

Frequently asked questions on the Joint Statement in relation to Results Announcements in light of Travel Restrictions related to the Severe Respiratory Disease associated with a Novel Infectious Agent (Joint Statement)

28 February 2020 (Updated on 16 March 2020)

The Exchange and the Securities and Futures Commission (the SFC) have held discussions with various stakeholders and listed issuers on the Joint Statement. The following are some questions frequently asked during the course of the discussions.

| | Question | Answer |
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| A. Publication of results by issuers with December 31 financial year end | | |
| 1. | <p>If an issuer is able to publish a preliminary results announcement but without agreement with auditors by 31 March 2020,</p> <p>(i) can trading in its securities continue?</p> <p>(ii) what should the announcement include?</p> <p>(iii) if the issuer's financial results are subsequently agreed by auditors, should it publish a further announcement?</p> | <p>(i) Yes. As explained in the Joint Statement, the Exchange will not normally suspend trading of the securities of the issuer.</p> <p>(ii) In addition to the preliminary results, the issuer may consider including:</p> <p>a. a statement to the effect that the results have not been agreed with its auditors;</p> <p>b. an explanation for the lack of agreement with auditors and where available, the expected date that the results may be agreed with auditors; and</p> <p>c. whether the results have been agreed with the audit committee and if there is disagreement, details of the disagreement.</p> <p>(iii) Yes, the announcement can simply state that the previously published results have been agreed with auditors. If there are adjustments to the accounts, the announcement should clearly explain the adjustments and where appropriate, publish the revised results that have been agreed with auditors.</p> |
| 2. | <p>If an issuer has management accounts available but is uncertain as to potential adjustments to the financial figures (whether due to the lack of</p> | <p>(i) As explained in the Joint Statement, it is our overall objective to minimize trading disruptions. In this regard the issuer should provide the investing public with sufficient information to make investment decisions (see (ii)</p> |

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| | <p>supporting evidence or relating to the impairment or valuation of assets or liabilities),</p> <p>(i) can trading in its securities continue if it publishes such accounts by 31 March 2020?</p> <p>(ii) what should the announcement include?</p> <p>(iii) if the issuer's financial results are subsequently agreed by auditors, should it publish a further announcement?</p> | <p>below). For example, the Exchange will not normally require trading suspension:</p> <p>a. if there are uncertainties on certain financial items and the issuer can highlight the areas of uncertainties in its announcement.</p> <p>b. if the issuer cannot provide breakdown of financial figures normally in notes to financial statements.</p> <p>(ii) The announcement should provide details of the uncertainties. In preparing the financial information for publication, issuers may refer to the e-News published by the Financial Reporting Council (the FRC) on 6 February 2020 (https://www.frc.org.hk/en-us/enews/202002/enewsletter_202002_en_Final_website.pdf) for advice to the board of directors and audit committees.</p> <p>The announcement should comply with the standards for disclosure for issuers' communication (see Main Board Rule 2.13/ GEM Rule 17.56). In particular, information presented in the announcement should be, taken as a whole, accurate and complete in all material respects and not be misleading or deceptive.</p> <p>(iii) Where the issuer is subsequently aware of any material differences and/or has obtained the outstanding information, it should publish a supplemental announcement to clearly explain the differences and/or disclose the outstanding information when the information is available and where appropriate, revised results that have been agreed with auditors (see also Question 5 on material differences).</p> |
| 3. | <p>If an issuer's operations are severely affected by the outbreak of SRD and cannot prepare its management accounts,</p> | <p>As recommended in the Joint Statement, the issuer should consult with the Exchange on the financial information that it is able to report on as soon as possible. The Exchange will assess whether the publication of this information</p> |

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| | (i) can trading in its securities continue? (ii) what should the announcement include? | <p>will be sufficient to maintain an orderly, informed and fair market so that trading in the issuer's securities can continue.</p> <p>See also Further Guidance on the Joint Statement released by the SFC and the Exchange on 16 March 2020 for additional guidance as to what would suffice as material financial information necessary to enable trading in the issuer's securities to continue.</p> <p>If the issuer's business operations, reporting controls, systems, processes or procedures are materially disrupted by the SRD outbreak and/or the related travel restrictions, management should assess whether any inside information has arisen under Part XIVA of the Securities and Futures Ordinance (the SFO) and, if so, make a separate announcement as soon as reasonably practicable, independent of any announcement required under the Listing Rules.</p> <p><i>(Updated on 16 March 2020)</i></p> |
| 4. | Should an issuer make a written submission to the Exchange and/or apply for a waiver if its preliminary results announcement does not fully comply with Main Board Rules 13.49(1) and (2)/ GEM Rule 18.49? | <p>To reduce the administrative burden of issuers we welcome issuers to make verbal enquiries.</p> <p>A waiver application is <u>not</u> required where an issuer publishes a preliminary results announcement that does not fully comply with the requirements in Main Board Rules 13.49(1) and (2)/ GEM Rule 18.49 and/or where the Exchange exercises its discretion under Main Board Rule 13.50/ GEM Rule 17.49A not to suspend trading in the issuer's securities.</p> |
| 5. | If an issuer has concerns that its management accounts may have material differences compared to its later audited financial statements, (i) what should the issuer do? | (i) To minimize potential material differences, the audit committee is encouraged to discuss the key audit matters with the auditors as early as possible. Please see the advice from the FRC in its e-News released on 6 February 2020 (https://www.frc.org.hk/en-us/enews/202002/enewsletter_202002_en_Final_website.pdf). |

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| | (ii) can the issuer postpone the publication of the preliminary results announcement until the audit is completed? | <p>The SFC and the Exchange will not take disciplinary action solely because of material differences. We will consider whether the issuer and its directors have been diligent and reasonable in their treatment of accounts or put a good faith effort on the available information. Issuers can also refer to the Hong Kong Institute of Directors' response to the Joint Statement published on 7 February 2020 (https://www.hkiod.com/7Feb2020_final.pdf) and guidance provided by the FRC in its February e-News.</p> <p>(ii) The issuer is reminded of its obligation to timely disclose inside information under Part XIVA of the SFO. Withholding of unaudited financial information may expose the issuer to a risk of non-compliance with Part XIVA of the SFO.</p> |
| 6. | Are there different requirements for A+H issuers that cannot publish preliminary results announcements with agreements with auditors by 31 March 2020? | No. The A+H issuer should follow the guidance under the Joint Statement (see also questions above). |
| B. Publication of audited financial statements and Listing Rules requirements related to published financial information | | |
| 7. | If an issuer cannot publish its annual report by 30 April 2020 (for GEM issuers, 31 March 2020), can the issuer postpone the publication of its annual report? | <p>Yes. See Further Guidance on the Joint Statement released by the SFC and the Exchange on 16 March 2020.</p> <p>The issuer should also take note of the deadline for holding an annual general meeting and plan accordingly (see also Question 10).</p> <p><i>(Updated on 16 March 2020)</i></p> |

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| 8. | When does the blackout period for an issuer that publishes a preliminary results announcement without auditors' agreement on 31 March 2020 end? | <p>By now, all issuers with December year end should have started the blackout date (based on the expected publication time on or before 31 March 2020).</p> <p>Rule A.3 of Appendix 10/ note to GEM Rule 5.56 states that “<i>Directors should note that the period during which they are not allowed to deal under rule A.3 will cover any period of delay in the publication of a results announcement.</i>”</p> <p>Accordingly, the blackout period ends when the issuer releases the audited financial results (or an announcement confirming that the released results have now been agreed with auditors).</p> |
| 9. | For the purpose of the size tests , if the issuer published the preliminary results announcement without auditors' agreement, can the issuer refer to the financial figures in such announcement when computing the assets ratio, profits ratio and revenue ratio? | <p>Reference is made to FAQ Series 7 No. 10, which states that the issuer must ensure accuracy of the figures used for computing the assets, profits and revenue ratios if the figures in the percentage ratios computation are referred to the preliminary results announcement with auditors' agreement. Under the current circumstance we will adopt the same approach for an issuer that has published a results announcement without auditors' agreement.</p> <p>Where any such figures need to be revised in the audited accounts subsequently available, the issuer should re-compute the relevant percentage ratios and comply with any additional requirements if the proposed transaction falls under a higher classification.</p> |

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| C. Holding of annual general meetings (AGMs) | | |
| 10. | <p>Under the Listing Rules, issuers are required to lay financial statements at AGM within six months after financial year end. Could the issuer postpone the date of its annual general meeting beyond six months as a result of the delayed publication of audited financial statements?</p> | <p>For overseas and PRC issuers, we may consider waiving the relevant Listing Rules requirement under Main Board Rule 13.46(2)(b)/ GEM Rule 18.03 Note 3 on a case-by-case basis. However, the directors should also observe the relevant requirements under the laws and regulations in their jurisdictions and the issuers' own articles of association. <i>(Note: PRC, Cayman and Bermuda company laws require companies (other than exempted companies in the Cayman Islands) to hold AGMs at least once every year. The PRC also requires listed companies to hold AGMs within six months of the closing of the financial year.)</i></p> <p>For Hong Kong issuers, the Companies Ordinance requires the issuer to hold the AGM within six months and directors to lay the issuer's annual financial statements at its AGM within the period of six months after the end of the financial year. While Main Board Rule 13.46(1) Note 2/ GEM Rule 18.03 Note 3 also requires Hong Kong issuers to lay accounts within six months of its financial year end, the Exchange will not grant any waiver that would result in contravention with company laws.</p> <p><i>(Updated on 16 March 2020)</i></p> |
| 11. | <p>Can an issuer conduct its AGM using webcast or video conference in lieu of a physical meeting?</p> <p>How should the issuer make available facilities for voting in those circumstances?</p> <p>According to the Guide on General Meetings published by the Exchange, general meetings should be held at place and a time convenient to</p> | <p>Issuers should ensure that the conduct of its shareholders' meetings are in compliance with the company laws and its own articles of association where applicable. The Listing Rules do not impose requirement on the format for general meetings.</p> <p>The Exchange's Guide on General Meetings (https://www.hkex.com.hk/-/media/HKEX-Market/Listing/Rules-and-Guidance/Other-Resources/Listed-Issuers/Practices-and-Procedures-for-Handling-Listing-related-Matters/gm_guide.pdf?la=en) provides guidance for issuers as follows:</p> |

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| | the largest possible number of shareholders to attend. Does it mean that general meetings must be held in a physical location? | <i>2.3 Place and time for the meeting: Meetings should be held at place and a time convenient to the largest possible number of shareholders to attend. Issuers should consider the use of technology (e.g. webcast, video conference) to maximise shareholder participation. They should clearly explain whether or not shareholders attending the general meeting by webcast at a remote site are allowed to vote and if so, how. They should not change the venue or the time of a general meeting without giving sufficient notice to shareholders.</i> |