Other Disclosure Breaches

- Promotional Disclosure Activities

Paragraph / Rule 9.12(1) states that a listed corporation must refrain from promotional disclosure activity in any form whatsoever or howsoever which may mislead investors or cause unwarranted price movement and activity in a listed corporation's securities.

Paragraph / Rule 9.12(2) states that such activity includes news releases, public announcements, predictions, reports or advertisements which are –
(a) not justified by actual developments concerning a listed corporation;
(b) exaggerated;
(c) flamboyant; (d) overstated or
(e) over-zealous.

Paragraph / Rule 9.13 states that although the distinction between legitimate public relations activities and such promotional disclosure activity is one that must necessarily be drawn from the facts of a particular case, the following are frequent hallmarks of promotional activity:
(a) a series of public announcements unrelated in volume or frequency to the materiality of actual developments concerning a listed corporation;
(b) announcement of products still in the development stage with unproven commercial prospects;
(c) promotions and expense-paid trips, or the seeking out of meetings or interviews with analysts and financial writers, which could have the effect of unduly influencing the market activity in the listed corporation's securities and are not justified in frequency or scope by the need to disseminate information about actual developments concerning the listed corporation;
(d) press releases or other public announcements of a one-sided or unbalanced nature; and
(e) listed corporation's or product advertisements which in effect promote the listed corporation's securities.

CASE 1 – SERIES OF PROMOTIONAL DISCLOSURE ACTIVITY VIDE PRESS RELEASES AND ADVERTORIAL

Relevant Facts

Company I had on 15 August 2012 issued / posted a press release entitled "Company I leaps forward with XYZ's appointment as sole local vendor for mobile devices" on its corporate website and made the following representations:-

> *"**This joint venture is competitively poised for growth by gearing up to sell 30,000 units amounting to RM15 million by end of this year, and 120,000 units amounting to RM60 million in sales by end of 2013."***
>
> *"Company I believes that it is more than ready for another quantum leap in the ICT distribution business while expecting significant profit turnaround for the financial year Q1 June 2012/2013 which is to be announced tomorrow…. and the turnaround is expected to be material and not merely a case of breaking even."*
>
> *...."The strategic plan developed by the management, along with on-going transformation, improvements in its products line as well as continued acquisition of strategic partners, **is expected to boost sales turnover to RM800 million with the Group's profit to RM12.5 million for the new financial year March 2013. The management team has set internal targets that they believe are achievable and is planning to see a 20% improvement following the next financial year."***

The above press release had included the statements (in bold) that were requested to be removed by Bursa earlier from the company's announcement made on 15 August 2012 to Bursa and the market.

The statements and in particular the representation on the expected / targeted sales of RM800 million and profit of RM12.5 million for the financial year ended (FYE) 31 March 2013 (the Sales / Profit Representation) were again disseminated by Company I on 16 August 2012 when it posted on its corporate website another press release entitled "Company I shows sign of turnaround with remarkable breakthrough of RM3.2 million quarterly profit" where it had made the following representations:-

> *"With the turnaround underway, the Group believes and foresees that with its new strategic plan and on-going improvement in its products line as well as continuation to acquire strategic partners in place, **the Group is potentially of achieving its internal target for sales turnover of RM800 million and Group's profit to RM12.5 million for the upcoming financial year. The Group's first quarter results have reaffirmed the management's belief that these internal targets are reasonably achievable barring any unforeseen circumstances, thus aiming for a 20% improvement in the next following financial year."***

"Ultimately, the management's goal is to apply for transfer of its current listing status to the Main Market of Bursa Securities soonest possible, hopefully within the next 3 years."

Company I also published an advertorial entitled "Eyes firmly set on the Main Board in 3 years time" in The StarBizWeek on 18 August 2012 and again reiterated the Sales / Profit Representation as follows:-

".....Together with on-going improvements in its product line as well as continued acquisition of strategic partners, the strategy ***is expected to boost sales turnover to RM800 million and Group's profit to RM12.5 million*** *for the* ***new financial year. The management team firmly believes that these internal targets can be achieved and is planning to see a 20% improvement the following financial year."***

Upon Bursa's request for Company I to clarify the statements (in bold) (including the Sales / Profit Representation) in the advertorial, the Company had on 23 August 2012 announced that:-

- The representation in the advertorial was merely an internal target set out to be achieved for the FYE 31 March 2013 and 31 March 2014 and should not be construed as a revenue and profit forecast;
- The internal target has not been and will not be reviewed by the external auditors; and
- There was no certainty that the internal revenue and profit targets for FYE 31 March 2013 and 31 March 2014 will be achieved.

The Sales / Profit Representation in the press releases dated 15 & 16 August 2012 and advertorial dated 18 August 2012 was presented as certain and/or as more probable and was one-sided, not balanced and not fair as it did not provide any proper / adequate / reasonable justification, basis and/or assumptions and did not contain sufficient information to enable investors to make informed investment decisions with regard to such representations. This fulfilled the hallmarks of promotional activity under Rule 9.13(d) of the ACE LR read together with Rule 9.16(1)(c) of the ACE LR. Further, the Sales / Profit Representation which were made repeatedly through the press releases on 15 & 16 August 2012 and the advertorial on 18 August 2012 was overstated, overzealous and unbalanced particularly in the light of Company I's bare assumption of the profit based on unclear, uncertain and unreasonable assumptions.

Listing Requirements Enforcement In Focus

There was unusual market activity in the trading of Company I's securities during the material period from 10 August 2012 to 14 August 2012 and particularly after issuance of each of the press releases on 15 & 16 August 2012 and the advertorial on 18 August 2012 where in aggregate, the Company's share price had increased significantly by 244% within a period of 2 weeks from RM0.135 on 9 August 2012 to a high of RM0.465 on 23 August 2012. However, upon Company I's clarification on 23 August 2012, the share price had decreased approximately 24.7% within 3 market days.

Company I's series of promotional disclosure activity particularly via the press releases dated 15 & 16 August 2012 and advertorial dated 18 August 2012 which -

- contained the repeated Sales / Profit Representation and the Company's prospects to the Main Market; and
- were made and publicised during the period where the Company's shares had significant and unusual market activity;

had or might have misled investors and/or caused / further caused unwarranted price movement and activity in the Company's shares and in effect promote its securities.

Enforcement Decision

Company I and two of its executive directors were **publicly reprimanded**. In addition, the executive directors were fined **RM100,000 each** taking into consideration all facts and circumstances of the matter including the conduct of the executive directors in approving the press releases dated 15 & 16 August 2012 and/or advertorial dated 18 August 2012 (which included the Sales / Profit Representation) notwithstanding their knowledge / awareness of the unusual market activity in the company's securities and Bursa's concerns/request for removal of such representation in the company's announcement.

No enforcement action was taken against the non-executive directors in view that only the executive directors had reviewed/approved the press releases dated 15 & 16 August 2012 and/or advertorial dated 18 August 2012 prior to the same being posted and they were unaware of Bursa's request for removal of the Sales / Profit Representation.

More information on this case can be found in the Media Release dated 11 June 2014.

Other Disclosure Breaches

Selective Disclosure / Failure to Ensure Equal Access of Material Information to the Market

Paragraphs / Rules 9.08 of the LR states that:-

(1) A listed company must release material information to the public in a manner designed to obtain its fullest possible public dissemination

(2) A listed company must ensure that no disclosure of material information is made on an individual or selective basis to analysts, shareholders, journalists or other persons unless such information has previously been fully disclosed and disseminated to the public. In the event that material information is inadvertently disclosed on the occasion of any meetings with analysts, shareholders, journalists or others, it must be publicly disseminated as promptly as possible

(3) There may be limited circumstances where selective disclosure of material information is necessary, for example where the listed issuer is undertaking a corporate exercise or to facilitate a due diligence exercise. In such circumstances, the listed company must ensure that the disclosure is restricted to only relevant persons and the strictest confidentiality is maintained.

(4) Disclosures of material information can often be made after the market closes. If the disclosure is made immediately before or during trading hours, the Exchange may impose a temporary halt or suspension in trading of the listed issuer's securities. Such a temporary halt or suspension provides an opportunity for the dissemination and evaluation of the information released.

(5) Any public disclosure of material information must be made by an announcement first to the Exchange or simultaneously to the Exchange, the press and newswire services. For the avoidance of doubt, a listed company must not release any material information to the media even on an embargoed basis until it has given the information to the Exchange.

CASES 1 & 2 –SELECTIVE DISCLOSURE OF MATERIAL CONTRACT

In 2016, two enforcement actions were taken against the following companies who had made selective disclosures of material contracts to fund managers and/or analysts without disclosing the same first to Bursa.

Selective disclosure such as where listed companies disclose material non-public information to certain individual / group first before making full disclosure of the same information to the market via Bursa will result in those being privy to the information beforehand being able to make a profit or avoid a loss at the expense of those kept in the dark. Bursa believes that such selective disclosure may lead to a loss of investor confidence in the integrity of its capital market including question as to whether there is level

playing field with market insiders and hence, fairness of the market. In dealing with journalists, analysts and fund managers, it is important to keep in mind the principle that a listed issuer must not provide information relating to its business, operations or financial performance that constitutes non-public material information.

Bursa in ensuring that there is fair market (i.e. level playing field where there is equal access to material information pertaining to its listed issuers), requires its listed companies to announce any material information first to Bursa or simultaneously to Bursa, the press and other modes of communication that the listed issuer wishes to use. Material information received by Bursa from listed companies are immediately posted on its website and as such, the market can access all material announcements of listed issuers in the company announcement section of the Bursa's website.

Relevant Facts

Company S

On 3 May 2015, Company S had secured a new material contract with the value of about / up to RM400 million per year (which represented 97% and 65% of the Company's revenue for the financial year ended 31 March 2014 and 31 March 2015 respectively) for a tenure of 5 years from its existing customer. On 7 May 2015, an Executive Director had verbally disclosed the contract including the contract value to two research houses without making an announcement of the same first / simultaneously to Bursa. The announcement on the contract was only made to Bursa on 18 and 20 May 2015. There was a significant increase of approximately 20% in the Company's share price from 8 May 2015 following the disclosure to the research houses and issuance of the research reports until after the Company's announcements of the Contract on 18 and 20 May 2015.

Company M

Company M had obtained an expanded scope of service from the government which was material to the company's business and prospects as it would increase the Company's market share on the service from 8% to 100%. The Managing Director of Company M had made a presentation to a group of fund managers on the expanded scope of service as well as impact of the service on 6 January 2015. However, Company M only announced the expanded service to Bursa on 9 and 12 January 2015 but

without disclosing the details of its impact / implication on the Company (which was disclosed to the fund managers on 6 January 2015). Prior to the announcements to Bursa, there was a significant increase of up to 26% in Company M's share price following the presentation and issuance of a research report based on, amongst others, the details of the presentation. .

Enforcement Decision

(i) A **public reprimand** was imposed on both Company S & Company M respectively.

(ii) Directors of Company S – The executive director of Company S who had made the selective disclosure to the research houses (First ED) and 2 other executive directors who were aware of the proposed meeting between the First ED and the research houses and the proposed disclosure of the contract to the research houses by the First ED in the meeting even though no prior announcement of the same was made to Bursa were **publicly reprimanded and imposed with a fine of RM50,000** each.

(iii) Directors of Company M – The Managing Director of Company M who had made the selective disclosure to the fund managers was **publicly reprimanded and imposed with a fine of RM50,000**

For more information on the cases, please refer to the Media Releases dated 29 November 2016 and 30 November 2016

Other Disclosure Breaches

Delay in Announcing PN1 / GN5 Default In Payment

Paragraphs / Rules 9.03 and 9.04(l) of the LR read together with Practice Note 1 (PN1) or Guidance Note 5 (GN5) requires a listed company to make immediate announcement upon an event of default of interest or principal payments for loans by the listed company, its subsidiaries or associated companies irrespective of whether a demand has been made.

CASE 1 - FAILURE TO ANNOUNCE DESPITE EVENTS OF DEFAULTS

Relevant Facts

Company M failed to make an immediate announcement of the default in payment of credit facilities to a lender by its major subsidiary since 31 October 2006. The total amount outstanding of the defaulted credit facility to the lender as at 31 December 2006 represented more than 400% of the company's net assets at the material time. The company only made an announcement of the default on 3 March 2009 notwithstanding that:-

1. The lender had in fact issued a notice dated 31 January 2007 on the default of the principal and interest repayment of the default;
2. The lender had issued quarterly advices on the default to the major subsidiary; and
3. The lender had issued a notice of demand dated 3 February 2009 to the company as guarantor of the major subsidiary on the default.

The company was unable to provide a solvency declaration to Bursa upon announcement of the default and as a consequence made the First Announcement that it was a PN17 Company on 3 March 2009. The explanation provided for the company's failure to make an immediate announcement of the default in payment ie. the lender had refrained from calling a formal default on the major subsidiary and such an announcement would prejudice the ability of the company to pursue its corporate objective with regards to the preservation of a contract was unacceptable as the fact remained that the company/its major subsidiary had clearly defaulted in payment of the credit facilities due to the lender since 31 October 2006.

Enforcement Decision

Taking into consideration that the company did make some disclosure on the non-repayment of the credit facility in the company's annual audited accounts for the financial year ended 31 December 2007 which was announced on 30 April 2008:-

(i) Company – **public reprimand**

(ii) Directors – **public reprimand on all the directors**. In addition, fines were imposed on:-

(a) The executive chairman and the managing director cum chief executive officer of the major subsidiary were **imposed RM50,000 and RM25,000 respectively** as they were the directors primarily in charge/involved in the financial and legal affairs of the company.

(b) The other directors were or should also be aware of the defaults and the obligation to make timely disclosure of the same as they were notified of the default through the receipt of numerous documents issued by the lender and/or the default being highlighted at the board meeting on 29 August 2007. Therefore, the **other directors, were imposed with a fine of RM10,000 each**.

CASE 2 – FAILURE TO ANNOUNCE PREMISED ON ONGOING NEGOTIATIONS TO RESOLVE

Relevant Facts

Company K failed to make an immediate announcement of the default in payment of credit facilities on 31 December 2009 which represented approximately 19% of the Company's net assets at the material time. The primary reason for the failure was premised on the fact that there was ongoing negotiations between Company K and the banks to resolve the defaults. The announcement was only made on 31 May 2010. The company was unable to provide a solvency declaration following the announcement of the defaults in payment and made the First Announcement that it was a PN17 Company on the same date.

Enforcement Decision

(i) Company – **public reprimand**

(ii) Directors –

(a) The managing director was aware of the default in payment of credit facilities being the person who was involved in the negotiation to restructure the credit facilities. **A public reprimand and fine of RM100,000** was imposed on him.

(b) The other directors were informed of the letter of demand by the lender only 2 April 2010. However, the announcement was only made on 31 May 2010 and the delay was premised on that there were negotiations with the lender and their reliance on assurance of management that the matter was being resolved was unreasonable and hence, did not absolve these other directors' obligation to ensure compliance with the requirement of an immediate announcement under paragraph 2.1(d) of PN1 with regards to the default in payment. A **public reprimand** was imposed on each of these directors.

Other Disclosure Breaches -

Delay in Making First Announcement Despite Triggering PN17

Paragraph 8.04(3)(b) of the LR read together with paragraph 4.1(a) of Practice Note 17 (PN17) states that a PN17 Company must announce to the Exchange on an immediate basis (First Announcement) upon triggering one or more of the prescribed criteria under PN17

CASE 1

Relevant Facts

Company A had on 31 October 2013 announced its audited accounts for the FYE 30 June 2013 where the external auditors had expressed an emphasis of matter on Company A and its subsidiaries' ability to continue as a going concern. Company A's shareholders equity on a consolidated basis of RM15.758 million was less than 50% (i.e.35.8%) of Company A's issued and paid up capital of RM44 million as at 30 June 2013. Hence, Company A had triggered the prescribed criteria under paragraph 2.1 (e) of PN17. However, Company A failed to make the First Announcement pursuant to PN17 on an immediate basis. The First Announcement was only made on 15 November 2013, after a delay of 15 market days.

Company A and its 7 directors were **publicly reprimanded** for breach of paragraph 8.04(3)(b) of the LR read together with paragraph 4.1(a) of PN17 after taking into consideration all facts and circumstances including the following:

(i) The company/directors failed to be more vigilant in the assessment as to whether the company triggered any of the prescribed criteria under PN17. In this regard, the company/directors merely focused on only one of the prescribed criteria of PN17 and merely sought advice and relied on the external auditors' alleged advice/confirmation that the company had not triggered PN17. The directors having or expected to have basic knowledge and understanding of the listing requirements particularly fundamental requirements such as the financial condition requirement set out under paragraph 8.04(3) of the LR and PN17 and in light of their knowledge of:-

- The emphasis of matter which was highlighted by the external auditors in the audit committee and/or board of directors meeting; and
- The shareholders equity on a consolidated basis of RM15.758 million was less than 50% (i.e. 35.8%) of Company A's issued and paid-up capital of RM44 million as at 30 June 2013 in approving the audited accounts;

should have been alerted to undertake due inquiry and ensure compliance of the listing requirements.

(ii) Despite Bursa informing Company A that it had triggered PN17 and required / reminded the company to make the necessary announcement from 12 – 15 November 2013, the issuance of the First Announcement was further delayed; and

(iii) There was material share price movement of Company A's securities upon the First Announcement on 15 November 2013 at 1.51 p.m. where the share price had decreased by RM0.03 /16.7% from RM0.18 i.e. the closing price after the morning session on 15 November 2013 to RM0.15 i.e. the closing price of the day after the First Announcement and further decreased to RM0.14 on 18 November 2013 (i.e. the next market day). In aggregate, Company A's share price had decreased by RM0.09 / 50% for the next 5 market days after the First Announcement.

In addition to the public reprimand, a fine of **RM100,000** was imposed **on the Group Managing Director** in view of his responsibility for the day to day operations and management of the company including financial and preparation and/or finalization of Company A's First Announcement. Hence, he was in a better position to advise the board and there was reliance by the board on him to ensure the proper discharge of Company A's obligation vis a vis making the First Announcement under the LR. A fine of **RM10,000** were also imposed **on other directors** for their failure to properly discharge due care and diligence and their mere reliance on the advice of PN17 by the management/external auditors which was unreasonable.

More information on this case can be found in the Media Release dated 30 June 2014.

CASE 2

Relevant Facts

Company H had on 30 July 2012 announced that a winding up order was made on 24 May 2012 against its wholly owned as well as major subsidiary i.e. Company HT (Winding Up Order). In addition, in view that the total assets of Company HT and its subsidiaries was RM310,796,938 as at 31 March 2012 based on the consolidated balance sheets of Company HT Group which exceeded 50% (i.e. 87.9%) of Company H's Group's total assets of RM353,633,000 as at 31 March 2012, Company H also triggered the prescribed criteria under paragraph 2.1(c) of PN17. However, Company H had failed to make the First Announcement on an immediate basis and only made the First Announcement on 28 February 2013 upon triggering another criteria under PN17 (i.e. paragraph 2.1(a) of PN17) based on the company's quarterly report for the financial period ended 31 December 2012 which had reported a negative shareholders' equity of RM19.25 million.

There was material share price movement upon Company H making the First Announcement where the share price had decreased by RM0.035 / 46.7% from RM0.075 on 28 February 2013 to RM0.04 on 1 March 2013 i.e. the next market day of the First Announcement.

The penalties imposed on Company H and 4 of its directors for breaches of paragraphs 9.19(19) and 8.04(3)(b) of the LR read together with paragraph 4.1(a) of PN17 of the LR for the delay in the announcement of the Winding-Up Order as well as the First Announcement respectively were as follows:

Company H : **Public reprimand for each breach**

Directors : Penalties were imposed on the 4 directors collectively for both breaches as follows:

(1) **Public Reprimand and fine of RM100,000** each on the **Executive Chairman/ Group Chief Executive Officer (Group CEO)** who was responsible for day to day operations of Company H and preparation and / or finalization of the announcement on the Winding Up Order and the **Group Executive Director** who was also the CEO of Company HT and assisted the Group CEO in the operations of Company H. Both directors had prior knowledge of the Winding-Up Order/petition including the development thereto. Further, by virtue of their roles and responsibilities, they were also in a better position to advise the other non-executive directors and/or to ensure

Company H's compliance with the obligations under the LR in respect of the Winding-Up Order and the implication of the same on Company H.

(2) **Public reprimands** were also imposed on 2 non-executive directors (who were not involved in the day to day management/operations) in view of their knowledge of the Winding Up Order (albeit approximately 1 month after it was made against Company HT) but had nevertheless failed to undertake reasonable efforts to discharge their duties to ascertain, undertake reasonable assessment / due enquiry to ensure timely announcement of the Winding Up Order and First Announcement.

No enforcement action was taken against one non-executive director in view that he was newly appointed and was only informed of the Winding Up Order (which was announced on 30 July 2012) on 29 August 2012 and had reasonably relied that the said announcement (on 30 July 2012) was made in accordance with the Main LR (including impact on Company H).

More information on this case can be found in the Media Release dated 5 June 2014.