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# HKEx Issues New Guidance On The Requirements For The Publication Of Overseas Regulatory Announcements

## Introduction

On 21 January 2011 the Stock Exchange of Hong Kong (the "**Exchange**") published a guidance letter (the "**Guidance Letter**") on the new requirements for the publication of overseas regulatory announcements under Main Board Listing Rule 13.09 (2) (the "**Rule**"). The new guidance letter overrules that of 28 October 2004.

The Rule obliges a dually listed issuer to disclose all overseas regulatory information in Hong Kong at the same time the information is released to other stock exchanges. The note to the Rule clarifies that this requirement encompasses information disclosed by a subsidiary of the issuer to another market, or another exchange, on which that subsidiary is listed, if that information is discloseable by the issuer according to the terms of Chapter 13. Further obligations were placed on issuers by the 2004 guidance letter, which demanded issuers release in Hong Kong all information disclosed by their overseas listed subsidiaries to other markets.

The Rule seeks to reduce regulatory arbitrage by ensuring shareholders trading on the Exchange receive from issuers the same information, at the same time, as shareholders on other exchanges. This disclosure obligation on issuers operates in addition to the general one under Rule 13.09(1), which requires all material information that is, or may be, price sensitive to be disclosed by issuers.

## The Withdrawal Of The 2004 Letter

The Exchange, prompted by an upsurge in the number of dually listed issuers and overseas listed subsidiaries, recently conducted a review of the Rule. This review encompassed the effect of the requirement that issuers must disclose all information released by their overseas listed subsidiaries to other markets. After taking on board market criticism of the latter, the Exchange found that there was little use in demanding an issuer to publish all of a subsidiary's overseas regulatory information. Such an obligation was concluded to be of little use to shareholders, unless the information was material to the issuer, and encumbered issuers needlessly. Shareholders are already protected in this area by Rule 13.09 (1), which requires the disclosure of information released by an overseas listed subsidiary which is material to the issuer. Following consideration of all of these factors, the 2004 guidance letter was withdrawn by the Exchange.

## The New Regime

Under the revised procedure, where an issuer's overseas listed subsidiary releases overseas regulatory information, it need only be published on the Exchange website if the information is discloseable by the issuer under other Listing Rules. This would include, for example, information discloseable under Rule 13.09(1) or the notifiable and connected transaction requirements in Chapters 14 and 14A (as set out in the note to Rule 13.09(2)).

However, overseas regulatory information released by dually listed issuers must still be simultaneously published on the Exchange website under Rule 13.09(2). This information may be published in English, or Chinese, or both. The guidance letter notes that issuers should request advice from the Exchange in situations where their regulatory information is publicised in overseas markets in languages other than Chinese and English, and this factor is causing them difficulty as regards meeting the Exchange requirements concerning languages. All such requests will be assessed individually and waivers may be granted where appropriate.

The Guidance Letter emphasises however that if the information is discloseable under Rule 13.09(2) and any other Rule(s), the announcements must be published in both English and Chinese.

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