

Model code for securities transactions by directors of listed issuers

- 1. A director enters into a share dealing agreement prior to the black-out period. Will the director be considered as dealing in shares if completion of the share dealing agreement takes place during the black-out period under Rule A.3(a) of Appendix C3 to the MB Rules / GEM Rule 5.56(a)?**

No, provided that the pricing is fixed (in monetary terms) before the black-out period and completion takes place pursuant to the original terms of the agreement.

*MB App C3 – Rule A.3(a)
GEM Rule 5.56(a)*

First released: March 2004; last updated: May 2024

- 2. Please clarify the meaning of “beneficial ownership is transferred from another party by operation of law” under paragraph 7(d)(viii) of Appendix C3 to the MB Rules / GEM Rule 5.52(4)(h)?**

This refers to the situation where the transfer occurs automatically because of applicable laws rather than any act on the part of the relevant parties. For example, the director may be entitled to receive an interest in securities as a result of the laws governing intestacy or, where the director is a joint holder of securities, the director may obtain ownership of the securities if the other joint holder dies.

*MB App C3 – Paragraph 7(d)(viii)
GEM Rule 5.52(4)(h)*

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- 3. A listed issuer has notified the Exchange of the commencement date of the black-out period under paragraph (b) of Rule A.3 of Appendix C3 to the MB Rules / GEM Rule 5.56(b). If it later decides to postpone publication, should the black-out period be based on the revised publication date?**

No. The commencement date of the black-out period does not change if the listed issuer decides to postpone publishing the results after it has notified the Exchange. The black-out period will be extended and end on the date of publication.

*MB App C3 – Rule A.3(b)
GEM Rule 5.56(b)*

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4. When should the black-out period start if a listed issuer anticipates a delay in publishing its results announcement?

The default position is that the latest any black-out period can start is 60 days or 30 days before the publication deadline for the annual or interim results. This is so even if the listed issuer expects that the publication date will be after the deadline imposed by the Listing Rules.

*MB App C3 – Rule A.3
GEM Rule 5.56*

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5. Is a director permitted to deal on the actual day on which the listed issuer’s financial results are published?

No. Rule A.3(a) of Appendix C3 to the MB Rules / GEM Rule 5.56(a) states that a director must not deal in any securities of the listed issuer on any day on which its financial results are published.

*MB App C3 – Rule A.3(a)
GEM Rule 5.56(a)*

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6. Rule A.3(a) of Appendix C3 to the MB Rules / GEM Rule 5.56(a) provides that the black-out period may commence “from the end of the relevant financial year up to the publication date of the results”. Please clarify whether the period commences on the day the financial year end or the day immediately following the financial year end.

The period commences on the day immediately following the financial year end date.

*MB App C3 – Rule A.3(a)
GEM Rule 5.56(a)*

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7. Mr. X, a director of Company A, intends to make an offer for Company A’s shares under the Takeovers Code. Does it constitute a dealing in Company A’s shares by Mr. X under the Model Code when, during the black-out period:

(i) the offer document is despatched?

Yes, the despatch of the offer document during the black-out period is a dealing by Mr. X under the Model Code.

(ii) Mr. X announces his firm intention to make the offer (with terms)?

No, if the offer (i.e. the despatch of the offer document) would not take place within the black-out period. As Mr. X will be required to proceed with the offer in accordance with the Takeovers Code after he announced a firm intention to make the offer, he should apprise himself of all applicable rules and regulations before making the announcement. Please also refer to the SFC’s [Takeovers Bulletin – Issue No. 15](#).

(iii) Mr. X seeks and obtains irrevocable undertakings from Company A's shareholders to tender their shares under the offer?

No, the undertakings would not themselves be regarded as dealings by Mr. X under the Model Code.

*MB App C3 – Paragraph 7 and Rule A.3
GEM Rules 5.52 and 5.56
First released: May 2011; last updated: May 2024*

8. Mr. X has announced a firm intention to make an offer for Company A's shares (with terms) under the Takeovers Code before the commencement of the black-out period. If the offer document is to be despatched during the black-out period and there are no change to the offer terms, would the dealing restriction under the Model Code apply?

Yes.

*MB App C3 – Paragraph 7 and Rule A.3
GEM Rules 5.52 and 5.56
First released: May 2011; last updated: May 2024*

9. For the purpose of the Model Code, does dealing include a takeover of a listed issuer by way of scheme of arrangement under which the listed issuer's shares would be cancelled or transferred in exchange for cash or securities?

Yes, as a scheme of arrangement has similar effect to takeovers by way of general offer.

*MB App C3 – Paragraph 7
GEM Rule 5.52
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10. An entity makes an offer to acquire a listed issuer's shares under the Takeovers Code. Mr. Y is a director of each of the listed issuer and the offeror. Would the offer be regarded as dealing by Mr. Y in the listed issuer's shares under the Model Code by virtue of his directorship in the offeror?

No. However, Mr. Y should note that under the Model Code he must not make any unauthorised disclosure of confidential information of the listed issuer to any person (even those to whom he owes a fiduciary duty).

*MB App C3 – Paragraphs 6 and 7 and Rules A.3 and A.6
GEM Rules 5.51, 5.52, 5.56 and 5.59
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11. A director of a listed issuer has pledged part of his/her shares in the issuer for a margin loan. Does it constitute a dealing in the listed issuer's shares by the director under the Model Code if, during the black-out period,

(i) the director tops up the number of shares pledged to meet the margin requirements?

Yes. The dealing restriction will apply unless the director can demonstrate that the circumstances are exceptional and the proposed top-up of share pledge is the only reasonable course of action available to the director to avoid forced sale of the pledged shares and will be conducted in accordance with Rule C.14 of the Model Code.

(ii) the director repays the loan which will result in a release of the share pledge?

No.

*MB App C3 – Rules A.3(a) and C.14
GEM Rules 5.56(a) and 5.67
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12. A listed issuer has repurchased its shares on the Exchange for holding in treasury. One of its directors is taken to have an interest in those treasury shares for the purpose of Part XV of the SFO as the director is also a shareholder that controls over one-third of the voting power at general meetings of the issuer. In this situation, would the share repurchase or any subsequent sale, transfer or cancellation of the treasury shares by the issuer constitute a dealing in the issuer's shares by the director under the Model Code?

No, if the director has an interest in those treasury shares only because of his shareholding in the issuer.

The Model Code is not intended to apply to an issuer's holding or cancellation of its treasury shares, or its share repurchase, issuance of new shares, or sale or transfer of its treasury shares conducted with persons independent of its directors. That said, directors are still required to observe the general principle under the Model Code that they must not make any unauthorised disclosure of confidential information to other persons (even those to whom they owe a fiduciary duty) or make any use of such information for the advantage of themselves or others. They must ensure that the issuer complies with the Listing Rule requirements applicable to the transactions, including but not limited to the dealing restrictions and moratorium periods set out in MB Rules 10.06(2) and (3) and 10.06A / GEM Rules 13.11, 13.12, 13.12A and 13.14A.

*MB App C3 – Paragraphs 6 and 7 and Rule A.6
GEM Rules 5.51, 5.52 and 5.59
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