Charltons - Hong Kong Law Newsletter - 13 May 2013

[online version](http://www.charltonslaw.com/exchange-publishes-faq-on-listing-rule-changes-consequential-on-the-statutory-regime-for-disclosure-of-inside-information/)

# The Exchange Publishes Frequently Asked Questions On Listing Rule Changes Consequential On The Statutory Regime For Disclosure Of Inside Information

The Stock Exchange of Hong Kong recently published [Frequently Asked Questions Series 22](http://www.hkex.com.hk/eng/rulesreg/listrules/listrulesfaq/Documents/FAQ_22.pdf) [[archived copy](FAQ_22.pdf)] (the **FAQs**) in relation to the listing rules changes implemented in connection with the statutory regime for disclosure of inside information (i.e. price sensitive information) under new Part XIVA of the SFO which came into effect on 1 January 2013. With the introduction of the statutory regime, the Exchange remains responsible for maintaining an orderly, fair and informed market for the trading of securities. Listed issuers therefore continue to be subject to an obligation under the Listing Rules to disclose information necessary to avoid the development of a false market.

The FAQs clarify certain concepts or elements in the amended Listing Rules in relation to disclosure of inside information. They also explain how listed issuers should comply with the Listing Rule requirements in certain hypothetical situations.

Previously, we have published [a newsletter](/newsletters/hklaw/en/2012/155/nl-hklaw-20120511-155.html) on the statutory regime for disclosure of inside information and [a newsletter](/newsletters/hklaw/en/2012/175/nl-hklaw-20121220-175.html) on the relevant Listing Rule amendments.

## “False market”

“False market” refers to a situation where there is material misinformation or materially incomplete information in the market which is compromising proper price discovery. Examples of situations where this could arise include:

* An issuer has made **a false or misleading announcement**;
* There is **other false or misleading information**, including a false rumour, circulating in the market;
* An issuer has inside information that needs to be disclosed under the Inside Information Provisions (**Part XIVA of the 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
* A segment of the market is trading on the basis of inside information that is **not available to the market as a whole**

## Media or analyst reports

Regardless of whether the information is accurate or not, where a media or analyst report appears to contain information from a credible source, the issuer must announce information necessary to avoid a false market in its securities in the following situations:

* There is a material change in the market price or trading volume of the issuer’s securities which appears to be **referrable to the report** (in the sense that it is not readily explicable by any other event or circumstance); or
* Where the market is not trading at the time but the report is of a character that when the market starts trading, it is **likely to have a material effect** on the market price or trading volume of the issuer’s securities.

Note that in such case, the information is required to be disclosed to avoid the development of a false market **under the Listing Rules**. The information may not be inside information discloseable under the statutory regime.

## No need to consult the Exchange

An issuer does not need to “consult” the Exchange before announcing the information necessary to avoid a false market. However, it must contact the Exchange as soon as reasonably practicable if it believes that there is likely to be a false market in its securities.

## “such enquiry with respect to the issuer as may be reasonable in the circumstances”

In response to the Exchange’s enquiries, an issuer is required to make the standard announcement in the form of Note 1 to Listing Rule 13.10 after having made “*such enquiry with respect to the issuer as may be reasonable in the circumstances*” if it is not aware of any discloseable matters to avoid a false market (**Standard Announcement**).

The Exchange clarifies that the facts and circumstances giving rise to each of its enquiries are different. What enquiry should be made by the issuer depends on the circumstances and the test is one of **reasonableness**.

## Controlling shareholders which are not directors or officers

When making enquiries with respect to the company, an issuer is generally not expected to contact,

* Its controlling shareholders when they are not directors or officers of the issuer, or
* Counterparties to a transaction,

**except** if there is information available to the issuer suggesting that the subject matter of the enquiry is related to the controlling shareholders or the counterparties to a transaction.

### Example 1

* Where the issuer is aware of its controlling shareholder’s plan to dispose of its interests in the issuer, and there is an unusual increase in the trading volume of the issuer’s shares.

### Example 2

* Where there are press articles suggesting that the counterparty to a disclosed transaction may not be able to complete the transaction due to difficulties raising finance.

## Inside information exempted from disclosure

Where an issuer has inside information which is exempted from disclosure under the safe harbours of the Inside Information Provisions, and there are market rumours which are unrelated to this information but have resulted in unusual trading movements, the Exchange clarifies that if the issuer publishes a Standard Announcement, it **would not be inaccurate** as information that is exempted from disclosure does not fall within the term “any inside information that needs to be disclosed under Part XIVA of the SFO” in the Standard Announcement.

## Subsequent disclosure of inside information and market uncertainty

If an issuer made a Standard Announcement stating that there was no discloseable inside information due to an exemption under the Inside Information Provisions, and the issuer subsequently (e.g. 1 month later) discloses the information, the Exchange states that the issuer can clarify in the disclosure announcement that the information was exempted from disclosure when the Standard Announcement was first issued, so as to avoid market uncertainty that might arise from the subsequent disclosure.

## Listed structured products

For the obligations of listed issuers of structured products to make an announcement to avoid a false market, to respond to the Exchange’s enquiries and to apply for a trading halt, the obligations do not cover information **relating to the underlying securities** but are confined to information relating to the listed structured products, structured products issuers and/or guarantors.

**This newsletter is for information purposes only.**

Its contents do not constitute legal advice and it should not be regarded as a substitute for detailed advice in individual cases.

Transmission of this information is not intended to create and receipt does not constitute a lawyer-client relationship between Charltons and the user or browser.

Charltons is not responsible for any third party content which can be accessed through the website.

If you do not wish to receive this newsletter please let us know by emailing us at unsubscribe@charltonslaw.com

**Charltons - Hong Kong Law Newsletter - Issue 190 - 13 May 2013**