



Techtronic Industries

TECHTRONIC INDUSTRIES CO. LTD.

**POLICY ON MARKET DISCLOSURE,
INVESTOR & MEDIA RELATIONS**

- Continuous disclosure
- Investor relations
- Media relations

TECHTRONIC INDUSTRIES CO. LTD.

**The Stock Exchange of Hong Kong Limited
Ordinary Shares (code:669)**

ADR Level 1 Programme (code: TTNDY)



Techtronic Industries

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POLICY ON MARKET DISCLOSURE, INVESTOR AND MEDIA RELATIONS

1. INTRODUCTION

1.a. Statement of purpose

Techtronic Industries Company Limited (“**TTI**”) Policy on Market Disclosure, Investor and Media Relations (“**Policy**”) is designed to ensure that there is balanced and timely disclosure of information which may affect the market activity in, and the price of, TTI’s securities or influence investment decisions and information in which shareholders, investors and the market generally have a legitimate interest.

This Policy is also directed to ensure that:

- TTI complies with its disclosure obligations under applicable laws and regulations, including the Rules Governing the Listing of Securities (the “**Listing Rules**”) on The Stock Exchange of Hong Kong Limited (“**HKSE**”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (“**HKEC**”), the Securities and Futures Ordinance (the “**SFO**”), and the Companies Ordinance in Hong Kong; and
- All shareholders and potential investors have an equal opportunity to receive and obtain externally available information issued by TTI.

1.b. Commitment to continuous disclosure

This Policy reflects TTI’s commitment to comply with the disclosure requirements in respect of “inside information” under Part XIVA of the SFO, the Listing Rules as well as relevant corporate and securities legislation.

The Board of TTI has adopted this Policy at a board meeting held on 18 March 2014 in replacement of the policy previously adopted on 11 April 2006. A Disclosure Committee has also been established to oversee compliance with its continuous disclosure obligations.

1.c. Disclosure Committee

The Disclosure Committee is responsible for:

- ensuring that TTI complies with its disclosure obligations under applicable laws and regulations, including the Listing Rules, the Securities and Futures Ordinance and the Companies Ordinance;
- reviewing and assessing what information will be disclosed and the form of that disclosure;
- implementing reporting processes, controls and guidelines for the release of information; and
- informing and updating directors and staff on TTI’s disclosure policies and procedures and raising awareness of the principles underlying continuous disclosure to promote compliance with this Policy and the related procedures.

The Disclosure Committee comprises the Chief Executive Officer (“**CEO**”), the Chief Financial Officer (“**CFO**”) and the President of Strategic Planning. On a daily basis, the team leader is the CFO who is responsible for generally co-ordinating the disclosure of information.

Specific responsibilities may be delegated to individuals outside the Disclosure Committee from time to time.

1.d. Review

This Policy shall be reviewed regularly by the Disclosure Committee to ensure that it reflects applicable legislative or regulatory requirements and “best practice” developments.

1.e. Guiding Principles

The Securities and Futures (Amendment) Ordinance 2012 (the “SFAO”) introduces a statutory obligation to disclose “inside information” (previously defined as “price-sensitive information”) to the public with effect from 1 January 2013. The “Guidelines on Disclosure of Inside Information” (attached as Appendix 1) was issued by the Securities and Futures Commission (the “SFC”) in June 2012 in conjunction with the new disclosure regime so as to provide guidance on the compliance with such disclosure obligation.

Accordingly, TTI conducts its affairs with close regard to the “Guidelines on Disclosure of Inside Information”, the previous “Guide on Disclosure of Price-Sensitive Information” (attached as Appendix 2) and the “Recent Economic Developments and the Disclosure Obligations of Listed Issuers” (attached as Appendix 3) issued by HKSE in 2002 and 2008 respectively.

Both the “Guidelines on Disclosure of Inside Information” and the “Guide on disclosure of price-sensitive information” provides guiding principles and criteria in disclosing inside information:

Information which is expected to be inside information should be announced promptly after it becomes known to a director, an officer or senior management of the issuer and/or is the subject of a decision by the directors or senior management of the issuer.

Until an announcement in relation to such information is made, directors of issuers must ensure that such information is kept strictly confidential.

- (a) Where it is felt that the necessary degree of security cannot be maintained or that security may have been breached, an announcement disclosing the information must be made immediately to the public.
- (b) If inside information is inadvertently divulged to outside parties or it is believed that such information may have been inadvertently divulged, the issuer must immediately issue an announcement so that the relevant information is disseminated to the market as a whole.
- (c) Information should be disclosed to the market as a whole and all users of the market have simultaneous access to the same information. It is important that inside information should not be divulged selectively outside the issuer and its advisers in such a way as to place in a privileged dealing position any person or class or category of persons.
- (d) Inside information may include positive and negative information.

Other information requiring disclosure may also emerge during the preparation of its disclosure obligation, in particular during the preparation of periodic financial information and that the issuer should not defer releasing such inside information until the prescribed disclosure document is issued. A separate immediate disclosure may be required in order to bring it to the market’s attention.

2. MARKET DISCLOSURE

2.a. General obligation of disclosure

TTI is subject to a statutory disclosure obligation under the SFO to disclose inside information to the public as soon as reasonably practicable, after any inside information has come to TTI's knowledge, unless one of the prescribed safe harbours under section 307D of the SFO applies.

In addition, pursuant to Rule 13.09(1) of the Listing Rules TTI has a continuous obligation to disclose information necessary to avoid a false market in its securities where in HKSE's view there is or there is likely to be a false market in TTI's securities, as soon as reasonably practicable after consultation with HKSE.

For the purposes of determining whether certain information should be disclosed, the information set out above should be looked at independently rather than conjunctively.

2.b. Type of information to be disclosed and safe harbours

Inside Information

Inside information is information that:

- (a) is about TTI; or a shareholder or officer of TTI; or the listed securities of TTI or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of TTI but would if generally known to them be likely to materially affect the price of TTI's listed securities.

There are many events and circumstances that may affect the price of TTI's securities. Examples of such events or circumstances (which are not exhaustive) as set out in the "Guidelines on Disclosure of Inside Information" include:-

- changes in the performance, or the expectation of the performance of business;
- changes in financial condition, e.g. cashflow crisis;
- fundraising activities;
- restructuring, reorganizations and spin-offs that have an effect on the listed issuer's assets, liabilities, financial position or profits and losses;
- legal disputes and proceedings;
- changes in expected earnings or losses;
- withdrawal from or entry into new core business areas; and
- changes in a matter which was the subject of a previous announcement.

Safe Harbours

TTI may also be permitted to withhold disclosure of inside information under specified circumstances. The prescribed safe harbours are set out as follows:-

- (i) Disclosure is prohibited under HK law or would constitute a breach of court order or an enactment;
- (ii) Information relates to an incomplete proposal or negotiation;
- (iii) Information is a trade secret;
- (iv) Listed issuer (or its group members) receives liquidity support from an Exchange Fund or a central bank; and
- (v) Waiver granted by the SFC on an application by the listed issuer where it is prohibited by foreign court orders or legislation to disclose the information.

Immediate notice of material information

TTI will immediately notify the market by making an announcement to HKSE of any information concerning TTI that a reasonable person would expect to have a material effect on market activity in, and the prices of, TTI securities.

A reasonable person will be taken to expect information to have a material effect on the price or value of TTI securities if the information would, or would be likely to, influence a reasonable person who commonly invests in securities or other traded financial products in deciding whether or not to deal in the TTI shares. This type of information is “inside information”.

2.c. Management of disclosure and internal reporting process

Staff to notify potential inside information

TTI is deemed to have knowledge of any inside information if such information has, or ought reasonably to have, come to the knowledge of an officer of TTI in the course of performing his/her function as an officer of TTI; and that a reasonable person, acting as an officer of TTI, would consider the information is inside information in relation to TTI. An officer refers to a director, manager, secretary of, or any other person involved in the management of TTI.

In addition, under the “Guidelines on Disclosure of Inside Information”, every officer must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of the disclosure requirement. If a breach is attributable to the intentional, reckless or negligent conduct of any officer, these officers would also be personally liable.

Officers of TTI should ensure that they are familiar with the relevant rules and principles, in order to make their own judgments when considering how to comply with such disclosure obligations.

All TTI staff must follow the relevant reporting lines for giving notice of any potential “inside information” concerning TTI as soon as they become aware of it.

Staff may speak to their business unit head if they are in doubt as to whether information is potentially inside information or that individual's appropriate reporting line.

TTI's reporting lines then direct any potentially "inside information" which has been notified to the CFO in the first instance (as day-to-day team leader of the Disclosure Committee).

Internal disclosure guidelines

Internal disclosure guidelines have been prepared and provided to staff to assist staff in understanding what information may be inside information. Staff must obtain a copy of the current internal disclosure guidelines from the CFO. Amendments made to the internal disclosure guidelines will be communicated to staff by the CFO.

2.d. Assessing information for disclosure

CFO to make initial assessment

CFO will make an initial assessment of any notified potential "inside information" and must refer any such issues for further deliberation to the Disclosure Committee.

Disclosure Committee

The Disclosure Committee will:

- assess the materiality of information which is potentially "inside information" and will make that assessment on both qualitative and quantitative bases;
- consider whether any of the safe harbours as prescribed above are applicable in the circumstances; and
- determine the form and content of any required disclosure.

Inquiries will be made as considered appropriate to verify the accuracy and materiality of "inside information" and to ensure that company announcements are made as soon as reasonably practicable in a timely manner, are factual, do not omit material information and are expressed in a clear, balanced and objective manner that allows investors to assess the impact of the information when making investment decisions. For such purpose, "balance" requires the disclosure of both positive and negative information. The information contained in an announcement must also be accurate and complete in all material respects and must not be false or misleading as to a material fact, or false or misleading through the omission of a material fact.

Significant announcements

Any proposed announcements regarding a matter of strategic or financial "significance" for TTI, such as a significant transaction or relating to future prospects, will be referred by the CFO to the Chairman who will determine whether the relevant disclosure should be considered by the Audit Committee or the Board.

2.e. Process for disclosure

TTI will disclose “inside information” as soon as reasonably practicable, in the first instance, to HKSE. All announcements will be lodged with HKSE by the Authorized Representatives registered with HKSE or his/their delegate(s) as the Responsible Officer, following consultation with and approval by the Disclosure Committee as required.

Copies of company announcements will then be placed on TTI’s website.

TTI will not publicly release information that is required to be disclosed to HKSE (or which has been disclosed to HKSE) until such time as it has been cleared for publication.

CFO will oversee this process.

2.f. Authorised spokesperson

The only TTI staff authorised to make any public statement on behalf of, or attributable to, TTI are set out in internal disclosure guidelines.

2.g. Market speculation and rumours

Market speculation and rumours, whether substantiated or not, have the potential to impact upon TTI and may also result in HKSE requesting TTI to make disclosure in relation to that matter.

TTI’s general policy is not to respond to market speculation or rumours. However, TTI may issue a statement in relation to market speculation or rumours where TTI:

- considers that it has an obligation at that time to make a statement to the market about a particular matter; or
- is required to respond to a formal request from HKSE for the disclosure of information in accordance with the Listing Rules.

2.h. False market

If HKSE considers that there is or is likely to be a false market in TTI securities and asks TTI to give it information to correct or prevent a false market, TTI must give HKSE the information needed to correct or prevent the false market.

HKSE does not provide a definition of “false market”. However the offence of “false trading” under the SFO provides some guidance on what this means in practice, that is, if there is a false or misleading appearance of active trading in the issuer’s securities or futures contracts.

In addition, certain overseas stock exchanges, such as the ASX, provides the following guidance on its meaning:

“The entity has information that has not been released to the market and there is reasonably specific rumour or media comment in relation to the entity that has not been confirmed or clarified by an announcement by the entity to the market and there is evidence that the rumour or comment is having, or ASX forms the view that the rumour or comment is likely to have an impact, on the price of the entity’s securities.”

2.i. Trading halts

The Disclosure Committee will consider requesting a trading halt from HKSE to ensure the orderly trading of TTI's securities and to manage disclosure issues, if considered appropriate having regard to the particular circumstances.

2.j. Financial calendar

TTI will establish a calendar of regular disclosure to the market on its financial and operational results. The calendar, which shall be posted on the website, includes dates for the release of half year and full year results, other financial information, shareholder meetings and business briefings.

At these briefings and meetings:

- no inside information will be disclosed unless it has been previously or simultaneously released to the market; and
- if material inside information is inadvertently released, it will immediately be released to HKSE and placed on the TTI website.

2.k. External communications

TTI must not communicate material inside information to an external party except where that information has previously been disclosed to the market generally or is simultaneously disclosed.

Contact with analysts, fund managers and financial media is restricted to the CEO, the CFO and the President of Strategic Planning and any delegates nominated for that purpose.

If material information is inadvertently released, it will be immediately released to the market by disclosure to HKSE and placed on the TTI website.

Any presentation materials will also be placed on TTI's website as appropriate in the opinion of the Disclosure Committee.

2.l. Breaches

Failure to comply with this Policy may lead to a breach of legislation, the SFO or the Listing Rules, which may lead to civil or criminal penalties for directors and officers. Breaches of this Policy may lead to disciplinary action being taken, including dismissal in serious cases.

3. INVESTOR RELATIONS

3.a. Media (refer also to Media Relations in this Policy)

No announcement or press release is to be given to the media on matters which are of high public interest or which may materially affect TTI's share price without the prior approval of the Disclosure Committee and prior to informing HKSE or by publishing an announcement.

Any such press release or announcement is to be forwarded to the CFO for review by the Disclosure Committee at least 24 hours before the scheduled time for publication.

3.b. Analysts, fund managers and financial media

Contact with analysts, fund managers and financial media is to be restricted to no less than two of the following members: the CEO, the CFO and the President of Strategic Planning and any delegates nominated for that purpose. Any inquiries from analysts, fund managers and financial media are to be referred to the CFO in the first instance. Accurate minutes or tape recording of all such discussions shall be kept.

In no circumstances are any executives or employees other than those nominated above to enter into discussions with analysts/fund managers, whether generally or by way of briefings, without the prior knowledge of, and approval by the CFO. In particular, there is to be no pro-active contact with analysts.

3.c. Institutions

CFO is primarily responsible for identifying and contacting prospective institutional investors and undertaking briefings to these investors.

3.d. Operational support

The Business Unit Presidents / Managing Directors and other members of senior management should provide support to the Disclosure Committee on operational issues at the request of a Disclosure Committee member.

3.e. Electronic disclosure of announcements

All HKSE announcements are to be submitted by the Responsible Officer through the e-Submission System for publication on the HKSE website.

Any press or other public release which is of high public interest or which has the potential to materially affect TTI's share price is to be forwarded to the CFO at least 24 hours before publication.

4. MEDIA RELATIONS

4.a. Corporate

On major matters, the CEO should be the spokesman, with support and briefing material provided by the CFO and the President of Strategic Planning.

Routine enquiries will be handled by the CFO, or any delegates nominated for that purpose, who will consult with the Disclosure Committee and appropriate members of the executive team as required.

4.b. Business Units

Primary responsibility for media relations in the countries in which TTI has a significant market presence will reside with the President / Managing Director of the relevant country. These include but are not limited to China, North America, UK, Germany, France, and Australasia.

All media inquiries in these countries should be directed to the relevant President / Managing Director, unless the accountability has been specifically assigned, and with approval of the Disclosure Committee.

4.c. Operational Support

Regional and other senior business unit management should provide support to the media relations teams on operational matters at the request of a team member.

Reviewed and adopted by the Board on 18 March 2014.



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Guidelines on Disclosure of Inside Information

June 2012



In the course of preparing periodic and other structured disclosures

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Introduction

1. On 1 January 2013 ("Commencement Date"), amendments to the Securities and Futures Ordinance ("SFO") (Cap. 571) come into effect to provide for a new Part XIVA under the SFO giving statutory backing to one of the most important principles in the Rules Governing the Listing of Securities ("Listing Rules") on the Stock Exchange of Hong Kong Limited ("Stock Exchange"). The provisions under Part XIVA impose a general obligation of disclosure of price sensitive, or "inside" information by listed corporations ("corporations").
2. These Guidelines are published by the Securities and Futures Commission ("SFC") under section 399 of the SFO to assist corporations to comply with their obligations to disclose inside information under Part XIVA of the SFO. However, they are not an exhaustive examination of the disclosure obligations as set out in the SFO nor can they be relied upon as an authoritative legal opinion. The obligations to disclose inside information depend upon the facts of each case.
3. These Guidelines provide examples and discuss issues on particular situations to illustrate the SFC's views on the operation of the provisions as set out in the SFO. They do not have the force of law.
4. As the definition of the new term "inside information" in Part XIVA of the SFO is the same as that of "relevant information" used in section 245 in Part XIII of the SFO in connection with insider dealing, the Guidelines have quoted the decisions of the tribunals in Hong Kong with regard to the meaning of "relevant information". The decisions of the tribunals in relation to insider dealing, and "relevant information" are relevant for the purposes of determining what constitutes "inside information" and may assist in determining when an obligation to disclose information arises under the SFO. For the avoidance of doubt, the Guidelines are intended to assist listed corporations and their officers to fulfil their obligations under Part XIVA. As the Guidelines do not concern the provisions of Part XIII and Part XIV other than the definition of "relevant information", they have no application to the operation of Part XIII and Part XIV of the SFO.
5. Although the Guidelines summarise the key aspects of what has been viewed by the tribunals in Hong Kong as constituting "relevant information", it is important to recognise that the set of circumstances or events will not be the same in each case and every case turns on its own facts. Understanding the principles underlying the obligations will help listed corporations and their officers to comply with the disclosure requirements. This summary is not intended to be exhaustive, is included for guidance only, and may not represent the latest legal authority.
6. The term "inside information" is used in the legislation because the provisions are concerned with information that is known to an officer, or "insider", of a corporation but not generally known to the market. The term "inside information" is also used in a similar context in the securities regulations of the European Union.
7. The obligations to disclose inside information under Part XIVA of the SFO are separate and distinct from the disclosure requirements under the Listing Rules and those under the Codes on Takeovers and Mergers and Share Repurchases ("Takeovers Codes").

¹ Where depositary receipts are issued, the corporation whose shares in respect of which the depositary receipts are issued is the listed corporation for the purposes of Part XIVA of the SFO.



Background

8. The statutory requirements to disclose inside information are central to the orderly operation and integrity of the market and underpin the maintenance of a fair and informed market.
9. To comply with the obligations, corporations should consider their own circumstances when deciding whether any inside information arises and how it should be disclosed properly to the public. Disclosure should be made in a manner that provides for equal, timely and effective access by the public to the information disclosed.
10. To strike an appropriate balance between encouraging timely disclosure of inside information and preventing premature disclosure which might prejudice a corporation's legitimate interests, the SFO provides for appropriate Safe Harbours to permit a corporation to withhold the disclosure of inside information in specified circumstances. From one month before the Commencement Date, the SFC will provide a consultation service to assist corporations to understand how to apply the disclosure provisions. We will provide the consultation service initially for a period of 2 years and will then review whether it is necessary to continue the service for an additional period. We envisage that most questions will relate to the application of the Safe Harbours. The SFC is not in a position to judge whether in the circumstances of a particular corporation certain information is likely to materially affect the price of a corporation's listed securities, and accordingly, is not able to offer advice to a corporation on whether a particular piece of information is inside information.
12. In case of doubt, listed corporations are encouraged to consult the SFC, the contact details of which are available on the SFC website at www.sfc.hk.

What may constitute inside information?

13. Section 307A(1) of the SFO states that "inside information", in relation to a listed corporation, means specific information that –
 - (a) is about –
 - (i) the corporation;
 - (ii) a shareholder or officer of the corporation; or
 - (iii) the listed securities of the corporation or their derivatives; and
 - (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the corporation but would if generally known to them be likely to materially affect the price of the listed securities."
14. The definition of inside information is the same as that of "relevant information" used in section 245 of the SFO which applies to insider dealing. The term "relevant information" has been the subject of consistent and definitive interpretation by tribunals in Hong Kong over many years and those decisions will continue to offer guidance as to the meaning of the new term inside information.

15. Paragraphs 16 to 34 below summarise the key aspects of what has been viewed by tribunals as constituting "relevant information". A list of cases handled by the Insider Dealing Tribunal and the Market Misconduct Tribunal relevant to the interpretation of "relevant information" is set out in Appendix A. It is important to recognise that the set of factual circumstances or events will not be the same in each case. In particular, the circumstances in which insider dealings are regarded to have taken place would be different from the context in which the obligation to disclose may arise and thus the interpretative guidance available from these decisions may not apply. Nevertheless, understanding the principles underlying the obligations should help listed corporations and their officers to comply with the disclosure requirements. This summary is not intended to be exhaustive.
16. There are three key elements comprised in the concept of inside information. They are –
 - (a) the information about the particular corporation must be specific;
 - (b) the information must not be generally known to that segment of the market which deals or which would likely deal in the corporation's securities; and
 - (c) the information would, if so known be likely to have a material effect on the price of the corporation's securities.²

Inside information must be specific information

17. Inside information must be specific information. Specific information is information which has the following characteristics –
 - (a) The information is capable of being identified, defined and unequivocally expressed.
 - (b) The information may not be precise.It is not necessary that all particulars or details of the transaction, event or matter be precisely known. Information may still be specific even though it has a vague quality and may be broad which allows room, even substantial room, for further particulars⁴. For instance, information that a company is having a financial crisis would be regarded to be specific, as would contemplation of a forthcoming share placing even if the details are not known. However, specific information is to be contrasted with mere rumours, vague hopes and worries, and with unsubstantiated conjecture.⁵

Information concerning a company's affairs is sufficiently specific if it carries with it such particulars as to a transaction, event or matter, or proposed transaction, event or matter, so as to allow that transaction, event or matter to be identified and its nature to be coherently described and understood.³

² See p.34 of the IDT report dated 6 August 2009 on Harbour Ring International Holdings Limited
³ See p.58-59 of the IDT report dated 2 April 2004 and 8 July 2004 on Firstone International Holdings Limited
⁴ See p.235-236 of the IDT report dated 5 August 1995 on Public International Investments Ltd
⁵ See p.20-21 of the IDT report dated 6 September 2006 and 14 December 2006 on Asia Orient Holdings Limited

- (c) Information on a transaction contemplated or at a preliminary state of negotiation can be specific information but vague hopes and wishful thinking may not be specific information.

The fact that a transaction is only contemplated or under negotiation and has not yet been subjected to any formal or informal final agreement does not necessarily cause the information concerning that contemplated course of action or negotiation to be non-specific. However, a vague hope or wishful thinking that a transaction will occur or come to fruition does not amount to sufficient contemplation or preliminary negotiation of that transaction.

To constitute specific information, a proposal, whether described as under contemplation or at a preliminary stage of negotiation, should have more substance than merely being at the stage of a vague exchange of ideas or a "fishing expedition". Where negotiations or contacts have occurred, for these to be considered specific information there should be a substantial commercial reality to such negotiations which goes beyond a merely exploratory testing of the waters and which is at a more concrete stage where the parties intend to negotiate with a realistic view to achieving an identifiable goal.⁶

Inside information must be information that is not generally known

18. By its very nature, inside information is information which is known only to a few and not generally known to the market, the market being defined as those persons who are accustomed or would be likely to deal in the listed securities of that corporation.⁷ In some instances, the investor group or class who are accustomed or would be likely to deal in the listed securities of that corporation may be a large one, comprising not only professional dealers and investors with elaborate networks for obtaining information, but also those of the investing public including small investors who deal in the particular category of stocks to which the corporation belongs.⁸

19. Even though there might be rumours, media speculation or market expectation as to an event or a set of circumstances of a corporation, these cannot be equated with information which is generally known to the market. There is a clear distinction between actual knowledge of the market about a hard fact which is properly disclosed by the corporation and speculation or expectation of what might have happened about a corporation which obviously requires proof.⁹

20. It is not uncommon that information relating to a corporation is found in media comments, analyst research reports or electronic subscription databases, which may consist of published historical information, market commentary, speculation, rumour or even information leaked from various sources. However, press speculation, reports and rumours in the market cannot be automatically taken to be information generally known to the market, even though in some cases the media reports might have a wide circulation.¹⁰

⁶ See p.60-61 of the IDT report dated 2 April 2004 and 8 July 2004 on Firstone International Holdings Limited

⁷ See p.70 of the IDT report dated 10 April 2000 and 15 June 2000 on Henry Holdings Limited

⁸ See p.237-238 of the IDT report dated 5 August 1995 on Public International Investments Ltd

⁹ See p.258 of the IDT report dated 5 August 1995 on Public International Investments Ltd

¹⁰ See p.57-58 of the IDT report dated 22 February 1990 on Life Holdings Limited

- 21.

In deciding whether information is generally known by virtue of being the subject of media comments, covered in analysts' reports or carried on news service providers, a corporation should consider not only how widely the information has been disseminated but also the accuracy and completeness of the information disseminated and the reliance that the market can place on such information. A corporation should consider in particular whether –

- (a) these sources contain the full information that would need to be disclosed as required under section 307B(3) so that there are no material omissions which may make the disclosure false or misleading (see paragraphs 39 and 43);
- (b) the market will realise that the information in these sources reflects the information known to the corporation; and
- (c) the information will be regarded as speculation or opinion of persons outside the corporation.

Where the information known to the market is incomplete or there are material omissions or there are doubts as to its bona fides, such information cannot be regarded as generally known and accordingly full disclosure by the corporation is necessary.

- 22.

Notwithstanding the above, a piece of information is regarded as generally known if it consists of readily observable matter such as general external developments e.g. changes in commodity prices, foreign exchange rates and interest rates, outbreak of pandemic diseases and occurrence of natural disasters or general public information e.g. disclosure of interests by directors and shareholders pursuant to Part XV of the SFO.

Inside information is information that is likely to have a material effect on the price of the listed securities

23. Corporations with potential inside information need to assess promptly whether or not the information is likely to have a material price effect. It would not be sufficient to meet the test of "likely to have a material price effect" if the information is likely to cause a mere fluctuation or slight change in price. For information to constitute inside information, there must be likelihood that the information would cause a change in the price of sufficient degree to amount to a material change.¹¹

24. Generally information that is likely to have a material effect on the price of the listed securities is important information concerning a corporation. But the converse is not necessarily true. Some important information or information of great interest concerning a corporation may excite comment but may not be information that would be likely to have a material effect on the price of the securities. Similarly, some important information may be of a neutral or mixed nature that may influence some investors to buy and others to sell, but which would not be likely to affect the price either up or down to a material degree.¹²

25. Information that is likely to affect the price is information which may well materially affect the price. Put another way, it is more likely than less likely that the price will be affected materially. The further element of the statutory test concerns materiality.

¹¹ See p.58-59 of the IDT report dated 22 February 1990 on Life Holdings Limited

¹² See p.20 of the IDT report dated 10 March 2005 on HKCB Holding Company Ltd & Hong Kong China Ltd

It may be that what is a material price increase in one case may not necessarily be a material price increase in another case. It all depends on the share and the circumstances obtaining at the time.¹³

26. The standard by which materiality is to be judged is whether the information on the particular share is such as would influence persons who are accustomed or would be likely to deal in the share, in deciding whether or not to buy or whether or not to sell that share. A movement in price which would not influence such an investor may be termed immaterial. Price is, after all, to a large extent determined by what investors do. If generally known, it is the impact of the information on persons who are accustomed or would be likely to deal in the share, and thus on price, which has to be judged.¹⁴

27. The test of whether the information is likely to materially affect the price is a hypothetical one in that it has to be applied at the time the information becomes available. The exercise in determining how the general investor would behave if he was in possession of that piece of information has necessarily to be an assessment at the time the disclosure was to take place.¹⁵

28. It is clear that fixed thresholds of price movements or quantitative criteria alone are not a suitable means of determining the materiality of a price movement. For example, the volatility of "blue-chip" securities is typically less than that of small, less liquid stocks and "blue-chip" securities usually move within ranges narrower than those of small stocks. While a certain percentage movement for a small company stock might be seen immaterial, the same (or even lower) percentage movement if applied to a large company stock might be considered material by virtue of the stock's nature and size. In determining whether a material effect is likely to occur, the following factors should be taken into consideration –

- (a) the anticipated magnitude of the event or the set of circumstances in question in the context of the totality of the corporation's activity;
- (b) the relevance of the information as regards the main determinants of the price of the listed securities;
- (c) the reliability of the source;
- (d) market variables that affect the price of the listed securities in question (These variables could include prices, returns, volatilities, liquidity, price relationships among securities, volume, supply, demand, etc.).

29. Whilst the actual magnitude of the share movement once the information becomes publicly known indicates the extent of probable change the information might have brought about was it known to the market at the time, this evaluation is by no means conclusive. It is possible that the actual price change on the day the information is released is moderate because of the mixed impact arising from the information released and other extraneous factors or considerations. It is possible that a material price movement may have been pre-empted by the fact that the share price has already declined substantially in the period leading up to the release of the information. Care

¹³ See p.41 of the IDT report dated 5 March 1997 on Hong Kong Parkview Group Limited

¹⁴ See p.41 of the IDT report dated 5 March 1997 on Hong Kong Parkview Group Limited (the terminology of which is adjusted to reflect the terminology used in Part XIVA)

¹⁵ See p.19-20 of the IDT report dated 10 March 2005 on HKCB Holding Company Ltd & Hong Kong China Ltd

must be taken to ascertain whether and how the investors' response once the information is stripped of its confidentiality and becomes public knowledge is attributable to the information released and / or affected by other events or considerations.¹⁶

Management accounts

30. In the ordinary course of running the business, directors and officers are likely to possess information concerning the corporation not generally known to the market. It is therefore necessary to distinguish between information about day-to-day activities, and on the other hand, significant events and matters which are likely to change a corporation's course or indicate that there has been a change in its course.¹⁷

31. Generally the mere knowledge of the content of draft annual or interim accounts prior to their publication or internal management accounts would not be specific information. However, knowledge of substantial losses or profits made by a corporation even though the precise magnitude is not yet clear would be specific information and accordingly may be inside information. The facts and figures in every case will be different and every case turns on its own facts. To constitute inside information the difference between the results which the market might predict and the results the directors or officers know must be significant.¹⁸

32. As stated by the Insider Dealing Tribunal in Chevalier (OA) International Limited, "what percentage is deemed to be "material" or "significant" or "substantial" in an insider dealing case may vary and it would be dangerous to lay down any hard and fast or arithmetic test"¹⁹. Examples of relevant facts and key aspects which have been viewed by tribunals as constituting "material" in some insider dealing cases are set out in Appendix B.

33. In assessing what results the market might predict for a corporation, account must be taken of information previously disclosed by the corporation including past results, statements and any forecasts issued by the corporation. Reference should also be made to profit projections by analysts and the availability of data and information about the corporation in financial journals and publications from which a sophisticated investor may logically deduce the corporation's results. However, it would be inadvisable to consider these research reports or financial publications to be information generally known to the market because the market means "the persons who are accustomed or would be likely to deal in the listed securities of the corporation" which might include smaller investors who are unable to perform or follow professional analyses.²⁰

34. Although there might be a substantial amount of financial and economic information circulated in the market, it is not unusual that profit forecasts made by different analysts vary considerably and media reports contain inconsistencies. As such analysts' reports, financial journals and media reports often fall short of providing information which is accurate, complete and not misleading or deceptive. Accordingly, a corporation should not normally treat these as information that is generally known and disclosure of any inside information would be necessary.

¹⁶ See p.59-60 of the IDT report dated 22 February 1990 on Lefe Holdings Limited

¹⁷ See p.72-73 of the IDT report dated 10 April 2000 and 15 June 2000 on Hannay Holdings Limited

¹⁸ See p.35-36 of the IDT report dated 23 July 1998 of Ngai Hing Hong Company Limited

¹⁹ See p.73 of the IDT report dated 10 July 1997 on Chevalier (OA) International Limited

²⁰ See p.62-70 of the IDT report dated 10 July 1997 on Chevalier (OA) International Limited



Examples of possible inside information concerning the corporation

35. There are many events and circumstances which may affect the price of the listed securities of a corporation. It is vital for the corporation to make a prompt assessment of the likely impact of these events and circumstances on its share price and decide consciously whether the event or the set of circumstances constitutes inside information that needs to be disclosed. The following are common examples of such events or circumstances where a corporation should consider whether a disclosure obligation arises.
- Changes in performance, or the expectation of the performance, of the business;
 - Changes in financial condition, e.g. cashflow crisis, credit crunch;
 - Changes in control and control agreements;
 - Changes in directors and (if applicable) supervisors;
 - **Changes in directors' service contracts;**
 - Changes in auditors or any other information related to the auditors' activity;
 - Changes in the share capital, e.g. new share placing, bonus issue, rights issue, share split, share consolidation and capital reduction;
 - Issue of debt securities, convertible instruments, options or warrants to acquire or subscribe for securities;
 - Takeovers and mergers (corporations will also need to comply with the Takeovers Codes that include specific disclosure obligations);
 - Purchase or disposal of equity interests or other major assets or business operations;
 - Formation of a joint venture;
 - Restructurings, reorganizations and spin-offs that have an effect on the corporation's assets, liabilities, financial position or profits and losses;
 - Decisions concerning buy-back programmes or transactions in other listed financial instruments;
 - Changes to the memorandum and articles (or equivalent constitutional documents);
 - Filing of winding up petitions, the issuing of winding up orders or the appointment of provisional receivers or liquidators;
 - Legal disputes and proceedings;
 - Revocation or cancellation of credit lines by one or more banks;

- Changes in value of assets (including advances, loans, debts or other forms of financial assistance);
- Insolvency of relevant debtors;
- **Reduction of real properties' values;**
- Physical destruction of uninsured goods;
- New licenses, patents, registered trademarks;
- Decrease or increase in value of financial instruments in portfolio which include financial assets or liabilities arising from futures contracts, derivatives, warrants, swaps protective hedges, credit default swaps;
- Decrease in value of patents or rights or intangible assets due to market innovation;
- Receiving acquisition bids for relevant assets;
- Innovative products or processes;
- Changes in expected earnings or losses;
- Orders received from customers, their cancellation or important changes;
- Withdrawal from or entry into new core business areas;
- Changes in the investment policy;
- Changes in the accounting policy;
- Ex-dividend date, changes in dividend payment date and amount of dividend; changes in dividend policy;
- **Pledge of the corporation's shares by controlling shareholders; or**
- Changes in a matter which was the subject of a previous announcement.

36.

However, the above list of events or circumstances should not be treated as definitive in terms of meaning that the information in question, if disclosed, will have a material price effect. It is a *non-exhaustive and purely indicative* list of the type of events or circumstances which might constitute inside information. The fact that an event or a set of circumstances does not appear on the list does not mean it cannot be inside information. Nor does inclusion in the list mean that it automatically is inside information. It is the materiality of the information in question that needs to be considered. Information which is likely to materially affect the price of the securities should be disclosed.

37.

Moreover, corporations should take into account that the materiality of the information in question will vary widely from entity to entity, depending on a variety of factors such as the entity's size, its course of business and recent developments, the market sentiment about the entity and the sector in which it operates. For example, what may constitute material information to one party to a contract may be immaterial to another party.

make the information misleading. The information must be presented in a clear and balanced way, which requires equal disclosure of both positive and negative facts.

There are circumstances where confidentiality has not been maintained and the corporation is not able to make an announcement, be it a full announcement or a holding announcement. In such cases, the corporation should consider applying for a suspension of trading in its securities until disclosure can be made. The fact that trading in the securities of the corporation is suspended in no way lessens the obligations of a corporation to disclose inside information to the public as soon as reasonably practicable.

44.

Section 307C(1) of the SFO states that –

"A disclosure under section 307B must be made in a manner that can provide for equal, timely and effective access by the public to the inside information disclosed."

45.

Section 307C(2) of the SFO states that –

"Without limiting the manner of disclosure permitted under subsection (1), a listed corporation complies with that subsection if it has disseminated the inside information required to be disclosed under section 307B through an electronic publication system operated by a recognized exchange company for disseminating information to the public."

46.

To fulfil the obligation to disclose to the public, a corporation should disclose inside information to the market as a whole so that all users of the market have equal and simultaneous access to the same information.

47.

Section 307C(2) provides a corporation with certainty that disclosure by way of the electronic publication system operated by the Stock Exchange meets its obligation to ensure that the public has equal, timely and effective access to the inside information it discloses. Accordingly the SFC would expect a corporation to use this channel for dissemination of inside information. In addition, under the Listing Rules, a corporation is required to publish announcements of inside information through the electronic publication system of the Stock Exchange.

48.

A corporation may implement additional means to disseminate information such as issuing a press release through news or wire services, holding a press conference in Hong Kong and / or posting an announcement on its own website; however, using such means of themselves are unlikely to be sufficient to satisfy the obligation to ensure equal, timely and effective access by the public to the information.

Responsibility for compliance and management controls

49.

Section 307B(2) of the SFO states that –

"For the purposes of subsection (1), inside information has come to the knowledge of a listed corporation if –

- (a) *information has, or ought reasonably to have, come to the knowledge of an officer of the corporation in the course of performing functions as an officer of the corporation; and*

Similarly, cancellation of a credit line by a bank which is material to an entity facing liquidity problems may be immaterial to another entity which is highly liquid.

When and how should inside information be disclosed?

38.

Section 307B(1) of the SFO states that –

"A listed corporation must, as soon as reasonably practicable after any inside information has come to its knowledge, disclose the information to the public."

39.

Section 307B(3) of the SFO states that –

"Without limiting subsection (1), a listed corporation fails to disclose the inside information required under that subsection if –

- (a) *the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact; and*
- (b) *an officer of the corporation knows or ought reasonably to have known that, or is reckless or negligent as to whether, the information disclosed is false or misleading as to a material fact, or is false or misleading through the omission of a material fact."*

40.

A corporation must disclose any inside information to the public "as soon as reasonably practicable" unless the information falls within any of the Safe Harbours as provided in the SFO. For this purpose, "as soon as reasonably practicable" means that the corporation should immediately take all steps that are necessary in the circumstances to disclose the information to the public. For example, if a corporation faces an event that might significantly affect its business and operations, the necessary steps which the corporation should immediately take prior to the issue of a public announcement may include ascertaining sufficient details, internal assessment of the matter and its likely impact, seeking professional advice where required and verification of the facts.

41.

Before the information is fully disclosed to the public, the corporation should ensure that the information is kept strictly confidential. Where the corporation believes that the necessary degree of confidentiality cannot be maintained or that confidentiality may have been breached, it should immediately disclose the information to the public.

42.

If a corporation needs time to clarify the details of, and the impact arising from, an event or a set of circumstances before it is in a position to issue a full announcement to properly inform the public, the corporation should consider issuing a "holding announcement" which –

(a) details as much of the subject matter as possible; and

(b) sets out reasons why a fuller announcement cannot be made.

The corporation should make a full announcement as soon as reasonably practicable.

43.

The information contained in an announcement must not be false or misleading as to a material fact, or false or misleading through the omission of a material fact. To comply with this requirement, the information must be accurate and complete in all material respects and not be misleading or deceptive, and there are no omissions that would

55. In ensuring compliance with the obligation to disclose inside information in relation to any material changes in the corporation's financial condition, in the performance of its business or in its expectation as to its performance, the Board should establish and maintain appropriate and effective reporting procedures which ensure a timely and structured flow of relevant financial and operational data.

56. It is ultimately the responsibility of the corporation's officers to ensure that the corporation complies with the disclosure obligation. Officers are obliged to take all reasonable measures to ensure proper safeguards exist to prevent the corporation from breaching the statutory disclosure requirement, which would include the creation and maintenance of appropriate internal control and reporting systems. If a breach on the part of the corporation is attributable to the failure to take all reasonable measures to ensure that proper safeguards exist by, or to any intentional, reckless or negligent conduct of, any officers, the officers concerned would also be liable.

Officers' liability

57. An officer would only have liability under section 307G(2)(a) if (i) the listed corporation is in breach of a disclosure requirement; and (ii) the officer's intentional, reckless or negligent conduct resulted in the breach.

58. In the situation where an officer has actual knowledge of information which should have been disclosed the meaning of "intentional", "reckless" and "negligent" can be summarised as follows –

- (a) The requirement for conduct to be intentional means that there must be evidence that the officer intended the corporation not to disclose information that was required to be disclosed under a disclosure requirement.
- (b) The requirement for conduct to be reckless means that the officer was aware that there was a risk that by not disclosing the information the corporation may breach a disclosure requirement and it was in the circumstances known to him unreasonable to take the risk.

(c) The requirement for conduct to be negligent means the officer failed to exercise such care, skill or foresight as a reasonable officer in his situation would exercise to ensure or cause the corporation to comply with a disclosure requirement.

Assuming a corporation has implemented reasonable measures to prevent a breach, an officer who acts in good faith and in accordance with all his fiduciary duties without actual knowledge of the information or involvement in the corporation's breach is unlikely to be personally liable under any of the elements discussed above.

Obligations of non-executive directors

59. Given the unitary nature of a board and the indivisible legal duties of all directors, both executive directors and non-executive directors should exercise due care, skill and diligence to fulfil their roles and obligations. However, as acknowledged in the

(b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation."

51. Section 307G of the SFO states that –

"(1) Every officer of a listed corporation must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement in relation to the corporation.

(2) If a listed corporation is in breach of a disclosure requirement, an officer of the corporation –

(a) whose intentional, reckless or negligent conduct has resulted in the breach; or

(b) who has not taken all reasonable measures from time to time to ensure that proper safeguards exist to prevent the breach,

is also in breach of the disclosure requirement."

52. Although the disclosure obligation rests with the corporation, the corporation is a legal entity which cannot act on its own. The corporation can only act through its "controlling mind", which encompasses its officers. Therefore, under section 307B(2), the corporation is considered to have knowledge of the inside information when (a) one or more of its officers knows or ought reasonably to have known that information in the course of performing functions as officers of the corporation and (b) a reasonable person, acting as an officer of the corporation, would consider that the information is inside information in relation to the corporation. In applying the test under subsection 307B(2)(b), a reasonable officer would consider whether the information is inside information based on his knowledge of all relevant facts and circumstances at the time; such information cannot be judged in hindsight taking account of factors that were not reasonably known at the time.

53. According to Part 1 Schedule 1 of the SFO, an "officer", in relation to a corporation, means "a director, manager or secretary of, or any other person involved in the management of, the corporation". As a general principle, one must look to the object of the legislation and the context to determine the meaning of the term "manager". In the context of Part XIVA, in considering whether a person is a "manager", the person's actual responsibilities are more important than the person's formal title. A "manager" normally refers to a person who, under the immediate authority of the board, is charged with management responsibility affecting the whole of the corporation or a substantial part of the corporation. A person is normally regarded to be "involved in the management of the corporation" if the person discharges the role of a "manager". A "secretary" means a company secretary which has the meaning ascribed to it under the Companies Ordinance (Cap. 32).

54. The corporation should establish and maintain appropriate and effective systems and procedures to ensure any material information which comes to the knowledge of one or more of its officers be promptly identified, assessed and escalated for the attention of the Board of directors to decide about the need for disclosure. This would require a timely and structured flow to the Board of information arising from the development or occurrence of events and circumstances so that the Board can decide whether disclosure is necessary.



Corporate Governance Code issued by the Stock Exchange²¹, non-executive directors normally are not involved in the daily operations of a corporation and would usually rely on a corporation's internal controls and reporting procedures to ensure that, where appropriate, material information is identified and escalated to the board as a whole. It is for this reason that the board's responsibility for establishing and monitoring key internal control procedures is of particular significance for non-executive directors as this is an area where they are more likely to be directly involved. It is therefore more likely that sections 307G(1) and 307G(2)(b) will be of direct relevance to them.

Reasonable measures

60. Under sections 307G(1) and 307G(2)(b), officers must take all reasonable measures from time to time to ensure that proper safeguards exist to prevent a breach of a disclosure requirement. In this respect, officers, including non-executive directors, are responsible to ensure that appropriate systems and procedures are put in place and reviewed periodically to enable the corporation to comply with the disclosure requirements. Officers with an executive role would also have a duty to oversee the proper implementation and functioning of the mechanisms and ensure that any material deficiencies are detected and resolved in a timely manner. In developing the systems and procedures, boards should take into account the particular needs and circumstances of the corporation. The following provides examples of measures which should be considered when establishing systems and procedures. These are not hard and fast rules and should not be taken as a definitive or exhaustive list. It would depend on the specific circumstances to determine whether there was a breach of section 307G(1) or section 307G(2)(b) and the absence of some of the examples below would not be conclusive.

- (a) Establish controls for monitoring business and corporate developments and events so that any potential inside information is promptly identified and escalated.
- (b) Establish periodic financial reporting procedures so that key financial and operating data is identified and escalated in a structured and timely manner.
- (c) Maintain and regularly review a sensitivity list identifying factors or developments which are likely to give rise to the emergence of inside information.
- (d) Authorize one or more officer(s) or an internal committee to be notified of any potential inside information and to escalate any such information to the attention of the board.
- (e) Maintain an audit trail of meetings and discussions concerning the assessment of inside information.
- (f) Restrict access to inside information to a limited number of employees on a need-to-know basis. Ensure employees who are in possession of inside information are fully conversant with their obligations to preserve confidentiality.

²¹ See Listing Rule Appendix 14 - A.6.2. The functions of non-executive directors should include: (a) participating in board meetings to bring an independent judgement to bear on issues of strategy, policy, performance, accountability, resources, key appointments and standards of conduct; (b) taking the lead where potential conflicts of interests arise; (c) serving on the audit, remuneration and other governance committees, if invited; and (d) scrutinising the corporation's performance in achieving agreed corporate goals and objectives, and monitoring performance reporting.



- (g) Ensure appropriate confidentiality agreements are in place when the corporation enters into significant negotiations.
- (h) Disseminate inside information via the electronic publication system operated by the Stock Exchange before the information is released via other channels, such as the press, wire services or posting on the corporation's website.
- (i) Designate a small number of officers or executives with the appropriate skills and training to speak on behalf of the corporation when communicating with external parties such as the media, analysts or investors.
- (j) Develop procedures to review presentation materials in advance before they are released at analysts' or media briefings.
- (k) Record briefings and discussions with analysts or the media afterwards to check whether any inside information has been inadvertently disclosed.
- (l) Develop procedures for responding to market rumours, leaks and inadvertent disclosures.
- (m) Provide regular training to relevant employees to help them understand the corporation's policies and procedures as well as their relevant disclosure duties and obligations.
- (n) Document the disclosure policies and procedures of the corporation in writing and keep the documentation up to date.
- (o) Publish the disclosure policies and procedures of the corporation so that the media and other stakeholders understand the corporation's statutory disclosure obligations.

Safe Harbours that allow non-disclosure of inside information

61. To strike an appropriate balance between requiring timely disclosure of inside information and preventing premature disclosure which might prejudice a corporation's legitimate interests, the SFO provides for Safe Harbours which permit a corporation to withhold disclosure of inside information under specified circumstances. Section 307D of the SFO sets out the Safe Harbours –
- "(1) A listed corporation is not required to disclose any inside information under section 307B if and so long as the disclosure is prohibited under, or would constitute a contravention of a restriction imposed by, an enactment or an order of a court.
 - (2) A listed corporation is not required to disclose any inside information under section 307B if and so long as –
 - (a) the corporation takes reasonable precautions for preserving the confidentiality of the information;
 - (b) the confidentiality of the information is preserved; and
 - (c) one or more of the following applies –

the Independent Commission Against Corruption, except for disclosure matters which are carved out from that prohibition. If a corporation or any of its officers is subject to an investigation by the ICAC and such investigation constitutes inside information, disclosure would not be required to the extent that it is prohibited statutorily. Nonetheless, disclosure of other information which would not contravene the relevant statutory requirement is still required.

The Safe Harbour under section 307D(1) does not apply to information the disclosure of which is prevented by contract. A corporation cannot justify not making the disclosure by virtue of the terms of an agreement which require the parties entering into the agreement not to disclose information about the agreement or the transaction that is the subject of the agreement. The terms and conditions of a contract do not override the statutory requirement.

Where disclosure is withheld in other circumstances

64. To rely on a Safe Harbour under section 307D(2), a corporation must satisfy each of subsections (a) and (b) and one paragraph of subsection (c). We discuss subsections (a) and (b) first and deal with subsection (c) below at paragraph 71.

Preservation of confidentiality

65. The requirements of the Safe Harbour under subsections 307D(2)(a) and (b) are that the corporation must take reasonable measures to preserve the confidentiality of the information and that the confidentiality of the information is preserved. In this regard, the corporation needs to ensure that knowledge of information is restricted to those who need to have access to it and that recipients of the information are aware that the information is confidential and recognise their obligations to maintain the information confidential. Where the information has not been kept confidential or there has been a leak, whether intentionally or inadvertently, these conditions will not be fulfilled and any Safe Harbour will no longer apply.

66. If there are unexplained changes to the share price of the corporation's securities or if there are comments about the corporation in the media or analysts' reports, this may indicate that confidentiality has been lost. It would be more likely to indicate that confidentiality has been lost where comments about the corporation are significant and credible and the details are reasonably specific or the market moves in a way that appears to be referable to such comments.

67. The requirement to preserve confidentiality under subsection 307D(2)(a) is not breached if information is given to another person who needs the information to fulfil the person's duties and functions in relation to the corporation and provided that the person owes the corporation a duty of confidentiality. The information should be given on the basis that restricts its use to the stated purpose and the recipient should recognise the resulting obligations. The categories of persons who may receive the information include the following –

- (a) the corporation's advisers and advisers of other persons involved in the matter in question;
- (b) persons with whom the corporation is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or placees of the securities of the corporation);

- (i) the information concerns an incomplete proposal or negotiation;
- (ii) the information is a trade secret;
- (iii) the information concerns the provision of liquidity support from the Exchange Fund established by the Exchange Fund Ordinance (Cap. 66) or from an institution which performs the functions of a central bank (including such an institution of a place outside Hong Kong) to the corporation or, if the corporation is a member of a group of companies, to any other member of the group;

(iv) the disclosure is waived by the Commission under section 307E(1), and any condition imposed under section 307E(2) in relation to the waiver is complied with."

(3) For the purposes of subsection (2) –

- (a) a listed corporation has not failed to take reasonable precautions for preserving the confidentiality of any inside information only because the corporation has, in the ordinary course of business, disclosed the information to any person who –
 - (i) requires the information to perform the person's functions in relation to the corporation; and
 - (ii) by virtue of any enactment, rule of law, contract, or the articles of association of the corporation, is under a duty to the corporation not to disclose the information to any other person; and

(b) in those circumstances, the confidentiality of the information is to be regarded as having been preserved.

(4) Despite subsection (2)(b), a listed corporation is not in breach of a disclosure requirement in respect of inside information the confidentiality of which is not preserved if –

- (a) the corporation has taken reasonable measures to monitor the confidentiality of the information; and
- (b) the corporation discloses the information in accordance with section 307C as soon as reasonably practicable after the corporation becomes aware that the confidentiality of the information has not been preserved."

Where disclosure is prohibited by law

62. By virtue of section 307D(1), no statutory disclosure is required for information where disclosure would breach an order made by a Hong Kong court or any provisions of other Hong Kong statutes. For example, under section 30 of the Prevention of Bribery Ordinance (Cap. 201), it is unlawful for a person to disclose details of an investigation of



- (c) the corporation's lenders;
- (d) the corporation's major shareholders; and
- (e) any government department, statutory or regulatory body or authority (e.g. SFC, Stock Exchange).

68. A corporation should note that the wider the group of recipients of inside information the greater the likelihood of a leak. If, during the period in which the corporation has decided to withhold disclosure, any inside information is released from any source, however inadvertent, the Safe Harbour no longer applies and public disclosure by the corporation is required.

69. If a corporation has availed itself of any of the Safe Harbours, it should keep under review whether confidentiality of the information has been maintained. If confidentiality has been lost, the Safe Harbour no longer applies and the corporation must disclose the inside information as soon as reasonably practicable. The corporation should normally prepare a draft announcement (albeit a holding announcement) to be kept updated ready for publication if it becomes apparent that confidentiality has not been maintained. In addition, the corporation should consider recording the reasons for relying on the Safe Harbour and the steps taken in preserving and monitoring confidentiality.

70. Where confidentiality has been lost and hence the Safe Harbour under section 307D(2)(b) falls away, if a corporation proves that it has taken reasonable measures to monitor the confidentiality and that it has made disclosure as soon as reasonably practicable once it becomes aware of the leakage, the corporation shall not be regarded to be in breach of the disclosure requirement.

Categories of information

71. The requirement of the Safe Harbours under subsection 307D(2)(c) is that the information falls into one or more of the categories as prescribed in paragraphs (i) to (iv) of that subsection, if the information is not, or if it loses that character, then the requirement is not satisfied.

72. **Where information concerns an incomplete proposal or negotiation.** No statutory disclosure is required for information concerning incomplete proposals or negotiations. The following are examples –

- when a contract is being negotiated but has not been finalised;
- when a corporation decides to sell a major holding in another corporation;
- when a corporation is negotiating a share placing with a financial institution; or
- when a corporation is negotiating the provision of financing with a creditor.

73. Where a corporation in financial difficulty and is in negotiations with third parties for funding, the Safe Harbour provides relief from disclosure in respect of the negotiations and the status of progress of those negotiations. However the Safe Harbour does not allow the corporation to withhold disclosure of any material change in its financial



position or performance which led to the funding negotiations and, to the extent that this is inside information, should be the subject of an announcement.

74. **Where information concerns a trade secret.** No statutory disclosure is required for information that is a trade secret. A trade secret generally refers to proprietary information owned by a corporation –

- (a) used in a trade or business of the corporation;
- (b) which is confidential (i.e. not already in the public domain);
- (c) which, if disclosed to a competitor, would be liable to cause real or significant harm to the corporation's business interests; and
- (d) the circulation of which is confined to a limited number of persons on a need-to-know basis.

Trade secrets may concern inventions, manufacturing processes or customer lists. For example, a corporation with a new pharmaceutical product may withhold disclosure until after completing the registration of the patent for the product. However, a corporation cannot regard the commercial terms and conditions of a contractual agreement or the financial information of a company as trade secrets as these are not proprietary information or rights owned by the corporation.

75. **Where information concerns the provision of liquidity support.** No statutory disclosure is required for information concerning the provision of liquidity support from the Exchange Fund of the Government or from an institution which performs the functions of a central bank, including one located outside Hong Kong. The liquidity support may be provided to the corporation or, if the corporation is a member of a group of companies, to any other member of the group. The entity receiving the liquidity support is normally a banking institution which may be registered in or outside Hong Kong.

76. **Where disclosure is waived by the SFC.** There are circumstances where disclosure of the information is prohibited under or would constitute a contravention of a restriction imposed by –

- (a) legislation of a place outside Hong Kong;
- (b) an order of a court exercising jurisdiction under the law of a place outside Hong Kong;
- (c) a law enforcement agency of a place outside Hong Kong; or
- (d) a government authority of a place outside Hong Kong in the exercise of a power conferred by legislation of that place,

especially where the corporation or certain of its subsidiaries are incorporated or operate outside Hong Kong. In these cases, the SFC may, on application by a corporation, grant an exemption to waive disclosure of the information if it considers appropriate to do so. An exemption granted may be unconditional or subject to specified conditions. No statutory disclosure is required for information for which an



exemption has been granted and any conditions imposed in relation to the exemption have been compiled with.

77. An application to the SFC to exempt disclosure of the information must be made in writing. The application should contain a clear explanation of why the exemption is requested in the circumstances and include all relevant details and information necessary for the SFC to consider the matter. Where applicable, the application should include an appropriate legal opinion to set out all relevant issues. The application should be accompanied by a fee which is payable pursuant to the Securities and Futures (Fees) Rules.
78. The application would be considered by an SFC executive committee that would make a first instance decision after considering all relevant facts and circumstances. If the waiver is rejected by the executive committee, the corporation may request the decision be reviewed by a committee appointed by the Commission for the purposes of handling reviews ("Review Committee"). A request for such a review must be made by the applicant to the Review Committee within 2 business days after the refusal of the waiver. Any member of the SFC who was involved in the first instance decision will not participate in the deliberations of the Review Committee in considering the review. A decision made by the Review Committee will be final and binding.

Guidance on particular situations and issues

Dealing with media speculation, market rumours and analysts' reports

79. Corporations are generally under no obligation to respond to media speculation, market rumours or analysts' reports. However, if a corporation has inside information and relies on a Safe Harbour to withhold disclosure subject to the preservation of confidentiality, the existence of media speculation, market rumours or analysts' reports about the corporation might indicate that matters intended to be kept confidential have leaked. In particular, where media speculation, market rumours or analysts' reports are largely accurate and the information underlying the speculation, rumours or reports constitutes inside information, it is likely that confidentiality has been lost, thus the Safe Harbour falls away and public disclosure is required. Accurate and extensive rumours and media speculation, even where included in analysts' reports, are unlikely to represent information that is generally known and accordingly disclosure by the corporation is necessary.
80. If a corporation does not have inside information but media reports or market rumours carry false or untrue information, the corporation is not obliged to make further disclosure under the SFO. This notwithstanding, under the Listing Rules, the Stock Exchange may require a corporation to provide disclosure or clarification beyond that required by the SFO, for example the issue of a negative announcement to confirm that a rumour is false. The fact that the corporation issues an announcement as requested by the Stock Exchange for the purposes of the Listing Rules would not in itself imply that the corporation has failed to meet the disclosure obligation for inside information under the SFO. If a corporation wishes to respond to rumours, the corporation should do so by making a formal announcement, rather than making a remark to a single publication or by way of a press release. This will ensure that the whole market is equally and properly informed.
81. A corporation should ensure that no inside information is given when answering an analyst's questions or reviewing an analyst's draft report. It is inappropriate for a



question to be answered, or draft report corrected, if doing so involves providing inside information. When analysts visit the corporation, care should be taken to ensure they do not obtain inside information.

82. In some circumstances, a corporation does not have inside information but an analyst's report contains errors or misinterpretations by, for example, using out of date data, or misreading or misinterpreting historical information of the corporation especially where the corporation's business is complex and / or comprised of many different divisions. In such cases, unless the corporation knows of inside information relevant to the analyst's report which has not been disclosed, strictly speaking the corporation is not obliged to make a correction or clarification under the SFO. It may nevertheless be appropriate, as a matter of good practice, for the corporation to clarify historical information and correct any factual errors in the analyst's assumptions which are significant to the extent that they may mislead the market, provided any clarification is confined to drawing the analyst's attention to information that has already been made available to the market. If the corporation becomes aware of inside information that would correct a fundamental misconception in the report, public disclosure of such information would be necessary. Nonetheless, a corporation is under no legal obligation to track reports prepared by third parties.
83. No analyst, investor or journalist should receive a selective release of inside information.

Internal matters

84. A corporation may consider internal issues in its day-to-day running which may involve matters of supposition or of an indefinite nature and where premature disclosure of the information may be more misleading than informative. Such information is not specific information. This might include, for example, the development of a new technology, the planning of a major redundancy program or the possibility of a substantial price cut in its products. Consideration of these matters with hypotheses or scenarios would not normally constitute inside information. However, once these matters become specific or definite, they may constitute inside information.
85. Similarly, a corporation may from time to time generate internal reports for management purposes. For example, an internal marketing research report may indicate that a new product to be launched by a competitor may pose a significant challenge that needs to be addressed as one possible outcome could be a significant loss of sales. The mere possibility that without a successful response the corporation could face a serious decline in profits does not automatically trigger an obligation to disclose. However, if after time the competitor's new product has significantly reduced sales, then the fact of the change in trading performance, shown by regular performance monitoring, may constitute inside information.

Corporation listed on more than one exchange

86. If the securities of a corporation are listed on more than one stock exchange, the corporation should synchronise the disclosure of inside information as closely as possible in all markets in which the securities are listed. In general, the corporation should ensure that inside information is released to the public in Hong Kong at the same time it is given to the overseas markets. If inside information is released to another market when the market in Hong Kong is closed, the corporation should issue an announcement in Hong Kong before the Hong Kong market opens for trading.

87. If necessary, the corporation may request a suspension of trading in its securities pending the issue of the announcement in Hong Kong.

Publications by third parties

88. Publications by industry regulators, government departments, rating agencies or other bodies may affect the price of, or market activity in, the securities of the corporation. If such publications when they become public knowledge are expected to have significant consequences directly affecting the corporation this may be inside information that should be disclosed by the corporation with an assessment of the likely impact of those events.

External developments

89. Corporations are not expected to disclose general external developments, such as foreign currency rates, the market price of commodities or changes in a taxation regime. However, if the information has a particular impact on the corporation this may be inside information that should be disclosed by the corporation with an assessment of the likely impact of those events.

In the course of preparing periodic and other structured disclosures

90. A corporation may be required in a number of circumstances to prepare disclosure in prescribed structured formats pursuant to the relevant laws and listing rules. For example, regular periodic financial reports, circulars and listing documents. In the course of preparing these prescribed disclosure documents, a corporation may become aware of inside information previously unknown to the directors and officers, or information in respect of a matter or financial trend which may have crystallised into inside information.

91. A corporation should be aware that inside information which requires disclosure may emerge during the preparation of these disclosures, in particular, periodic financial information, and that the corporation cannot defer releasing inside information until the prescribed document is issued. Separate immediate disclosure of the information is necessary.

Appendix A

List of cases handled by the Insider Dealing Tribunal and the Market Misconduct Tribunal

The following is a list of insider dealing cases handled and published by the Insider Dealing Tribunal and the Market Misconduct Tribunal as at 31 May 2012. Details of these cases can be found on the Insider Dealing Tribunal website at <http://www.idt.gov.hk/> and the Market Misconduct Tribunal website at <http://www.mmt.gov.hk/>

Insider Dealing Tribunal

- 1) Founder Holdings Limited – Report of the IDT dated 5 Nov 2009
- 2) Harbour Ring International Holdings Limited (currently known as Hutchison Harbour Ring Limited) – Report of the IDT dated 6 Aug 2009
- 3) Vanda Systems and Communications Holdings Limited – Report of the IDT dated 26 Mar 2007
- 4) Tingyi (Cayman Islands) Holding Corp – Report of the IDT dated 11 Jan 2007
- 5) Dransfield Holdings Limited (later renamed China Merchants DiChan (Asia) Limited; now known as Pearl Orient Innovation Limited) – Report of the IDT dated 22 Dec 2006
- 6) Siu Fung Ceramics Holdings Limited – Report dated 18 Mar 2004 (1st Report), 25 Oct 2004 (2nd Report), 14 Mar 2006 (3rd Report) & 2 Nov 2006 (4th Report)
- 7) Asia Orient Holdings Limited – Report of the IDT dated 8 Sep 2006 & 14 Dec 2006
- 8) Cheong Ming Investments Limited (formerly Cheong Ming holdings Limited) – Report of the IDT dated 3 Aug 2006 & 14 Sep 2006
- 9) Easy Concepts International Holdings Limited (subsequently renamed as 21CN CyberNet Corporation Limited and known as CITIC 21CN Company Limited) and Easyknit International Holdings Limited – Report of the IDT dated 19 Jan 2006
- 10) Gilbert Holdings Limited – Report of the IDT dated 11 May 2005 & 15 Dec 2005
- 11) HKCB Holding Company Ltd & Hong Kong China Ltd (now renamed Lippo China Resources Ltd) – Report of the IDT dated 10 Mar 2005 (1st Part), 9 Aug 2005 (2nd Part) & 20 Mar 2008 (3rd Part)
- 12) Chinney Alliance Group Limited – Report of the IDT dated 24 Dec 2004
- 13) Firststone International Holdings Limited – Report of the IDT dated 2 Apr 2004 & 8 Jul 2004
- 14) Stime Watch International Holding Limited – Report of the IDT dated 6 Dec 2003 & 14 Feb 2003
- 15) China Apollo Holdings Limited – Report of the IDT dated 31 Jan 2002 & 6 Jun 2002

Appendix B

Examples of previous insider dealing cases: materiality

Case	Relevant facts	Factors relevant to materiality
China Apollo Holdings Limited (IDT report dated 31 Jan 2002 & 6 Jun 2002)	<ul style="list-style-type: none"> On 7 Dec 1995, before the listing, the Company published a prospectus which included its actual business results to 30 Jun 1995 and a profit forecast for the year ended 31 Dec 1995 amounting to not less than \$190 million. It was listed on 19 Dec 1995. On 21 May 1996, the Company announced its final results to the year ending 31 Dec 1995 which disclosed a profit attributable to shareholders of \$192 million. The figure included an exceptional gain of \$15.8 million made on the sale of a long-term investment held by a major subsidiary pursuant to a sale and purchase agreement dated 26 Dec 1995. Without the inclusion of the exceptional gain, the Company would not meet the profit forecast in the prospectus. The prospectus, however, had stated that the profit forecast did not include any exceptional items in the calculation and that the directors did not expect any exceptional items to arise during the year to 31 Dec 1995. At the time of the issue of the prospectus, only the directors were in possession of information relating its results up to and including Oct 1995. It was apparent that sales deteriorated in the second half of 1995, rendering the attainment of profit forecast of not less than \$190 million impossible. 	<ul style="list-style-type: none"> The tribunal accepted the evidence of the non-expert and expert witnesses. On the evidence, the investors' response was wholly attributable to the information released on 21 May 1996. The tribunal had no doubt that had the market known of the Company's poor trading results for the 2nd half of 1995 before that date, this information would have been likely to have had a material impact on the price of its shares, both on the flotation and in subsequent trading up to 21 May 1996. It was certainly information, which had it been known during the relevant time would have been likely to cause more than a mere fluctuation, or a slight change in the Company's share price.
Hanny Holdings Limited (IDT report dated 10 Apr 2000 & 15 Jun 2000)	<ul style="list-style-type: none"> On 3 Jan 1994, the Company published its interim results for the 6 months ended 30 Sep 1993 with an increased profit attributable to shareholders of \$82.36 million, compared to \$60.08 million for the same period in 1992. The announcement expressed a bullish sentiment on the Company's performance for the year ended 31 Mar 1994. But, it was subsequently discovered from draft accounts that the year end results for 	<ul style="list-style-type: none"> The tribunal accepted the accuracy of the expert witness's evidence. The tribunal had no doubt that if the information of what was really happening at the Company from about 11 Jul 1994 onwards had been shared with the investing public it would have brought about a material drop in the value of the Company's shares. The very nature and extent of the

¹ See p.47 of the IDT report of China Apollo Holdings Limited dated 31 January 2002 & 6 June 2002
² *Ibid*

- 16) Indesen Industries Company Limited (now known as Central China Enterprises Limited) – Report of the IDT dated 2 Nov 2001
 - 17) Hanny Holdings Limited (formerly known as Hanny Magnetics (Holdings) Limited) – Report of the IDT dated 10 Apr 2000 & 15 Jun 2000
 - 18) Chinese Estates Holdings Limited – Report of the IDT dated 6 May 1999
 - 19) Ngai Hing Hong Company Limited – Report of the IDT dated 23 Jul 1998
 - 20) Chee Shing Holdings Limited – Report of the IDT dated 30 Mar 1998 & 21 Jun 2001
 - 21) Emperor (China Concept) Investments Limited – Report of the IDT dated 8 Jun 1998
 - 22) Hong Kong Worsteds Mills Limited (now renamed as Beijing Development (H.K.) Limited) – Report of the IDT dated 18 Nov 1997 & 21 Jan 1998
 - 23) Chevalier (OA) International Limited – Report of the IDT dated 10 Jul 1997
 - 24) Hong Kong Parkview Group Limited – Report of the IDT dated 5 Mar 1997
 - 25) Yanion International Holdings Limited – Report of the IDT dated 29 Oct 1996
 - 26) Public International Investments Ltd – Report of the IDT dated 5 Aug 1995
 - 27) Success Holdings Limited – Report of the IDT dated 24 Jun 1994
 - 28) Lafe Holdings Limited – Report of the IDT dated 22 Feb 1990
 - 29) International City Holdings Limited – Report of the IDT dated 27 Mar 1986 (Vols. I & II)
- Market Misconduct Tribunal
- 30) Chaoda Modern Agriculture (Holdings) Limited – Report of the MMT dated 26 Apr 2012
 - 31) ABC Communications (Holdings) Limited – Report of the MMT dated 20 Oct 2011
 - 32) Mirabell International Holdings Limited – Report of the MMT dated 23 Jul 2010
 - 33) China Overseas Land and Investment Limited – Report of the MMT dated 8 Jul 2009
 - 34) Sunny Global Holdings Limited – Report of the MMT dated 21 Jul 2008

Case	Relevant facts	Factors relevant to materiality
	<p>- If the public wanted to estimate the final profit for year 1994/95, they would probably double the half yearly figure and arrive at a figure of about \$40 million which represents an improvement over the 1993/94 figure of about 14% whereas the financial controller of the Company knew that the unaudited accounts for 11 months of the year in fact represented an improvement in profit over the previous year of about 105%.</p> <p>- Due to adjustments, the annual figure which was subsequently published on 18 Sep 1995 showed a profit of \$60.9 million (an improvement of over 70%).</p>	<p>material to constitute relevant information.³</p>
Chevalier (OA) International Limited (IDT report dated 10 Jul 1997)	<p>- From the date of its incorporation in 1988 until the financial year 1992/93, the Company had always made a profit; however, the size of its profits got smaller each year from \$45.9 million in 1989 to \$4.5 million in 1992.</p> <p>- On 13 Jan 1993, the Company announced its half yearly loss of \$16.9 million (up to 30 Sep 1992).</p> <p>- The Company's monthly management account showed the following accumulated losses in the subsequent months after the first half year – up to Oct 1992: \$24.66 million; Nov 1992: \$28.91 million; Dec 1992: \$35.60 million; Jan 1993: \$43.90 million (i.e. the half yearly loss of \$16.9 million doubled in the space of 3 months and increased by a factor of 2.8 in 5 months). These monthly management accounts were circulated to the directors of the Company on a monthly basis from 16 Jan 1993 to 1 Apr 1993.</p> <p>- On 12 Aug 1993, the Company announced its final figures for the financial year 1992/93. For the year ended 31 Mar 1993, the Company incurred a total loss of \$84.5 million.</p> <p>- The share price of the Company fell from 40 cents at the close on 11 Aug 1993 to</p>	<p>What does "materially" mean? Synonyms include considerably substantially, significantly. Authority on the meaning is sparse.</p> <p>- When gauging materiality it is obviously more helpful to look at percentages than actual cents. In the accountancy profession a movement up or down of 5% or more is deemed to be material.¹⁰</p> <p>- What percentage is deemed to be "material" or "significant" or "substantial" in an insider dealing case may vary and it would be dangerous to lay down any hard and fast or arithmetic test.¹¹</p> <p>- At the end of the day the tribunal can only hazard an educated guess as to how the market would have reacted.¹²</p>

⁸ *Ibid*, see p.38
⁹ See p.72 of the IDT report of Chevalier (OA) International Limited dated 10 July 1997
¹⁰ *Ibid*
¹¹ *Ibid*, see p.73
¹² *Ibid*

Case	Relevant facts	Factors relevant to materiality
	<p>- the year ended 31 Mar 1994 were in fact facing a significant loss.</p> <p>- One of the earliest of these accounts (bearing a date of 11 Jul 1994) showed that just one company in the Group was looking at a loss of over HK\$100 million compared to a profit of HK\$18 million at the end of the previous year.</p> <p>- On 2 Sep 1994, the Company announced its year end results showing that the profit decreased by 76%.</p>	<p>Company's reversal of fortunes makes that obvious.⁹</p> <p>- If further proof was needed, the reaction to the Company's results when they were formally published on 2 Sep 1994 was sufficient. Despite a major fall in value over the previous weeks (share price dropped by 33% over 5 weeks from 13 Jul to 22 Aug 1994), when the Company's year-end position was spelt out in black and white the drop in value continued. Between 2 and 7 Sep 1994, share price dropped another 15% over 5 trading days.⁴</p>
Ngai Hing Hong Company Limited (IDT report dated 23 Jul 1998)	<p>- On 21 Jul 1995, the then financial controller of the Company (who was also the company secretary and an executive director) purchased 1 million shares of the Company.</p> <p>- At the time of his purchase, the financial controller possessed the following information which was not in public possession:</p> <ul style="list-style-type: none"> • The Company's consolidated accounts for the 9 months up to 31 Mar 1995 showed a total profit of approximately \$47.1 million. • The Company's management accounts for 11 months up to 31 May 1995 showed a profit before adjustments of approximately \$71.4 million. <p>- Information in the public domain at that time was limited to knowledge that:</p> <ul style="list-style-type: none"> • The interim results for the first 6 months of the year showed a profit of approximately \$20.8 million. • The annual result for the previously year 1993/94 showed a profit of approximately \$35 million. 	<p>- The facts and figures in every case will be different and every case turns on its own facts.⁵</p> <p>- To constitute relevant information, the difference between the results which the public might predict and the results which the insider knows must be significant. If it were not significant the share price would not be materially affected.⁶</p> <p>- To arrive at a decision in each case the tribunal must make a judgement from the combined effect of the figures themselves, the expert evidence concerning those figures and the insider's own testimony either admitting or explaining those figures.⁷</p> <p>- Based on the totality of the evidence coupled with the absence of any submissions to the contrary the tribunal was satisfied that the difference between what the financial controller of the Company knew and the likely investors of the Company knew at the material time was sufficiently significant and</p>

³ See p.100 of the IDT report of Hamny Holdings Limited dated 10 April 2000 & 15 June 2000
⁴ *Ibid*
⁵ See p.36 of the IDT report of Ngai Hing Hong Company Limited dated 23 July 1998
⁶ *Ibid*
⁷ *Ibid*

Case	Relevant facts	Factors relevant to materiality
<p>Lafe Holdings Limited (IDT report dated 22 Feb 1990)</p>	<p>31 cents on 25 Aug 1993 (over 10 trading days).</p> <p>- As at early May 1993, the alleged insider would have known that the final loss for the year ended 31 Mar 1993 would be not less than \$54 million, taking into consideration the previous trend, adjustments and other factors, before the announcement of the final figure. The question to be determined was whether this loss was "material".</p>	
<p>- The Company reported a profit of \$22.13 million for the half year ended 30 Jun 1988 in its interim report dated 22 Sep 1988.</p>	<p>- The Company's internal management account revealed that the accumulated net profit for the year continued to rise to reach a peak of \$28.7 million on 31 Aug 1988. However, beginning with September to the end of that year, the Company incurred losses – for Sep: \$2.78 million; for Oct: \$5.9 million; for Nov: \$2.35 million and for Dec: \$7.77 million, making a total loss of \$18.8 million for the 4 months ended Dec 1988.</p>	<p>- Thus information that would be likely to cause a mere fluctuation or a slight change in price would not be sufficient; there must be the likelihood of change of sufficient degree in any given circumstances to amount to a material change.¹³</p> <p>- The share price declined steeply from \$0.94 to \$0.53 i.e. almost 44% during the period from 1 Mar to 5 May 1989. It is perhaps not surprising, taking into account the overall decline from \$1.10 in mid-Feb 1989, that when the results were actually released on 5 May 1989, they did not have a major impact and the price fell some 5 cents in the ensuing week, i.e. about 10%, which may nevertheless be thought by no means immaterial. However, had the results come out at the times the sales by the chairman were procured, the fall could have well been greater.¹⁴</p>
<p>- The then chairman (who was also the managing director and principal shareholder) of the Company possessed the information of the management accounts for Dec 1988 in the middle of Mar 1989.</p>	<p>- In the period between 24 Nov 1988 and 5 May 1989, the chairman sold 99.3% of his shareholding (i.e. 175.13 million shares of the Company). In particular, 161.82 million shares were sold between 1 Mar 1989 and 5 May 1989.</p>	<p>- Having regard to all the evidence and the foregoing considerations the tribunal was satisfied that both the information in the monthly accounts for Sep, Oct and Nov 1988 that losses had occurred in those months, and the information that the total losses for the last 4 months of 1988 amounted to 18.8 million, revealed by the Dec accounts, was each on its own likely to produce a material change, i.e. a substantial fall, in the</p>
<p>- The results for the year ended Dec 1988 were published on 5 May 1989.</p>		

¹³ See p.58-59 of the IDT report of Lafe Holdings Limited dated 22 February 1990

¹⁴ *Ibid.*, see p.58-60

Case	Relevant facts	Factors relevant to materiality
		<p>Company's share price, if it had become generally available during the period ending 5 May 1989 and beginning 1 Mar 1989 or even earlier.¹⁵</p>

¹⁵ *Ibid.*, see p.62

Withdrawn on 1 January 2013 in light of the Rule changes consequential on the statutory backing to issuers' continuing obligation to disclose inside information

Guide on disclosure of price-sensitive information

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Introduction

1. The principal function of The Stock Exchange of Hong Kong Limited (the “Exchange”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, is to provide a fair, orderly and efficient market for the trading of securities. To this end, the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Main Board Rules”) and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited (the “GEM Rules”) (collectively, the “Listing Rules”) require issuers to make, among other things, timely public disclosure of price-sensitive information¹. Further, all disclosure of information must be made in such a way that it does not place any person in a privileged dealing position and allows time for the market to price the concerned security to reflect the latest available information.

2. The disclosure required under the Listing Rules is only the minimum mandatory standard. In order to promote fairness, transparency, accountability and responsibility, which are the core principles of good corporate governance, directors should consider the issuers’ own circumstances when deciding whether any information is material and should be disclosed properly to the public. Disclosure by issuers should be aimed at providing shareholders and the public with appropriate data and information on a timely and even basis, and not at merely meeting the minimum regulatory requirements. Timely disclosure of accurate and quality information is in the issuer’s interest for investors often give premium ratings to the most transparent companies.

3. This guide is intended to help issuers and their directors fulfil their obligations under the Listing Rules while allowing them to actively inform the market of company developments. This guide does not form part of the Listing Rules and does not in any way amend or vary an issuer’s obligations under the Listing Rules, nor does it remove the need for issuers to make their own judgment as to what is price-sensitive information and when disclosure is required. In case of doubt, issuers are encouraged to consult with the Exchange. The principles and elaboration in this guide reflect some of the criteria that the Exchange will consider in its interpretation of the Listing Rules to determine whether certain information is price-sensitive.

¹ See paragraph 2 of Appendix 7 of the Main Board Rules (the “Listing Agreement”) and Rule 17.10 of the GEM Rules

Summary

4.

The guiding principles and criteria in disclosing price-sensitive information are summarised in this paragraph, and explained in more detail in the paragraphs that follow:

- (a) Information which is expected to be price-sensitive should be announced promptly² after it becomes known to a director or senior management of the issuer and/or is the subject of a decision by the directors or senior management of the issuer.
- (b) Until an announcement in relation to such information is made, directors of issuers must ensure that such information is kept strictly confidential.
- (c) Where it is felt that the necessary degree of security cannot be maintained or that security may have been breached, an announcement must be made.
- (d) If price-sensitive information is inadvertently divulged to outside parties or it is believed that such information may have been inadvertently divulged, the issuer must immediately issue an announcement so that the relevant information is disseminated to the market as a whole.
- (e) Information should be disclosed to the market as a whole and all users of the market have simultaneous access to the same information. It is important that price-sensitive information should not be divulged selectively outside the issuer and its advisers in such a way as to place in a privileged dealing position any person or class or category of persons.
- (f) Price-sensitive information may include positive and negative information.

² See definition for "promptly" in paragraph 10

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What is "price-sensitive information"?

Under paragraph 2 of Appendix 7 of the Main Board Rules (the "Listing Agreement") and rule 17.10 of the GEM Rules, an issuer shall keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:

- (a) is necessary to enable them and the public to appraise the position of the group
- (b) is necessary to avoid the establishment of a false market in its securities
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.

However, it is important to note that in determining whether certain information is price-sensitive or otherwise, one should look at the information set out in (a) to (c) independently rather than conjunctively.

6.

An issuer may face unexpected and significant events and there are many events which can affect prices and market activity. It is thus vital for the issuers to make a prompt assessment of the likely impact of these events on their share price/ activities and decide consciously whether the relevant information would be price-sensitive and need to be disclosed. If necessary, issuers should request a suspension in the trading of its securities until a formal announcement can be made. Some common examples of such events include:

- regularly recurring matters (such as financial results and dividends);
- exceptional matters (such as acquisitions, realisations transactions with connected persons);
- signing an important contract;
- entering into a significant joint venture;
- fund-raising exercises;
- comments on the prospects for future earnings or dividends;
- release of any projected profits of the group by issuers or their directors;
- entering into an agreement for the issue of options convertible into securities;
- a large foreign exchange loss;
- major market upheaval in the industries, countries or regions where the issuer has significant operations or transactions;

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- premature removal of auditors before end of their term in office;
- cancellation of an agreement which was previously the subject of an announcement;
- resignation of chief executive;
- the issuer being aware that its auditors will issue a qualified report on its results;
- any change of accounting policy that may have a significant impact on the accounts; or
- events beyond the control of the issuer and is of material significance to the issuer's business, operations or financial performance.

7. However, no definitive list can be given. What may be price-sensitive information to one party to a contract may be immaterial to the counterparty. A fund-raising that may be material to an issuer facing liquidity problems may be immaterial to the same company in better times. Later in this guide examples of situations are discussed to reflect some of the criteria that the Exchange will consider in its interpretation of the Listing Rules. It is important to note that "price-sensitive information" includes potentially price-sensitive information. Thus, references in this guide to "price-sensitive information" should be construed accordingly.

8. Deciding on what information is price-sensitive is a matter of judgement. In considering whether the decision or information is price-sensitive, directors should make reference to paragraph 5.

9. The Listing Rules seek to ensure the efficient functioning of the market through timely and accurate public disclosure of price-sensitive information. They also seek to ensure that any such disclosure must be made to the market generally (and not just to a section of the public). Paragraph 2 of the Listing Agreement and rule 17.10 of the GEM Rules impose an obligation on issuers to keep the Exchange, their shareholders and other holders of their listed securities informed, as soon as reasonably practicable, of any price-sensitive information relating to the issuer's group. This is often referred to as the "general disclosure obligation".

When and how should price-sensitive information be disclosed?

10. The guiding principle is that information which is expected to be price-sensitive should be announced promptly after it becomes known to a director or senior management of the issuer and/or is the subject of a decision by the directors or senior management of the issuer. In cases where a decision by the directors or senior management of the issuer is pending or in cases of incomplete negotiations, issuers should refer to the guidelines set out in paragraphs 15 to 17. For this purpose, "promptly" means as soon as reasonably practicable after the senior management of the issuer learns (or when any reasonable issuer should have been aware) that the information is both material and non-public. Until such an announcement is made, the directors must ensure that such information is kept strictly confidential. Where it is felt that the necessary degree of security cannot be maintained or that security may have been breached, an announcement must be made.

11. The general disclosure obligation will be satisfied by the issuer publishing the relevant information in the newspapers by means of a paid announcement in one Chinese language and one English language newspaper or other means and manner as stipulated in the Listing Rules.

12. Issuers may consider implementing additional means of broad communication such that the news will be disseminated to the shareholders and the public in a timely and uniform manner. Such means might include a press release through widely disseminated news or wire services and/or directly sent to international and local media, an announcement of a conference of which the public has notice and may have personal or electronic access, or direct email or fax to shareholders whose address is known. Posting the announcement on an issuer's website is an appropriate action, but cannot be regarded of itself as an announcement of information.

Unusual movements in price or trading volume

13. The Exchange will usually contact an issuer if it notices unusual movements in the price or trading volume of its securities, or in response to press reports or market rumours which may affect market activity in or the price of its securities. In those circumstances, the issuer must promptly respond to any enquiries from the Exchange and, if appropriate, issue a statement authorised by the board as to whether the issuer is aware of any matter or development that is or may be relevant to the unusual price movement or trading volume of its listed securities (including any negotiations or discussions in relation to a price-sensitive matter).

Establishing a communications policy and procedure

14. The systematic dissemination of price-sensitive information is greatly assisted by having a communications policy and procedure in place. In particular:

- (a) while the board is generally responsible for the proper dissemination of price-sensitive information, the actual implementation is usually delegated to one or more executive directors and/or other authorised senior executives of the issuer. A procedure should be put in place to ensure that the information to be disclosed does not constitute unpublished price-sensitive information. Such procedure may include clearance with a compliance officer before disclosure of the information. The board of directors of the issuer should approve the procedure before it is implemented;
- (b) responsibility for communication with parties outside the issuer should be clearly defined. Specific directors or senior officers who are aware of the issuer's business and the relevant regulatory requirements should be assigned for such purpose and all communication should be made through such directors or officers. Other directors and/or staff should be prohibited from communicating information unless they are nominated;
- (c) issuers should consider making their internal policies on communication known outside the company. This could be a useful tool to assist issuers in withstanding pressure to disclose prematurely confidential price-sensitive information;
- (d) the directors of an issuer should put in place appropriate procedures to keep price-sensitive information confidential until a formal announcement is made. Information must not be allowed to leak (to selected groups; or otherwise) in order to "test" the market. If confidentiality cannot be maintained, or is in fact breached, the directors of the issuer have a responsibility to notify the Exchange and, if necessary, request a suspension in the trading of its securities until a formal announcement is made; and
- (e) where appropriate, issuers should consult their professional advisers who can assist in determining whether information is price-sensitive.

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Guidance on particular situations and issues

Incomplete negotiations

15. Issuers are sometimes confronted with the problem of how long to keep an issue confidential and what constitutes the proper time for its release. The overriding principle is that information which is expected to be price-sensitive should be announced promptly³ after it becomes known to a director or senior management of the company and/or it is the subject of a decision by the directors or senior management of the issuer. Until it is released, it is essential to maintain confidentiality. Issuers should consider implementing procedures to maintain the confidentiality of information such as: the use of codenames in correspondence, the use of private fax lines and e-mail accounts; limiting dissemination of the information to those who "need to know", and reminding parties involved of the need to keep all such information strictly confidential.

16. If negotiations or discussions regarding a potentially price-sensitive matter are extended to include more than a small group of people or if it becomes difficult to ensure the confidentiality of the information, an announcement should be made as soon as practicable.

17. If negotiations have reached a delicate stage or major elements have not been finalised, the issuer should consult the Exchange as soon as possible. It may be necessary for the securities to be suspended from trading pending a formal announcement.

Inadvertent dissemination of information

18. If an issuer becomes aware that price-sensitive information has inadvertently been given to a third party, it should immediately issue an announcement disclosing the relevant information and, if necessary, request a suspension in the trading of its securities pending a formal announcement.

Sharing of information amongst board members

19. There may be circumstances where one director has information about a price-sensitive information but does not disclose it to the rest of the board members. Directors should have an understanding between themselves that information on business developments or otherwise that may be price-sensitive be shared with each other and an announcement should be made if such information is considered to be price-sensitive.

3 See definition for "promptly" in paragraph 10

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Profit forecasts

If an issuer has made a public forecast and subsequently becomes aware that any of the assumptions upon which the forecast is based may not be correct, or that the outcome will be materially different from the forecast figure, an announcement should be made as soon as possible. In such an announcement, the issuer should state the likely impact of the incorrect assumption on the profit forecast, the extent to which any intervening event will affect the profit, or how the actual outcome will differ from the original forecast.

Profit warning statement

Where an issuer becomes aware that its results may be significantly worse than generally accepted market expectation, the issuer should publish an announcement "warning" investors of the likely impact.

The annual report and general meeting

Issuers are encouraged to communicate with investors. An issuer may reinforce its corporate messages and provide indicators of its future direction through its annual report, or through the Chairman's address at the annual general meeting.

Arrangements must be made for any price-sensitive information that is to be discussed at the meeting to be announced simultaneously as described in this guide.

Questions from analysts and correction of analysts' forecasts

Issuers should have their own policy on the extent to which analysts' questions should be answered. Issuers should decline to answer analysts' questions where individually or cumulatively the answers would provide unpublished price-sensitive information. Directors should resist pressure from analysts to provide or comment on data that may involve the dissemination of unpublished price-sensitive information.

Where any information is wrongly interpreted by analysts and is materially incorrect, issuers should ask the analysts to correct it immediately.

Draft reports from analysts

Under normal circumstances, issuers should make no comment on an analyst's financial projections or opinions. If an analyst sends an issuer a draft report for its comments the issuer can, of course, refuse to respond. Where the report

contains inaccurate information already in the public domain or not price-sensitive, issuers should inform the analyst for there is no advantage to any party having inaccurate information being circulated. If an issuer is aware of unpublished price-sensitive information that would correct a fundamental misconception in the report, it should consider making public disclosure of such data and at the same time correcting the report.

Conduct of meetings with analysts

Some issuers are concerned that they may be misinterpreted or mistakenly accused of providing price-sensitive information following meetings with analysts. Such risk can be reduced by having appropriate internal procedures. These procedures could, for example, include ensuring that more than one company representative and the compliance officer, if any, are present during these meetings and that accurate records of all discussions are kept. Alternatively, issuers could consider opening up such meetings to the press and the public, or announcing in advance the fact of an analysts' meeting and, where price-sensitive information is to be made public, publishing at the same time the information to be disclosed as required by the Listing Rules.

Issuers should also be aware of the possibility of analysts obtaining price-sensitive information during visits to the issuer's premises. Employees meeting the analysts during the visit should be briefed as to the extent and nature of information that can be communicated (see paragraph 14 above).

Questions from journalists

Relationships with the press and other media, though often contributing to a well-informed market, need particularly careful management in instances where price-sensitive information is involved. In the case of inaccurate reporting, the issuer should consider clarifying the situation by issuing an announcement and, if necessary, seeking a suspension of trading in the company's securities until the announcement is made.

When confronted with questions by journalists about rumours circulating in the market, issuers should be prepared to give a "no comment" answer where journalists are pressing for unannounced price-sensitive information. However, issuers are reminded that, to be credible, "no comment" statements must be used consistently and must be maintained. Where sufficient price-sensitive information has been leaked for the reported story to be broadly accurate, an issuer should ensure that an announcement is made to guarantee that the correct information is widely available. This is preferable to attempting to refute or play down the story by making counter-comments to sections of the press or by writing a letter to or granting an interview with the press in question. Issuers will find it helpful to have established internal procedures for handling these queries (see paragraph 14 above).

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Issuers are reminded that it is contrary to the principle of fair disclosure to release negative news by way of press release in weekend newspapers or on public holidays in an attempt to soften its impact. Disclosure of price-sensitive information must be made in accordance with the Listing Rules.

Dealing in the issuer's shares

32.

Directors must also not deal in the relevant securities at any time when they are in possession of unpublished price-sensitive information⁴.

Making parties "insiders"

33.

At certain times, issuers may need to give information in confidence to, for example, prospective financiers, potential business partners, underwriters or other parties with whom they are negotiating. Before a meeting at which price-sensitive information is to be given, an established procedure should be followed unless the relationship with the participants is automatically one of confidentiality. The relevant party should be told that, if he attends the meeting, he must keep the relevant information strictly confidential and that he will not be able to deal in the issuer's securities before the information is made public. He should give consent to being made an "insider" and this should be recorded. No one should be made an insider without his consent or for a longer period than necessary.

Employees

34.

Employees may have access to unpublished price-sensitive information. Some employees have regular access to price-sensitive information because of their duties. Employees must be made aware of the need at all times to keep confidential all unpublished price-sensitive information given to them. Issuers should have a policy for employees such as limiting their access to price-sensitive information and providing information to employees on a "need-to-know" basis.

35.

Increasingly, issuers publish "in-house" publications or publish information on its intranet. Issuers must ensure that their "in-house" publications of personal presentations to employees do not inadvertently include unpublished price-sensitive information.

⁴ There are other dealing restrictions contained in the Listing Rules, see "Model Code for Securities Transactions by Directors of Listed Companies", Appendix 10 of the Main Board Rules and "Securities transactions by directors", Rules 3.40 to 3.59 of the GEM Rules.

Takeovers and mergers

36.

Issuers which are or may become involved in a takeover or merger, should also have regard to the Code on Takeovers and Mergers when considering the content and timing of announcements. In particular, an announcement may be required where the target company is the subject of rumour or speculation about a possible offer or where negotiations between the offeror and the target are about to be extended to include more than a very restricted number of people. In all cases of doubt, the Securities and Futures Commission should be consulted and the Exchange informed.

Announcements by third parties

37.

Announcements by industry regulators, government departments and other bodies may affect the share price of an issuer or market activity in its shares. If such announcement is expected to have a particularly significant impact on an issuer, an announcement should be made by the issuer providing the issuer's view on the impact of the relevant announcement.

Issuer listed on more than one exchange

38.

If the securities of an issuer are listed on more than one stock exchange, the issuer should co-ordinate the release of information so that the Exchange is simultaneously informed of any information released to any such other exchanges and that such information is released to each of the markets at the same time. If a price-sensitive announcement is made in another market while the Hong Kong market is closed, the issuer should ensure that a corresponding announcement is published in Hong Kong before the Hong Kong market opens for trading, and, if necessary, request a suspension of trading of its securities on the Exchange pending the publication of the announcement in Hong Kong.

The Internet

39.

In order to promote good corporate governance practice and transparency, issuers are increasingly using the Internet as a medium for disseminating information about themselves, for example, by maintaining a web page. Issuers are reminded that any unpublished price-sensitive information that it intends to publish on the Internet should first be made the subject of an announcement in accordance with the Listing Rules. Issuers should implement appropriate procedures to vet information which is to be put on its website. Issuers should also regularly monitor their own websites to ensure that all published information is up-to-date and accurate.



The Stock Exchange of Hong Kong Limited

(A wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited)

Our Ref: RW20081031-53

31 October 2008

To: Main Board Listed Issuers (Attn: Authorised Representatives)
GEM Listed Issuers (Attn: Authorised Representatives)

Dear Sirs

Recent economic developments and the disclosure obligations of listed issuers

Recent economic developments in Hong Kong and elsewhere, including significant declines in stock market values, fluctuations in exchange rates, the availability of credit in global lending markets, corporate failures and a general deterioration in economic confidence may potentially have an adverse impact on the operations, financial performance, expectations of financial performance or financial condition of listed issuers and their subsidiary and other operations.

Analysis we have recently performed on the frequency of disclosures under Listing Rule 13.09(1) reveals that Hong Kong listed issuers, as a whole, do not have a well developed practice of regularly updating the market on their finances. A number of disclosures of a material change in financial performance or condition were published some time after the end of the relevant financial reporting period. These cases raise legitimate concerns about the timeliness of these disclosures and the ability of the issuers in question and their senior management to monitor the issuer's financial performance and financial condition and update their expectations of the issuer's performance on a regular basis and to continuously assess whether disclosure is needed.

It is against this background that we consider it appropriate to issue a reminder about the applicable continuous disclosure standards and to provide further interpretative guidance and observations on the Exchange's expectations.

Please circulate this letter to all directors and senior management.

Primary disclosure obligations

Listed issuers have a continuous disclosure obligation under Main Board Listing Rule 13.09(1) (GEM Listing Rule 17.10) to keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:-

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- (a) is necessary to enable them and the public to appraise the position of the group; or
- (b) is necessary to avoid the establishment of a false market in its securities; or
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.

This obligation is supplemented by an obligation under Note 11 to Main Board Listing Rule 13.09(1) for the issuer to notify the Exchange, members of the issuer and other holders of its listed securities without delay where to the knowledge of the directors there is such a change in the issuer's financial condition or in its performance of its business or in the issuer's expectation of its performance that knowledge of the change is likely to lead to a substantial movement in the price of its listed securities.

The question of timing of the release of an announcement to the market is crucial, having regard to its possible effect on the market price of the issuer's listed securities. The overriding principle is that information which is expected to be price-sensitive should be announced immediately it is the subject of a decision. That is a decision about whether the information has characteristics, in the prevailing market conditions, that would be reasonably expected to materially affect market activity in and the price of the issuer's securities i.e. the information is potentially price sensitive.

In periods of market volatility and turmoil it is observable that the market is more sensitive to information, both positive and negative, concerning the financial performance and financial condition of listed issuers, their subsidiary and other operations. This is a factor which should be taken into account in the assessment of whether information is potentially price sensitive.

How to approach compliance with the continuous disclosure obligations

The integrity of the market is enhanced if continuous disclosure is carried out in the "spirit" of the Listing Rules. Main Board Listing Rule 13.09(1) (and its GEM equivalent) is a complex rule which should not be interpreted in a restrictive or legalistic fashion but with regard to the intention and purpose of the requirements and in a manner which looks beyond form to substance and in a way that promotes the principles on which the Listing Rules are based. The general principles, in Main Board Listing Rule 2.03, (and its GEM equivalent) are designed to ensure that investors have and can maintain confidence in the market and in particular that:

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- investors and the public are kept fully informed by listed issuers of all factors which might affect their interests and in particular that immediate disclosure is made of potentially price sensitive information;
- all holders of listed securities are treated fairly and equally; and
- directors of a listed issuer act in the interests of shareholders as a whole.

These principles encompass the interests of listed issuers and their shareholders and maintenance of investor confidence that the market in the listed issuer's securities is informed. By virtue of being listed on the Exchange's markets and having access to the public capital that those markets provide, an issuer has, in our view, a further and additional responsibility not just to its existing shareholders, but to investors who may become its shareholders and to the market as a whole. There may be circumstances where these interests may appear to diverge. In those circumstances it is our view, which is supported by Listing Rule 2.03, that an issuer and its management must give precedence to its continuous disclosure obligations to the market as a whole.

There are two exceptions to this principle which are:

- (a) where specific conditional relief from immediate disclosure is provided in the rules for transactions and fundraising which is in the course of negotiation or proposals in the course of development, and
- (b) the Exchange grants dispensation from immediate disclosure. This may happen when following consultation the Exchange is satisfied that disclosure to the public might prejudice the listed issuer's business interests. However, please note that this dispensation will only be granted in very exceptional circumstances.

If the directors of a listed issuer consider that disclosure of information to the public might prejudice the issuer's business interests, they must consult the Exchange as soon as possible. This is a requirement of Note 7 to Main Board Listing Rule 13.09(1).

Responsibility for compliance

Most of the obligations under the Listing Rules apply to the listed issuers and not directly to their directors or management. However, a company is a legal entity and cannot act on its own. Responsibility for the issuer's compliance rests with "the controlling mind" of the entity which will encompass its directors and may also by virtue of delegations of authority

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include members of senior management. The obligations and standards placed on directors are derived from various sources but in particular from law and regulation. In respect of companies listed in Hong Kong those standards are supplemented by the contractual undertakings given to the Exchange which require those directors to use their best endeavours to procure the issuer's compliance with the Listing Rules.

It is ultimately the responsibility of the Board of a listed issuer, collectively and individually, to ensure that the Company is in a position to comply with its general disclosure obligations by the creation and maintenance of robust and effective internal controls that support the identification and escalation of a timely flow of reliable information to the Board or those directors authorised to ensure the issuer's performance of its continuous disclosure obligations. Such arrangements, properly designed, should allow them to make speedy decisions about the need for disclosure upon the emergence of developments or the occurrence of a development which might constitute potentially price sensitive information. The aim of these arrangements is to reduce any delay in disclosure to a minimum. You should note that the Exchange is not likely to regard the inability to physically convene a full board meeting as a justifiable reason for delaying the announcement of potentially price sensitive information.

In the context of monitoring compliance with the obligation to inform the market without delay of material changes in its financial condition, in the performance of its business or in its expectation as to its performance the Board must establish and maintain periodic financial reporting procedures which ensure a structured flow of financial and operational data necessary for such an appraisal. For most issuers the minimum requirement that is necessary will be the provision of monthly management accounts shortly after the month end. Other operational data which provides a critical insight into likely financial performance or the issuer's financial condition may be available at an even earlier stage, or even continuously, and such data should again be identified and escalated in a structured manner.

Issuers should also have in place vetting and authorisation processes designed to ensure that regulatory announcements are made in a timely manner, are factual, do not omit material information and are presented in a clear and balanced way. "Balance" requires the disclosure of both positive and negative information. Main Board Listing Rule 2.13 (GEM Listing Rule 2.18) requires that the information disclosed must be accurate and complete in all material respects and not be misleading or deceptive. However, the need to take due care prior to releasing potentially price sensitive information does not absolve a listed issuer of responsibility to announce such information as soon as reasonably practicable or without delay as the case may be.

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Where a listed issuer intends to release price sensitive information such information should be released only after due care and by means of a public announcement disseminated through HKEx EPS at the first available opportunity. Disclosure must be through HKEx EPS first and not to any other selected persons or audiences.

It is incumbent on the directors and senior management of listed issuers to ensure that they are familiar with the principles, the rule and its related provisions and our guidance on the rule and make their own judgments when considering how to comply with the continuous disclosure obligation.

Precisely what will constitute potentially price-sensitive information will vary from company to company, depending on a variety of factors such as the company's size, developments in its recent past and activity in its sector. Market sentiment about a sector can also affect the price sensitivity of an item of information. It is not possible to set out a formula for identifying price sensitive information that will cover all possible permutations and situations. Necessarily judgment will be required, and where appropriate, with assistance and advice from qualified advisers.

In administering and enforcing Listing Rule 13.09(1) (and its GEM equivalent) and its related provisions the Exchange will give weight to informed judgments that are logically and honestly made.

Guidance on particular situations and issues

You may find it helpful to refer to the guidance materials previously released by the Exchange on this subject matter. Listed issuers are encouraged to refer to the Exchange's "Guide on disclosure of price sensitive information" issued in January 2002, which is available on the HKEx website (<http://www.hkex.com.hk/rule/psguide/full-e.pdf>), and the Exchange's announcement dated 11 September 2006 on "Clarification of Formal Reporting Requirements for Profit Forecasts by Main Board Issuers and Obligations of Main Board and GEM Issuers on the Release of Price Sensitive Information", which is available at <http://www.hkex.com.hk/news/hkexnews/060911news.htm>. Listed issuers are also referred to a number of Enforcement decisions on this topic which appear on the Exchange website at <http://www.hkexnews.hk/reports/enforcement/enforce.asp>.

The following guidance supplements those materials.

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During the preparation of periodic and other structured disclosures

Listed issuers are required in a number of circumstances to prepare disclosure in certain prescribed structured formats, for example, regular periodic financial reports, circulars and listing documents. In the course of preparing these prescribed disclosure documents, listed issuers may become aware of material information previously unknown to senior management and the directors, or information in respect of a matter or financial trend in the course of development may crystallize into material information.

Listed issuers should be aware that material information which requires disclosure under Main Board Listing Rule 13.09(1) may emerge during the preparation of these disclosures, in particular during the preparation of periodic financial information, and that a listed issuer cannot defer releasing the potentially price sensitive information until the prescribed disclosure document is issued. Separate immediate disclosure of the information is required in order to bring it to the attention of the market. The periodic disclosure obligations run in parallel with and are in addition to the continuous disclosure obligation under Main Board Listing Rule 13.09(1), they are not substitutes.

During the course of negotiations concerning transactions, fund raising or other proposals

Listed issuers may be invited, during the course of negotiations, to provide to third parties with confidential information concerning the issuer. Prior to making any such documents available the issuer should review, "filter", such material to assess whether the information in any of the documents, individually or together, constitutes potentially price sensitive information. For example, a review of management accounts may reveal financial trends which are potentially price sensitive and which require immediate disclosure. Disclosure of a material change in financial performance cannot be delayed whilst the negotiations proceed. This contrasts with the conditional relief available to the issuer in respect of the subject matter and status of progress of those negotiations as further described below.

Legitimate delay in disclosure

There may be circumstances in which it may be legitimate for an issuer to delay the public disclosure of potentially price sensitive information. The Listing Rules contemplate scope for an issuer to delay the public disclosure concerning transactions or the raising of finance, so as not to prejudice its interests in those negotiations, and the issuer may also legitimately give that information in confidence to other parties who may be involved in the development of the matter, provided that the issuer is able to ensure the confidentiality of that information and the delay in disclosure will not lead to the establishment of a false market.

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There are many issues, which are inherently price sensitive, where it is desirable to maintain confidentiality until the major elements have been finalised and where premature release of information may be more misleading than informative. This might include, for example, the development of a new product or the planning of a major redundancy programme. Once these issues have been finalised a regulatory announcement should be made without delay.

However, once confidentiality is lost whether inadvertently or deliberately, disclosure must be made without delay. Loss of confidentiality may be indicated by otherwise unexplained changes to the price of the issuer's securities or by reference to media or analyst reports. An issuer must be prepared to make disclosure where references to the matters under development are significant and reasonably specific.

In order to make the necessary disclosure without delay it is a reasonable practice for the issuer to have a substantially complete and up to date draft of an announcement readily at hand.

Internal developments

An issuer may face unexpected events that indicate that something is significantly amiss in the issuer's business or that of its subsidiary and other operations. The issuer should begin an investigation immediately to flush out sufficient information to determine whether the issuer has a disclosure obligation. If further work is needed to fully investigate the development before complete information can be disclosed a 'holding' announcement must be made to satisfy its continuous disclosure obligations. For example, upon the discovery of a material fraud it may only be possible to give a broad indication of the likely financial impact in this initial announcement. Further disclosure should be made once the issuer is in a position to give more precise details.

Where significant uncertainties exist about the outcome of any development it may be necessary to give a more detailed and carefully crafted account of the nature and scale of the uncertainties by the issuer and details of actions it has or is taking so that the market in its securities is properly informed. In the exceptionally rare cases where either of these general approaches cannot be applied without the risk of creating a false (misinformed) market the issuer should immediately ask for a suspension of trading pending clarification of the position. Such an announcement should indicate the nature of the matter pending clarification. For example, the statement might indicate "pending clarification of the issuer's financial position".

External developments

Listed issuers are not required to disclose general external information which may already be in the public domain. For example, foreign currency rates, the market price of commodities or changes in a taxation regime. However, if the information has a particular impact on the issuer that effect may be required to be disclosed.

Handling of market rumours

While the Exchange does not usually require an issuer to make a negative statement denying a wholly unfounded rumour, if the issuer does decide to make such a denial it should consider doing so by making a formal announcement, rather than just making such a remark to a single publication or by way of a press release. This will ensure that the whole market is informed rather than just the readers and viewers of selected newspapers or media services. In addition, issuers should bear in mind that such denials can sometimes have a material effect on its share price. If this is likely to be the case, then a formal announcement is required. Likewise, when an issuer is concerned that the reaction to a wholly unfounded rumour will or is creating a disorderly market the issuer should issue a corrective announcement without delay.

The Listing Division is likely to contact an issuer or its advisers if there are rumours relating to it in the media. We will not necessarily require an announcement, but will expect a full justification for the issuer's proposed course of action and confirmation of the issuer's true position so that we can monitor developments properly. The issuer and its advisers should not seek to mislead us in these circumstances, as the issuer is obliged to provide this information under Main Board 13.10 (GEM Listing Rule 17.11). An issuer's response to rumours may be investigated by us subsequently, particularly if it appears that we may have been misled at any point.

Director's checklist

Issuers and directors that the Exchange and the Securities and Futures Commission have investigated in recent years have commented that our investigations can be time-consuming, costly and can distract senior management. They are to be avoided.

In the current economic climate, compliance with the continuous disclosure obligations is an area of risk for directors and we recommend that all directors should take stock on the adequacy of the arrangements they have put in place to achieve compliance. All directors should be aware of the Listing Rules and participate in reviewing the design of the company's systems. A robust system will be a major factor in helping directors not directly

involved in handling compliance in a specific situation to establish a defence to any allegations of either a breach of the Listing Rules or of their Undertakings to the Exchange.

To assist directors in maximizing the chances of avoiding an unintended breach of the Listing Rules we out in an Attachment to this letter a checklist of questions we think you should consider and in following best practice be able to answer in the affirmative.

We appreciate that you may be doing all or most of what we suggest already but if you are not, please start now. You should also consider adopting the practice of issuing periodic trading statements (with or without detailed financial and performance data) more regularly than the twice-yearly financial results announcements. This will keep the market up to date and reduce the likelihood of a need for unplanned announcements.

Yours faithfully
For and on behalf of
The Stock Exchange of Hong Kong Limited



Richard Williams
Head of Listing

Attachment

Director's Compliance Checklist – Continuous Disclosure Obligation Procedures

The following is a non-exhaustive list of questions we think that diligent Board directors should consider in assessing the adequacy of procedures they have put in place to ensure compliance with the issuer's continuous disclosure obligations.

1. Do we have a system for monitoring developments in our business so that potentially price sensitive information which might have an impact on the company's share price is quickly escalated up the organization to those responsible for deciding whether an announcement should be made?
2. Are those systems and procedures documented in writing?
3. Is the process realistic and likely to operate smoothly in practice?
4. Does that system incorporate the preparation of and regular, periodic review of a sensitivity list identifying factors or developments which are likely to give rise to the emergence of price sensitive information?
5. Does that system incorporate the risks identified through existing internal risk management compliance routines?
6. Do we have procedures with our financial and legal advisers for involving them at short notice in the assessment of the potential price sensitivity of information and to involve them in the preparation of announcements?
7. Do we have a procedure for monitoring share price movements, media and analyst reports and market rumours?
8. Do we involve our financial advisers and public relations advisers to help us systematically identify and escalate news of external developments so that those responsible for handling the Company's compliance with the continuous disclosure requirements can respond promptly and accurately to enquiries from the Exchange and can prepare and disseminate regulatory announcements where necessary to correct or prevent a false (misinformed) market in the company's securities?
9. Do we intensify the application of those procedures when a major transaction or proposals is in the course of development?
10. Do we have a defined procedure for communicating with the market, analysts, investors and the press?
11. Does that procedure identify a small number of specific individuals who have responsibility and training for such external communication?
12. Does the procedure expressly prohibit any other director or member of staff from engaging in such communications?
13. Do we publish our policy and procedures so that the press and others understand how we go about meeting our Listing Rule compliance obligations at the same time as maintaining a constructive dialogue with the press, analysts and investors?
14. Are directors, senior management and other staff given initial training and periodic refresher training on the Company's procedures?
15. Do we assign a company representative to record or prepare detailed notes of what was said at all media and analyst briefing to reduce the scope for dispute about what has been said to the media or analysts?