

Withdrawn on 1 January 2013 in light of the Rule changes consequential on the statutory backing to issuers' continuing obligation to disclose inside information

Guide on disclosure of
price-sensitive
information

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Introduction

1. The principal function of The Stock Exchange of Hong Kong Limited (the “Exchange”), a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited, is to provide a fair, orderly and efficient market for the trading of securities. To this end, the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the “Main Board Rules”) and the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited (the “GEM Rules”) (collectively, the “Listing Rules”) require issuers to make, among other things, timely public disclosure of price-sensitive information¹. Further, all disclosure of information must be made in such a way that it does not place any person in a privileged dealing position and allows time for the market to price the concerned security to reflect the latest available information.
2. The disclosure required under the Listing Rules is only the minimum mandatory standard. In order to promote fairness, transparency, accountability and responsibility, which are the core principles of good corporate governance, directors should consider the issuers’ own circumstances when deciding whether any information is material and should be disclosed properly to the public. Disclosure by issuers should be aimed at providing shareholders and the public with appropriate data and information on a timely and even basis, and not at merely meeting the minimum regulatory requirements. Timely disclosure of accurate and quality information is in the issuer’s interest for investors often give premium ratings to the most transparent companies.
3. This guide is intended to help issuers and their directors fulfil their obligations under the Listing Rules while allowing them to actively inform the market of company developments. This guide does not form part of the Listing Rules and does not in any way amend or vary an issuer’s obligations under the Listing Rules, nor does it remove the need for issuers to make their own judgment as to what is price-sensitive information and when disclosure is required. In case of doubt, issuers are encouraged to consult with the Exchange. The principles and elaboration in this guide reflect some of the criteria that the Exchange will consider in its interpretation of the Listing Rules to determine whether certain information is price-sensitive.

¹ See paragraph 2 of Appendix 7 of the Main Board Rules (the “Listing Agreement”) and Rule 17.10 of the GEM Rules

Summary

4.

The guiding principles and criteria in disclosing price-sensitive information are summarised in this paragraph, and explained in more detail in the paragraphs that follow:

- (a) Information which is expected to be price-sensitive should be announced promptly² after it becomes known to a director or senior management of the issuer and/or is the subject of a decision by the directors or senior management of the issuer.
- (b) Until an announcement in relation to such information is made, directors of issuers must ensure that such information is kept strictly confidential.
- (c) Where it is felt that the necessary degree of security cannot be maintained or that security may have been breached, an announcement must be made.
- (d) If price-sensitive information is inadvertently divulged to outside parties or it is believed that such information may have been inadvertently divulged, the issuer must immediately issue an announcement so that the relevant information is disseminated to the market as a whole.
- (e) Information should be disclosed to the market as a whole and all users of the market have simultaneous access to the same information. It is important that price-sensitive information should not be divulged selectively outside the issuer and its advisers in such a way as to place in a privileged dealing position any person or class or category of persons.
- (f) Price-sensitive information may include positive and negative information.

² See definition for “promptly” in paragraph 10

What is “price-sensitive information”?

5.

Under paragraph 2 of Appendix 7 of the Main Board Rules (the “Listing Agreement”) and rule 17.10 of the GEM Rules, an issuer shall keep the Exchange, members of the issuer and other holders of its listed securities informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group’s sphere of activity which is not public knowledge) which:

- (a) is necessary to enable them and the public to appraise the position of the group
- (b) is necessary to avoid the establishment of a false market in its securities
- (c) might be reasonably expected materially to affect market activity in and the price of its securities.

However, it is important to note that in determining whether certain information is price-sensitive or otherwise, one should look at the information set out in (a) to (c) independently rather than conjunctively.

6.

An issuer may face unexpected and significant events and there are many events which can affect prices and market activity. It is thus vital for the issuers to make a prompt assessment of the likely impact of these events on their share price/activities and decide consciously whether the relevant information would be price-sensitive and need to be disclosed. If necessary, issuers should request a suspension in the trading of its securities until a formal announcement can be made. Some common examples of such events include:

- *regularly recurring matters (such as financial results and dividends);*
- *exceptional matters (such as acquisitions, realisations transactions with connected persons);*
- *signing an important contract;*
- *entering into a significant joint venture;*
- *fund-raising exercises;*
- *comments on the prospects for future earnings or dividends;*
- *release of any projected profits of the group by issuers or their directors;*
- *entering into an agreement for the issue of options convertible into securities;*
- *a large foreign exchange loss;*
- *major market upheaval in the industries, countries or regions where the issuer has significant operations or transactions;*

- *premature removal of auditors before end of their term in office;*
- *cancellation of an agreement which was previously the subject of an announcement;*
- *resignation of chief executive;*
- *the issuer being aware that its auditors will issue a qualified report on its results;*
- *any change of accounting policy that may have a significant impact on the accounts; or*
- *events beyond the control of the issuer and is of material significance to the issuer's business, operations or financial performance.*

7.

However, no definitive list can be given. What may be price-sensitive information to one party to a contract may be immaterial to the counterparty. A fund-raising that may be material to an issuer facing liquidity problems may be immaterial to the same company in better times. Later in this guide examples of situations are discussed to reflect some of the criteria that the Exchange will consider in its interpretation of the Listing Rules. It is important to note that "price-sensitive information" includes potentially price-sensitive information. Thus, references in this guide to "price-sensitive information" should be construed accordingly.

8.

Deciding on what information is price-sensitive is a matter of judgement. In considering whether the decision or information is price-sensitive, directors should make reference to paragraph 5.

9.

The Listing Rules seek to ensure the efficient functioning of the market through timely and accurate public disclosure of price-sensitive information. They also seek to ensure that any such disclosure must be made to the market generally (and not just to a section of the public). Paragraph 2 of the Listing Agreement and rule 17.10 of the GEM Rules impose an obligation on issuers to keep the Exchange, their shareholders and other holders of their listed securities informed, as soon as reasonably practicable, of any price-sensitive information relating to the issuer's group. This is often referred to as the "general disclosure obligation".

When and how should price-sensitive information be disclosed?

10. The guiding principle is that information which is expected to be price-sensitive should be announced promptly after it becomes known to a director or senior management of the issuer and/or is the subject of a decision by the directors or senior management of the issuer. In cases where a decision by the directors or senior management of the issuer is pending or in cases of incomplete negotiations, issuers should refer to the guidelines set out in paragraphs 15 to 17. For this purpose, “promptly” means as soon as reasonably practicable after the senior management of the issuer learns (or when any reasonable issuer should have been aware) that the information is both material and non-public. Until such an announcement is made, the directors must ensure that such information is kept strictly confidential. Where it is felt that the necessary degree of security cannot be maintained or that security may have been breached, an announcement must be made.

11. The general disclosure obligation will be satisfied by the issuer publishing the relevant information in the newspapers by means of a paid announcement in one Chinese language and one English language newspaper or other means and manner as stipulated in the Listing Rules.

12. Issuers may consider implementing additional means of broad communication such that the news will be disseminated to the shareholders and the public in a timely and uniform manner. Such means might include a press release through widely disseminated news or wire services and/or directly sent to international and local media, an announcement of a conference of which the public has notice and may have personal or electronic access, or direct email or fax to shareholders whose address is known. Posting the announcement on an issuer’s website is an appropriate action, but cannot be regarded of itself as an announcement of information.

Unusual movements in price or trading volume

13. The Exchange will usually contact an issuer if it notices unusual movements in the price or trading volume of its securities, or in response to press reports or market rumours which may affect market activity in or the price of its securities. In those circumstances, the issuer must promptly respond to any enquiries from the Exchange and, if appropriate, issue a statement authorised by the board as to whether the issuer is aware of any matter or development that is or may be relevant to the unusual price movement or trading volume of its listed securities (including any negotiations or discussions in relation to a price-sensitive matter).

Establishing a communications policy and procedure

14.

The systematic dissemination of price-sensitive information is greatly assisted by having a communications policy and procedure in place. In particular:

- (a) while the board is generally responsible for the proper dissemination of price-sensitive information, the actual implementation is usually delegated to one or more executive directors and/or other authorised senior executives of the issuer. A procedure should be put in place to ensure that the information to be disclosed does not constitute unpublished price-sensitive information. Such procedure may include clearance with a compliance officer before disclosure of the information. The board of directors of the issuer should approve the procedure before it is implemented;
- (b) responsibility for communication with parties outside the issuer should be clearly defined. Specific directors or senior officers who are aware of the issuer's business and the relevant regulatory requirements should be assigned for such purpose and all communication should be made through such directors or officers. Other directors and/or staff should be prohibited from communicating information unless they are nominated;
- (c) issuers should consider making their internal policies on communication known outside the company. This could be a useful tool to assist issuers in withstanding pressure to disclose prematurely confidential price-sensitive information;
- (d) the directors of an issuer should put in place appropriate procedures to keep price-sensitive information confidential until a formal announcement is made. Information must not be allowed to leak (to selected groups, or otherwise) in order to "test" the market. If confidentiality cannot be maintained, or is in fact breached, the directors of the issuer have a responsibility to notify the Exchange and, if necessary, request a suspension in the trading of its securities until a formal announcement is made; and
- (e) where appropriate, issuers should consult their professional advisers who can assist in determining whether information is price-sensitive.

Guidance on particular situations and issues

Incomplete negotiations

15. Issuers are sometimes confronted with the problem of how long to keep an issue confidential and what constitutes the proper time for its release. The overriding principle is that information which is expected to be price-sensitive should be announced promptly³ after it becomes known to a director or senior management of the company and/or it is the subject of a decision by the directors or senior management of the issuer. Until it is released, it is essential to maintain confidentiality. Issuers should consider implementing procedures to maintain the confidentiality of information such as: the use of codenames in correspondence, the use of private fax lines and e-mail accounts, limiting dissemination of the information to those who “need to know”, and reminding parties involved of the need to keep all such information strictly confidential.
16. If negotiations or discussions regarding a potentially price-sensitive matter are extended to include more than a small group of people or if it becomes difficult to ensure the confidentiality of the information, an announcement should be made as soon as practicable.
17. If negotiations have reached a delicate stage or major elements have not been finalised, the issuer should consult the Exchange as soon as possible. It may be necessary for the securities to be suspended from trading pending a formal announcement.

Inadvertent dissemination of information

18. If an issuer becomes aware that price-sensitive information has inadvertently been given to a third party, it should immediately issue an announcement disclosing the relevant information and, if necessary, request a suspension in the trading of its securities pending a formal announcement.

Sharing of information amongst board members

19. There may be circumstances where one director has information about a price-sensitive information but does not disclose it to the rest of the board members. Directors should have an understanding between themselves that information on business developments or otherwise that may be price-sensitive be shared with each other and an announcement should be made if such information is considered to be price-sensitive.

³ See definition for “promptly” in paragraph 10

Profit forecasts

20. If an issuer has made a public forecast and subsequently becomes aware that any of the assumptions upon which the forecast is based may not be correct, or that the outcome will be materially different from the forecast figure, an announcement should be made as soon as possible. In such an announcement, the issuer should state the likely impact of the incorrect assumption on the profit forecast, the extent to which any intervening event will affect the profit, or how the actual outcome will differ from the original forecast.

Profit warning statement

21. Where an issuer becomes aware that its results may be significantly worse than generally accepted market expectation, the issuer should publish an announcement “warning” investors of the likely impact.

The annual report and general meeting

22. Issuers are encouraged to communicate with investors. An issuer may reinforce its corporate messages and provide indicators of its future direction through its annual report, or through the Chairman’s address at the annual general meeting.

23. Arrangements must be made for any price-sensitive information that is to be discussed at the meeting to be announced simultaneously as described in this guide.

Questions from analysts and correction of analysts’ forecasts

24. Issuers should have their own policy on the extent to which analysts’ questions should be answered. Issuers should decline to answer analysts’ questions where individually or cumulatively the answers would provide unpublished price-sensitive information. Directors should resist pressure from analysts to provide or comment on data that may involve the dissemination of unpublished price-sensitive information.

25. Where any information is wrongly interpreted by analysts and is materially incorrect, issuers should ask the analysts to correct it immediately.

Draft reports from analysts

26. Under normal circumstances, issuers should make no comment on an analyst’s financial projections or opinions. If an analyst sends an issuer a draft report for its comments the issuer can, of course, refuse to respond. Where the report

contains inaccurate information already in the public domain or not price-sensitive, issuers should inform the analyst for there is no advantage to any party having inaccurate information being circulated. If an issuer is aware of unpublished price-sensitive information that would correct a fundamental misconception in the report, it should consider making public disclosure of such data and at the same time correcting the report.

Conduct of meetings with analysts

27. Some issuers are concerned that they may be misinterpreted or mistakenly accused of providing price-sensitive information following meetings with analysts. Such risk can be reduced by having appropriate internal procedures. These procedures could, for example, include ensuring that more than one company representative and the compliance officer, if any, are present during these meetings and that accurate records of all discussions are kept. Alternatively, issuers could consider opening up such meetings to the press and the public, or announcing in advance the fact of an analysts' meeting and, where price-sensitive information is to be made public, publishing at the same time the information to be disclosed as required by the Listing Rules.

28. Issuers should also be aware of the possibility of analysts obtaining price-sensitive information during visits to the issuer's premises. Employees meeting the analysts during the visit should be briefed as to the extent and nature of information that can be communicated (see paragraph 14 above).

Questions from journalists

29. Relationships with the press and other media, though often contributing to a well-informed market, need particularly careful management in instances where price-sensitive information is involved. In the case of inaccurate reporting, the issuer should consider clarifying the situation by issuing an announcement and, if necessary, seeking a suspension of trading in the company's securities until the announcement is made.

30. When confronted with questions by journalists about rumours circulating in the market, issuers should be prepared to give a "no comment" answer where journalists are pressing for unannounced price-sensitive information. However, issuers are reminded that, to be credible, "no comment" statements must be used consistently and must be maintained. Where sufficient price-sensitive information has been leaked for the reported story to be broadly accurate, an issuer should ensure that an announcement is made to guarantee that the correct information is widely available. This is preferable to attempting to refute or play down the story by making counter-comments to sections of the press or by writing a letter to or granting an interview with the press in question. Issuers will find it helpful to have established internal procedures for handling these queries (see paragraph 14 above).

31. Issuers are reminded that it is contrary to the principle of fair disclosure to release negative news by way of press release in weekend newspapers or on public holidays in an attempt to soften its impact. Disclosure of price-sensitive information must be made in accordance with the Listing Rules.

Dealing in the issuer's shares

32. Directors must also not deal in the relevant securities at any time when they are in possession of unpublished price-sensitive information⁴.

Making parties "insiders"

33. At certain times, issuers may need to give information in confidence to, for example, prospective financiers, potential business partners, underwriters or other parties with whom they are negotiating. Before a meeting at which price-sensitive information is to be given, an established procedure should be followed unless the relationship with the participants is automatically one of confidentiality. The relevant party should be told that, if he attends the meeting, he must keep the relevant information strictly confidential and that he will not be able to deal in the issuer's securities before the information is made public. He should give consent to being made an 'insider' and this should be recorded. No one should be made an insider without his consent or for a longer period than necessary.

Employees

34. Employees may have access to unpublished price-sensitive information. Some employees have regular access to price-sensitive information because of their duties. Employees must be made aware of the need at all times to keep confidential all unpublished price-sensitive information given to them. Issuers should have a policy for employees such as limiting their access to price-sensitive information and providing information to employees on a "need-to-know" basis.

35. Increasingly, issuers publish "in-house" publications or publish information on its intranet. Issuers must ensure that their "in-house" publications of personal presentations to employees do not inadvertently include unpublished price-sensitive information.

⁴ There are other dealing restrictions contained in the Listing Rules, see "Model Code for Securities Transactions by Directors of Listed Companies", Appendix 10 of the Main Board Rules and "Securities transactions by directors", Rules 5.40 to 5.59 of the GEM Rules.

Takeovers and mergers

36. Issuers which are or may become involved in a takeover or merger should also have regard to the Code on Takeovers and Mergers when considering the content and timing of announcements. In particular, an announcement may be required where the target company is the subject of rumour or speculation about a possible offer or where negotiations between the offeror and the target are about to be extended to include more than a very restricted number of people. In all cases of doubt, the Securities and Futures Commission should be consulted and the Exchange informed.

Announcements by third parties

37. Announcements by industry regulators, government departments and other bodies may affect the share price of an issuer or market activity in its shares. If such announcement is expected to have a particularly significant impact on an issuer, an announcement should be made by the issuer providing the issuer's view on the impact of the relevant announcement.

Issuer listed on more than one exchange

38. If the securities of an issuer are listed on more than one stock exchange, the issuer should co-ordinate the release of information so that the Exchange is simultaneously informed of any information released to any such other exchanges and that such information is released to each of the markets at the same time. If a price-sensitive announcement is made in another market while the Hong Kong market is closed, the issuer should ensure that a corresponding announcement is published in Hong Kong before the Hong Kong market opens for trading, and, if necessary, request a suspension of trading of its securities on the Exchange pending the publication of the announcement in Hong Kong.

The Internet

39. In order to promote good corporate governance practice and transparency, issuers are increasingly using the Internet as a medium for disseminating information about themselves, for example, by maintaining a web page. Issuers are reminded that any unpublished price-sensitive information that it intends to publish on the Internet should first be made the subject of an announcement in accordance with the Listing Rules. Issuers should implement appropriate procedures to vet information which is to be put on its website. Issuers should also regularly monitor their own websites to ensure that all published information is up-to-date and accurate.