

Disclosure Obligations

1. What are the guidelines governing the publication of marketing materials in relation to listed structured products?

An issuer should comply with the Guidelines on Marketing Materials for Listed Structured Products issued from time to time by the Securities and Futures Commission. Any such marketing materials should also prominently display the non-collateralized nature of structured products and highlight the associated risks.

*MB Rule 15A.53
First released: July 2012; last updated: May 2024*

2. What is a “false market”?

The term “false market” refers to a situation where there is material misinformation or materially incomplete information in the market which is compromising proper price discovery. This may arise, for example, where:

- (a) an issuer has made a false or misleading announcement;
- (b) there is other false or misleading information, including a false rumour, circulating in the market;
- (c) an issuer has inside information that needs to be disclosed under the Inside Information Provisions but it has not announced the information (e.g. the issuer signed a material contract during trading hours but has not announced the information); or
- (d) a segment of the market is trading on the basis of inside information that is not available to the market as a whole.

Where a media or analyst report appears to contain information from a credible source (whether that information is accurate or not) and:

- (a) there is a material change in the market price or trading volume of the issuer's structured products which appears to be referable to the report (in the sense that it is not readily explicable by any other event or circumstance); or
- (b) if the market is not trading at the time but the report is of a character that when the market starts trading, it is likely to have a material effect on the market price or trading volume of the issuer's structured products,

the issuer must announce information necessary to avoid a false market in its structured products.

*MB Rules App E5-1(1)(a), APP E5-26
First released: April 2013; last updated: May 2024*

3. **What is the meaning of the term “such enquiry with respect to the issuer and/or the guarantor as may be reasonable in the circumstances”? What sort of enquiry is an issuer and/or its guarantor required to make in response to the Exchange’s enquiries?**

When will an issuer and/or its guarantor be expected to contact any of its controlling shareholders when they are not directors or officers of the issuer and/or the guarantor?

The facts and circumstances giving rise to each enquiry are different. Therefore, what enquiry is reasonable depends on the circumstances, and there are no hard and fast rules. The test is one of reasonableness.

To facilitate compliance, it is crucial that an issuer and/or the guarantor implement(s) and maintain(s) adequate and effective internal control systems and procedures to ensure material information concerning the issuer, the guarantor and/or any of its/their business would be promptly identified, assessed and escalated to the Board for consideration and action from a Rule compliance perspective. 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.

An issuer and/or its guarantor is/are generally not expected to contact (a) any of its controlling shareholders when they are not directors or officers of the issuer and/or the guarantor, or (b) counterparties to a transaction, except if there is information available to the issuer and/or the guarantor suggesting that the subject matter of the enquiry is related to the controlling shareholders or the counterparties to a transaction. For example, the issuer and/or the guarantor is/are aware of any of its controlling shareholder’s plan to dispose of its interest in the issuer and/or the guarantor, and there is an unusual increase in the trading volume of the issuer’s structured products. Another example is where there are press articles suggesting that the counterparty to a disclosed transaction may not be able to complete the transaction as a result of difficulties in obtaining financing.

MB Rule APP E5-26(2)

First released: April 2013; last updated: May 2024

4. **An issuer has inside information which is exempted from disclosure under one or more of the safe harbours in the Inside Information Provisions. If there are market rumours which are unrelated to this information, but have resulted in unusual trading movements of the structured products, does the issuer need to publish a standard announcement?**

If the standard announcement states that there is no inside information that needs to be disclosed under the Inside Information Provisions, but the issuer subsequently discloses the information, say a month later, will this result in market uncertainty?

Whether an announcement is required to be issued under these provisions depends on the facts and circumstances of the matter. It is only if and when requested by the Exchange that an announcement needs to be issued.

Information that is exempted from disclosure under the Inside Information Provisions does not fall within the term “any inside information that needs to be disclosed under Part XIVA of the Securities and Futures Ordinance” contained in the standard announcement. Therefore, a standard announcement issued under those circumstances will not be inaccurate.

To avoid market uncertainty arising from the subsequent disclosure of the inside information previously exempted from disclosure, the issuer can clarify in the disclosure announcement that the information was exempted from disclosure when the standard announcement was issued.

MB Rule APP E5-26(2)

First released: April 2013; last updated: May 2024

5. Where and for how long should documents on display be published online? How will these documents be removed from the relevant websites after the expiry of the prescribed display period?

An issuer should publish documents on display on both the HKEX website (through EPS under the headline category “Documents on Display”) and the issuer’s website for the time period prescribed by the Listing Rules (which is the same as what the Listing Rules originally require for physical display of such documents).

After the expiry of any relevant display period prescribed by the Listing Rules, an issuer should remove the documents on display manually from the HKEX website through EPS and its own website.

An issuer should not do so before the expiry of the relevant display period.

MB Rule APP D1D-27

First released: June 2021; last updated: May 2024

6. Do the obligations to make an announcement to avoid a false market in the issuer’s structured products, to respond to the Exchange’s enquiries, and to apply for a trading halt cover information relating to the underlying stock?

No, those obligations are generally confined to information relating to the structured products, issuers and/or guarantors.

MB Rules APP E5-1(1)(a), APP E5-26

First released: April 2013; last updated: May 2024

7. Can structured products holders make requests for hard copies of corporate communications?

What measures should an issuer put in place to ensure that structured products holders wishing to request hard copy corporate communications are properly informed of how they can do so?

Yes.

An issuer must send corporate communications in printed form to a structured products holder upon the request of a holder. Where an issuer receives instructions indicating a structured products holder’s preference to receive hard copies of the issuer’s corporate communications (or refusal to receive them by electronic means), such instructions should be regarded as a request for hard copy unless such instructions have been revoked, have been superseded or have expired.

Issuers must disclose on their websites on an ongoing basis, the relevant arrangements for the electronic dissemination of their corporate communications (including the arrangements by which holders can make hardcopy requests). This will enable new structured products holders to understand the relevant arrangements in place.

Issuers are expected to clearly inform holders of the purpose of obtaining their electronic contact details when soliciting them from the holders (e.g. that the issuer will be using the electronic contact details to send actionable corporate communications.) Issuers should also draw their structured products holders' attention to the consequence of providing non-functional electronic contact details.

MB Rule 2.07A(4)

First released: December 2023; last updated: August 2024

8. What constitutes an “electronic form” of corporate communication? Is SMS or other electronic messaging systems accepted as a means to disseminate corporate communications electronically?

Generally, the Exchange would view any communication that is supplied in the form of a record generated in digital form by an information system, that can be transmitted and stored, as being in “electronic form”.

The interpretation used in Companies (Winding Up and Miscellaneous Provisions) Ordinance as to how documents or information is considered to be sent or supplied in electronic form is a useful reference in this regard.

The Exchange does not prescribe detailed requirements on this matter and issuers have the flexibility to devise their own arrangements based on their own circumstances.

MB Rule 2.07A

First released: December 2023; last updated: August 2024

9. What should issuers do if they try to send corporate communications to individual structured products holders electronically but find that the electronic contact details provided to them by a holder are non-functional?

The Exchange will not hold issuers responsible for failed electronic communications that are due to non-functional electronic contact details provided to them by structured products holders.

However, issuers are expected to take appropriate steps to minimise the chance of unsuccessful electronic communication (e.g. by drawing the structured products holders' attention to the risk of providing non-functional electronic contact details; reminding holders to use legible handwriting if they are filling in the relevant contact details in a paper form; or requiring holders to input the relevant contact details twice if an electronic form is used, etc.).

The Exchange will consider an issuer to have complied with its obligations if the issuer has used reasonable efforts to contact a structured products holder using the electronic contact details provided. In general, an issuer is considered to have complied with the requirements if it sends corporate communications to the electronic contact details provided by the holders without receiving any “non-delivery message”.

If an issuer has attempted to send a corporate communication electronically and received a non-delivery message, the issuer should re-send the corporate communication using other contact details provided by the holder (if any) in the manner the issuer considers appropriate (e.g. in hard copy). In the case of actionable corporate communications, the issuer must send the actionable corporate communication in printed form that includes a request for the holder's functional electronic contact details for the purpose of its future compliance with the Listing Rules.

Note 3 to MB Rule 2.07A

First released: December 2023; last updated: August 2024

10. Are issuers required to notify structured products holders when they publish a corporate communication on their website/the Exchange's website?

No, except where the issuer is disseminating an actionable corporate communication, which must be sent to structured products holders individually.

Structured products holders who wish to be notified of corporate communications may subscribe to electronic alerts, such as the free News Alert service on HKEX website.

MB Rule 2.07A(4)

First released: December 2023; last updated: August 2024

11. Are issuers required to put in place mechanisms to receive electronic instructions from structured products holders in response to actionable corporate communications?

The Listing Rules do not prescribe how a structured products holder must respond to actionable corporate communications they receive from an issuer. Similarly, the Listing Rules do not prescribe the mechanism that an issuer must put in place to receive instructions from structured products holders in response to actionable corporate communications. This mechanism could be, for example, a designated email box, an electronic online platform or hardcopy by post.

MB Rule 2.07A(4)

First released: December 2023; last updated: August 2024

12. Can issuers postpone the publication of listing documents or announcements under severe weather trading arrangements ('SWT')?

Issuers are expected to fulfil disclosure obligations in the same manner as normal under SWT (including but not limited to publication of listing documents and announcements relating to residual value and adjustment of terms).

MB Rules 15A.64, APP E5

First released: September 2024