Chapter 2

Disclosure and control of inside information by issuers
2.1 Introduction and purpose

Introduction

An issuer should be aware that matters that fall within the scope of this chapter may also fall within the scope of:

1. the market abuse regime set out in the Market Abuse Regulation;
2. Part 7 (Offences relating to Financial Services) of the Financial Services Act 2012 relating to misleading statements and practices;
3. Part V of the Criminal Justice Act 1993 relating to insider dealing; and
4. the Takeover Code.

Purpose

The purpose of this chapter is to:

1. promote prompt and fair disclosure of relevant information to the market; and
2. give guidance on aspects relating to disclosure of such information, including the circumstances allowing delayed disclosure.
2.2 Disclosure of inside information

Requirement to disclose inside information

2.2.1 R [Note: see DTR 6.3.2R, regarding the disclosure of inside information]

2.2.1A EU [article 17(1) of the Market Abuse Regulation]

2.2.2 R [deleted]

Identifying inside information

2.2.3 G Information is inside information if each of the criteria in the definition of inside information is met.

2.2.4 G (1) [Note: article 7(4) of the Market Abuse Regulation]

(2) In determining whether information would be likely to have a significant effect on the price of financial instruments, an issuer should be mindful that there is no figure (percentage change or otherwise) that can be set for any issuer when determining what constitutes a significant effect on the price of the financial instruments as this will vary from issuer to issuer.

2.2.5 G An issuer may wish to take account of the following factors when considering whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions:

(1) the significance of the information in question will vary widely from issuer to issuer, depending on a variety of factors such as the issuer’s size, recent developments and the market sentiment about the issuer and the sector in which it operates; and

(2) the likelihood that a reasonable investor will make investment decisions relating to the relevant financial instrument to maximise his economic self interest.

2.2.6 G It is not possible to prescribe how the reasonable investor test will apply in all possible situations. Any assessment may need to take into consideration the anticipated impact of the information in light of the totality of the issuer’s activities, the reliability of the source of the information and other market variables likely to affect the relevant financial instrument in the
given circumstances. However, information which is likely to be considered relevant to a reasonable investor’s decision includes information which affects:

(1) the assets and liabilities of the issuer;

(2) the performance, or the expectation of the performance, of the issuer’s business;

(3) the financial condition of the issuer;

(4) the course of the issuer’s business;

(5) major new developments in the business of the issuer; or

(6) information previously disclosed to the market.

2.2.7 An issuer and its advisers are best placed to make an initial assessment of whether particular information amounts to inside information. The decision as to whether a piece of information is inside information may be finely balanced and the issuer (with the help of its advisers) will need to exercise its judgement.

Note: DTR 2.7 provides additional guidance on dealing with market rumour.

2.2.8 The directors of the issuer should carefully and continuously monitor whether changes in the circumstances of the issuer are such that an announcement obligation has arisen under article 17 of the Market Abuse Regulation.

When to disclose inside information

2.2.9 (1) [deleted]

(2) If an issuer is faced with an unexpected and significant event, a short delay may be acceptable if it is necessary to clarify the situation. In such situations a holding announcement should be used where an issuer believes that there is a danger of inside information leaking before the facts and their impact can be confirmed. The holding announcement should:

(a) detail as much of the subject matter as possible;

(b) set out the reasons why a fuller announcement cannot be made; and

(c) include an undertaking to announce further details as soon as possible.

(3) If an issuer is unable, or unwilling to make a holding announcement it may be appropriate for the trading of its financial instruments to
be suspended until the issuer is in a position to make an announcement.

(4) An issuer that is in any doubt as to the timing of announcements required under the Market Abuse Regulation should consult the FCA at the earliest opportunity.

Communication with third parties

2.2.10 The FCA is aware that many issuers provide unpublished information to third parties such as analysts, employees, credit rating agencies, finance providers and major shareholders, often in response to queries from such parties. The fact that information is unpublished does not in itself make it inside information. However, unpublished information which amounts to inside information is only permitted to be disclosed in accordance with the requirements of the Market Abuse Regulation.
2.3 Publication of information on internet site

[Note: article 17(1) of the Market Abuse Regulation, in relation to the period for which an issuer must maintain on its website inside information which it is required to disclose publicly; article 17(9) of the Market Abuse Regulation, in relation to the maintenance of such information by issuers with financial instruments admitted to trading on an SME growth market.]

2.3.1 R [deleted]

2.3.2 R [deleted]

2.3.3 R [deleted]

2.3.4 G [deleted]

2.3.5 R [deleted]
2.4 Equivalent information

2.4.1 [deleted]

2.4.2 [deleted]
2.5 Delaying disclosure of inside information

Delaying disclosure

2.5.1 [deleted]

2.5.1A EU [article 17(4), (5) and (8) of the Market Abuse Regulation]

2.5.1B G Issuers should be aware that ESMA has issued guidelines under article 17(11) of the Market Abuse Regulation which contain a non-exhaustive indicative list of the legitimate interests of issuers to delay disclosure of inside information and situations in which delayed disclosure is likely to mislead the public. The ESMA MAR delayed disclosure guidelines are available here: https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf.

Legitimate interests and when delay will not mislead the public

2.5.2 G (1) Delaying disclosure of inside information will not always mislead the public, although a developing situation should be monitored so that if circumstances change an immediate disclosure can be made.

(2) Investors understand that some information must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the issuer.

2.5.3 G [deleted]
2.5.4 G

(1) In the FCA’s opinion, paragraph 5(1)(8)(a) of the ESMA MAR delayed disclosure guidelines does not envisage that an issuer will:

(a) delay public disclosure of the fact that it is in financial difficulty or of its worsening financial condition and is limited to the fact or substance of the negotiations to deal with such a situation; or

(b) delay disclosure of inside information on the basis that its position in subsequent negotiations to deal with the situation will be jeopardised by the disclosure of its financial condition.

(2) Paragraph 5(1)(8)(c) of the ESMA MAR delayed disclosure guidelines refers to an issuer with a dual board structure (e.g. a management board and supervisory board) delaying the disclosure of inside information in certain circumstances. As this paragraph is not relevant to an issuer with a unitary board structure it should only be relevant to a very limited number of issuers in the United Kingdom.

2.5.5 G

An issuer should not be obliged to disclose impending developments that could be jeopardised by premature disclosure. Whether or not an issuer has a legitimate interest which would be prejudiced by the disclosure of certain inside information is an assessment which must be made by the issuer in the first instance.

2.5.5A R

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[Note: article 17(5) of the Market Abuse Regulation]

Selective disclosure

2.5.6 R

[deleted]

2.5.6A EU

[article 17(8) of the Market Abuse Regulation]

2.5.7 G

(1) [deleted]

(2) Selective disclosure cannot be made to any person simply because they owe the issuer a duty of confidentiality. For example, an issuer contemplating a major transaction which requires shareholder support or which could significantly impact its lending arrangements or credit-rating may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency as long as the recipients are bound by a duty of confidentiality. An issuer may, depending on the circumstances, be justified in disclosing inside information to certain categories of recipient in addition to those employees of the issuer who require the information to perform their functions. The categories of recipient may include, but are not limited to, the following:

(a) the issuer's advisers and advisers of any other persons involved in the matter in question;

(b) persons with whom the issuer is negotiating, or intends to negotiate, any commercial financial or investment transaction (including prospective underwriters or placees of the financial instruments of the issuer);
(c) employee representatives or trade unions acting on their behalf;
(d) any government department, the Bank of England, the
   Competition Commission or any other statutory or regulatory
   body or authority;
(e) major shareholders of the issuer;
(f) the issuer's lenders; and
(g) credit-rating agencies.

2.5.8 G Selective disclosure to any or all of the persons referred to in DTR 2.5.7 G
may not be justified in every circumstance where an issuer delays disclosure
in accordance with article 17(4) and (5) of the Market Abuse Regulation.

2.5.9 G An issuer should bear in mind that the wider the group of recipients of
inside information the greater the likelihood of a leak which will trigger full
public disclosure of the information under article 17(8) of the Market Abuse
Regulation.
2.6 Control of inside information

Denying access to inside information

2.6.1 An issuer should establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the issuer.

Breach of confidentiality

2.6.2 [deleted]

2.6.2A [article 17(7) of the Market Abuse Regulation]

2.6.3 If an issuer is relying on article 17(4) or 17(5) of the Market Abuse Regulation to delay the disclosure of inside information it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence. Such a holding announcement should include the details set out in DTR 2.2.9 G (2).

2.6.4 We recognise that an issuer may not be responsible for breach of article 17(4) or 17(5) of the Market Abuse Regulation if a recipient of inside information under article 17 of the Market Abuse Regulation breaches his duty of confidentiality.
2.7 Dealing with rumours

2.7.1 Where there is press speculation or market rumour regarding an issuer, the issuer should assess whether a disclosure obligation arises under article 17(1) of the Market Abuse Regulation. To do this an issuer will need to carefully assess whether the speculation or rumour has given rise to a situation where the issuer has inside information.

2.7.2 [deleted]

[Note: article 17(7) of the Market Abuse Regulation]

2.7.3 The knowledge that press speculation or market rumour is false may not amount to inside information. If it does amount to inside information, the FCA expects that there may be cases where an issuer would be able to delay disclosure in accordance with article 17(4) or 17(5) of the Market Abuse Regulation.
## 2.8 Insider lists

### Requirement to draw up insider lists

2.8.1  [deleted]

2.8.1A  [article 18(1)(c) of the Market Abuse Regulation]

### Providing insider lists to the FCA on request

2.8.2  [deleted]

2.8.2A  [article 18(1)(c) of the Market Abuse Regulation]

### Contents of insider lists

2.8.3  [deleted]

2.8.3A  [article 18(3) of the Market Abuse Regulation]

### Maintenance of insider lists

2.8.4  [deleted]

2.8.4A  [article 18(4) of the Market Abuse Regulation]

2.8.5  [deleted]

2.8.5A  [article 18(5) of the Market Abuse Regulation]

2.8.6  [deleted]

2.8.7  [deleted]

[Note: article 18(2) of the Market Abuse Regulation; article 18(2) of the Market Abuse Regulation]
2.8.8 | [deleted]

2.8.9 | [deleted]

2.8.9A | [article 18(2) of the *Market Abuse Regulation*]

2.8.10 | [deleted]

2.8.10A | [article 18(2) of the *Market Abuse Regulation*]