

Summary: SFC published its Corporate Regulation Newsletter in March 2016

I. Overview

- SFC stresses the disclosure principles of “accuracy”, “clarity”, and “balance” as regards inside information disclosure
- The newsletter addresses: (i) “how inside information should be disclosed” (i.e. means and timeliness); (ii) “incomplete or misleading statements”; (iii) special issues relating to issuers listed in multiple jurisdictions

II. How “inside information” should be disclosed

(1) Means of disclosure

- (a) S.307 of the Securities and Futures ordinance (“SFO”) requires the disclosure of inside information in a manner that can provide for equal, timely, and effective access by the public;
- (b) The use of HKEX’s electronic publication system (i.e. HKExnews website) regarded as satisfying the SFO requirements;
- (c) Posting exclusively on an issuer’s corporate website not acceptable, as such information may not have been generally known to the public;
- (d) Effective co-ordination of disclosure of inside information and other general press releases needed -- SFC gave some examples of problematic practices:
 - a company concluded that the signing of a particular contract does not amount to “inside information”
 - but it made an announcement through its website, describing the contract as “a major step forward”
 - in fact, the financial impact of the contract is very limited
 - subsequent rise in share price was disproportionate
- (e) “Timeliness” in disclosure
 - SFC alerted issuers on potential IT problems relating to corporate website, even if the information is simultaneously disseminated via HKExnews
 - Cited the Twitter example, whereby its financial results were released nearly two hours ahead of time
 - Twitter used a standard formulation of its URL (website address) and it was possible to predict the URL to be used
 - Twitter uploaded its new release, in preparation of release
 - Exploited by a data mining company using software relatively easy to obtain

- (f) Use of social media
- Social media dissemination not regarded as satisfying SFO disclosure requirements
 - Other potential problems – SFC gave examples whereby the market reacted to information posted by a company’s senior management on his personal social media account (quoting a sales growth figure which represented a significant drop)
 - other shareholders were denied the chance to take this information into account when they trade

(2) Incomplete or misleading statements

- (a) SFC gave examples of “piecemeal”, “unbalanced” or “inaccurate” information which make them “sufficiently false or misleading” to be regarded as a breach under the SFO.
- (b) Example:
- A company announced that it had signed a major contract without disclosing the details of the terms
 - Share price rose significantly
 - Subsequently, the financial statements revealed that the profit generated was minimal
 - Share price drifted downwards once financial results became clearer
 - Investors who traded on the possible upside of the contract might not have done so if the initial announcement gave more complete details of the terms of the contract and sums involved
- (c) Example (disclosure language for “bonus issue” to existing shareholders)
- described as a “reward” – in fact, issuing shares pro rata to existing shareholders simply spreads the value of the company over a larger number of shares i.e. not amounting to any “reward”
 - described its effect as “widening the capital base of the company” – in fact, it does not involve the raising of capital
 - SFC regards these disclosures as “misleading”
- (d) In general, issuers should present both “good news and bad news” equally, in a clear and balanced way without omitting any material facts – the principles of “accuracy”, “clarity” and “balance”.

(3) Companies listed in multiple jurisdictions

- (a) Where a company has requested suspension of trading of its shares because it has “inside information”, the suspension should be kept as short as possible

(set out in HKEX Guidance letter on trading halts – please refer to our [Dec 15 legal updates](#));
- (b) Some listed companies may be subject to regulatory regimes that require suspension of trading whilst other processes continue;
- (c) For market integrity, it may be generally desirable for suspensions to be simultaneously imposed in all relevant jurisdictions;
- (d) However, under HKEX Guidance Letter – if the reason requesting suspension is that it has inside information, then the company should disclose such information as soon as practicable and resume trading shortly afterwards.

III. Practising Governance’s suggested management actions

Apart from strengthening companies’ understanding and application of disclosure requirements, we suggest the following measures relating to internal systems:

- (a) Develop a corporate disclosure policy, with clear division of roles and co-ordination among various teams (legal, finance, IR/corporate communications). “Silo” issues can cause unintended mistakes (see the above example re: “over bullish” press release);
- (b) Develop a social media policy, including prohibiting disclosure on sensitive information on corporate, as well as personal accounts of executives;
- (c) Avoid using “boilerplate” language without appreciating their applicability to individual circumstances (e.g. see the “bonus issue” examples above).

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