

ASAF Position Paper
Corporate Disclosure of Material Price-Sensitive Information

Asian Securities Analysts Federation
Position Paper 2002

Corporate Disclosure of Material Price-Sensitive Information

1. Introduction

The principal issue addressed by the Asian Securities Analysts Federation (ASAF) Advocacy Committee in 2002 has been Corporate Disclosure, specifically continuous disclosure practices and a company's obligation to inform the market of material price-sensitive developments that occur outside the periodic disclosure structure.

Based on the input from ASAF member societies on the type of corporate disclosure policy, access to information and compliance with existing disclosure requirements in their country/region, the ASAF Annual General Meeting held at the Gold Coast, Australia, on 27 October 2002, has adopted this Position Paper, prepared by its Advocacy Committee.

The ASAF Annual General Meeting encouraged member societies to advocate these recommendations to the securities regulators, exchanges and industry associations in their respective markets.

Recent corporate scandals in the US show how failure to promptly disclose important information to the market can negatively impact on market and investor confidence and damage the reputation and integrity of capital markets. Under its system of periodic (quarterly) reporting and fair disclosure, there had been no express obligation on US companies to publicly disclose all material developments as and when they occur. The merits of prompt continuous disclosure requirements are now being seriously considered by the US and many other jurisdictions.

These *Recommendations on Corporate Disclosure* are designed to improve the transparency of financial reporting and ensure equal access to current company information for all investors. They also aim to avoid the risk of selectively providing price-sensitive information to exclusive groups or individuals (such as analysts or institutional investors) prior to disclosing it to the general market, which may potentially create unfair trading opportunities (e.g. tipping or insider trading) and ultimately undermine retail investors' confidence in the market by creating the perception that select groups can access to information not available to other investors.

The recommendations aim to encourage a best practice approach to corporate disclosure in the ASAF region and to foster a strong culture of continuous disclosure that focuses on shareholders' information needs, and not just on meeting minimal regulatory compliance requirements.

It is not intended for these recommendations to change a company's general disclosure obligations under applicable stock exchange listing rules or regulations or to eliminate the need to assess what information is material and price-sensitive information and when disclosure is required. In recognition of the fact that the approach to corporate disclosure issues varies among ASAF member societies and that corporate disclosure practices are currently being reviewed in some jurisdictions, these recommendations present high-level principles of general application.

ASAF Position Paper
Corporate Disclosure of Material Price-Sensitive Information

The recommendations allow companies to adopt the suggested disclosure practices flexibly and sensibly to meet legal requirements and local market conditions and their individual needs and circumstances.

The quality of ongoing corporate disclosure (such as what information is disclosed and not disclosed) affects the perception of market integrity and investor protection and impacts on how well financial analysts can perform their intermediary role. ASAF encourages all member societies to advocate and promote these disclosure practice recommendations in their country/region to the market regulators, exchanges, clearing houses and professional associations representing the securities industry and where possible, to urge listed companies to improve the timing, quality and quantity of information they disclose to the market.

2. Continuous Disclosure Principles and Premises

Effective corporate disclosure involves a combination of two types of disclosure:

- (i) legal or regulatory disclosure (comprising of structured or periodic reporting obligations on an annual and interim basis as required by the corporations and securities law, market regulatory bodies and accounting standards, as well as particular administrative disclosure); and
- (ii) Continuous or timely disclosure that occurs outside the structured time periods set for legal disclosure and which must be promptly disclosed because it may have a material impact on investment decisions and the value and price of a company's securities.

By integrating the additional requirements of timely, continuous disclosure into the legal or regulatory disclosure framework, securities investment and trading can be most efficiently and equitably conducted.

A continuous disclosure regime recognises the need for the market and all investors to have fair access to price-sensitive information (positive and negative) on an equal footing. It requires when listed companies to disclose in a timely manner to all market participants all relevant information which may affect security values or influence investment decisions, and only in very limited circumstances does it permit companies to withhold disclosure of such material information.

Continuous disclosure of accurate and quality information is in the best interests of the company, as investors often give premium ratings to the most transparent companies. The basic premise of corporate disclosure is that the greater the quality, detail and timeliness of material disclosure made by a company in relation to its business operations and performance, the more market confidence and the lower the risk for investors in evaluating the company's investment potential and thereby the higher valuation (share price) for the company's stock and the lower the cost of capital.

Continuous disclosure considers the immediate release of material price-sensitive information to be necessary to ensure that the same information (in both content and detail) is available to all investors and to act as a deterrent to selective disclosure and insider trading, to counter market distortion through rumours and speculation and above all, to enable investors to make informed investment decisions.

Disseminating material information as and when it occurs is the most effective way to mitigate the potential for negative surprises and to advance the interests of investors.

ASAF Position Paper
Corporate Disclosure of Material Price-Sensitive Information

3. Determining Whether Information is Material and Price-Sensitive

In a continuous disclosure system, a general disclosure obligation is imposed on listed companies to keep the stock exchange and shareholders informed as soon as reasonably practicable of any information relating to the company and its business activities which:

- (a) is necessary to enable the exchange, shareholders and the public to appraise the position and investment potential of the company and assess the associated risks and rewards of the company's shares;
- (b) is necessary to avoid establishing or maintaining a false market in the company's shares; and
- (c) might reasonably be expected to materially affect the price or value of the company's shares or market trading activity in those shares.

The company must consider each of these three criteria in determining whether or not a particular item of information is both material and price-sensitive.

Given that there are potentially numerous unexpected and significant events that can impact on share prices and affect market activity, it is important for companies to promptly assess the likely impact of each event and determine whether the relevant information would be both material and price-sensitive and should therefore be publicly disclosed without delay.

As a matter of good corporate governance, good disclosure practice demands that the market be kept informed of any information that is significant to a listed company in relation to its operations, management, profitability and financial position.

Some illustrative examples of the type of company information or events that may be potentially price-sensitive and thus require prompt disclosure include, but are not limited to:

- regular announcement of financial performance results, earnings, dividends or projected profit and of significant changes to the previous announcement;
- comments on the prospects for future earnings or dividends;
- exceptional capital structure matters such as a change in assets, acquisitions, divestments, leases, mergers, joint ventures, a large foreign exchange loss, fundraising or committing significant resources to a non-core business;
- creation of a direct or contingent financial obligation that is material or significant; or the occurrence of an event which triggers the direct or contingent financial obligation, including any default or acceleration of such obligation;
- winning or losing a major new contract or order;
- negotiation breakdown or cancellation of an agreement previously announced;
- major changes in suppliers or customers;
- new products, product lines or discoveries;
- issue of options convertible into securities;
- changes in control or key management (e.g. resignation of the chief executive or chief financial officer);
- audit or auditor changes, such as premature removal of the auditor before the end of their appointment term, withdrawal of a previously issued auditor's report or notice that the auditor will issue a qualified report of the company's results;
- major restructuring, bankruptcy or receivership;
- any change of accounting policy that may have a significant impact on the accounts;

ASAF Position Paper
Corporate Disclosure of Material Price-Sensitive Information

- notification that shareholders should no longer rely on the company's previously issued financial statements, and details of restatements;
- any change in a rating agency decision or company outlook;
- major market upheaval in the industries, countries or regions where the company has significant operations or transactions; or a significant change in the exchange rate of currencies that are key to the company's operations;
- an event beyond the company's control which is of material significance to the company's business, operations or financial performance.

For potentially price-sensitive information related to the company's business affairs to be deemed material, it must also refer to facts or changes of significance that result (or would reasonably be expected to result) in a significant change in the market price or value of the company's stock. However, whether certain information is material or not may vary from one company to another depending on the company's size, capitalisation, assets, profits, type of operations or industry. Corporate disclosure decisions therefore require a combination of objective analysis (from the investors' or market's perspective) and subjective assessment (from the individual company's perspective).

It is not possible to compile an exhaustive or definitive list, since what might be materially price-sensitive information to one company may be quite immaterial to another similar company or not have any share price implications.

Determining what information is price-sensitive and whether it is material or significant enough to be immediately disclosed is always a matter of judgement for each company, based on its own unique circumstances.

When in any doubt as to whether disclosure should be made, a company should consult the stock exchange for guidance and should consider the interests and information needs of investors above all other interests, including the company's desire or need to keep the information confidential.

Even where the company considers that the relevant information would be material and price-sensitive, a company should only be permitted to withhold such information from immediate disclosure if one or more of the following exceptional circumstances were to be satisfied:

- (i) if the information concerns or relates to an incomplete proposal or negotiation; or
- (ii) if the information contains matters of supposition or is insufficiently definite to warrant disclosure at this time; or
- (iii) if the information has been generated for the company's internal management purposes; or
- (iv) if the information is a trade secret; or
- (v) if disclosing the information would constitute a breach of law.

If the information falls within one or more of these exceptions to disclosure, the company would have to show that two further conditions relating to the information were also satisfied:

- that a reasonable person would not expect the information to be disclosed; and
- that the information is confidential and the stock exchange is satisfied that confidentiality has been maintained.

In determining whether confidentiality has been maintained, the stock exchange might be prompted by trading in the company's shares to confirm with the company whether there has been any confidentiality breach or rumour or speculation about the company that is impacting on the share price. If there is cause for the stock exchange to ask the company about the information in order to prevent a false market in the company's securities developing or subsisting (arising from a market rumour or speculation), the company cannot withhold the information from the market any longer. The company must disclose the information immediately, as it is deemed to have ceased being confidential.

ASAF Position Paper

Corporate Disclosure of Material Price-Sensitive Information

If it could be argued that a reasonable person would not expect the subject information to be promptly disclosed to the market (e.g. on the grounds that it was not material or significant to the company's financial condition or prospects), then the company would not be required to disclose it immediately.

However, if a reasonable person would expect it to be disclosed and there is evidence that the information has already been disclosed (and is therefore no longer confidential), the stock exchange may intervene and require immediate disclosure.

Only if the subject information meets all these conditions could a company be justified in withholding from the market information which it considers would be otherwise material and potentially price-moving.

4. Managing Disclosure in Practice

Once the listed company determines that the information item is both material and price-sensitive, the following disclosure procedures apply:

1. On becoming aware of non-public information that the company expects will have a material effect on the price or value of its securities, the company's directors or senior executive should immediately disclose that information to the stock exchange and investing public.
2. Until properly disclosed to the market after informing the stock exchange, the company must ensure that the material price-sensitive information is kept strictly confidential.
3. Where the company feels that the necessary degree of security cannot be maintained or that security or confidentiality of the information may have been breached, the company must immediately disclose the material price-sensitive information to the stock exchange and the market.
4. If the material price-sensitive information is inadvertently or unintentionally disclosed to any selected external party or it is believed that such information may have been inadvertently disclosed (leaked), the company must immediately disclose the price-sensitive information so that the relevant information is broadly disseminated to the market.
5. In disclosing the material price-sensitive Information, the company should employ an effective wide means of market dissemination to the market and provide uniform or simultaneous access to the same information for all market participants. It is important that price-sensitive information should not be disclosed selectively outside the company and its advisers in such a way as to place in a privileged dealing position any person or class or category of persons.
6. Price-sensitive information may include positive and negative information. Bad news must be disclosed in the same way as good news.
7. The company should promptly respond to any stock exchange queries regarding unusual movements in its price or trading volume, market rumours, leaks or media reports which may affect the stock's price or market activity and make immediate disclosure of any relevant information by way of explanation.

In disclosing information that is deemed price-sensitive and likely to have a material impact, the company must act in good faith to ensure that the information disclosed is:

- **Complete:** All facts that are material to a particular event or transaction must be fully disclosed. If information is summarised, it must be sufficiently complete so as not to be misleading by omission.
- **Accurate:** Disclosure must be factual and internally consistent with financial statements and company policies.

ASAF Position Paper

Corporate Disclosure of Material Price-Sensitive Information

- **Current and Timely:** The relevant information must be released to investors promptly and without delay, as soon as practicable after the company becomes aware (or should reasonably have been aware) that the non-public information is both material and price-sensitive. If and when a material variance to the information later occurs, an update on the information previously disclosed must be promptly provided.
- **Balanced:** Disclosure must not accentuate the practical aspects of the company's business, while ignoring the negative and should not contain information that is not factual, is exaggerated or without basis or support or is merely promotional.

Where the initial disclosure contains some outstanding uncertainties, this fact should be specified along with the conditions and an anticipated date for resolution of the uncertainty.

Managing the disclosure of material price-sensitive information should be based on internal company policies that could include some of the following practical steps:

(i) Basic policy of disclosure: Provide timely and equal access to all investors:

- by establishing written policies and procedures that focus on continuous information disclosure and updates and on improving investor access to company information; and
- by utilising current technology (such as the company's website) to disseminate price-sensitive information as soon as it is disclosed to the market.

(ii) Develop and implement formal disclosure policies and procedures:

- by allocating specific responsibilities to specific individuals to comply with the continuous disclosure regime (e.g. a senior officer to oversee, co-ordinate and monitor disclosures and a few selected spokespersons to speak on behalf of the company) – to clarify who can say what about your company and when they can say it;
- that ensure price-sensitive information is publicly released through the stock exchange before disclosing to analysts or others outside the company; and
- that ensure proper handling of rumours, leaks and inadvertent disclosures.

A written disclosure policy can provide a framework for effective disclosure and raise the level of awareness and understanding of regulatory requirements. Disclosure policies should also be broadly communicated throughout the company and monitored for compliance.

Note: In handling private briefings with analysts and fund managers, a listed company should not disclose material price-sensitive information. If such information is inadvertently disclosed, the company should immediately announce it to the market and post it on its web site. If an analyst at a briefing asks a question that touches on price sensitive information, the company can either answer using information that has already been released to the market or refrain or defer from answering until the relevant price-sensitive information has been released.

(iii) Limit the number of authorised company spokespersons:

- by designating a limited number of persons as the only representatives of the company authorised to communicate with analysts or the media, institutional shareholders and the public-at-large, and instructing employees to refer all requests for information to those authorised spokespersons.

Note: This practice reduces the risk of different company representatives making inconsistent statements; and of disclosers making inconsistent statements from the information contained in the company's financial statements.

(iv) Ensure broad dissemination of information:

- by distributing the material price-sensitive information by means of a wide range of media and technology (including the company's website, electronic data services, press wire services, print media) as soon as possible after releasing it to the stock exchange.

ASAF Position Paper

Corporate Disclosure of Material Price-Sensitive Information

Note: This practice will ensure that all investors are given simultaneous/timely access to the disclosed information.

Although the board of a listed company holds responsibility for the proper dissemination of price-sensitive information, the task usually falls to an executive director or senior executive in practice. Before disclosure of material price-sensitive information, it is advisable to obtain clearance from an internal compliance officer and to decide on the most effective and efficient means of achieving broad dissemination to the investment market.

These recommendations acknowledge the growing importance and use of the Internet and email technology as effective continuous disclosure tools for communicating to investors and encourage the use of electronic media, provided that information disclosed in this way has first been disclosed to the listing authority under the relevant listing rules and complies with relevant regulatory requirements as to format, currency and accuracy.

Posting up-to-date information on the company's website is an efficient way of disseminating information to investors and the marketplace simultaneously. However, note that disclosure by website announcement alone will not meet the disclosure requirements – a website posting is merely an additional distribution mechanism to the traditional dissemination requirement of a stock exchange notification and media release. In the spirit of providing timely and broad disclosure to the market, there should be no restrictions (such as access fees, codes or bars) placed by the company on investors freely accessing the material price-sensitive information.

For practical guidance on handling specific issues and situations relating to continuous disclosure, please refer to the practical suggestions in Appendix 1: Excerpt from Hong Kong Exchanges and Clearing Ltd's *Guide on Disclosure of Price-Sensitive Information*, pages 7-11.

5. Improving Continuous Disclosure Practices

Continuous disclosure obligations involve a disciplined process of ongoing communication and review.

To improve the quality of their continuous disclosure, a company should:

- be proactive, not reactive about continuous disclosure obligations and be conscious of disclosing to the market any vital information in a timely, fair and consistent manner to assist investors' decisions, not just to comply with the formal requirements;
- carefully consider the type and scope of information that it should publicly disclose – *what* information to provide and *when* (how frequently) and *how* (by what medium) to most effectively disseminate it;
- monitor all their public disclosures (both written and verbal), financial statements and interim and annual reports, releases to the media and the stock exchange and regularly check their website to ensure that the relevant information provided is current, factual and complete;
- ensure that analyst meetings are always conducted by notified conference calls where the same information is distributed at the same time, rather than one-on-one situations where inadvertent selective disclosure may occur;
- hold conference calls that are open with "listen only mode" for audio participants coupled with continuous playback and Internet broadcast availability;
- prepare and review presentations to analysts beforehand to ensure that they do not contain material changes that require further disclosure;

ASAF Position Paper
Corporate Disclosure of Material Price-Sensitive Information

- develop responsible practical procedures and policies for responding to market rumours and speculation and for identifying and remedying inadvertent, unauthorised or selective disclosures, and instruct the company's authorised spokespersons on how best to apply them.

Other useful suggestions for addressing issues of disclosure of price-sensitive information are made in Appendix 1: Excerpt from Hong Kong Exchanges and Clearing Ltd's *Guide on Disclosure of Price-Sensitive Information*, pages 7-11.

ASAF Position Paper
Corporate Disclosure of Material Price-Sensitive Information

Appendix 1: Guidance on particular situations and issues

Source: Excerpt from Hong Kong Exchanges and Clearing Limited, *Guide on Disclosure Of Price-Sensitive Information*, Hong Kong, January 2002, pp. 7-11.

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Incomplete negotiations

Issuers are sometimes confronted with the problem of how long to keep an issue confidential and what constitutes the proper time for its release. The overriding principle is that information which is expected to be price-sensitive should be announced promptly after it becomes known to a director or senior management. Until it is released, it is essential to maintain confidentiality. Issuers should consider implementing procedures to maintain the confidentiality of information such as: the use of codenames in correspondence, use of private fax lines and email accounts, limiting dissemination of information to those who 'need to know', and reminding parties involved of the need to keep all such information strictly confidential.

If negotiations or discussions regarding a potentially price-sensitive matter are extended to include more than a small group of people or if it becomes difficult to ensure the confidentiality of the information, an announcement should be made as soon as practicable.

If negotiations have reached a delicate stage or major elements have not been finalised, the issuer should consult the exchange as soon as possible. It may be necessary for the securities to be suspended from trading pending a formal announcement.

Inadvertent dissemination of information

If an issuer becomes aware that price-sensitive information has inadvertently been given to a third party, it should immediately issue an announcement disclosing the relevant information and if necessary, request a suspension in the trading of its securities pending a formal announcement.

Sharing of information among board members

There may be circumstances where one director has information about a price-sensitive item of information but does not disclose it to the rest of the Board. Directors should have an understanding between themselves that information on business developments or otherwise that may be price-sensitive be shared with each other and an announcement should be made if such information is considered to be price-sensitive.

Profit forecasts

If an issuer has made a public forecast and subsequently becomes aware that any of the assumptions upon which the forecast is based may not be correct or that the outcome will be materially different from the forecast figure, an announcement should be made as soon as possible whereby the issuer states the likely impact of the incorrect assumption on the profit forecast, the extent to which any intervening event will affect the profit or how the actual outcome will differ from the original forecast.

Profit warning statement

Where an issuer becomes aware that its results may be significantly worse than generally accepted market expectation, the issuer should publish an announcement "warning" investors of the likely impact.

Annual Report and General Meeting

Issuers are encouraged to communicate with investors. An issuer may reinforce its corporate messages and provide indicators of its future direction through its annual report or through the Chairman's address at the annual general meeting.

Arrangements must be made for any price-sensitive information discussed at the meeting to be announced simultaneously.

Questions from analysts and correction of analysts' forecasts

ASAF Position Paper

Corporate Disclosure of Material Price-Sensitive Information

Issuers should have their own policy on the extent to which analysts' questions should be answered. Issuers should decline to answer analysts' questions where individually or cumulatively the answers would provide unpublished price-sensitive information. Directors should resist pressure from analysts to provide or comment on data that may involve the dissemination of unpublished price-sensitive information.

Where any information is wrongly interpreted by analysts and is materially incorrect, issuers should ask the analysts to correct it immediately.

Draft reports from analysts

Under normal circumstances, issuers should make no comment on an analyst's financial projections or opinions. If an analyst sends a draft report for its comments to an issuer, the issuer can refuse to respond. Where the report contains inaccurate information already in the public domain or not price-sensitive, the issuer should inform the analyst as there is no advantage to any party in having inaccurate information circulated. If an issuer is aware of unpublished price-sensitive information that would correct a fundamental misconception in the report, it should consider making public disclosure of such data and at the same time correcting the report.

Conduct of meetings with analysts

Some issuers are concerned that they may be misinterpreted or mistakenly accused of providing price-sensitive information following meetings with analysts. Such risk can be reduced by having appropriate internal procedures in place. These procedures could for example include ensuring that more than one company representative and the compliance officer, if any, are present during these meetings and that accurate records of all discussions are kept. Alternatively, issuers could consider opening up such meetings to the press and the public, or announcing in advance the fact of an analysts' meeting and where price-sensitive information is to be made public, publishing at the same time the information to be disclosed as required by the relevant Listing Rules.

Questions from journalists

Relationships with the press and other media, though often contributing to a well-informed market, need particularly careful management in instances where price-sensitive information is involved. In the case of inaccurate reporting, the issuer should consider clarifying the situation by issuing an announcement and if necessary, seeking a suspension of trading in the company's securities until the announcement is made.

When confronted with questions by journalists about rumours circulating in the market, issuers should be prepared to give a "no comment" answer where journalists are pressing for unannounced price-sensitive information. However, issuers are reminded that to be credible, "no comment" statements must be used consistently and maintained. Where sufficient price-sensitive information has been leaked for the reported story to be broadly accurate, an issuer should ensure that an announcement is made to guarantee that the correct information is widely available. This is preferable to attempting to refute or play down the story by making counter-comments to sections of the press or writing a letter to or granting an interview with the press in question. Issuers will find it helpful to have established internal procedures for handling these queries.

Issuers are reminded that it is contrary to the principle of fair disclosure to release negative news by way of press release in weekend newspapers or on public holidays in an attempt to soften its impact. Disclosure of price-sensitive information must be made in accordance with the relevant Listing Rules.

Dealing in the issuer's shares

Directors must also not deal in the relevant securities at any time when they are in possession of unpublished price-sensitive information.

Making parties "insiders"

ASAF Position Paper

Corporate Disclosure of Material Price-Sensitive Information

At certain times, issuers may need to give information in confidence to prospective financiers or business partners, underwriters or other parties with whom they are negotiating. Before a meeting at which price-sensitive information is to be given, an established procedure should be followed unless the relationship with the participants is automatically one of confidentiality. The relevant party should be told that if they attend the meeting, they must keep the relevant information strictly confidential and that they will not be able to deal in the issuer's securities before the information is made public. They should give consent to being made an 'insider' and this should be recorded. No one should be made an insider without their consent or for a longer period than necessary.

Employees

Employees may have access to unpublished price-sensitive information. Some employees have regular access to price-sensitive information because of their duties. Employees must be made aware of the need at all times to keep confidential all unpublished price-sensitive information given to them. Issuers should have a policy for employees such as limiting their access to price-sensitive information and providing information to employees on a "need-to-know" basis.

Increasingly, issuers publish "in-house" publications or publish information on their intranet. Issuers must ensure that their "in-house" publications or personal presentations to employees do not inadvertently include unpublished price-sensitive information.

Takeovers and mergers

Issuers that are or may become involved in a takeover or merger should also have regard to regulations on takeovers and mergers when considering the content and timing of announcements. In particular, an announcement may be required when the target company is the subject of rumour or speculation about a possible offer or where negotiations between the offeror and target are about to be extended to include more than a very restricted number of people. In all cases of doubt, the regulators should be informed.

Announcements by third parties

Announcements by industry regulators, government departments and other bodies may affect the share price of an issuer or market activity in their shares. If such announcement is expected to have a particularly significant impact on an issuer, an announcement should be made by the issuer providing the issuer's view on the impact of the relevant announcement.

Issuer listed on more than one exchange

If an issuer's securities are listed on more than one stock exchange, the issuer should co-ordinate the release of information so that the stock exchange is simultaneously informed of any information released to each of the markets at the same time.

If a price-sensitive announcement is made in another market while the local market is closed, the issuer should ensure that a corresponding announcement is published in the local market before that market opens for trading and if necessary, request a suspension of trading in its securities on the exchange pending publication of the announcement in the local market.

The Internet

To promote good corporate governance practice and transparency, issuers are increasingly using the Internet as a medium for disseminating information about the company by maintaining a web page. Issuers are reminded that any unpublished price-sensitive information that it intends to publish on the Internet should first be made the subject of an announcement in accordance with the relevant Listing Rules. Issuers should implement appropriate procedures to vet information posted on their website. Issuers should also regularly monitor their own websites to ensure that all published information is up-to-date and accurate.