

Primary Market Technical Note

Delaying disclosure/dealing with leaks and rumours

The information in this note is designed to help issuers and practitioners interpret our UK Listing Rules, Prospectus Regulation Rules, Disclosure Guidance and Transparency Rules, and related legislation. The guidance notes provide answers to the most common queries we receive and represent FCA guidance as defined in section 139A FSMA

Rules and guidance

Articles 7, 11 and 17 of MAR and UKLR 21.1.3G

Key to the framework set out in Articles 7 and 17 of the Market Abuse Regulation (MAR) is the notion of inside information.

Subject to the limited ability to delay the release of any inside information to the public, an issuer is required to inform the public as soon as possible of all inside information in its possession which directly concerns that issuer. Issuers and their advisers should, when delaying disclosure of inside information, continue to monitor various media (and when appropriate, market prices) for signs of possible leaks and/or related price movements. While an issuer may not be required to respond to a rumour that is false, when speculation or market rumour is largely accurate, it is unlikely that an issuer will be able to continue to delay the disclosure of inside information (see MAR

Article 17(7) and note the FCA's power in section 122G of the Financial Services and Markets Act 2000 to require an issuer to make public statements).

In such circumstances, the Primary Market Monitoring Team may make contact with an issuer or its adviser. However, issuers should not wait to be contacted before considering their disclosure obligations. If required, we may seek to establish the truth or otherwise of a story and the presence (or likelihood) of related significant price movement. We may seek opinion from an issuer or advisers and challenge opinions received. We recognise that judgement and discretion is required and each case will be treated on its merits. Nonetheless, inaccuracies of some aspects of a story may not in themselves be justification for non-disclosure. An example may be inaccuracies in a rumour as to the size or pricing of a capital raising, which may not of themselves negate the obligation to announce the existence of a planned capital raising.

Should a leak occur and a full announcement not be possible, any holding announcement should be meaningful and, at a minimum, reflect the extent to which a leak or rumour is truthful. We will challenge holding statements that do not sufficiently reflect the leak. We do recognise in time critical situations, there can be a tension between timeliness and completeness, and in working with issuers and advisers in managing a particular market situation, we may seek commitments as to planned timetables for announcements and the contents of these.

Where an issuer's non-disclosure leads us to decide to invoke our powers to require an announcement or to suspend an issuer's securities, we may make ex post enquiries as to whether all parties have been sufficiently open and cooperative in their dealings with us to that point and whether there have been any breaches of our rules.

When an issuer is, or should be, in a position to make a meaningful announcement, we would not normally expect a suspension of listing to be sought or to be granted. Unless the smooth operation of the market is at risk, or investors require particular protection, market disciplines should remain unfettered. Further, as outlined in UKLR 21.1.3G, we will not suspend the listing of a security to fix its price at a particular level.

Delaying public disclosure of inside information

Articles 17(4) and (5) of MAR allow companies to delay public disclosure of inside information in certain circumstances. Alongside preparations for and just prior to such announcements, companies may give selective internal briefings provided they comply with MAR. While we recognise they may facilitate better internal management of information, the company needs to ensure the disclosure is reasonable and enables the person briefed to perform the proper functions of his/her employment. Companies must not delay announcements of inside information in order to give briefings.

Issuers should not provide inside information to journalists or others under an embargo that seeks to prevent them using the information until it has been released to a Regulatory Information Service (RIS).

Article 17(8) of MAR says, in summary, that where an issuer, or a person acting on its behalf, discloses inside information to any third party in the normal course of the exercise of an employment, profession or duties (as referred to in Article 10(1) of MAR), it must immediately disclose that information publicly unless the person receiving the information owes the issuer a duty of confidentiality. However, we do not consider that this covers information being given to journalists under an embargo. This is because by disclosing information to third parties under an embargo, an issuer risks losing control over the information as soon as the disclosure is made.