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SFC Announces Increase in Inside Information Announcements and Publishes Additional FAQs on Statutory Inside Information Disclosure Regime

It has been a year since the statutory regime for disclosure of inside information came into effect under Part XIVA of the Securities and Futures Ordinance (**SFO**), which was implemented on 1 January 2013. The Securities and Futures Commission (**SFC**) has published a press release on 9 January 2014, noting that in 2013 corporate announcements about inside information rose by 52% and profit alerts and warnings went up 16% from 2012, while updates on trading information also increased by 48%. The SFC also updated its FAQs on disclosure of inside information on the same day, adding two new questions to the original three, advising companies to disclose relevant directors' dealings when making an unusual price and trading volume announcement under the Listing Rules following a request from the Stock Exchange (**Stock Exchange**). The updated FAQs also address issues concerning disclosure obligations in relation to a statutory enquiry or investigation.

Increase in number of announcements on inside information in 2013

The implementation of the new statutory disclosure regime for inside information has resulted in a significant increase in corporate announcements. In a news release published on 9 January 2014, the SFC noted that in 2013, corporate announcements about inside information increased by 52% and profit alerts and warnings went up 16% from 2012. Updates on companies' trading information, including monthly sales figures, production volumes and other key performance indicators, also increased by 48%.

Frequently-Asked-Questions (FAQs)

The SFC has updated its FAQs to include two more questions providing guidance to listed issuers on the application of the provisions of the statutory regime for disclosure of inside information under Part XIVA of the SFO and the SFC Guidelines on Disclosure of Inside Information. The following is a summary of the responses to the two new questions (nos. 4 and 5) published in January 2014, followed by a review of the previous three (nos. 1 to 3) published in April last year (as set out in our newsletter).

Question 4: Stock Exchange enquiries concerning unusual movements in price or trading volume of a listed corporation's securities

When the Stock Exchange makes 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 under Listing Rule 13.10, a listed company should consider all matters that are or may be relevant to the trading of its securities. A sudden increase in the trading volume of a company's listed securities, which may in turn trigger a change in the share price, may be due to a director trading in the securities, particularly if the trading volume is significant or represents a significant portion of market turnover. Where a listed corporation is aware of any material dealings by its directors shortly before or at the time of

the Exchange's enquiry and the Exchange requests the issue of an announcement, information about such dealings should be disclosed.

Question 5: Disclosure of a statutory enquiry or an investigation by the SFC and compliance with the secrecy provisions under s378 of the SFO

A listed corporation should consider the following factors when deciding whether to disclose the fact that it is subject to a statutory enquiry or an investigation by the SFC:

a) The fact that the SFC is conducting a statutory enquiry or 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 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 s378 of the SFO (relating to point (d)).

b) A disclosure obligation will seldom arise because such statutory enquiry or investigation by the SFC is normally not inside information, but merely an administrative information gathering processes and nothing is proven or alleged until the investigation is finished and proceedings started.

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 might be where the SFC is conducting an investigation into misconduct in office by the corporation's CEO who has stood down or stands down pending the conclusion of the investigation. However, the SFC expects such cases to be rare, and that any corporation who decides to make such disclosure will inform the SFC beforehand.

d) It is for the corporation to decide whether such information is inside information, and if the answer is in the affirmative then such disclosure must be made under s 307B of the SFO. In this case, disclosure will not breach the statutory secrecy provisions under s378 of the SFO as obligations made under the SFO will fall within s378(2)(e) of the SFO which permits disclosure in accordance with a legal requirement.

e) It should be noted that points (a) to (d) concern disclosure of the fact that the SFC has started or is conducting a statutory enquiry or investigation. They do not remove the obligation of a corporation to disclose inside information. If the circumstances which have resulted in, or are the subject of, the enquiry or investigation (as opposed to the fact that the SFC has made a statutory enquiry or is undertaking an investigation) are discloseable inside information, 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. In the case of legal proceedings commenced by the SFC, the corporation should consider points (a) to (d) in deciding whether a disclosure obligation exists.

The following three questions were previously published:

Question 1: Issuing an announcement with the heading "Voluntary Announcement" to disclose inside information

Listed issuers should avoid using the heading "voluntary announcement" to disclose inside information since it exposes issuers to the risk of failing to comply with the requirement to disclose inside information that is accurate, complete and not misleading which is set out in the SFC Guidelines on Disclosure of Inside Information of June 2012 (at paragraph 43). The SFC additionally commented that the heading "voluntary announcement" is not helpful for investors to understand the significance of the information contained in the announcements. Issuers should instead ensure that the heading chosen for the announcement is that which most accurately reflects the substance of the relevant information.

Question 2:. Content requirements for an inside information announcement

Announcements of inside information should enable investors to make well-informed decisions and should therefore:

i) be factual, clear and expressed in a balanced and objective manner;

ii) convey key messages that are clearly visible to and readily understandable by investors;

iii) contain sufficient background information so that an announcement can be read without undue reference to other documents;

iv) avoid boilerplate statements that tend to lengthen the document without providing meaningful information; and

v) 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.

Question 3: Disclosing inside information in an "overseas regulatory announcement"

Under the Listing Rules (Main Board Rule 13.10B and GEM Rule 17.12), an issuer dually listed in Hong Kong and an overseas exchange must announce in Hong Kong all information released to any other exchanges at the same time as the information is released to that other exchange. Any publication on the Exchange website must be made in both Chinese and English unless otherwise specified (Main Board Listing Rule 2.07C and GEM Rule 16.18(3)(b)).

The Exchange, in practice, allowed "overseas regulatory announcement" to be published in one language only because they did not usually contain information reportable under the Listing Rules and it was assumed that they did not contain inside information.

The SFC and the Exchange have noticed, however, that there have been overseas regulatory announcements containing information which could constitute inside information under Hong Kong law (e.g. periodic results).

As a result, the practice described above has been revisited. The SFC takes the view that if an issuer discloses inside information in an overseas regulatory announcement in one language only, the issuer has not fully discharged its statutory obligation to disclose inside information in a manner that can provide for equal, timely and effective access by the public to the information (section 307C(1) of the SFO). Thus if information which a dually listed issuer is required to disclose to an overseas exchange in fact contains information which is inside information under Part XIVA SFO, the announcement to the Hong Kong market must be published in both Chinese and English.

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