

Frequently Asked Questions Series 14 (Released on 31 May 2011 / Last Updated on 2 January 2013)

Model Code for Securities Transactions by Directors of Listed Issuers

Status of “Frequently Asked Questions”

The following frequently asked questions (FAQs) are designed to help issuers to understand and comply with the Listing Rules, particularly in situations not explicitly set out in the Rules or where further clarification may be desirable.

Users of the FAQs should refer to the Rules themselves and, if necessary, seek qualified professional advice. The FAQs are not substitutes for the Rules. If there is any discrepancy between the FAQs and the Rules, the Rules prevail.

In formulating our “answers”, we may have assumed certain underlying facts, selectively summarised the Rules or concentrated on one particular aspect of the question. They are not definitive and do not apply to all cases where the scenario may at first appear similar. In any given case, regard must be had to all the relevant facts and circumstances.

The Listing Division may be consulted on a confidential basis. Contact the Listing Division at the earliest opportunity with any queries.

No.	Main Board Rules	GEM Rules	Query	Response
1(a)	Appendix 10 - Paragraphs 6 and 7, and Rule A.3	5.51, 5.52, 5.56	<p>Mr. X, a director of Company A, intends to make an offer for Company A's shares under the Takeovers Code.</p> <p>(i) Does a dealing in Company A's shares occur under the Model Code when the offer document is despatched?</p> <p>(ii) If Mr. X announces his firm intention to make the offer (with terms) during the black out period, would it be regarded as a dealing in Company A's shares under the Model Code?</p>	<p>Under the Model Code, an issuer's director must not deal in the issuer's securities when he is in possession of inside information¹ relating to those securities and during a black out period. Dealing includes an offer to acquire the issuer's securities.</p> <p>(i) In the takeover situation, the despatch of the offer document is a dealing by Mr. X under the Model Code because he has made an offer to acquire Company A's shares under the offer document.</p> <p>(ii) As an offer has not been made at the time of the announcement, it is not a dealing under the Model Code.</p> <p>However, we understand that if a director announces a firm intention to make an offer, he will be required to proceed with the offer in accordance with the Takeovers Code. Therefore, Mr. X should apprise himself of all applicable rules and regulations before he announces the offer, and ensure that the offer (i.e. the despatch of the</p>

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				<p>offer document) would not take place within the black out period. Please also refer to the SFC's Takeovers Bulletin – Issue No. 15.</p> <p><i>Note:</i></p> <p>1. <i>Amendment made in light of the Rule changes consequential on the statutory backing to issuers' continuing obligation to disclose inside information, which became effective on 1 January 2013. (Added in January 2013)</i></p>
1(b)	Appendix 10 - Paragraph 7, and Rule A.3	5.52, 5.56	<p>Mr. X has announced a firm intention to make an offer for Company A's shares (with terms) under the Takeovers Code before the commencement of the black out period.</p> <p>If the offer document is to be despatched during the black out period and there are no change to the offer terms, would the dealing restriction under the Model Code apply?</p>	Yes.

No.	Main Board Rules	GEM Rules	Query	Response
1(c)	Appendix 10 - Paragraph 7, and Rule A.3	5.52, 5.56	If during the black out period Mr. X seeks and obtains irrevocable undertakings from Company A's shareholders to tender their shares under the offer, would these be considered as dealings under the Model Code?	The undertakings would not themselves be regarded as dealings by Mr. X under the Model Code.
2	Appendix 10 - Paragraph 7	5.52	For the purpose of the Model Code, does dealing include a takeover of a listed issuer by way of scheme of arrangement under which the issuer's shares would be cancelled or transferred in exchange for cash or securities?	The dealing restrictions in the Model Code also apply to schemes of arrangement as they have similar effect to takeovers by way of general offer.
3	Appendix 10 - Paragraphs 6 and 7, and Rules A.3 and A.6	5.51, 5.52, 5.56, 5.59	<p>An entity makes an offer to acquire Listco's shares under the Takeovers Code.</p> <p>Mr. Y is a director of each of Listco and the offeror. The offer is not a dealing in which Mr. Y is treated as interested under Part XV of the Securities and Futures Ordinance.</p> <p>Would the offer be regarded as dealing by Mr. Y in Listco's shares under the Model Code by virtue of his directorship in the offeror?</p>	No. However, Mr. Y should note that under the Model Code he must not make any unauthorised disclosure of confidential information of Listco to any person (even those to whom he owes a fiduciary duty).