Continuing obligations

DS3-1 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) a listed 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) a listed issuer has inside information that needs to be disclosed under the Inside Information Provisions but it has not announced the information (e.g. the listed 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 listed issuer's securities which appears to be referrable 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 listed issuer's securities,

the listed issuer must announce information necessary to avoid a false market in its listed securities.

MB Rules 37.46A, 37.47(b), para 3 of PN11 and App E4 - 1(1)(a) and 27
GEM Rules 30.39A, 30.40(b), 31.04(2) and 31.05
First released: April 2013; last updated: May 2024

DS3-2 What is the meaning of the term "such enquiry with respect to the issuer as may be reasonable in the circumstances"? What sort of enquiry is a listed issuer required to make in response to the Exchange's enquiries? When will a listed issuer be expected to contact its controlling shareholders when they are not directors or officers of the listed issuer?

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 a listed issuer implements and maintains adequate and effective internal control systems and procedures to ensure material information concerning the listed issuer and its 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.

A listed issuer is generally not expected to contact (a) its controlling shareholders when they are not directors or officers of the listed issuer, or (b) counterparties to a transaction, except if there is information available to the listed issuer suggesting that the subject matter of the enquiry is related to the controlling shareholders or the counterparties to a transaction. For example, the listed issuer is aware of its controlling shareholder's plan to dispose of its interest in the listed issuer, and there is an unusual increase in the trading volume of the listed issuer's shares. 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 Rules 37.46A(b) and App E4 - 27(2)
GEM Rules 30.39A(b) and 31.05(2)
First released: April 2013; last updated: May 2024

DS3-3 A listed 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, does the listed 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 listed 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 listed issuer can clarify in the

disclosure announcement that the information was exempted from disclosure when the standard announcement was issued.

MB Rules 37.46A(b) and App E4 - 27(2)
GEM Rules 30.39A(b) and 31.05(2)
First released: April 2013; last updated: May 2024

DS3-4 Part 9 of the Financial Institutions (Resolution) Ordinance (Cap.628) (FIRO) empowers a resolution authority (being the Monetary Authority, the Securities and Futures Commission or the Insurance Authority) to temporarily defer certain entities' disclosure obligations under section 307B of the SFO in certain circumstances (including that the disclosure would cause or contribute to the non-viability of the entity or its group company or impede the ability of the resolution authority to achieve orderly resolution), and in that case, the entities' disclosure obligations under the Listing Rules will also be deferred automatically.

Where a listed issuer's disclosure obligations are deferred under the FIRO, will dealings in securities of such listed issuer be suspended?

There is no automatic suspension of dealings in securities of such listed issuer, but the FIRO provides that the resolution authority may direct the Exchange to suspend, or not to suspend, dealings in securities of a listed issuer despite its disclosure obligations have been deferred under the FIRO.

According to Part 9 of the FIRO, the resolution authority must consult the SFC (if the SFC is not the resolution authority) before its exercise of any powers to defer disclosure obligations or suspend, or not suspend, dealings to enable the SFC's views to be ascertained (including e.g. on the effects of deferral, suspension or non-suspension on the market, and financial stability).

Any decision to exercise such powers would not be taken lightly by a resolution authority given their potential risks and ramifications for the stability and effective functioning of the financial system. Ultimately, the extent to which the resolution authority would use any of these powers on failure of an institution would depend upon its assessment of the risks posed to the orderly resolution, its balancing of the resolution objectives in the context of securing its financial stability objectives as set out in the FIRO and the operational mechanics (to be developed by the resolution authorities) for the implementation of the FIRO stabilization options.

MB Rule 6.01
GEM Rule 9.01
First released: October 2017; last updated: May 2024

DS3-5 Company A is an issuer of debt listed on the Exchange. Company B, an unlisted group company of Company A, guarantees Company A's obligations under the listed debt.

Company A is subject to Part 9 of the FIRO, while Company B is not.

Where Company A's disclosure obligations are deferred under section 150 of the FIRO or suspended under section 153 of the FIRO, will Company B's disclosure obligations remain intact?

Where Company A's disclosure obligations are deferred under section 150 of the FIRO or suspended under section 153 of the FIRO, the Exchange will exercise the general waiver approved by the SFC under MB Rule 2.04 (or GEM Rule 2.07) to waive Company B's disclosure obligations under the Listing Rules arising out of or in connection with the

possible resolution which may be triggered, or the resolution triggered under the FIRO.

MB Rule 2.04
GEM Rule 2.07
First released: October 2017

DS3-6 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
GEM Rule 16.04A
First released: December 2023; last updated: May 2024