

## Practice Note 2/2015

### Price Sensitive Information

Directors of issuers are currently required, and will continue, to apply their own discretion in determining what will constitute price sensitive information and in doing so directors must apply quantitative and qualitative measures to their assessment. If there is any uncertainty as to what constitutes price sensitive information, then the issuer's sponsor must be consulted. If doubt remains, the issuer must assume that the information is price sensitive in order to avoid selective disclosure which could lead to confusion in the market. If in doubt, publish.

The definition of price sensitive information contains two key principles that require further guidance.

(i) Specific and Precise

The Requirements do not define what constitutes specific or precise information. What may constitute specific or precise information in one situation may possibly not do so in another, depending on the surrounding circumstances. The European Court of Justice has accepted a definition of "Precise" to be where:

- The information indicates a set of circumstances which exists or may reasonably be expected to come into existence or an event which has occurred or may reasonably be expected to do so; and
- The information is specific enough to enable conclusions to be drawn as to the possible effect of that set of circumstances or event on the price of a share.

Specific should have a similar meaning and the grammatical meaning should also be considered.

Taking into account the above statements, it would be fair to say that a reasonable degree of certainty is required to conclude that information is specific or precise.

(ii) Material Effect

After confirming that the information may be specific or precise, issuers must assess whether such information may have a material effect on the price of the issuer's securities. Materiality must be assessed both quantitatively and qualitatively. Issuers should be mindful that there is no firm figure (percentage change or otherwise) that can be set for any issuer as this will surely vary from issuer to issuer taking into account the variety of factors.

The JSE suggest that issuers also consider the following in making the assessment whether the information would have a material effect on the price of the issuer's securities.

*“Under the securities laws of the United States, information is material if a reasonable investor is likely to consider it significant in making an investment decision...”*

From a Listings Requirements perspective consideration must be given whether the information could influence the economic decisions of investors in respect of the issuer’s securities. This assessment should take into consideration the anticipated impact of the information in light of (i) the whole of the issuer’s activities, (ii) the reliability of the source of the information and (iii) other market variables likely to affect the relevant listed securities in the circumstances. Information which is considered to be relevant to a reasonable investor’s decision includes information which affects:

- The assets and liabilities of the issuer;
- The performance, or the expectation of the performance of the issuer’s business;
- The financial condition of the issuer;
- The course of the issuer’s business;
- Major new developments in the business of the issuer; and
- Information previously disclosed to the market.

(iii) Board Policy

The JSE acknowledges and appreciates that various subjective tests must be applied by the directors of issuers and their sponsor in order to determine whether information is price sensitive information for purposes of the Requirements. On this basis, the JSE has spent a considerable amount of time and has consulted widely in the formulation of the above practice note which should be used as a tool by directors and sponsors to apply the correct interpretation to the meaning of price sensitive information.

The JSE therefore strongly advises issuers to have a policy in place to assist the directors in applying the provisions of this practice note on whether any details, directly or indirectly, relating to the issuer constitutes price sensitive information.