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# Listed Companies' Disclosure Obligations: HKEx Issues Reminder And Guidance

## Introduction

The Hong Kong Stock Exchange (the **Exchange**) has issued a letter to all issuers listed on the Main Board and Growth Enterprises Market (**GEM**) reminding them of their obligation to make timely public disclosure of price-sensitive information. The letter also contains useful guidance on particular situations and includes a directors' compliance checklist setting out a non-exhaustive list of questions for directors to consider in assessing the adequacy of a listed issuer's internal procedures for ensuring compliance with the continuous disclosure obligations.

A [copy of the letter](http://www.hkex.com.hk/eng/rulesreg/listrules/listletter/documents/20081031.pdf) ([see archive](20081031.pdf)) is available on the Exchange's website. The following is a summary of the main points raised.

## The Primary Disclosure Obligations

The letter reminds listed issuers of their obligation under Main Board Listing Rule 13.09(1) (GEM Listing Rule 17.10) to keep the Exchange, members of the issuer and other holders of their listed securities informed as soon as reasonably practicable of any information relating to the group which: (i) is necessary to appraise the position of the group; (ii) is necessary to avoid the establishment of a false market in its securities; or (iii) might be reasonably expected to materially affect market activity in and the price of its securities.

Issuers are also reminded of their obligation to notify the Exchange, members of the issuer and other holders of their listed securities without delay where, to the knowledge of the directors, there is such a change in the issuer's financial condition or in the performance of its business or in the issuer's expectation of its performance that knowledge of the change is likely to lead to substantial movement in the price of its listed securities (Note 11 to Main Board Listing Rule 13.09(1) (Note 13 to GEM Listing Rule 17.10).

## Importance Of Timely Disclosure Of Information

Information should be announced as soon as a decision has been made that the information is potentially price-sensitive - that is as soon as a decision has been made that the information has characteristics that, in the prevailing market conditions, would be reasonably expected to materially affect market activity in and the price of the issuer's securities.

The Exchange notes that in determining whether information is price-sensitive, issuers should take into account that in times of market volatility, the market is more sensitive to information concerning the financial performance and financial condition of listed issuers, their subsidiaries and operations.

## Responsibility To The Market

The Exchange considers that issuers are responsible not only to their existing shareholders, but also to potential shareholders and the market as a whole. In cases where those duties conflict, an issuer and its management should give priority to its continuous disclosure obligations to the market as a whole. The two exceptions to this principle are: (i) where specific conditional relief from immediate disclosure is provided in the Listing Rules for transactions and fundraising which is in the course of negotiation or proposals in the course of development; and (ii) where the Exchange grants dispensation from immediate disclosure. This may occur where the Exchange is satisfied that public disclosure might prejudice the listed issuer's business interests.

## Responsibility For Compliance

Responsibility for compliance with the disclosure obligations is that of a listed issuer's "controlling mind" - that is its directors and any members of senior management to whom responsibility has been delegated. Directors' undertakings to the Exchange also contain an undertaking to use their best endeavours to procure the issuer's compliance with the Listing Rules.

The Exchange expects issuers' internal controls and procedures to include the following:

* Robust and effective internal controls to identify potentially price-sensitive information and ensure that it is passed quickly to the board or those directors responsible for deciding whether an announcement is necessary. Those internal controls should be in writing. Inability to physically convene a full board meeting will not be regarded as a justifiable reason for delaying an announcement.
* Periodic financial reporting procedures to ensure that the board has the financial and operational data necessary to determine whether there has been any material change in the issuer's financial condition, in the performance of its business or in its expectation of its performance, which is required to be disclosed. The minimum requirement for most issuers is that monthly management accounts are provided to the board shortly after the month-end.
* Vetting and authorisation processes to ensure that regulatory announcements are made in a timely manner, are factual, do not omit material information and are presented in a clear and balanced way (i.e. include positive and negative information).

Directors and members of senior management must ensure that they are familiar with the disclosure obligations under Main Board Listing Rule 13.09(1) (GEM Listing Rule 17.10) and the Exchange's guidance on the disclosure of price-sensitive information.

## Guidance On Particular Situations

The letter contains guidance on a number of specific disclosure issues. This supplements the guidance previously given in the Exchange's "[Guide on disclosure of price sensitive information](http://www.hkex.com.hk/eng/listing/listreq_pro/documents/full-e.pdf)" ([see archive](full-e.pdf)), and the Exchange's announcement on "[Clarification of Formal Reporting Requirements for Profit Forecasts by Main Board Issuers and Obligations of Main Board and GEM Issuers on the Release of Price Sensitive Information](http://www.hkex.com.hk/news/hkexnews/060911news.htm)" ([see archive](060911news.pdf)).

### Price Sensitive Information During Preparation of Financial Reports or Other Disclosures

A listed issuer may become aware of price-sensitive information in the course of preparing periodic financial reports or other required disclosure documents such as circulars. The issuer cannot defer releasing the potentially price-sensitive information until the financial report or other disclosure document is issued. Separate disclosure of the price-sensitive information must be made immediately.

### Price Sensitive Information During Negotiations concerning Transactions, Fund Raising or Other Proposals

If confidential information concerning the issuer is to be released to third parties during negotiations, the issuer must first "filter" and review such material to evaluate whether it contains potentially price-sensitive information. If it does, an announcement should be made immediately. For example, a review of management accounts may reveal financial trends which are potentially price-sensitive and require immediate disclosure. Disclosure of a material change in financial performance cannot be delayed while the negotiations proceed.

### Legitimate Delay in Disclosure

The Listing Rules contemplate that an issuer may defer disclosure of transactions or fund-raising activities, if disclosure might prejudice the issuer's interests in the negotiations. The issuer may also give that information in strict confidence to parties involved in the development of the matter. Delay in disclosure and provision of the information to other parties is only permissible if:

* the issuer can ensure the confidentiality of the information; and
* the delay in disclosure will not cause the establishment of a false market.

In addition, parties who receive price-sensitive information must not deal in the issuer's securities until it has been announced.

If confidentiality is lost, which may be indicated by otherwise unexplained changes to the price of the issuer's securities or by reference to media or analyst reports, disclosure must be made immediately. The Exchange recommends that issuers should have a substantially complete and up-to-date draft of an announcement ready for release at the appropriate time to ensure that there is no delay.

### Internal Developments

An issuer should immediately investigate indications of problems within the issuer's business or operations to determine whether the issuer has a disclosure obligation. If more work is needed to obtain complete information, a "holding" announcement must be made to satisfy the continuous disclosure obligation. Further disclosure should be made once more detailed information is obtained.

Where there are significant uncertainties about the outcome of a development, the issuer may have to give a detailed account of the nature and scale of the uncertainties and details of the actions being taken by the issuer.

If either of the above approaches risks creating a false (i.e. misinformed) market, the issuer should ask for a suspension of trading pending clarification of the position. The announcement of the suspension should indicate the nature of the matter pending clarification.

### External Developments

Listed issuers are not required to disclose general external information (such as foreign currency rates or the market price of commodities) which may already be in the public domain, unless the information has a particular impact on the issuer.

### Handling Market Rumours

An issuer is not usually required to make a negative statement rebutting a wholly unfounded rumour. However, if it does, it must do so by way of a formal announcement rather than by way of a press release or remark to a publication. The situations where a corrective announcement should be made include where denial of a wholly unfounded rumour is likely to materially affect the issuer's share price or where such rumour is creating a disorderly market.

The Listing Division is likely to contact the issuer or its advisers if there are rumours relating to it in the media and will require a full justification of the issuer's proposed course of action and confirmation of the true position. Issuers should not seek to mislead the Exchange as they are required to provide the requested information under Main Board Listing Rule 13.10 (GEM Listing Rule 17.11). The Exchange may subsequently investigate any misleading statements made.

### A Robust Compliance System

The Exchange's letter notes that in the current economic climate, compliance with the continuous disclosure obligations is an area of risk for directors. It recommends that all directors should ensure that they are familiar with the disclosure obligations and participate in a review of the adequacy of the arrangements in place to ensure compliance. The Exchange indicates that a robust system will assist directors not directly involved in handling compliance in a specific situation to establish a defence to any allegations of breach of the Listing Rules or of their undertakings to the Exchange.

The Exchange also recommends that issuers release periodic trading statements (with or without detailed financial and performance data) more regularly than the twice-yearly financial results announcements. It suggests that this will keep the market up-to-date and reduce the need for unplanned announcements.

The Exchange's letter sets out in an attachment a list of questions for directors to consider in assessing issuers' internal procedures for ensuring compliance with the continuous disclosure obligations. Those questions are reproduced in the annex to this note.

This note constitutes a summary only of the contents of the Exchange's letter dated 31 October 2008 regarding "Recent economic developments and the disclosure obligations of listed issuers". Specific advice should be sought in relation to any specific situation.

### Appendix

### Director's Compliance Checklist - Continuous Disclosure Obligation Procedures

The following is a non-exhaustive list of questions that the Exchange thinks diligent Board directors should consider in assessing the adequacy of procedures they have put in place to ensure compliance with the issuer's continuous disclosure obligations.

1. Do we have a system for monitoring developments in our business so that potentially price sensitive information which might have an impact on the company's share price is quickly escalated up the organization to those responsible for deciding whether an announcement should be made?
2. Are those systems and procedures documented in writing?
3. Is the process realistic and likely to operate smoothly in practice?
4. Does that system incorporate the preparation of and regular, periodic review of a sensitivity list identifying factors or developments which are likely to give rise to the emergence of price sensitive information?
5. Does that system incorporate the risks identified through existing internal risk management compliance routines?
6. Do we have procedures with our financial and legal advisers for involving them at short notice in the assessment of the potential price sensitivity of information and to involve them in the preparation of announcements?
7. Do we have a procedure for monitoring share price movements, media and analyst reports and market rumours?
8. Do we involve our financial advisers and public relations advisers to help us systematically identify and escalate news of external developments so that those responsible for handling the Company's compliance with the continuous disclosure requirements can respond promptly and accurately to enquiries from the Exchange and can prepare and disseminate regulatory announcements where necessary to correct or prevent a false (misinformed) market in the company's securities?
9. Do we intensify the application of those procedures when a major transaction or proposals is in the course of development?
10. Do we have a defined procedure for communicating with the market, analysts, investors and the press?
11. Does that procedure identify a small number of specific individuals who have responsibility and training for such external communication?
12. Does the procedure expressly prohibit any other directors or member of staff from engaging in such communications?
13. Do we publish our policy and procedures so that the press and others understand how we go about meeting our Listing Rule compliance obligations at the same time as maintaining a constructive dialogue with the press, analysts and investors?
14. Are directors, senior management and other staff given initial training and periodic refresher training on the Company's procedures?
15. Do we assign a company representative to record or prepare detailed notes of what was said at all media and analyst briefing to reduce the scope for dispute about what has been said to the media or analysts?

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