

UKLA Technical Note

Assessing and handling inside information

Ref: UKLA / TN / 521.1

DTR 2

Responsibility

Issuers should have a consistent procedure for determining what information is sufficiently significant for it to be deemed inside information and for the release of that information to the market.

The overall policy for the identification, control and dissemination of inside information is the overall responsibility of the issuer's board of directors. You should note we are not likely to regard the inability to physically convene a full board meeting as a justifiable reason for delaying the announcement of inside information. We understand that responsibility may be delegated to a small number of directors who can react quickly. In the case of listed companies, applying the Listing Principles, particularly Listing Principle 1 (directors understand their obligations) and Listing Principle 2 (systems and controls), will be relevant here.

Balancing positive and negative news

Issuers are reminded that there is a risk associated with balancing positive and negative news. We also remind issuers that justifying non-disclosure of information by offsetting negative and positive news is not acceptable. Issuers should continue to assess whether information held meets the tests for inside information and whether any announcement obligations arise.

It is generally not acceptable for issuers to attempt to choreograph the assessment and possible disclosure of various and offsetting information that may individually meet the tests for inside information. It is vital that issuers disclose all inside information they have in accordance with the Disclosure and Transparency Rules and do not attempt to delay the publication of negative news, for example, until there is off-setting positive news.

Materiality 'thresholds'

Issuers are reminded that, when determining when to announce updates on performance (trading statements), DTR 2.2 (disclosure of inside information) does not set materiality thresholds. In particular, DTR 2.2.4G (2) outlines 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'. In addition, DTR 2.2.6G also reminds issuers that an impact assessment should be made concerning any information that may be required to be announced, in the 'light of the totality of the issuer's activities'. ESMA has also published guidance in relation to the operation of the Market Abuse Directive, (reference CESR/06-562b), that issuers may find helpful.

We are aware that some market practitioners may consider 10% as a threshold for impact on the price of an issuer's financial instruments. This is not the case. Similarly, we do not necessarily see it as appropriate, in this context, that a 10% variation in underlying financial information (e.g., operating profit, or projected operating profit) should be used as the threshold for making an announcement. Issuers will need to separately consider any disclosure obligations that arise in prospectuses or circulars required by the UK Listing Regime.

Issuers may need to separately consider LR 9.2.18 (2)(c) in any situation where LR 9.2.18 applies (that is where an issuer has published unaudited financial information or a profit forecast or estimate previously).

We are also conscious that many issuers will look to update their AGMs with information on their trading or financial performance. We do not have a concern with this practice, as long as issuers comply with their general disclosure obligations. This may include, if appropriate, making a simultaneous RIS announcement.

Interaction with the City Code on Takeovers and Mergers

Issuers that are or may become involved in a takeover or merger should also have regard to the City Code on Takeovers and Mergers (the City Code) when considering the content and timing of announcements.

The UKLA regularly liaises with the Panel on Takeovers and Mergers (POTAM) to ensure that the DTRs are being complied with in areas which overlap with the City Code.

There may be circumstances where a matter is not required to be disclosed under the rules of the City Code but which nonetheless triggers an obligation under the DTRs. If the UKLA identifies rumours of a potential takeover or merger that have not been announced, it will contact the POTAM to discuss the issues and the appropriate response.

Announcements by industry regulators, trade associations and government departments

Announcements by industry regulators, trade associations, government departments and other bodies may affect the share price of many issuers. So it is advisable, where possible, for issuers to have an agreed understanding of the sensitivity of such statements and their likely effect on market expectations with these organisations so issuers can make announcements to the market where appropriate.

We are party to an agreement with certain industry regulators which seeks to ensure that, if these regulators need to make an announcement that will affect an issuer's share price, they do so via a RIS and according to principles that minimise leaks. A list of industry regulators who are party to this agreement along with guidelines for the dissemination of inside information by industry regulators can be found on our website.