



SFC PROPOSES ADDITIONAL EXEMPTIONS FROM PART XV DISCLOSURE REQUIREMENTS

The Securities and Futures Commission (**SFC**) is proposing to add two more categories of exemptions from the disclosure-of-interests requirement under Part XV of the Securities and Futures Ordinance (**SFO**) (**Part XV**). The proposed amendments to the Guidelines for the Exemption of Listed Corporations from Part XV of the Securities and Futures Ordinance (Disclosure of Interests) (the **Guidelines**) are set out in the appendix to the SFC's consultation paper, which was released on 18 June. Comments on the consultation must be submitted by 17 July. The consultation paper is available at: <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=14CP4>

Current Guidelines

Part XV requires substantial shareholders (i.e. shareholders who hold at least 5% of the voting shares), directors, shadow directors and chief executives (**Corporate Insiders**) of companies listed on the Hong Kong Stock Exchange (the **Exchange**) to disclose their shareholding interest when the circumstances under sections 310 or 341 of the SFO arise. Exemptions from this requirement are available under the Guidelines for three categories of corporations that are listed or seeking a listing on the Exchange:

- Category 1: dual-listed corporations that (i) have no share trading or only have nominal trading on the Exchange; or (ii) where the Corporate Insiders of the company are subject to overseas disclosure-of-interest requirements that are comparable to those under Part XV;

- Category 2: issuers of securities other than shares; and
- Category 3: open-ended corporate form collective investment schemes.

Amendments to the Guidelines

In April, the China Securities Regulatory Commission announced a pilot programme for mutual stock market access between Mainland China and Hong Kong that will be operated by the Exchange, Hong Kong Securities Clearing Company Limited (**HKSCC**), China Securities Depository and Clearing Corporation Limited (**ChinaClear**) and the Shanghai Stock Exchange (**SSE**). Under this programme, southbound orders would be placed through a securities trading service company established by the SSE (**SPV**) to trade shares listed on the Exchange, and ChinaClear would provide clearing, settlement, custody and nominee services. Consequently, if the SPV or ChinaClear acquired 5% interest in any company listed on the Exchange, it would need to satisfy the Part XV requirements.

The SFC proposes to exempt the SPV and ChinaClear from the Part XV requirements by amending the Guidelines to include two additional categories of exemption:

- Category 4: exchange participants where their interest in securities listed on the Exchange are acquired as an agent in the ordinary course of business (i.e. neither the principal nor the person from whom the interest is acquired is a related corporation of the exchange participant) and the interest does not last more than three business days; and

- Category 5: clearing houses where:
 - they are themselves participants of a recognised clearing house;
 - they are regulated by a regulator in its home market that has entered into a memorandum of understanding with the SFC; and
 - their interests in companies listed on the Exchange are incidental to the clearing and settlement services they provide or are held for beneficial investors.

The existing three categories of exemption in the Guidelines will come under Part 1 of Part XV. A new Part 2 will be added to the Guidelines to provide for the two new exemptions. Category 4 would apply to the SPV as it would be an Exchange participant, and Category 5 would apply to ChinaClear as it would be a participant of the HKSCC. The term “clearing house” as it applies to Part 2 does not have the same meaning as defined in Schedule 1 to the SFO, which is applicable to the rest of the SFO. The proposed paragraph 11 of Part 2 states that the SFC will normally consider granting a complete exemption to applications for Category 4 or 5 exemptions.



Consultation and Proposed Implementation

The SFC proposes to put the amended Guidelines into effect upon their gazettal. Comments are sought in response to the following consultation questions:

- Do you agree with the proposed amendments to the Guidelines to extend the scope of exemption in the Guidelines?
- Do you agree with the general criteria for exemption discussed in paragraphs 14 (f) and (g) above that the SFC will take into account in deciding whether to grant an exemption?

Comments may be submitted by 17 July 2014 by the following means:

By mail to:	Securities and Futures Commission 35/F, Cheung Kong Center 2 Queen's Road Central Hong Kong
By fax to:	(852) 2810 5385
By on-line submission to:	http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/
By email to:	AmendmentsGuidelinesPtXV@sfc.hk

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