

Frequently Asked Questions Series 22 (Released on 30 April 2013)

Rule changes consequential on the statutory backing of the obligation on listed corporations to disclose inside information (Effective from 1 January 2013)

Status of “Frequently Asked Questions”

The following frequently asked questions (FAQs) are designed to help issuers understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail.

In formulating our “answers”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Contact the Listing Division at the earliest opportunity with any queries.

No.	Main Board Rules	GEM Rules	Query	Response
1.	Rules 13.09(1), 13.10 and 37.47(b) Para 3 of PN 11 Para 2(1)(b) of	Rules 17.10(1), 17.11, 30.40(b), 31.04(2) and 31.05	What is a “ <i>false market</i> ”?	The term “ <i>false market</i> ” 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:

	<p>Appendices 7C, 7D, 7E and 7H</p> <p>Para 24 of Appendix 7C</p> <p>Para 26 of Appendix 7H</p>			<ul style="list-style-type: none"> (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. <p>Where a media or analyst report appears to contain information from a credible source (whether that information is accurate or not) and:</p> <ul style="list-style-type: none"> (a) there is a material change in the market price or trading volume of the issuer's securities 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
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				<p>material effect on the market price or trading volume of the issuer's securities,</p> <p>the issuer must announce information necessary to avoid a false market in its listed securities.</p>
2.	<p>Rules 13.09(1) and 37.47(b)</p> <p>Para 2(1)(b) of Appendices 7C, 7D, 7E and 7H</p>	<p>Rules 17.10(1), 30.40(b) and 31.04(2)</p>	<p>Does an issuer need to “consult” the Exchange before announcing the information necessary to avoid a false market in its securities?</p>	<p>No, it can proceed to disclose the information which requires disclosure under these provisions.</p> <p>However, it must contact the Exchange as soon as reasonably practicable if it believes that there is likely to be a false market in its listed securities (see the note to these provisions).</p>
3.	<p>Rule 13.10(2)</p> <p>Para 24(2) of Appendix 7C</p> <p>Para 26(2) of Appendix 7H</p>	<p>Rules 17.11(2) and 31.05(2)</p>	<p>What is the meaning of the term “<i>such enquiry with respect to the issuer as may be reasonable in the circumstances</i>”?</p> <p>What sort of enquiry is an issuer required to make in response to the Exchange's enquiries?</p> <p>When will an issuer be expected to contact its controlling shareholders when they are not directors or officers of the issuer?</p>	<p>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.</p> <p>To facilitate compliance, it is crucial that an issuer implements and maintains adequate and effective internal control systems and procedures to ensure material information concerning the 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.</p>

				<p>An issuer is generally not expected to contact (a) its controlling shareholders when they are not directors or officers of the issuer, or (b) counterparties to a transaction, except if there is information available to the issuer suggesting that the subject matter of the enquiry is related to the controlling shareholders or the counterparties to a transaction. For example, the issuer is aware of its controlling shareholder's plan to dispose of its interest in the issuer, and there is an unusual increase in the trading volume of the 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.</p>
4.	<p>Rule 13.10(2)</p> <p>Para 24(2) of Appendix 7C</p> <p>Para 26(2) of Appendix 7H</p>	<p>Rules 17.11(2) and 31.05(2)</p>	<p>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, does the issuer need to publish a standard announcement?</p> <p>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?</p>	<p>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.</p> <p>Information that is exempted from disclosure under the Inside Information Provisions does not fall within the term "<i>any inside information that needs to be disclosed under Part XIVA of the Securities and Futures Ordinance</i>" contained in the standard announcement. Therefore, a standard announcement issued under those circumstances will not be inaccurate.</p>

				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.
5.	Para 2(1)(b), 26 and 26A of Appendix 7H		Do the obligations to make an announcement to avoid a false market in the issuer's listed securities, to respond to the Exchange's enquiries, and to apply for a trading halt cover information relating to the underlying securities?	No, those obligations are generally confined to information relating to the listed structured products, structured products issuers and/or guarantors.