

Chapter 1

Market Abuse

1.4 Unlawful disclosure

1.4.1 UK [deleted]

1.4.1A UK [article 10 of the *Market Abuse Regulation*]

Descriptions of behaviour that indicate unlawful disclosure

1.4.2 G The following behaviours are indications of *unlawful disclosure*:

- (1) disclosure of *inside information* by the *director* of an *issuer* to another in a social context; and
- (2) selective briefing of analysts by *directors* of *issuers* or others who are *persons discharging managerial responsibilities*.

Descriptions of behaviour that does not indicate unlawful disclosure

1.4.3 G The following behaviour indicates that a *person* is acting in the normal exercise of their employment, profession or duties, if a *person* makes a disclosure of *inside information*:

- (1) to a government department, the Bank of England, the Competition Commission, the *Takeover Panel* or any other *regulatory body* or authority for the purposes of fulfilling a legal or regulatory obligation; or
- (2) otherwise to such a body in connection with the performance of the functions of that body.

1.4.4 G Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) may not amount to *unlawful disclosure*.

1.4.4A G Disclosure of *inside information* by a *broker* to a potential buyer regarding the fact that the seller of *financial instruments* is a *person discharging managerial responsibilities* or the identity of the *person discharging managerial responsibilities* or the purpose of the sale by the *person discharging managerial responsibilities* where:

the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;

- (2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and
- (3) the transaction could not be otherwise completed without creating a disorderly market;
may not, of itself, amount to *unlawful disclosure* .

Factors to be taken into account in determining whether or not behaviour amounts to unlawful disclosure

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The following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:

- (1) whether the disclosure is permitted by the rules of a *trading venue* a *prescribed auction platform*, of the *FCA* or the *Takeover Code*; or
- (2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:
 - (a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
 - (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or
 - (c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or placees of *securities*); or
 - (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or
 - (e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf.
- (3) [deleted]

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Examples of unlawful disclosure

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The following descriptions are intended to assist in understanding certain behaviours which may constitute *unlawful disclosure* under the *Market Abuse Regulation*:

- (1) X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.
- (2) A, a *person discharging managerial responsibilities* in B PLC, asks C, a *broker*, to sell some or all of As shares in B PLC. C discloses to a potential buyer that A is a *person discharging managerial*

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responsibilities or discloses the identity of A, in circumstances where the fact that A is a *person discharging managerial responsibilities* or the identity of A, is *inside information* .

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