HKEx 香港交易所

The Stock Exchange of Hong Kong Limited

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

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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:

- 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

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 give 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.

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/0609111news.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.

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".

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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

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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

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?