

Inside Information Management and FCA scrutiny



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Ensuring accurate, timely, and well-documented disclosure of inside information is a cornerstone of market integrity. Both Main Market and AIM-listed issuers face legal and regulatory scrutiny in this area. This article outlines the obligations under the UK Market Abuse Regulation (**UK MAR**) and considers FCA expectations, offering practical guidance on inside information management.

While some issuers may be inclined to include general MAR rubric indicating the presence of inside information in every market announcement as a default risk-management tactic, this practice can inadvertently trigger scrutiny from the Financial Conduct Authority (**FCA**). Within its broader statutory objective of ensuring market integrity, the FCA assesses not just disclosure content but the governance frameworks underpinning such disclosures. Where MAR rubric is used, particularly in connection with a notification of delayed disclosure of inside information (**DDII**), the FCA may request substantiating documentation to assess the issuer's compliance with UK MAR.

The key message is not to avoid the rubric, but to use it only when supported by robust governance and documentation, not as a blanket precaution.

Before we move to the nature of the FCA enquiries, here is a quick reminder on what constitutes inside information and when a DDII is permissible.

Identifying Inside Information and Delayed Disclosure Criteria

UK MAR defines inside information in Article 7 (1) as information that:

- a) is precise;
- b) has not been made public;
- c) directly or indirectly relates to one or more issuers, or to one or more financial instruments; and
- d) if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

The default position under Article 17(1) UK MAR is that inside information must be disclosed to the public as soon as possible. However, there are circumstances, outlined in Article 17(4) UK MAR, under which a company can delay disclosure. In order to delay, the following three criteria must all be met:

- a) immediate disclosure is likely to prejudice the issuer's legitimate interests;
- b) delay of disclosure is not likely to mislead the public; and
- c) the issuer is able to ensure the confidentiality of the information.



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Where disclosure can be delayed, Main Market issuers must draw up an insider list (as prescribed by Article 18 UK MAR) to be provided to the FCA as soon as possible upon request and retain each insider list for at least five years after it is drawn up or updated. AIM-listed companies are exempt from the requirement to keep an insider list on a real-time basis; however, they must be able to provide an insider list upon the FCA's request and, as such, we consider it prudent for AIM companies to follow Main Market practice in maintaining an insider list in real-time.

When inside information is announced to the market via a regulatory information service after a delay, issuers are obliged to file the DDII notification with the FCA.

FCA Enquiry (Identifying, Controlling and Handling Inside Information)

Where issuers assess that they are in possession of inside information and its disclosure can be delayed, they will need to be prepared, at the FCA's request, to explain:

- 1) How they determined the information was inside information;
- 2) How they assessed that the delay was justified under Article 17(4) UK MAR; and
- 3) What controls were in place to ensure confidentiality throughout the delay period.

The issuer's board bears the overall responsibility for inside information management, as confirmed by the FCA in TN 521.3. The FCA's Primary Market Bulletin 52 provides suggested approaches to the management of inside information; however, it will depend on each issuer what controls they will want to establish. A common approach is delegating responsibility for determining and managing inside information to a disclosure committee, comprising selected board directors.

Examples of good practice include:

- Maintaining detailed minutes of board or disclosure committee discussions;
- Ensuring ongoing confidentiality of the information up until the disclosure and ensuring contingency plans, including leak announcements, are in place;
- Maintaining an accurate insider list; and
- Requiring insiders to acknowledge in writing their regulatory obligations under UK MAR.

How One Advisory Can Help

Disclosing inside information correctly is not merely a compliance function – it is an indication of sound corporate governance and effective internal controls. One Advisory works closely with more than 50 companies and their advisors to ensure that clients and boards are aware of their obligations under UK MAR, AIM Rules, Listing Rules, and Disclosure Guidance and Transparency Rules, and supports them in implementing practical and documented governance processes and delivering training on these areas.

In addition to advice on inside information assessment and maintenance of insider lists, One Advisory can draft, review and help implement policies, such as a Share Dealing Policy and Inside Information Policy. These policies contain a detailed process for inside information analysis and follow-up steps to be taken by the board and individuals to ensure compliance with UK MAR.

If you would like to discuss any of the points covered in this article, please get in touch with Bohdana Pagacova at bohdana.pagacova@oneadvisory.london.



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