

24th December, 2012

The Securities and Futures Commission
8th Floor, Chater House,
8 Connaught Road Central,
Hong Kong.

Re: Consultation Paper on proposals to enhance the regulatory regime for non-corporate listed entities

Dear Sir/Madam,

Consultation Paper on proposals to enhance the regulatory regime for non-corporate listed entities – November 2012 (“the Consultation Paper”)

As elucidated in the recommendations adopted in the Consultation Paper, we welcome the Commission’s initiatives to regularise and control the non-corporate listed entities. Whilst we support the overall objectives of the Consultation Paper, our major concerns and views over the proposal are stated below.

Question 1

Do you agree that Parts XIII and XIV of the SFO should be amended so that these Parts expressly cover listed entities that are not in corporate form?

Doubts about the definition of ‘partnership’ set out in paragraph 16(a) are cast. The term “partnership” may cover limited liability partnership (“LLP”) and general partnership. Further, under LLP, one partner shall be a general partner with unlimited liability. Hence, upon introducing this provision, the Commission is also recommended to look into the existing statutory provision governing the partnership in Hong Kong or provide a clear-cut provision as to what form of partnership will be allowed as a listed entities. However, we strongly support the inclusion of partnership in the provision.

Furthermore, the term ‘officer or employee’ set out in paragraph 16(e) is too broad as it may cover different levels of employees of the entities. Having viewed the serious and punitive nature of the market misconduct in both civil

and criminal aspects, we recommend that “associate” should only include the accountants, financial controllers, legal officers and the management staff of the entity.

Question 2

Do you agree that Part XV of the SFO should be amended so that it expressly covers listed entities that are not in corporate form?

The proposals tend to cover all non-corporate listed entities. To accommodate this, the proposed changes in definitions in Part XV are necessary.

Question 3

Do you agree that Parts VIII and X of the SFO should be amended to extend the SFC’s powers under these Parts to all listed entities?

Yes. To effect the regulation and control of the non-corporate listed entities, the Commission must be empowered to enforce the provisions.

Question 4

Do you have any comments on the proposal to extend the statutory disclosure requirement for PSI in respect of listed corporations under Part XIVA of the SFO to listed CIS and other listed entities?

Presently, the disclosure requirement for price-sensitive information (the “PSI”) shall not be extended to the listed collective investment scheme (the “CIS”). Based on our understanding, the investment managers/advisors of those listed CIS are the financial intermediaries licensed by the Commission, for which Type 9 (asset management) regulated activity is licensed. In this regards, the staff of the aforesaid financial intermediaries are subject to a more stringent staff dealing policy as set forth in the Fund Manager Code of Conduct issued by the Commission.

Therefore, we think extending the statutory disclosure requirement to the listed CIS under the Securities and Futures Ordinance (“SFO”) is deemed excessive and unnecessary.

However, due to the different business nature of the Real Estate Investment Trust ("REIT"), the statutory disclosure requirement shall be imposed thereon. The rationale is that the business and operational model of the REIT in Hong Kong is quite similar to that of a listed property investor. We see, therefore, a necessity to require the REIT to observe and perform the statutory disclosure requirement.

Question 5

Do you have any comments on the examples of events or circumstances where the management company of a listed CIS/other listed entity should consider whether a disclosure obligation of PSI would arise under the SFO?

What constitutes PSI is often a difficult question of judgment. Sometimes, information may be uncertain in nature and it is somehow difficult for the officer of the entity to ascertain whether one piece of information may affect the price of the securities in a material way.

More profoundly, the Commission's Guideline on Disclosure of Inside Information will come into play on 1 January 2013. Based on our understanding, many listed companies are still very ambivalent what inside information shall be disclosable or non-disclosable. Therefore, we agree that as mentioned in paragraph 40 of the Consultation Paper, further guidance shall be provided to assist listed CIS and other listed entities to comply with their obligations to disclose PSI.

Question 6

Do you have any comments on our proposal set out in paragraph 45 above?

Yes, we agree with this.

Question 7

Do you agree with our proposals set out in paragraphs 58 and 59 above?

In view of the special features of listed debentures (which may include bonds or notes, represent loans), it is rather impossible to impose any disclosable obligations on them.

Therefore, we are in support of this proposal.

Guardian

Should you have any questions pertinent to the foregoing, please feel free to contact the undersigned
Thank you very much.

Yours faithfully
For and on behalf of
Guardian Regulatory Consulting Limited

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