

**DISCLOSURE GUIDANCE AND TRANSPARENCY RULES SOURCEBOOK
(DELAYED DISCLOSURE) INSTRUMENT 2017**

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 137A (The FCA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) section 139A (Power of the FCA to give guidance).

Commencement

- B. This instrument comes into force on 24 February 2017.

Amendments to the Handbook

- C. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- D. The Disclosure Guidance and Transparency Rules sourcebook (DTR) is amended in accordance with Annex B to this instrument.

Citation

- E. This instrument may be cited as the Disclosure Guidance and Transparency Rules Sourcebook (Delayed Disclosure) Instrument 2017.

By order of the Board
23 February 2017

Annex A

Amendments to the Glossary of definitions

Insert the following definition in the appropriate alphabetical position. The text is not underlined.

ESMA MAR delayed disclosure guidelines *ESMA's* guidelines on 'Delay in the disclosure of inside information' (ESMA 2016/1478). These are available at:
https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf.

Annex B

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Disclosure and control of inside information by issuers

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2.5 Delaying disclosure of inside information

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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](https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf).

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- 2.5.3 G ~~For the purposes of article 17 of the Market Abuse Regulation, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:~~
- ~~(1) negotiations in course, or related elements where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long term financial recovery of the issuer; or~~
 - ~~(2) decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organisation of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public. [deleted]~~
- 2.5.4 G (1) ~~DTR 2.5.3G(1) does~~ 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) ~~The legitimate interest described in DTR 2.5.3G(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 if and to the extent that decisions of the management board require ratification by the supervisory board) delaying the disclosure of inside information in certain circumstances. An As this paragraph is not relevant to an issuer with a unitary board structure would be unable to take advantage of DTR 2.5.3G(2) and, therefore, DTR 2.5.3G(2) it should only be available 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. ~~However, the FCA considers that, other than in relation to impending developments or matters described in DTR 2.5.3G or article 17(5) of the Market Abuse Regulation, there are unlikely to be other circumstances where delay would be justified.~~

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