the information disclosed to be false or misleading under section 307B(3) of the SFO.

Q3: Should a listed corporation disclose inside information in an "overseas regulatory announcement"?

A: Under Listing Rule 13.10B[2] of The Stock Exchange of Hong Kong Limited (**Stock Exchange**), a dually listed corporation must announce in Hong Kong all information released to any other stock exchange on which the securities are listed at the same time as the information is released to that other exchange. Listing Rule 2.07C provides that any publication on the HKExnews website by an issuer must be made in both the English and Chinese language unless otherwise stated. In practice, the Stock Exchange has allowed any "overseas regulatory announcement" to be published in one language only (either Chinese or English) (FAQ Series 9 – No. 55 and No.56). This is because overseas regulatory announcements typically reported matters that were not required by the Listing Rules and it had been assumed that they did not contain inside information.

However, the regulators have noticed that there have been overseas regulatory announcements which contained material information (e.g. periodic results). It is possible that such material information may constitute inside information. The Stock Exchange follows up on such overseas regulatory announcements and requires them to be re-issued in English and Chinese under Listing Rule 13.09.

With the advent of the statutory regime under Part XIVA of the SFO the above practice has been revisited. As a result, the SFC takes the view that if a listed corporation discloses inside information in an overseas regulatory announcement in one language only (i.e. Chinese or English), the listed corporation has not fully complied with the requirement under section 307C(1) to disclose information in a manner that can provide for equal, timely and effective access by the public to the information.

Q4: If the Stock Exchange makes an enquiry concerning unusual movements in the price or trading volume of a listed corporation's securities and the listed corporation is aware that a director has traded on the securities, should the listed corporation disclose such information in an announcement?

A: In responding to the Stock Exchange's enquiry concerning unusual trading movements[3], a listed corporation should consider all matters that are or may be relevant to the trading of its securities. If a director has traded on the securities of a listed corporation, especially where the trading volume is significant or represents a significant portion of market turnover, this will likely lead to a sudden increase in volume, which may also trigger an unusual change in share price. Where a listed corporation is aware of any material dealings by its directors shortly before or at the time of the Stock Exchange's enquiry and is requested by the Stock Exchange to issue an announcement, information about such dealings should be disclosed.

Q5: If a listed corporation is subject to a statutory enquiry or an investigation by the SFC, should such a fact be disclosed by the corporation, and if so, would such disclosure contravene the secrecy provisions under section 378 of the SFO?

A: A listed corporation should consider the following factors in deciding whether a disclosure is needed: -

a. The fact that the SFC is conducting a statutory enquiry or an investigation concerning a corporation (and/or its officers) is confidential non public information. The SFC will not ordinarily disclose or confirm the fact of such an enquiry or investigation to the public. Similarly, a corporation (and/or its officers) assisting the SFC in such an enquiry or investigation is obliged to preserve secrecy with regard to any matter coming to its knowledge in the course of assisting the SFC, pursuant to section 378 of the SFO.

b. In most cases, the mere fact that the SFC is conducting a statutory enquiry or an investigation is unlikely to be inside information, so a disclosure obligation will seldom arise. This is because statutory enquiries and investigations are of themselves merely administrative information gathering processes only and nothing is yet proven or alleged until the investigation is finished and proceedings started. In these circumstances, where no disclosure obligation arises, the confidentiality of the enquiry or investigation will be preserved.

c. There may be rare cases where the mere fact of an enquiry or investigation is inside information and so will need to be disclosed. An example where the fact of an SFC investigation may prompt a corporation to consider that the disclosure obligation applies is where the SFC is conducting an investigation into misconduct in office by the corporation's CEO and the CEO stands down or is stood down from office pending the conclusion of the investigation. The SFC expects cases where the disclosure obligation will arise because of an SFC investigation will be rare. The SFC expects any corporation who decides to make a disclosure about an SFC investigation will inform the SFC before making such disclosure.

d. In all cases, it is for the corporation to decide whether such information is inside information. If it is, then it must be disclosed under section 307B of the SFO. Disclosure in these circumstances will not breach the statutory secrecy provisions under section 378 of the SFO as disclosure made in complying with a disclosure obligation under the SFO will fall within section 378(2)(e) of the SFO which permits disclosure in accordance with a legal requirement.

e. It should be emphasized that the discussion in paragraphs (a) to (d) above concern disclosure of the fact that the SFC has started or is conducting a statutory enquiry or investigation. Nothing in these paragraphs removes the obligation of a corporation to make disclosure of inside information. If the circumstances which have resulted in, or are the subject of, the enquiry or investigation (as distinct from the fact that the SFC has made a statutory enquiry or is undertaking an investigation) are discloseable under the disclosure regime, then they should be disclosed. Similarly, the fact of a statutory enquiry or investigation should be distinguished from legal proceedings, including those commenced by the SFC, where the corporation should also consider whether a disclosure obligation arises. In this regard, the discussions in paragraphs (a) to (d) above are relevant.

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[1] *See paragraph 43 of the SFC Guidelines*
[2] *These are references to the Main Board Listing Rules. Similar provisions are found in the GEM Listing Rules.*
[3] *Under Listing Rule 13.10, the Stock Exchange may make an enquiry concerning unusual movements in the price or trading volume of a listed corporation's securities, the possible development of a false market in its securities or any other matters, and may, where appropriate, request the listed corporation to issue an announcement to clarify the matter.*