Welcome to the second edition of the SFC's *Corporate Regulation Newsletter*

Highlights

- Previously disclosed inside information
- Disclosure of information generated by internal developments and investment portfolio performance
- Dual Filing Regime: customers' identities and IPO incentive schemes

Specific new information

Making an announcement repeating information, which in the prospectus is detailed, unambiguous and quantifiable, is ra
required under the statutory regime for disclosure of inside information, Part XIVA of the Securities and Futures Ordinanc
However, this would not apply to some of the more general comments in a prospectus, such as the risk disclosures.

For example, potential work stoppages at a factory might be disclosed as a risk factor. In such a case, a subsequent sus
factory operations is likely to be specific information which is not generally known to the public. The company would have
consider whether the disclosure of the information would have a material effect on its share price and hence whether an i
information announcement under the SFO was required. The company could not rely on its previous disclosures in the pr
as vague references to possible future events do not fulfil a company's disclosure obligations if any of those events come

One-off events

There have been other instances of confusion caused by the repetition of information in announcements described as pro
warnings or alerts. For example, the absence of a one-off gain which was included in the prior year is commonly cited as
for the decline in profits in the current year. By definition, one-off, extraordinary, discontinued or other similarly described
not expected to reoccur, and therefore the fact that they did not reoccur would not normally be considered inside informa
Where a company seeks to highlight the absence of a one-off event and this has the effect of masking the impact of othe
on its financial performance, it may be regarded as having made a misleading statement. For example,

- A company announces that its profits for 2015 will be substantially reduced from 2014's $500 million due to the absence of the previous year's gain of $300 million arising on the sale of a subsidiary.
- The company then issues the 2015 accounts showing a loss of $50 million.
- Adjusting for the one-off gain in 2014, there was a shift from a profit of $200 million in 2014 to a loss of $50 million in 2015. Such a significant change in trading performance is likely to have been evident quite early on and needs to be considered independently from the previous year's one-off gain.

Repeating disclosures

Similarly, some companies announce an event more than once in the same year. This is sometimes seen in profit alerts or warnings where the same disclosures are repeated in both the interim and year-end reports. For example,

- A company announces that its profits for the six-month period increased due to a gain arising from the sale of a building.
- It then issues a profit alert at the end of the year stating that its yearly profits increased substantially due to the significant gain from the sale of a building.

There is no statutory requirement to refer specifically to the gain on the property sale as a factor in the increased profits f
second time. The gain arising on the sale of the building has been made known to the public and so the company is not o
disclose such information again under the SFO.

Inside information generated by internal developments

Inside information is defined in section 307A of the SFO. In broad terms, it includes specific information about a company that, if made public, would be likely to materially affect the price of its listed securities. This definition does not include any refere how the information might be created.

The SFC’s Guidelines on Disclosure of Inside Information set out a non-exhaustive, indicative list of events or circumstan

Disclosure of investment portfolio performance

Similarly, these three aspects may be just as relevant when considering making disclosures in connection with investmer
losses on investment portfolios.

Certainty – Gains or losses arising from disposals of listed investments do not need to be confirmed by an auditor before t
can be announced. Nor do fair value adjustments of listed investments which can easily be marked to market. If the gains
losses are sufficiently material to be considered as inside information, the company should consider whether an announc
is appropriate.

Expectations – If the investment portfolio of listed shares held by a company has been previously disclosed – such details

Dual filing regime

[1] The Securities and Futures (Stock Market Listing) Rules require a listing applicant to file its listing application with both SEHK and the SFC for review.

However, incentive schemes relating to IPOs can be constructed in many different ways and may involve incentives whic
distantly related to the shares being offered, and in such circumstances it may be hard to understand the value of the inc
The conditions relating to the grant of the incentive, or its withdrawal, can also affect the decision to buy shares in the IPO
having bought them, whether to continue to hold them in light of the changing market price.

Making an investment decision based on the expected future value of a company is not a simple exercise, even for a stra
forward IPO. The addition of an incentive scheme creates additional complications to the investment decision.

Any incentive scheme that may unduly influence the investment decision will always raise questions concerning its
appropriateness and is likely to be carefully scrutinised by the SFC. Where there are sufficient concerns that an incentive
unduly influence the investment decision, the SFC may use its powers under Rule 6 of the Securities and Futures (Stock
Listing) Rules to object to the listing. An issuer considering the use of such an incentive scheme is advised to discuss the