

New inside information and dealing rules: a UK director's guide



A new EU-wide rule book on inside information, PDMR dealings and market abuse: the Market Abuse Regulation, enforced in the UK by the Financial Conduct Authority.



Effective on
3 July 2016.



Similar to current regime but not the same: beware subtle differences and important new procedural requirements.

44

Boards who think it will be business as usual when the new regime kicks in do so at their peril. A top down approach to implementing refreshed compliance procedures will be the key to avoiding sanctions from the regulator."

James Wootton, Partner, London

WHEN MUST A LISTED COMPANY MAKE AN ANNOUNCEMENT?

- > As before, inside information has to be disclosed to the market as soon as possible. A delay is allowed if it is to protect legitimate interests, such as ongoing negotiations, so long as the information can be kept confidential and the market isn't misled.
- > There is a low bar for determining if something is inside information. The line can be crossed as a situation evolves or at a preliminary step of a protracted process.
- > Don't think in terms of price-sensitivity: think whether a reasonable investor would use this information when making investment decisions.
- > Making the right call as to whether something is inside information is more important than ever, as you need to record exactly when inside information arose. If disclosure has been delayed, once it is finally announced the company has to tell the FCA the time and date of the decision to delay disclosure and who made that decision.

WHO CAN YOU TALK TO?

- > Insider dealing and disclosing inside information other than in the proper performance of your job will continue to be offences. You should avoid sharing inside information except on a need to know basis with people who are subject to confidentiality restrictions.
- > Sounding-out investors before a deal may entail disclosure of inside information. Detailed notes should be kept and other procedures followed to ensure protection from the unlawful disclosure offence for market soundings.

WILL WE STILL HAVE INSIDER LISTS?

- > Companies will have to keep an insider list with different sections for different events. Extensive data has to be recorded for each insider. If anyone has access to all inside information about the company they may be put on a permanent insider section.

WHEN CAN YOU DEAL IN YOUR COMPANY'S SECURITIES? WHO DO YOU HAVE TO TELL?



PDMRs are persons discharging managerial responsibilities. This includes the directors and any senior managers who have regular access to inside information and the power to take managerial decisions.



Closely associated persons are certain family members, and entities controlled by a PDMR.



For more information visit our dedicated MAR site on the Linklaters Knowledge Portal.

- > PDMRs can't deal in a "closed period": the 30-day period before financial results are announced.
- > The Model Code disappears but companies may choose to have an internal process to require PDMRs to seek clearance before dealing. Companies are likely to adopt their own dealing codes.
- > Clearance to deal won't normally be given in a closed period or if the PDMR has inside information.
- > Some companies may amend award timetables under share incentive plans to avoid closed periods.
- > PDMRs and their closely associated persons have to disclose any transactions in the company's securities. This is broad and includes some dealings they had no say in (e.g. an inheritance or dealings by the trustee of a family trust). PDMRs have to give the company a list of their closely associated persons and advise them in writing of their disclosure obligations.
- > The disclosure will need to be made to the FCA as well as the company. The company will notify the market. All this must be done within 3 business days of the dealing.

45%

Number of companies who expect their boards to spend “a great deal” or “quite a lot” of time focussing on the new requirements from July.

11%

Number of companies whose existing procedures enabled them to capture the information they will need to report to the FCA after a delayed disclosure of inside information.

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