香港女律師協會
HONG KONG FEDERATION OF WOMEN LAWYERS

贊助人 Patron:
曾鮑笑薇女士
Mrs. Selina Tsang

名譽會員 Honorary Members:
梁愛詩律師
Ms Elsie Oi-sie LEUNG. G.B.M., J.P.
劉健儀律師
The Hon. Ms. Miriam Kin-yee LAU, G.B.S., J.P.

Securities and Futures Commission

Corporate Finance Division

June 29, 2010

Dear Sirs,

Consultation Paper on the Draft Guidelines on Disclosure of Inside Information (the "Draft SFC Guidelines")

I attach a copy of the comments of Hong Kong Federation of Women Lawyers on the Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information which we have submitted to the Financial Services and the Treasury Bureau today. The comments also apply to the Draft SFC Guidelines.

In addition, in relation to paragraph 26 of the Draft SFC Guidelines (management accounts), it would be important for listed issuers to be given room to assess whether a temporary setback in its business revealed by its management accounts requires immediate disclosure to the market, because if there are reasonable grounds to believe that its business operations would improve in a reasonable period of time and the setback is merely seasonal or otherwise not of a long term nature, then it should not necessarily be required to disclose the setback.

Thank you for your attention and please do not hesitate to contact us if we can be of further assistance.

Yours faithfully,

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Ms. Angela Ho, Past President
Ms. Julianne Doe, Council member

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Comments on the Consultation Paper on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations – March 2010
(the "Consultation Paper")

We refer to the Consultation Paper issued by the Financial Services and the Treasury Bureau.

As an overall comment, we do not agree with the proposal to codify the obligations of a listed issuer to disclose price sensitive information, as the concept of price sensitive information is difficult to define in the context of disclosure, and there are already sufficient provisions in the Securities and Futures Ordinance, other statutes and common law which deal with misstatements and omissions in relation to information disclosed by listed issuers. If the proposal were nevertheless to proceed, set out below are our comments (subject to our position above).

Questions	FIDA's comments
Question 1 (a) Do you agree with the proposal to adopt the existing definition of "relevant information" from the insider dealing regime under the SFO to define PSI?	**Question 1** (a) Agreed, provided that the listed issuer and practitioners would be given the ability to consult the SFC on a continuous basis as to what would constitute "relevant information" for disclosure purposes in particular circumstances, given that the gravity of the consequences of a mis-interpretation of the term (being an offence of the law). This would preserve the current position under which The Stock Exchange of Hong Kong Limited (the "**HKSE**") provides guidance and allows consultation on what constitutes information falling under rule 13.09(1) of the Listing Rules.

(b) Do you agree that a listed corporation should be obliged to disclose to the public as soon as practicable any "inside information" that has come to its knowledge, and that it should be regarded to have knowledge of the inside information if a director or an officer has come into possession of that information in the course of the performance of his duties?	(b)The expression "as soon as practicable" should be amended to "as soon as reasonably practicable" to allow the issuer a reasonable amount of time to provide the necessary disclosures, and to be in line with the current approach of the HKSE. We do not agree that the issuer should be regarded to have the knowledge of any officer given the wide meaning this has under the Securities and Futures Ordinance (as the term includes a director, manager or secretary of, or any other person involved in the management of, the issuer). In practice, managers at the operating level and the company secretary may not be part of senior management, or decision making, of a listed company. We suggest that this should be limited to the senior management who is involved in executive decision making, such as the chief executive office, chief financial officer, the chief administrative office and the chief operation offer.
(c) Do you agree with the proposal that the disclosure must be made in a manner that can provide for equal, timely and effective access by the public to the information disclosed?	(c) Agreed.
Question 2 (a) Do you agree to the provision of the four proposed safe harbours?	**Question 2** (a) We agree with Safe Harbours A and B. We welcome Safe Harbour C, but its scope should be clarified to extend to commercially sensitive information contained in agreements or terms of business, in addition to proprietary information or intellectual property rights. Furthermore, information which if disclosed may prejudice the issuer in

	arbitration or litigation proceedings or otherwise subject to legal privilege should be covered in this safe harbour. As for Safe Harbour D, while we agree in principle that there will public policy reasons for not disclosing certain price sensitive information, however, this should not be merely limited to the provision of liquidity support by the Government or central bank. On the other hand, there could be situations where market transparency is more important such that shareholders of a certain bank should be informed of material liquidity issues for a bank. The question of whether this should be disclosed should be assessed on a case by case basis based on considerations of public policy. The UK Disclosure and Transparency Rules (DTRs) in fact provide that this safe harbour is applicable only if the delay would not be likely to mislead the public. Moreover, the UK Listing Authority (UKLA) has stated that keeping the market properly informed is the prime consideration and that bad news and the steps taken to mitigate it should be treated as two separate events. We understand that the UKLA considers that the purpose of the guidance in the DTRs is to make it clear that issuers cannot simply rely on the fact that negotiations are under way to address financial difficulties to justify not disclosing those underlying financial difficulties to the public. These points should be reflected in Safe Harbour D. .
(b) Do you agree that the SFC should be empowered to grant waivers, and to attach conditions thereto?	(b) Agreed.
(c) Do you think that the legislation should provide for additional safe harbours? If so, what are these additional safe harbours?	(c) No comment.
(d) Do you agree that the SFC should be empowered to prescribe further safe harbours in the form of rules under the SFO?	(d) Agreed.
Question 3	**Question 3**

(a) Do you agree to extend the jurisdiction of the MMT to handle breaches of the statutory disclosure requirements?	(a) Agreed, especially the proposal that a breach should only be subject to civil sanctions. However, a breach by a director should only arise out of an intentional or reckless act of omission on the part of any individual director or officer. Mere negligence should not result in an offence relating to this being committed, especially given the fact that the concept of price sensitive information is not necessarily a black and white one.
(b) Do you agree with the proposed range of civil remedies as set out in paragraphs 2.31, 2.35 and 2.36?	(b) We query whether the listed corporation (as opposed to its directors) should be subject to a monetary fine as this would be further prejudicial to the interests of the shareholders of the listed issuer, who have already suffered from a breach of disclosure obligations by the listed issuer. In any event, the fine of up to HK$8 million is too high, especially for small to medium cap issuers. Please reconsider whether this should be the subject to a scale relating to the market capitalisation of the issuer. We refer to our comment on the term "officer" above, which would also apply in the context of persons who may be sanctioned.
(c) Do you agree to grant the SFC direct access to the MMT to institute proceedings on breaches of the statutory disclosure requirements?	(c) Agreed.
Question 4 Do you agree that the SFC should provide informal consultation for the listed corporations with regard to the statutory disclosure requirements, initially for a 12-month period?	**Question 4** We believe that it is paramount for listed issuers and practitioners to be able to consult the SFC continuously under the new regime and that this should not be limited to a 12-month period. Under the current regime, listed issuers benefit significantly from the ability to consult the HKSE in relation to the obligation to

	disclose price sensitive information. Given that any codification of the requirements carries far more serious legal consequences for any breach of the requirements, it would be unduly cumbersome and grossly unfair for listed issuers if they would be left on their own to determine whether and how such disclosure obligations could be fulfilled without having the opportunity to seek the views and guidance of the SFC. Currently the market can consult and seek formal rulings from the SFC on matters under the Takeover Code. Such consultation should be extended to the SFC Guidelines on Disclosure of Inside Information.
	Miscellaneous Paragraph 2.22 of the Consultation Paper states that the proposal "would not oblige listed corporations to respond to mere rumours. Otherwise, they may be under an undue burden of responding to rumours from time to time. However, where rumours indicate that the inside information intended to be kept confidential has been leaked, the listed corporation would need to disclose the inside information." It may at times be difficult to ascertain whether a rumour actually results from a leak, in which case the listed issuer would be placed in a difficult position as to whether it is expected to make an announcement. This requirement should be clarified such that the announcement obligation would only arise if there is objective evidence that there has been a leak by the issuer itself.