UKLA Technical Note

Delaying disclosure/dealing with leaks and rumours

Ref: UKLA / TN / 520.1

DTR 1.3;
DTR 2.7;
LR 5.1.3G

Key to the framework set out in the Market Abuse Directive (and embedded in the DTRs) is the notion of inside information.

Subject to the limited ability to delay release of any inside information to the public, an issuer is required to notify a regulatory information service (RIS) as soon as possible of all inside information in its possession. 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 announcement of inside information.

In such circumstances, the UKLA may make contact with an issuer or its adviser, although consideration of announcement obligations should not wait for our contact. 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 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.

Furthermore, we would like to remind issuers that in addition to and complementing the disclosure requirement of inside information stemming from the Market Abuse Directive, the UKLA can require an issuer to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market (DTR 1.3.3R). We do not see this power as reducing an issuer's obligations to announce inside information or to at least make meaningful holding statements. In using this power we will be mindful of the guidance in DTR 2.7.3G that the knowledge that press speculation or market rumour is false is not likely to amount to inside information.

Where the UKLA is obliged by an issuer's non-disclosure 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 LR 5.1.3G, we will not suspend the listing of a security to fix its price at a particular level.

Delaying public disclosure of inside information

DTR 2.5 allows companies to delay public disclosure of inside information in certain circumstances (see DTR 2.5.1R for the conditions that must be met).

Alongside preparations for and just prior to such announcements companies may give selective internal briefings provided they comply with DTR 2.5. 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 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 an RIS.

The DTRs allow information to be disclosed to persons that owe the issuer a duty of confidentiality; however they do not contemplate this 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.