
LISTED COMPANY GUIDE TO INSIDE INFORMATION

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Listed Company Guide to Inside Information

I. DISCLOSURE OF PRICE SENSITIVE INFORMATION

The statutory regime governing listed companies' disclosure of price sensitive information (referred to in the legislation as "**inside information**") is set out in Part XIVA of the Securities and Futures Ordinance ("**SFO**") which came into effect on 1 January 2013. The SFC has published [Guidelines on Disclosure of Inside Information](#) ("**SFC Guidelines**") to assist listed companies to comply with the disclosure obligation.

The regime creates a statutory obligation on listed companies to disclose inside information to the public, as soon as reasonably practicable after inside information has come to their knowledge. Breaches of the disclosure requirement are dealt with by the Market Misconduct Tribunal ("**MMT**") which can impose a number of civil sanctions including a maximum fine of HK\$8 million on the listed company and on its directors and chief executive in certain circumstances. The SFC can institute proceedings directly before the MMT to enforce the disclosure requirement.

1. What is inside information?

The regime uses the term "inside information" to refer to price sensitive information which a listed company must disclose. "Inside information" is defined in Section 307A SFO as:

specific information that:

- (a) is about:
 - (i) the listed company;
 - (ii) a shareholder or officer of the listed company; or
 - (iii) the listed securities of the listed company or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the listed company but would if generally known to them be likely to materially affect the price of the listed securities.

The inside information which a listed company is required to disclose is the same information that is prohibited from being used for dealing in the securities of the listed company under the insider dealing regime in Parts XIII and XIV of the SFO.

Objective test

An objective test should be applied in considering whether a piece of information is inside information. The test is whether a reasonable person, acting as an officer of the listed company, would consider that the information is inside information in relation to the listed company.

Key elements of the definition

The three key elements of the definition are that:

- (a) the information must be **specific**;
- (b) the information **must not be generally known** to that segment of the market which deals or which would likely deal in the listed company's securities; and

- (c) the information would, if generally known be **likely to have a material effect on the price of the listed company's securities**.

The SFC Guidelines provide guidance as to how these terms have been interpreted by the MMT in the past.

Specificity of information

- The information must be capable of being identified, defined and unequivocally expressed.

Information regarding a listed company's affairs will be sufficiently specific if "it carries with it such particulars as to a transaction, event or matter, or proposed transaction, event or matter, so as to allow that transaction, event or matter to be identified and its nature to be coherently understood".

- The information need not be precise

Information may be specific even though the particulars or details are not precisely known. For example, information that a listed company is in financial difficulty or proposes to conduct a share placing would be regarded as specific even if the details are not known.

- Information on a transaction that is only contemplated or under negotiation (and not yet subject to a final agreement (formal or informal) can be specific information.
- To constitute specific information, a proposal should be beyond the stage of a vague exchange of ideas or a "fishing expedition". If negotiations or contracts have occurred, there should be a substantial commercial reality to the negotiations which should be at the stage where the parties intend to negotiate with a realistic view to achieving an identifiable goal.
- Mere rumours, vague hopes or worries, wishful thinking and unsubstantiated conjecture are not specific information.

"Not generally known"

The SFC Guidelines note that rumours, media speculation and market expectation about an event or circumstances of a listed company cannot be equated with information which is generally known to the market. There is a clear distinction between the market having actual knowledge of a hard fact which has been properly disclosed by the listed company and speculation or expectation as to an event or circumstances which will require proof.

In determining whether information that is the subject of media comments or analysts' reports or carried by news service providers is considered to be generally known, the listed company should consider the accuracy, completeness and reliability of the information disseminated and not only how widely the information has been disseminated. Where the information disseminated is incomplete or there are material omissions or there are doubts as to its bona fides, the information cannot be regarded as generally known and the listed company is required to make full disclosure.

"Likely to have a material effect on the price of the listed securities"

Whether inside information is likely to materially affect the price of a listed company's securities is judged based on whether the inside information would influence persons who are accustomed to or would be likely to deal in the listed company's shares, in deciding whether or not to buy or sell such shares. The test is necessarily a hypothetical one since it must be applied at the time the information becomes available.

Page 8 of the SFC Guidelines sets out a non-exhaustive list of events or circumstances where a listed company should consider whether a disclosure obligation arises. These include (among others):

- Changes in the company's performance, or the expectation of its performance;
- Changes in financial condition;
- Changes in control;
- Changes in directors or auditors;
- Changes in the share capital – e.g. new share placing, bonus issue, rights issue, share split etc.;
- Issue of debt securities, convertible instruments, options or warrants to acquire or subscribe securities;
- Legal disputes and proceedings etc.

2. Timing of disclosure

A listed company must disclose inside information to the public **as soon as reasonably practicable after any inside information has come to its knowledge** (section 307B(1) SFO). Inside information has come to the listed company's knowledge if:

- (a) the inside information has, or ought reasonably to have, come to the knowledge of an officer of the listed company in the course of performing functions as an officer of the listed company; and
- (b) a reasonable person, acting as an officer of the listed company, would consider that the information is inside information in relation to the listed company (section 307B(2) SFO).

Listed companies must therefore ensure that they have effective systems and procedures in place to ensure that any material information which comes to the knowledge of any of their officers is promptly identified and escalated to the board to determine whether it needs to be disclosed.

Meaning of “as soon as reasonably practicable”

According to the SFC Guidelines, “as soon as reasonably practicable” means that the listed company should immediately take all steps that are necessary in the circumstances to disclose the information to the public. The necessary steps that the listed company should take immediately before the publication of an announcement may include: ascertaining sufficient details; internal assessment of the matter and its likely impact; seeking professional advice where required and verification of the facts (paragraph 40 of the SFC Guidelines).

The listed company must ensure that the information is kept strictly confidential until it is publicly disclosed. If the listed company believes that the required degree of confidentiality cannot be maintained or that there may have been a breach of confidentiality, it should immediately disclose the information to the public (paragraph 41 of the SFC Guidelines). The SFC Guidelines also raise the possibility of a listed company issuing a “holding announcement” to give the listed company time to clarify the details and likely impact of an event before issuing a full announcement.

The definition of “officer”

Under the SFO, an officer is a director, manager, secretary or any other person involved in a

listed company's management. In the context of the inside information disclosure regime, a "manager" generally connotes a person who, under the immediate authority of the board, is charged with management responsibility affecting the whole or a substantial part of the listed company. A secretary refers to a company secretary. The information which must be disclosed is restricted to that which becomes known in situations where the officer is acting in the capacity of an officer.

3. Manner of disclosure

Inside information must be disclosed by way of publication of an announcement on the websites of the Exchange and the listed company in accordance with Listing Rule 2.07(C) (this is required by Listing Rule 13.09(2)(a)). Publication on the Exchange's website fulfils the requirement of section 307C(1) SFO that disclosure of inside information must be made in a manner that can provide for equal, timely and effective access by the public to the information disclosed (by virtue of Section 307C(2) SFO).

The SFC Guidelines provide that listed companies can use additional means to disseminate inside information such as press releases issued through news or wire services, press conferences in Hong Kong and/or posting an announcement on their own websites. These must be additional to announcing the information on Exchange's website as they would not themselves satisfy the requirements of section 307C(1) SFO.

The information contained in an announcement of inside information must be complete and accurate in all material respects and not be misleading or deceptive (whether by omission or otherwise).

4. The safe harbours

Section 307D SFO provides four safe harbours to permit listed companies to not disclose or delay disclosing inside information. Except for Safe Harbour A, listed companies may only rely on the safe harbours if they have taken reasonable precautions to preserve the confidentiality of the inside information and the inside information has not been leaked.

Safe Harbour A: When disclosure would breach an order by a Hong Kong court or any provisions of other Hong Kong statutes

This grants a safe harbour to listed companies if they are prohibited from disclosing inside information under a Hong Kong court order or any Hong Kong statute.

Safe Harbour B: When the information relates to an incomplete proposal or negotiation

The SFC Guidelines give the following examples:

- when a contract is being negotiated but has not been finalised;
- when a listed company decides to sell a major holding in another listed company;
- when a listed company is negotiating a share placing with a financial institution; or
- when a listed company is negotiating the provision of financing with a creditor.

The SFC Guidelines note that where a listed company is in financial difficulty and is negotiating with third parties for funding, reliance on this safe harbour will mean that it will not be necessary to disclose the negotiations. The safe harbour does not however allow the listed company to withhold disclosure of any material change in its financial position or performance which led to the funding negotiations and, to the extent that this is inside information, should be the subject of an announcement.

Safe Harbour C: When the information is a trade secret

There is no statutory definition of trade secret. However the SFC Guidelines provide that a “trade secret” generally refers to proprietary information owned by a listed company:

- (a) used in a trade or business of the listed company;
- (b) which is confidential (i.e. not already in the public domain);
- (c) which, if disclosed to a competitor, would be liable to cause real or significant harm to the listed company’s business interests; and
- (d) the circulation of which is confined to a limited number of persons on a need-to-know basis.

Trade secrets may concern inventions, manufacturing processes or customer lists. However a trade secret does not cover the commercial terms and conditions of a contractual agreement or the financial information of a listed company, which cannot be regarded as proprietary information or rights owned by the listed company.

Safe Harbour D: When the government’s exchange fund or a central bank provides liquidity support to the listed company

Under this safe harbour, no disclosure is required for information concerning the provision of liquidity support from the exchange fund of the government or from an institution which performs the functions of a central bank (including one located outside Hong Kong) to the listed company or any member of its group.

Safe harbour condition of confidentiality

Except for Safe Harbour A, the safe harbours are only available if and so long as:

- (a) the listed company takes reasonable precautions for preserving the confidentiality of the information; and
- (b) the confidentiality of the information is preserved.

If confidentiality is lost or the information is leaked, the safe harbour will cease to be available and the listed company must disclose the inside information as soon as practicable.

If confidentiality is lost, the listed company will not be regarded as in breach of the disclosure requirement in respect of inside information if it can show that it:

- (a) has taken reasonable measures to monitor the confidentiality of the information in question; and
- (b) made disclosure as soon as reasonably practicable, once it became aware that the confidentiality of the information had not been preserved.

SFC’s power to grant waivers

The SFC can grant waivers where the disclosure of inside information in Hong Kong would be prohibited under a court order or legislation of another jurisdiction or would contravene a restriction imposed by a law enforcement agency or government authority in another jurisdiction (section 307E(1) SFO). The SFC will grant waivers on a case-by-case basis and may attach conditions. A listed company must copy to the Exchange any application to the SFC for a waiver from the disclosure obligation and the SFC’s decision when received.

5. Liability of officers

The officers of a listed company are required to take all reasonable measures to ensure that

proper safeguards exist to prevent the listed company's breach of the inside information disclosure requirement (section 307G(1)). Although an officer's breach of this provision is not actionable of itself, an officer will be regarded as having breached the disclosure obligation if the listed company has breached such obligation and either:

- (a) the breach resulted from the officer's intentional, reckless or negligent conduct; or
- (b) the officer has not taken all reasonable measures to ensure that proper safeguards exist to prevent the breach (section 307G(2) SFO).

In relation to officers' obligation to take all reasonable measures to ensure the existence of proper safeguards, the SFC Guidelines focus on the responsibility of officers, including non-executive directors, to ensure that appropriate systems and procedures are put in place and reviewed periodically to enable the listed company to comply with the disclosure requirement. Officers with an executive role will also have a duty to oversee the proper implementation and functioning of the procedures and to ensure the detection and remedy of material deficiencies in a timely manner. The particular needs and circumstances of the listed company should be taken into account in establishing appropriate systems and procedures. The SFC Guidelines provide a non-exhaustive list of examples of systems and procedures which listed companies should consider implementing.

Key examples of measures to prevent breach of the disclosure requirement (non-exhaustive)

- (a) Establish controls for monitoring business and corporate developments and events so that any potential inside information is promptly identified and escalated to the board.
- (b) Establish periodic financial reporting procedures so that key financial and operating data is identified and escalated in a structured and timely manner.
- (c) Maintain and regularly review a sensitivity list identifying factors or developments which are likely to give rise to the emergence of inside information.
- (d) Authorize one or more officer(s) or an internal committee to be notified of any potential inside information and to escalate any such information to the attention of the board.
- (e) Restrict access to inside information to a limited number of employees on a need-to-know basis. Ensure employees who are in possession of inside information are fully conversant with their obligations to preserve confidentiality.
- (f) Ensure appropriate confidentiality agreements are in place when the corporation enters into significant negotiations.
- (g) Develop procedures to review presentation materials in advance before they are released at analysts' or media briefings.
- (h) Record briefings and discussions with analysts or the media afterwards to check whether any inside information has been inadvertently disclosed.
- (i) Develop procedures for responding to market rumours, leaks and inadvertent disclosures.
- (j) Provide regular training to relevant employees to help them understand the corporation's policies and procedures as well as their relevant disclosure duties and obligations.

6. Sanctions

The MMT can impose one or more of the following penalties:

- (a) a fine of up to HK\$8 million on the listed company, a director or chief executive (but not officers) of the listed company;
- (b) disqualification of the director or officer from being a director or otherwise involved in the management of a listed company for up to five years;
- (c) a "cold shoulder" order on the director or an officer (i.e. the person is deprived of access to market facilities for dealing in securities, futures contracts and other investments) for up to five years;
- (d) a "cease and desist" order on the listed company, director or officer (i.e. an order not to breach the statutory disclosure requirement again);
- (e) an order that any body of which the director or officer is a member be recommended to take disciplinary action against him; and
- (f) payment of costs of the civil inquiry and/or the SFC investigation by the listed company, director or officer.

To try and prevent the occurrence of further breaches of the disclosure requirement, the MMT may additionally require:

- (a) the appointment of an independent professional adviser to review the listed company's procedures for disclosure of PSI and advise it on matters relating to compliance; and
- (b) the officer to undertake a training programme approved by the SFC on compliance with Part XIVA SFO, directors' duties and corporate governance.

7. Civil liability – Private right of action

A listed company or officer found to be in breach of the statutory disclosure obligation may be found liable to pay compensation to any person who has suffered financial loss as a result of the breach in separate proceedings brought by such person under Section 307Z SFO. The listed company or officer will be liable to pay damages provided that it is fair, just and reasonable that it/he should do so. A determination by the MMT that a breach of the disclosure requirement has taken place or identifying a person as being in breach of the requirement will be admissible in evidence in any such proceedings to prove that the disclosure requirement has been breached or that the person in question has breached that requirement. The courts may also impose an injunction in addition to or in substitution for damages.

8. Case Studies

The statutory disclosure obligation came into effect on 1 January 2013 and we are now beginning to see the first cases of disciplinary proceedings for breach of this obligation.

AcrossAsia Ltd

The SFC commenced the first case of market misconduct proceedings for breach of the

disclosure obligation in July 2015 against AcrossAsia Ltd (AAL) in relation to AAL's 13-day delay in announcing the commencement of insolvency-related proceedings in Indonesia against AAL.

The Chairman and Chief Executive of AAL received copies of court documents initiating insolvency-related proceedings in Indonesia, along with their English translations, by 4 January 2013, but this information was not announced to the public until 17 January, two days after the Indonesian court made insolvency related orders against AAL. The SFC alleges that the insolvency-related proceedings were specific information regarding AAL which was not generally known to the public at the material time and highly price sensitive because they threatened AAL with loss of control of its major asset and could lead to the company being put into liquidation.

In 2016, the SFC has commenced MMT proceedings against two further companies for alleged breaches of the inside information disclosure requirements. Senior executives of those companies were also charged with reckless or negligent conduct that caused the alleged breaches.

Mayer Holdings Limited

In the case of Mayer Holdings Limited (Mayer), the proceedings relate to failures to disclose unresolved audit issues, the auditors' notification that they would qualify their audit report if the issues were not resolved, and the auditors' subsequent resignation.

The SFC alleges that the outstanding audit issues and the auditors' notification of the possible qualification of the audit report were known by the company on 23 August 2012.

The auditors resigned on 27 December 2012, citing Mayer's lack of cooperation in relation to resolving the audit issues it had identified. Mayer did not announce the auditors' resignation until 23 January 2013.

Ten current and former senior executives of Mayer (including the company secretary/financial controller, the chairman of the board and the chairman of the audit committee) were also alleged by the SFC to have breached section 307G of the SFO by failing to ensure that Mayer complied with its disclosure obligation under section 307B.

Yorkey Optical International (Cayman) Limited

Proceedings have also been brought against Yorkey Optical International (Cayman) Limited (Yorkey) for failing to disclose information about the company's substantial losses and significant deterioration in its financial performance in the second half of 2012 (the Deterioration).

In its 2012 unaudited interim results, Yorkey had reported a decrease in revenue of 12.1% and a net profit decrease of 62% compared to the corresponding period in 2011. Nevertheless, it predicted "significant growth over that in the first half of the year, alongside with increasing profitability" for the second half of 2012.

Yorkey's 2012 audited annual results were announced on 25 March 2013. They recorded a 99% drop in net profit as compared to 2011, and net profit for the whole of 2012 was less than that for the first six months. The company's share price fell 21.25% in the three days following the results announcement.

Yorkey did not issue any profit warning announcement or otherwise inform the public of the Deterioration between the publication of its 2012 unaudited interim results on 16 August 2012 and the publication of its 2012 audited annual results on 25 March 2013. The SFC alleges that this lack of disclosure to the public constituted a breach of section 307B of the SFO.

In its notice to the Market Misconduct Tribunal, the SFC alleged that information about Yorkey's material losses and the significant deterioration in its financial performance in the second half of 2012 were already apparent from its monthly management accounts for the five months between July and November 2012. The SFC therefore alleges that the inside information came to the knowledge of the company either:

- from around mid-December 2012 when the consolidated monthly management accounts up to November 2012 had, or ought reasonably to have, come to the knowledge of Yorkey's Chief Executive Officer; or
- at the latest, from around mid-January 2013 when the internal management accounts for the whole of 2012 were made available to Yorkey's Chief Executive Officer.

The SFC further alleges that the chief executive officer and the financial controller/company secretary of Yorkey were aware of the Deterioration well before the publication of the 2012 financial results. The SFC considers that their failure to ensure timely disclosure of the deterioration constitutes reckless or negligent conduct which resulted in Yorkey's breach of the disclosure requirement.

Ensuring Accuracy, Clarity and Balance

The SFC has also warned against selective or uneven dissemination of inside information. The objective should be to present both good news and bad news equally in a clear and balanced way without glossing over or omitting any material facts. Disclosure should contain sufficient detail for investors to make a reasonable and realistic assessment of the company's affairs.

On that point that all inside information must be disclosed, both good and bad, there are a number of UK cases which emphasise that each piece of information must be considered independently and that good and bad news cannot be offset against each other as a reason for non-disclosure.

Wolfson Microelectronics PLC (January 2009)

On 10 March 2008 a key customer decided it would not be pursuing certain orders, representing a loss to Wolfson's forecast revenue of 8%. Wolfson was told by the customer to expect additional orders for other products to make up for the cancelled orders. It was also considered that the market would overreact and that a confidentiality agreement with the customer would prevent disclosure. Initially, investor relations advisers thought no announcement was needed. The company's lawyers and brokers were eventually consulted and both disagreed.

The FSA considered that the news of the cancellation of orders was inside information that investors were likely to use as part of the basis for their investment decisions. Wolfson was fined £140,000 for the 16 day delay in announcing the information.

With regard to the reasons given by Wolfson for non-disclosure the FSA commented:

- Off-setting negative and positive news is not acceptable. Companies are required to announce both types of information and allow the market to determine whether they cancel each other out;
- Concern about market over-reacting to the news – Wolfson's board was concerned that announcement of the cancelled order would cause its share price to fall but failed to announce because it believed that a reduced share price would not accurately

reflect the value of the company. The FSA commented that companies cannot refuse to disclose negative inside information because it would cause the share price to fall or result in the share price not representing the company's "true" value;

- Confidentiality agreements – one of Wolfson's reasons for not announcing the negative news was that the confidentiality agreement in place between Wolfson and the customer prevented it from announcing the positive news that the customer would increase its orders of other products, so off-setting the negative news. The FSA commented that companies cannot withhold inside information due to confidentiality agreements.

Entertainment Rights PLC (January 2009)

Entertainment Rights and a subsidiary had entered into a DVD distributorship agreement in the USA. A variation to the agreement, which came into effect on 10 July 2008, would reduce the company's estimated 2008 profits by US\$13.9 million. The company considered that there would be future opportunities to remove the impact of the variation and delayed disclosure accordingly. It finally announced the variation 78 days later which resulted in a fall in its share price of 55% on the day of the announcement. It was fined £245,000 for the delay. The FSA again emphasized that negative and positive news cannot be offset in order to justify non-disclosure.

Universal Salvage PLC (May 2004)

Universal Salvage had a rolling contract which was responsible for 40% of turnover and could be terminated on three months' notice. The board was told on 20 March 2002 that the contract was to end. The company thought this was a negotiating ploy and raised a number of arguments against the decision. After consideration by the contractee, confirmation of the loss was received on 16 April. It took four working days to receive advice from the company's financial adviser. On the adviser's recommendation, an announcement followed the next day and the share price fell by 55%. For the delay of five working days, the company was fined £90,000 whilst the Chief Executive was fined £10,000 as he was 'knowingly concerned' in the breach and was best placed to take the required steps to notify the market yet failed to do so.

II. LISTING RULE DISCLOSURE OBLIGATIONS

1. Disclosure of Inside Information

Under Main Board Rule 13.09(2), where an issuer is required to disclose inside information under the SFO, it must simultaneously announce the information. An issuer is also required to simultaneously copy to the Exchange any application to the SFC for a waiver from the requirement to disclose inside information and to promptly copy to the Exchange the SFC's decision whether to grant such a waiver.

2. Obligation to avoid false market (Main Board Rule 13.09(1))

If it is the Exchange's view that there is, or is likely to be, a false market in a listed issuer's securities, the issuer must announce the information necessary to avoid a false market as soon as reasonably practicable after consultation with the Exchange.

An issuer is also required to contact the Exchange as soon as reasonably practicable if it believes that there is likely to be a false market in its securities.

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) 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 Part XIVA of the Securities and Futures Ordinance (SFO), 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. (Exchange FAQ Series 22, FAQ No. 1)

3. Obligation to respond to the Exchange's enquiry

Under Main Board Rule 13.10, if the Exchange makes an enquiry concerning unusual movements in the price or trading volume of an issuer's listed securities, the possible development of a false market in its securities, or any other matters, an issuer will be required to respond promptly to the Exchange's enquiries in one of the following two ways:

- (i) provide to the Exchange and, if requested by the Exchange, announce any information relevant to the subject matter(s) of the enquiries available to it, so as to inform the market or to clarify the situation; or
- (ii) if appropriate, and if requested by the Exchange, issue a standard announcement confirming that, the directors, having made such enquiry with respect to the issuer as may be reasonable in the circumstances, are not aware of any information that is or may be relevant to the subject matter(s) of the enquiries, or of any inside information which needs to be disclosed under the SFO.

The standard form of the announcement referred to in (ii) above is set out in Note 1 to Main Board Rule 13.10:

"This announcement is made at the request of The Stock Exchange of Hong Kong Limited.

We have noted [the recent increases/decreases in the price [or trading volume] of the [shares/warrants] of the Company] or [We refer to the subject matter of the Exchange's enquiry]. Having made such enquiry with respect to the Company as is reasonable in the circumstances, we confirm that we are not aware of [any reasons for these price [or volume] movements] or of any information which must be announced to avoid a false market in the Company's securities or of any inside information that needs to be disclosed under Part XIVA of the Securities and Futures Ordinance.

This announcement is made by the order of the Company. The Company's Board of Directors collectively and individually accept responsibility for the accuracy of this announcement."

Main Board Rule 13.10 states that an issuer does not need to disclose inside information under the Rules if the information is exempt from disclosure under Part XIVA SFO.

The Exchange reserves the right to direct a trading halt of an issuer's securities if an announcement under Main Board Rule 13.10 cannot be made promptly.

4. Trading halts or suspension

Main Board Rule 13.10A requires an issuer to request a trading halt or trading suspension if an announcement cannot be made promptly in the following circumstances:

- (a) where an issuer has information which, in the opinion of the Exchange, must be disclosed in order to avoid a false market in its listed securities;;
- (b) an issuer reasonably believes that there is inside information which must be disclosed under Part XIVA SFO; or
- (c) inside information may have been leaked where it is the subject of an application to the SFC for a waiver from compliance with the statutory disclosure obligation or where it is exempt from the statutory disclosure obligation (except if the exemption concerns disclosure prohibited by Hong Kong law or an order of a Hong Kong court).

The Exchange also has the right to direct a trading halt in an issuer's securities where:

- a) there are unexplained movements in the price or trading volume of the issuer's listed securities or where a false market for the trading of such securities has developed and the issuer's authorised representative cannot immediately be contacted to confirm that the issuer is not aware of any matter that is relevant to the unusual price movement or trading volume or the development of a false market;
- b) the issuer delays in issuing an announcement in response to enquiries from the Exchange under Main Board Rule 13.10; or
- c) there is uneven dissemination or leakage of inside information in the market giving rise to an unusual movement in the price or trading volume of the issuer's listed securities (Paragraph 3 of Practice Note 11).

5. Case study

False market rumours

The press reported that a listed company received a takeover offer from another company. The Exchange made an enquiry before market open and the company confirmed that the press report was unfounded. The company's share price rose by more than 20%. The Exchange requested the listed company to issue a clarification announcement under Rule 13.10 to deny the press report.

III. THE MODEL CODE FOR SECURITIES TRANSACTIONS BY DIRECTORS OF LISTED ISSUERS ("MODEL CODE")

Listed companies are required to adopt rules governing dealings by directors in their listed securities on terms no less stringent than the terms set out in the Model Code in Appendix 10 of the Main Board Rules. All directors of a listed issuer are required to comply with the Model Code (or the Company's own code) and a breach of the requirements of the Model Code will amount to a breach of the Listing Rules.

1. Absolute Prohibition

The Model Code provides that a director of a listed issuer must not deal in the securities of the company:

- a) at any time when he is in possession of inside information in relation to those securities, or if clearance to deal has not been given (Model Code Rule A.1);
- b) on the publication date of the company's financial results;
- c) during the period of 60 days preceding the publication date of the annual results or, if shorter, the period from the end of the relevant financial year up to the publication date of the results (Model Code Rule A.3(a)(i)); and
- d) during the period of 30 days preceding the publication date of the quarterly results (if any) and half-year results or, if shorter, the period from the end of the relevant quarterly or half-year period up to the publication date of the results (Model Code Rule A.3(a)(ii)).

A listed issuer must give advance notice to the Exchange of the commencement date of each blackout period under (c) and (d) above.

Further, a director of a listed issuer must not deal in its securities if he is in possession of inside information in relation to those securities by virtue of his position as a director of another listed issuer (Model Code Rule A.2). The restrictions on dealings in the Model Code apply equally to dealings by directors' spouses and children under the age of 18 and to any dealings in which they are deemed to be interested for the purposes of Part XV of the SFO (Model Code Rule A.6). These would include, for example, dealings by a director's controlled corporation or a trust of which a director is a trustee or beneficiary.

It is also a Code Provision under the Corporate Governance Code set out in Appendix 14 to the Listing Rules, that the board should establish written guidelines no less exacting than the Model Code provisions for **relevant employees** in respect of dealings in the listed issuer. Relevant employees include employees and directors of the listed issuer, its subsidiaries and holding company(ies) who, because of their office or employment, are likely to possess inside information in relation to the issuer or its securities (Code Provision A.6.4). Where an issuer does not comply with this Code Provision, it must give considered reasons for its non-compliance in its corporate governance report.

2. Duty of Notification

A listed issuer is required by the Model Code to establish a procedure whereby a director is required to provide written notification to the chairman or a director (other than himself) designated by the board and to receive a dated written acknowledgement before dealing in any securities of the listed issuer. A response to a request for clearance to deal must be given to the relevant director within 5 business days and the clearance to deal must be valid for no more than 5 business days of clearance being received. The issuer must also maintain a written record of notifications given by directors, acknowledgements of such notifications and the written responses given.

IV. INSIDER DEALING UNDER THE SECURITIES AND FUTURES ORDINANCE

Insider dealing is both a civil and criminal offence under the SFO.

1. What is Insider Dealing?

In broad terms insider dealing takes place where a person buys or sells shares in a listed company when he has inside information - that is, knowledge of certain facts about that company which the public does not have and which, if known to the public, would have an impact on the price of that company's shares.

Sections 270 and 291 of the SFO set out seven occasions on which insider dealing in relation to a listed company occurs.

a. Person with inside information deals in shares of a listed company with which he is connected - Sections 270(1)(a) and 291(1)(a)

Insider dealing in relation to a listed company occurs when a person connected with the listed company has information which he knows is inside information in relation to that listed company and:

- deals in the listed company's listed securities or their derivatives or in those of a related corporation; or
- counsels or procures another person to deal in such listed securities or derivatives, knowing or having reasonable cause to believe that the other person will deal in them.

b. Take-over offer - bidder deals in shares of target - Sections 270(1)(b) and 291(2)

Insider dealing in relation to a listed company also occurs when a person who is contemplating or has contemplated making a take-over offer for the listed company and knows that the information that the offer is contemplated or is no longer contemplated is inside information:

- deals in the listed company's listed securities or their derivatives or in those of a related corporation otherwise than for the purpose of the take-over; or
- counsels or procures another person to deal in such listed securities or derivatives otherwise than for the purpose of the take-over.

This provision is designed to stop, for instance, a director of a company which is about to launch a take-over bid from telling his friends to buy shares in the intended target in order to make a profit when the price of those shares inevitably rises. It does not stop the director of the bidder from buying shares in the target (or indeed counselling or procuring others to do so) in a “dawn raid” where the sole purpose of such purchases is to facilitate the take-over itself.

The provision is also designed to catch, say, a director of the bidder who sells short in the target when he knows (but the public does not) that the bidder is not going to increase its offer price at the end of the initial offer period but instead is to let the offer lapse.

“Take-over offer” is defined in Schedule 1 to the SFO.

c. Person connected with a listed company leaks inside information about that listed company - Sections 270(1)(c) and 291(3)

Insider dealing in relation to a listed company also occurs when a person connected with a listed company has information which he knows is inside information in relation to the listed company and discloses the information, directly or indirectly, to another person, knowing or having reasonable cause to believe that the other person will use the information to deal, or counsel or procure another person to deal, in the listed company's listed securities or their derivatives or in those of a related corporation.

The sub-section is designed to cover the person who deliberately leaks confidential information with a view to someone (whether it be the person to whom he has leaked the information or some other person) using that information to make a favourable deal on the Exchange.

d. Bidder leaks take-over information - Sections 270(1)(d) and 291(4)

Insider dealing also occurs when a person who is contemplating or has contemplated making a take-over offer for a listed company and knows that the information that the offer is contemplated or no longer contemplated is inside information discloses the information, directly or indirectly, to another person knowing or having reasonable cause to believe that the other person will use the information to deal, or to counsel or procure another person to deal in the listed company's listed securities or their derivatives or in those of a related corporation.

This applies where a person who is contemplating or has contemplated a take-over offer for another listed company leaks to another person information to the effect that he is contemplating such an offer or is no longer contemplating such an offer with a view to that other person using the information to deal in the target's securities or to counsel or procure another to deal in them.

e. Recipient of inside information from a person connected with a listed company deals in shares of that listed company - Sections 271(1)(e) and 291(5)

Insider dealing in relation to a listed company also occurs when a person has information which he knows is inside information in relation to a listed company which he received, directly or indirectly, from a person whom he knows is connected with the listed company and whom he knows or has reasonable cause to believe held the information as a result of being so connected:

- deals in the listed company's listed securities or their derivatives or in those of a related corporation; or
- counsels or procures another person to deal in such listed securities or derivatives.

This catches the recipient of the leaked information who uses it either by dealing himself or by counselling or procuring someone else to deal. (The person who actually leaks the information would be caught by Sections 270(1)(c) and 291(3).)

f. Recipient of inside information about a take-over deals in shares of the target - Sections 270(1)(f) and 291(6)

Insider dealing also occurs when a person has received, directly or indirectly, from a person whom he knows or has reasonable cause to believe is contemplating or no longer contemplating making a take-over offer for the listed company, information to that effect which he knows is inside information in relation to the listed company and:

- deals in the listed company's listed securities or their derivatives or in those of a related corporation; or
- counsels or procures another person to deal in such listed securities or derivatives.

g. Person with inside information seeks to facilitate a dealing on an overseas market - Sections 270(2) and 291(7)

Insider dealing also occurs when a person who knowingly has inside information in relation to a listed company in any of the circumstances set out above (i.e. in sub-section 270(1) and sub-sections 291(1)-(6)) and:

- counsels or procures another person to deal in the listed company's listed securities or their derivatives or in those of a related corporation, knowing or having reasonable cause to believe that the other person will deal in such listed securities or derivatives outside Hong Kong on an overseas stock market; or
- discloses the inside information to another person knowing or having reasonable cause to believe that he or some other person will use the inside information to

deal or counsel or procure another person to deal in the listed company's listed securities or their derivatives or in those of a related corporation outside Hong Kong on an overseas stock market.

2. Definitions

i. “Securities”

“Securities” is widely defined to mean:

- a. shares, stocks, debentures, loan stocks, funds, bonds or notes of, or issued by, or which it is reasonably foreseeable will be issued by, a body, whether incorporated or unincorporated, or a government or municipal government authority;
- b. rights, options or interests (whether described as units or otherwise) in, or in respect of, any of the foregoing;
- c. certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, any of the foregoing;
- d. interests, rights or property, whether in the form of an instrument or otherwise, commonly known as securities; or
- e. interests, rights or property, whether or not in the form of an instrument, which the Financial Secretary has specified by notice in the Gazette is to be regarded as a “security”.

ii. “Listed securities”

Securities listed on the Hong Kong Stock Exchange at the time of the dealing in question. The definition of ‘listed securities’ include:

- issued unlisted securities provided that, at the time of the insider dealing, it is reasonably foreseeable that they will be listed and they are subsequently in fact listed; and
- unissued securities provided that, at the time of the insider dealing, it is reasonably foreseeable that they will be issued and listed and they are subsequently in fact issued and listed.

This is intended to catch “grey market” dealings prior to a secondary issue of securities. As insider dealing can only occur in relation to a ‘listed company’, insider dealing in an IPO grey market is not covered. The market manipulation provisions may however apply to such trading to the extent that it affects post listing prices and trading.

Securities are treated as listed notwithstanding that dealings in them may have been suspended.

iii. “Listed company”

The definition of “listed company” includes the large number of companies which are listed in Hong Kong but incorporated abroad.

iv. “a person connected with a listed company”

A “person connected with a listed company” is someone who is on the inside track who has access to information about a listed company by reason of his relationship with it. He is commonly called an “insider”.

Under sections 247 and 287 of the SFO, an individual is connected with a listed company if:

- a. he is a director or employee of that listed company or a related corporation;
- b. he is a substantial shareholder (i.e. has an interest in 5% or more of the company's issued voting shares) in the listed company or a related corporation;
- c. his position may reasonably be expected to give him access to inside information concerning the listed company by reason of:
 - i. a professional or business relationship existing between himself (or his employer or a listed company of which he is a director or a firm of which he is a partner) and that listed company, a related corporation or an officer or substantial shareholder in either company; or
 - ii. his being a director, employee or partner of a substantial shareholder of the listed company or a related corporation; or
- d. he has access to inside information by virtue of being connected (within the meaning of a, b or c above) with another listed company where that information relates to a transaction (actual or contemplated) involving both listed companies or involving one of them and the listed securities of the other or their derivatives, or to the fact that such transaction is no longer contemplated; or
- e. he was connected with the listed company within the meaning of a, b, c or d above at any time within 6 months preceding any relevant dealing.

A listed company is connected with another listed company if any of its directors or employees are so connected. A director is defined to include shadow directors, that is, persons in accordance with whose instructions the directors of the listed company are accustomed or obliged to act.

Under sections 248 and 288, any public officer or member or employee of certain bodies who in his capacity as such obtains inside information about a listed company will be deemed to be connected with that listed company.

v. **“Inside information”**

The definition of “Inside information” is the same as for the purposes of the disclosure requirement under Part XIVA, i.e.

specific information that:

- (a) is about:
 - (i) the listed company;
 - (ii) a shareholder or officer of the listed company; or
 - (iii) the listed securities of the listed company or their derivatives; and
- (b) is not generally known to the persons who are accustomed or would be likely to deal in the listed securities of the listed company but would if generally known to them be likely to materially affect the price of the listed securities.

Inside information could include information about changes in a listed company's shareholders or officers and about rights attaching to listed securities and derivatives over those securities.

vi. **“Dealing in securities”**

Under section 249 of the SFO a person deals, whether he acts as principal or agent. Agreeing to deal and buying or selling the right to deal will also be dealings under the SFO.

vii. “related corporation”

For the purposes of the SFO:

- a. Two or more corporations are regarded as related corporations of each other if one of them is:
 1. the holding company of the other;
 2. a subsidiary of the other; and
 3. a subsidiary of the holding company of the other;
- b. when an individual:
 1. controls the composition of the board of directors of one or more corporations;
 2. controls more than half of the voting power at general meetings of one or more corporations; or
 3. holds more than half of the issued share capital (excluding any part which carries no right to participate beyond a specified amount on a distribution of either profits or capital) of one or more corporations,

each of the corporations referred to in paragraphs 1 to 3, and each of their subsidiaries, are regarded as related corporations of each other.

3. What is not Insider Dealing?

Defences

Under sections 271 and 292 of the SFO a person will have a defence if he can establish that he is within one of the categories set out below:

1. the dealing, counselling or procuring was made:
 - a. for the sole purpose of acquiring qualifying shares as a director or intending director of a listed company;
 - b. in good faith in performance of an underwriting agreement for the listed securities or derivatives in question; or
 - c. in good faith as a liquidator, receiver or trustee in bankruptcy.
2. in the case of a listed company:
 - a. there were effective arrangements in place (commonly called a “Chinese wall”) to ring-fence any inside information in the possession of any of its directors and employees; and
 - b. each person who took the decision for the listed company to deal, counsel or procure a dealing in the listed securities or derivatives in question did not have the inside information at that time and had not received advice from those in possession of such information.
3. the purpose for which a person dealt in or counselled or procured another to deal in the listed securities or their derivatives or disclosed information did not include the purpose of securing or increasing a profit or avoiding or reducing a loss, whether for himself or another, by using the inside information.

4. the person dealt or counselled or procured another to deal in a listed company's listed securities or their derivatives:
 - a. as agent;
 - b. he did not select or advise on the selection of such listed securities or derivatives; and
 - c. he did not know that the person for whom he acted was connected with that listed company or had the inside information.

5. the dealing was off-market in Hong Kong and:
 - a. where a person dealt in listed securities or their derivatives, he and the other party entered into the dealing directly with each other and at the time of the dealing, the other party knew, or ought reasonably to have known, of the inside information; or
 - b. where a person counselled or procured another person to deal in listed securities or their derivatives, he counselled or procured the other party to enter into the dealing directly with him and at that time the other party knew, or ought reasonably to have known, of the inside information.

6. the person dealt in listed securities or their derivatives but did not counsel or procure the other party to deal and at the time of the dealing the other party knew, or ought reasonably to have known, that he was a person connected with the listed company.

This defence operates on the assumption that people who transact with someone they know or should know is a company insider, should be on notice that the other party may be insider dealing and so make adequate inquiries with the insider before dealing with them and maybe negotiate terms as to the disclosure of inside information.

7. the person counselled or procured another to deal in listed securities or their derivatives and establishes that:
 - a. the other person did not counsel or procure the other party to the dealing to deal in the listed securities or derivatives; and
 - b. at the time he counselled or procured the other person to deal, the other party to the dealing knew, or ought reasonably to have known, that the other person was a person connected with the listed company.

This gives a defence to a person who counsels or procures a person to deal in the same circumstances as a defence is available to a person who deals under 6 above. It is really a logical extension of the defence under paragraph 6. It would, for example, protect a merchant bank who introduced a prospective purchaser to a substantial shareholder of a listed company who the bank thought might want to tender to divest their shareholding and advised the shareholder on the sale.

8. the person dealt or counselled or procured another to deal in a listed company's listed securities or their derivatives and:
 - a. he acted in connection with any dealing which was under consideration or was the subject of negotiation, or in the course of series of such dealings and with a view to facilitating the accomplishment of the dealing or the series of dealing; and
 - b. the inside information was market information arising directly out of his involvement in the dealing or the series of dealings.

“Market Information” is defined to include facts such as:

- that there has or is to be (or that there has not been or is not to be) a dealing in listed securities or their derivatives or that any such dealing is under consideration or negotiation;

- the quantity and price (or price range) of the listed securities or their derivatives; and
- the identity of the persons involved.

This gives a defence to a person who trades with knowledge of his own trading intentions or activities and also to those who simply execute or facilitate a trade on his behalf. This defence caters for the situation in which a person, whose trading activities might be price-sensitive information (e.g. a substantial shareholder and therefore a connected person, increases his stake in a listed company). Without such an explicit defence a person dealing with 'insider' information about their own trading activities is technically insider dealing even though the Hong Kong authorities did not taken action against such conduct under the previous legislation.

9. the dealing in question was subject to the rules of a recognised clearing house and was entered into by the clearing house with a clearing participant for the purposes of the clearing and settlement of a market transaction.

Sections 272 and 293 provide a further defence where a trustee or personal representative dealt in or counselled or procured a dealing in listed securities or their derivatives on advice obtained in good faith from an appropriate person who did not appear to him to be a person who would have been involved in insider dealing if he himself had dealt in the listed securities or their derivatives.

Sections 273 and 294 provide a defence where a person dealt in listed securities or their derivatives in the exercise of a right to subscribe for or otherwise acquire such securities or their derivatives which was granted to him or was derived from securities held by him at a time when he was not aware of any inside information.

4. Effects of Insider Dealing and other Forms of Market Misconduct

THE MARKET MISCONDUCT TRIBUNAL (“MMT”)

Proceedings of the MMT

The SFC may institute proceedings before the MMT if it appears to the SFC that insider dealing has or may have taken place. The MMT makes its findings on the civil standard of proof. It needs therefore to be satisfied that a person has engaged in insider dealing on the balance of probabilities (rather than beyond reasonable doubt which is the criminal standard of proof).

Orders of the MMT

At the end of any proceedings the MMT may under subsection 257(1) impose the following sanctions on any person found to have committed insider dealing:

- a. *a disqualification order* – that a person shall not, without the leave of the Court of First Instance, be or continue to be a director, liquidator, or receiver or manager of the property or business, of a listed company or any other specified listed company or in any way, whether directly or indirectly, be concerned or take part in the management of a listed company or other specified listed company for up to 5 years;
- b. *a cold shoulder order* – that a person shall not, without the leave of the Court of First Instance, in Hong Kong, directly or indirectly, deal in any securities, futures contract or leveraged foreign exchange contract, or an interest in any of them or a collective investment scheme for up to 5 years;
- c. *a cease and desist order* – that the person must not again engage in any specified form of market misconduct;

- d. a disgorgement order – that the person pay to the Government an amount up to the amount of any profit gained or loss avoided as a result of the market misconduct;
- e. Government costs order – that the person pay to the Government its costs and expenses in relation to the proceedings and any investigation;
- f. SFC costs order – that the person pay the SFC's costs and expenses in relation to any investigation; and
- g. disciplinary referral order – that any body which may take disciplinary action against the person as one of its members be recommended to take such action against him.

5. Criminal Liability

Insider dealing is also a criminal offence under Part XIV of the SFO.

Penalties

The maximum criminal sanctions are 10 years' imprisonment and a fine of up to HK\$10 million. In addition, the court may make disqualification, cold shoulder and disciplinary referral orders.

No double jeopardy

A person will not be subject to the “double jeopardy” of both civil proceedings under Part XIII and criminal proceedings under Part XIV for the same conduct. The SFO provides that a person who has been subject to criminal proceedings under Part XIV may not be subject to MMT proceedings if those proceedings are still pending or if no further criminal prosecution could be brought against that person again under Part XIV in respect of the same conduct and vice versa (sections 283 and 307).

6. Civil Liability - Private right of action

The SFO provides a private right of civil action against any person who has committed market misconduct, which includes insider dealing, in favour of anyone who has suffered a pecuniary loss as a result, unless it is fair, just and reasonable that the perpetrator should not be liable (sections 281 and 305).

A person will be taken to have committed market misconduct if:

- a. he has perpetrated any market misconduct;
- b. a listed company of which he is an officer perpetrated the market misconduct with his consent or connivance; or
- c. any other person committed market misconduct and he assisted or connived with that person in the perpetration of the market misconduct, knowing that such conduct constitutes or might constitute market misconduct.

It is not necessary for there to have been a finding of market misconduct by the MMT or a criminal conviction under Part XIV before bringing civil proceedings. Findings of the MMT are however admissible in the civil proceedings as prima facie evidence that the market misconduct took place or that a person engaged in market misconduct. Further a criminal conviction constitutes conclusive evidence that the person committed the offence. The courts are able to impose injunctions in addition to or in substitution for damages.

7. Liability of officers of a listed company

Duty of Officers

Section 279 of the SFO imposes a duty on all officers of a listed company to take reasonable measures to ensure that proper safeguards exist to prevent the listed company from acting in a way which would result in the listed company perpetrating any market misconduct.

The definition of an “officer of a listed company” includes a director (including a shadow director and any person occupying the position of a director), manager or secretary of, or any other person involved in the management of, the listed company. The last category (i.e. any other person involved in management) could, in principle, catch supervisors and anyone else with management responsibilities.

Under Section 258, where a listed company has been identified as having been engaged in market misconduct and the market misconduct is directly or indirectly attributable to a breach by any person as an officer of the listed company of the duty imposed on him under section 279, the MMT may make one or more of the orders detailed above in respect of that person even if that person has not been identified as having engaged in market misconduct himself.

Civil Liability

As described above, the SFO clearly provides that anyone who suffers pecuniary loss as a result of market misconduct has a right of civil action to seek compensation. As noted above, an officer of a listed company which perpetrated market misconduct is taken to have committed market misconduct himself, if the listed company perpetrated the misconduct with his consent or connivance.

Criminal Liability

Under section 390 of the SFO, where it is proved that an offence committed under Part XIV was aided, abetted, counselled, procured or induced by, or committed with the consent or connivance of, or attributable to the recklessness of, any officer of the listed company, or any person purporting to act in any such capacity, that person, as well as the listed company, is guilty of the offence and liable to be punished accordingly.

PROCEEDINGS UNDER SECTION 213 SFO

The decision of the Court of Final Appeal in the Securities and Futures Commission v Tiger Asia Management LLC (Tiger Asia) and others confirmed the power of the courts to make final orders sought by the SFC under section 213 SFO without there having been a prior finding of insider dealing or other market misconduct by either the MMT or a criminal court.

Section 213 SFO allows the court to grant orders sought by the SFC to prevent or remedy breaches of, among others, the Securities and Futures Ordinance, including injunctions and orders requiring the person to take steps to restore the parties to a transaction to the position they were in before the transaction. Tiger Asia was a New York-based asset management company with no physical presence in Hong Kong. Tiger Asia and two of its senior officers were found to have breached the insider dealing and market manipulation provisions of the SFO in dealing in shares of two Hong Kong listed banks. The court ordered Tiger Asia and the two senior officers to pay HK\$45 million to investors affected by their insider dealing.

It is also clear from the December 2013 case of Mr. Du Jun, a former Morgan Stanley Asia managing director, that the SFC can pursue both criminal proceedings for insider dealing or other market misconduct offences and an order under section 213 SFO. Mr. Du Jun was convicted of insider dealing for which he was sentenced to six years' imprisonment and fined HK\$1.7 million. In separate section 213 proceedings in December 2013, the court granted a restoration order against Mr. Du Jun ordering him to pay HK\$23.9 million to investors affected by the insider dealing. The amount ordered to be paid was intended to restore counterparties to the insider dealing transactions to their pre-transaction positions through payment of the difference between the shares on the date of the transaction (taking

into account the inside information possessed by Mr. Du Jun) and the actual transaction price.

V. APPLYING FOR TRADING HALTS

The Stock Exchange's guidance on applying for trading halts pending the disclosure of material information is set out in Guidance Letter [HKEx-GL83-15](#) (the **Guidance Letter**) which was published in December 2015. The Guidance Letter provides information on:

- requesting trading halts;
- avoiding and minimising trading halts; and
- keeping the market informed during trading halts.

1. Requesting Trading Halts

As already discussed, under Main Board Listing Rule 13.10A, a listed issuer must apply for a trading halt for its listed securities, if it cannot announce the matter promptly, in the following circumstances:

- it has information which, in the opinion of the Exchange, must be disclosed in order to avoid a false market in its listed securities;
- it believes that there is Inside Information that must be disclosed under Part XIVA SFO; or
- it believes that Inside Information which is within one of the Safe Harbours or in respect of which a waiver application has been made, has been leaked or is reasonably likely to have been leaked.

In these circumstances, the issuer is required to apply for a trading halt as soon as is reasonably practicable.

The Exchange will generally only agree to a trading halt if there is reasonable concern that Inside Information may be leaked or there is practical difficulty in maintaining confidentiality.

2. Responding to the Exchange's Enquiries

The Exchange routinely monitors share price and volume movements and reviews media coverage to detect possible leakages of Inside Information and to prevent the possible development of a false or unfair market. Listed issuers' authorised representatives must be contactable at all times and in a position to answer enquiries from the Exchange on any unusual share price and volume movements and media news. They need to be able to confirm whether the directors are aware of any matter or development that is or may be relevant to the unusual trading movement, or information necessary to avoid a false market, or any inside information which is discloseable under Part XIVA of the SFO, and if so to provide details.

Listed issuers which are involved in confidential business negotiations should also monitor their share price and volume movements as well as news media to detect possible leakages of Inside Information.

In response to any enquiries from the Exchange regarding a listed issuer's unusual share price and volume movements and/or media coverage, the issuer must promptly and carefully assess whether it has an obligation under the SFO to disclose Inside Information. A listed

issuer should have in place an appropriate delegation of authority to allow for timely release of information to the Exchange and, where appropriate, to the public by publication of an announcement. Such delegation should enable the authorized representatives to timely request a trading halt pending publication of an announcement.

3. Handling Specific Market Speculations and Negative Publicity

Where a listed issuer is the subject of specific rumours, speculation or negative publicity, its directors should promptly assess whether a disclosure obligation arises under the SFO and the Listing Rules. Generally, listed issuers do not need to respond to rumours, speculations or other market comments. However, if any such market comment has or is likely to have, an effect on the issuer's share price/volume such that there may potentially be a false market in the company's listed securities, the Exchange may require the issue of a clarification announcement. If the issuer cannot make such announcement promptly, the Exchange may require it to request a trading halt pending the clarification.

Listed issuers therefore need to have procedures to actively monitor their share price and any news, comments or reports relating to them circulated in the market. Directors should have a proper understanding of the issuer's business, financial position and prospects and there should be an effective system for them to continuously monitor developments so they respond quickly and accurately to enquiries by the Exchange, and where necessary, publish announcements to correct or prevent a false market.

4. Avoiding and Minimising Trading Halts

The Exchange expects listed issuers to plan their affairs so that a trading halt can be avoided or, if it is unavoidable, the trading halt is kept as short as possible. Main Board Listing Rule 6.05 requires listed issuers to ensure that trading in their listed securities resumes as soon as practicable following the publication of an announcement or when the reasons for the trading halt cease to apply.

Under the Listing Rules, announcements containing inside information can only be published outside trading hours. The Exchange therefore recommends that significant agreements should only be signed outside trading hours and that relevant announcements are prepared in advance so that they can be released immediately after signing.

Where announcements need to be pre-vetted and cleared by the Exchange under Listing Rule 13.52(2), clearance should be sought before the agreements are signed so that they can be announced immediately afterwards.

Where trading is halted pending an announcement of a transaction, the issuer should publish the transaction announcement and resume trading as soon as possible. If there is a development during the trading halt (e.g. further negotiation that may materially change the terms of the agreement), the issuer should not continue the trading halt pending the outcome of the negotiation. The issuer is still required to publish the transaction announcement and to resume trading as soon as possible.

5. Keeping the Market Informed during a Trading Halt

Once a trading halt is in effect, the listed issuer must announce the reason for the trading halt as soon as possible. For example "Trading in the shares of Issuer A ... has been halted ... pending the release of an announcement containing inside information ...". To make the announcement meaningful, the Exchange requires issuers to disclose details, such as the subject of the transaction and the applicable Listing Rule classifications. e.g. " trading in the shares of Issuer A ... has been halted ... pending the release of an announcement about a further issuance of equity securities amounting to 5% of Issuer A's existing issued shares which would constitute a connected transaction for the purpose of the Listing Rules and Inside Information for the purpose of the SFO...".

If a trading suspension is unavoidable and it will take significant time to prepare and release the relevant material information, issuers should publish periodic updates or “holding announcements” on their progress towards trading resumption.

It should be remembered, however, that inside information must be disclosed **as soon as reasonably practicable**. This obligation exists whether or not trading is suspended.

6. Administrative Matters

Where a trading halt is to be applied for, a written request should be made:

- before 9.00 am for a trading halt in the morning trading session; and
- before 1.00 pm for a trading halt in the afternoon session.

Requests for a trading halt must be supported with reasons.

Resumption of trading will generally take place from the next immediate trading window following publication of material information by the listed issuer. In certain cases, the Exchange may impose conditions to be met before trading resumes.

VI. DEALING WITH ALLEGATIONS THAT MAY REQUIRE A TRADING HALT

In April 2016, the Stock Exchange published a new guidance letter [HKEx-GL87-16](#) for listed issuers subject to rumours or market commentaries making allegations of fraud, material accounting or corporate governance irregularities (together **allegations**) that may require a trading halt. The guidance letter provides guidance to issuers subject to such allegations and their obligations in handling such matters.

1. Issuers' Actions

When there are allegations circulating in the market in relation to a listed issuer and the Exchange considers that the allegations have resulted, or are likely to result, in the development of a false market in the issuer's securities, the Exchange may make an enquiry under Main Board Rule 13.10. The issuer must then either: (i) promptly issue a clarification announcement denying the allegation(s); or (ii) apply for a trading halt if a clarification announcement cannot be promptly issued to avoid the development of a false or disorderly market. If a trading halt is applied for, its duration should be as short as possible: the issuer is required to publish a clarification announcement as soon as practicable in order to resume trading.¹ It should be noted that an issuer has an obligation to issue a clarification announcement to prevent the development of a false or disorderly market, whether or not the Exchange makes an enquiry, under MB Rule 13.10.

A clarification announcement should refer to the allegations and explain the issuer's position regarding each allegation in order to avoid a false or disorderly market. If possible, the clarification announcement should also contain particulars to address, or to refute, the allegations. The issuer must also disclose any inside information required to be disclosed under Part XIVA of the Securities and Futures Ordinance where applicable, or an appropriate negative statement.

To minimise the duration of the trading halt, the Exchange will generally not pre-vet the clarification announcement and will expect it to be published as soon as practicable. The Exchange will normally expect share trading to resume (if it was halted) after publication of the clarification announcement. In the event that the clarification announcement does not

¹ MB Rule 6.05 / GEM Rule 9.09.

address the concerns as to the development of a false or disorderly market, the Exchange may require the issuer to provide further information and halt trading pending further clarification. This may be required where the clarification announcement contains information which materially contradicts the issuer's other published documents, or provides information which creates market confusion which raises the Exchange's concerns about the possible development of a false or disorderly market.

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This note is provided for information purposes only and does not constitute legal advice. Specific advice should be sought in relation to any particular situation. This note has been prepared based on the laws and regulations in force at the date of this note which may be subsequently amended, modified, re-enacted, restated or replaced.