Compliance Control Guide For the Prevention of Breaching Listing Rules

BM INTELLIGENCE

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Preface

This Compliance Control Guide For the Prevention of Breaching Listing Rules (the "Guide") is prepared by BMI Listed Corporate Services Limited ("BMILCS"). BMILCS is a leading professional corporate services provider which offers comprehensive and reliable corporate secretarial services to listed and private companies in Hong Kong, the People's Republic of China and throughout the Asia region.

With the help from our expertise business support, we can remove obstacles that would hinder your many great plans and let you concentrate on expanding your business without hesitation.

Since we have substantial experience in providing corporate services, especially for services in relation to the compliance with the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (the "Stock Exchange") (the "Listing Rules"), we put together our expertise and insights of our professionals in coming up with advice on compliance control for the prevention of breaching the Listing Rules in this Guide.

It is a continuing obligation for a listed company to comply with the Listing Rules all the time. Any breach of the Listing Rules may result in suspension of trading and/or public censure from the Stock Exchange.

Here with our professional advice, we presented to you this Guide identifying the compliance requirements in respect of the Listing Rules compliance.

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1. Introduction

Companies being listed on the Stock Exchange must comply with the Listing Rules as the continuing listing obligations.

In recent years, the Stock Exchange criticised the listed companies and/or their officers mainly due to the breach of the following Listing Rules:

1. Rule 13.09(1) - Disclosure of Price Sensitive Information;

2. Rule 2.13 - Presentation of Information; and

3. Appendix 10 A.3 - Blackout Period

The above Listing Rules will be discussed in this Guide with case studies for providing a better understanding.

2. Rule 13.09(1) - Disclosure of Price Sensitive Information

Rule 13.09(1)

The listed company shall keep the Stock Exchange and its shareholders informed as soon as reasonably practicable of any information relating to the group (including information on any major new developments in the group's sphere of activity which is not public knowledge) which:

(a) is necessary to enable the Stock Exchange, its shareholders and the public to appraise the position of the listed company; or

(b) is necessary to avoid the establishment of a false market in its shares; or

(c) might be reasonably expected materially to affect market activity in and the price of its shares.

Case study:

Company X is a company being listed on the Stock Exchange. It released its results announcement for the first six months of each financial year within two months after the end of that period of six months.

According to the interim results announcement, Company X recorded a gross loss during the financial period. The loss, excluding the one-off impairment losses of trade receivables, intangible assets, goodwill and available-for-sales financial assets in the prior period, was increased by HK$500 million, representing 12 times of that in the prior period. However, Company X did not issue a profit warning announcement before the publication of the results announcement.

Company X failed to fulfill its responsibility to disclose price sensitive information publicly in a timely manner.

First of all, it is important to determine whether the information was price sensitive in nature as per the Listing Rules. The loss for the financial period, which was 12 times compared with the prior period, was definitely a substantial change in the financial position of Company X. This information would influence the market expectation towards the future development of Company X, thus the stock price of Company X's shares would be fluctuated after the release of the results announcement.

Under Rule 13.09(1), the public should be informed of any information that might be reasonably expected to affect market activity materially in the price of the shares. However, it should also consider if the directors of Company X are informed of or have gathered the above information. Every director should ensure that he can give sufficient time and attention to the listed company's affairs and should not accept the appointment if he cannot do so. One of the responsibilities of the directors is to supervise the operation of the listed company and ensure that the listed company complies with the Listing Rules. Therefore, it was reasonable to expect the directors of Company X had obtained the information about the substantial changes of the financial position when the listed company started to prepare the interim financial report and had sufficient time to prepare the disclosure of the price sensitive information.

Normally speaking, in order to fulfill Rule 13.09(1) that the listed company should make updated information publicly available in a timely manner, Company X should issue a profit warning announcement immediately after they had got the information. As a result, there would be questions about the date of the directors of Company X becoming aware of the above information. If the directors of Company X fully understood the situation of the financial position of Company X which was price sensitive in nature, and did not issue a profit warning announcement, Company X obviously violated Rule 13.09(1).

3. Rule 2.13 - Presentation of Information

Rule 2.13

Without prejudice to any specific requirements of the Listing Rules as to content or responsibility for the document in question, any announcement or corporate communication required pursuant to the Listing Rules must be prepared having regard to the following general principles:

(1) the information contained in the document must be clearly presented and in the plain language format specified or recommended by the Stock Exchange and/or the Commission from time to time; and

(2) the information contained in the document must be accurate and complete in all material respects and not be misleading or deceptive. In complying with this requirement, the listed company must not, among other things:—

(a) omit material facts of an unfavourable nature or fail to accord them with appropriate significance;

(b) present favourable possibilities as certain or as more probable than is likely to be the case;

(c) present projections without sufficient qualification or explanation; or

(d) present risk factors in a misleading way.

Case study:

Company Y was listed on the Stock Exchange. On 5 October 2012, Company S, a wholly-owned subsidiary of Company Y, entered into a Licence Agreement with a famous international company in creative industries which agreed to grant Company S a non-exclusive licence and right to use certain material and trademarks of characters owned by them for a term of three years.

On 8 October 2012, Company Y recorded an increase of 25% of its share price compare with previous business day and its trading volume was 5 times of the past 10-day average.

Despite these circumstances, Company Y, in response to the enquiry from the Stock Exchange on 8 October 2012 after trading hours, published an announcement (the "Standard Announcement") on that evening stating, among other things, that it was not aware of any reasons for its share price and trading volume increases that day, and it was not aware of any matter discloseable under the general obligation, which was or might be of a price sensitive nature (the "Standard Confirmation").

Company Y's shareholders and investors continued to trade in its shares on a misinformed basis until 11 October 2012, the day on which Company Y published an announcement for disclosing the Licence Agreement.

Company Y should have, in these circumstances, requested a trading suspension with effect from 9:00 a.m. on 9 October 2012 pending the disclosure of the information. It did not do so and instead published the Standard Announcement which contained the Standard Confirmation that Company Y was not aware of any matter or development that was or might be relevant to the unusual price movement or trading volume of its listed shares.

The information regarding the Licence Agreement was material and might have been relevant to the unusual trading movements on 8 October 2012, which led to the Stock Exchange enquiries on that day. Company Y's Standard Confirmation rendered the Standard Announcement not accurate and complete in all material respects, and was misleading.

It is obvious that Company Y failed to contained information which is accurate and complete in all material respects and not be misleading or deceptive in the announcement. Company Y therefore breached Rule 2.13.

4. Appendix 10 A.3 - Blackout Period (a Period of Prohibiting Directors from Dealing in Shares of the Listed Company)

Appendix 10 A.3

(a) A director must not deal in any shares of the listed company on any day on which its financial results are published and:

(i) during the period of 60 days immediately 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; and

(ii) during the period of 30 days immediately 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,

unless the circumstances are exceptional.

(b) The listed company must notify the Stock Exchange in advance of the commencement of each period during which directors are not allowed to deal under (a).

Note: Directors should note that the period during which they are not allowed to deal under this rule will cover any period of delay in the publication of a results announcement.

Case study:

Mr. A was a non-executive director of Company Z. Company Z is a company listed on the Stock Exchange with financial year ended on 31 December.

(1) If Company Z expected to publish the annual results announcement on 26 February, the Blackout period prohibiting its directors from dealing in its shares would be from the end of the relevant financial year up to the publication date of the results (i.e. 1 January and ended on 26 February). Company Z should notify the Stock Exchange the Blackout period before 1 January.

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Date of publication of the annual results announcement

(2) On 20 January, Company Z notified the Stock Exchange that the Blackout period prohibiting its directors from dealing in its shares would be commenced on 25 January and ended on 26 March. Company Z was expected to publish the annual results announcement on 26 March.

Mr. A must not deal (e.g. acquire, dispose, be granted of option, exercise option) in any shares of Company Z, on market or off market, within the period from 25 January to 26 March.

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Date of publication of the annual results announcement

(2)(a) Afterward, if the Company Z shifted the publication date of the annual results announcement earlier to 22 March, the Blackout period would be changed to be commenced on 21 January and ended on 22 March. As such, if Mr. A dealt in the shares of Company Z on 23 January, he breached Appendix 10 A.3.

January

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Date of publication of the annual results announcement

Date of dealing in the shares

(2)(b) However, if Company Z postponed the publication date of the annual results announcement to 29 March, the Blackout period would be extended to 29 March. In this case, Mr. A must not deal in any shares of Company Z from 25 January to 29 March as the starting date of the Blackout period did not change despite the postponement of the publication of the annual results announcement. Even if Company Z notified the Stock Exchange for changing the commencement date of the Blackout period to 28 January, the change of the commencement date of the Blackout period was not permissible under Appendix 10 A.3. If Mr. A dealt in the shares of Company Z on 25 January, he breached Appendix 10 A.3.

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February

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March

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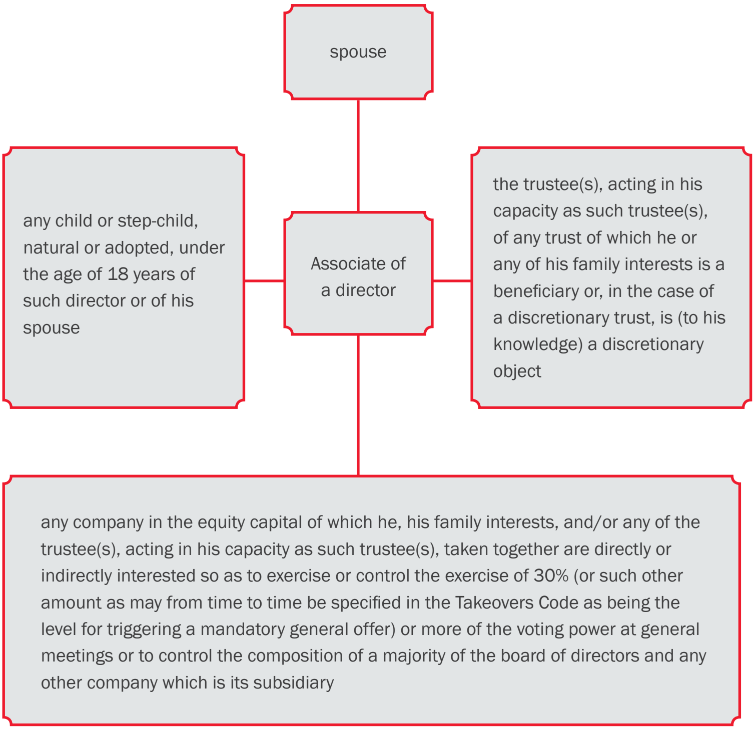
Date of publication of the annual results announcement

Date of dealing in the shares

Associate of Director(s)

Director(s) should also take proactive steps to avoid his associates' from dealing in the shares of Company Z during the Blackout period.



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