

Chapter 2

Disclosure and control of inside information by issuers

2.2 Disclosure of inside information

Requirement to disclose inside information

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

2.2.1A **UK** [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

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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

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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

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- (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

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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*.