



Markets Brief

Disclosure of Inside Information by Reporting Entities

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Introduction

In this edition of Markets Brief, the DFSA sets out some practical guidance for Reporting Entities and their advisors on the handling and disclosure of Inside Information¹.

Companies that have their Securities listed on an Authorised Market Institution (AMI) in the Dubai International Financial Centre (DIFC), typically NASDAQ Dubai, are referred to as Reporting Entities. Every Reporting Entity is required to disclose to the market certain types of information either relating to the Securities of the Reporting Entity or the Reporting Entity itself. Such disclosure is designed to ensure that the markets are continually updated with information that is likely to have an impact on the price of the Securities so that investors can make an informed judgment about those Securities.

Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by the Regulatory Law 2004 and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rulebook for Guidance or contact the DFSA if you

require individual guidance.

Technical explanations given in this brief are for illustrative purposes and should not be considered or relied upon as legal advice. We recommend that independent legal advice is obtained if you are unsure about any aspect of the DFSA Markets regime which may apply to you.

Defined terms are identified in this Brief by the capitalisation of the initial letter of a word or each word in a phrase and are defined in GLO.

Identifying Inside Information

The obligation to disclose Inside Information is set out in Part 4, Chapter 3 Article 41 of the Markets Law and in Chapter 4 (Chapter 6 for Listed Funds) of the Markets Rules (MKT).

Inside Information is defined in Article 63(1)(a) of the Markets Law as:

“information in relation to Investments, or related investments of a precise nature

(i) is not generally available;

which:

(ii) relates, directly or indirectly, to one or more Reporting Entities or the Issuer of the Investments concerned or to one or more of the Investments; and

1 *(iii) would, if generally available, be likely to*

¹ As defined in the Glossary of the DFSA Rulebook (GLO) and Article 63(1)(a) of the Markets Law 2012 (“Markets Law”).

have a significant effect on the price of the Investments or on the price of related investments.”

When is information precise?

Under Article 63(2) of the Markets Law information is “precise” if it:

- a. indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and*
- b. is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of Investments or related investments.*

Investment is defined in the General (GEN) Module of the DFSA Rules as either a Security or a Derivative. For the purposes of this Markets Brief we refer to Securities throughout but readers should note that this guidance can apply equally to other Investments.

Who determines what constitutes Inside Information?

The Reporting Entity is itself best placed to determine whether information, if made publically available, is likely to have a significant effect on the price of the relevant Securities. The kind of information that may constitute Inside Information will vary widely according to circumstances. Sometimes it may be very obvious that a certain piece of information is to be classified as Inside Information. However, the Reporting Entity is in the best position to judge what is material for its business and, therefore, important for investors and potential investors in the Reporting Entity. It is the obligation of the Reporting Entity to identify Inside Information.

There is no fixed method that a Reporting Entity is required to use to determine whether information would have a significant effect on price. In case of doubt as to whether information that the Reporting Entity possesses could be deemed to be Inside Information, the DFSA considers it prudent to err on the side of caution and make a market

disclosure.

Examples of Inside Information

The [Code of Market Conduct](#) (CMC), which was published in January 2015 and can be found on the DFSA website (in the Sourcebook Modules section), provides useful guidance on the DFSA definition of Inside Information and examples of conduct that would be deemed ‘Insider Dealing’ as defined in Article 58 of the Markets Law and, therefore, a contravention of the DFSA Market Abuse regime.

Examples of Inside Information include, but are not limited to, the following situations:

- if there are changes to the board or key senior management positions of the Reporting Entity;
- if the Reporting Entity enters into a significant new agreement or venture;
- if the Reporting Entity is subject to a Takeover or Merger;
- if the Reporting Entity has decided to repurchase its own shares or issue new shares; or
- if the Reporting Entity is facing a major credit event.

Who is an “Insider”

An ‘Insider’ is defined in Article 63 of the Markets Law as a person who has Inside Information:

- i. as a result of his membership of the Board of Directors, or the Governing Body of the relevant Reporting Entity;
- ii. as a result of his holding in the capital of the relevant Reporting Entity;
- iii. as a result of having access to the information through the exercise of his employment, profession or duties;
- iv. as a result of his criminal activities; or
- v. which he has obtained by other means and which he knows, or could reasonably

be expected to know, is Inside Information.

Obligation to disclose Inside Information

Reporting Entities are required to disclose Inside Information in a timely manner, ensure that the information disclosed is not misleading, false or deceptive and does not omit anything likely to affect the importance of the information.

How to make a market disclosure of Inside Information?

Market disclosure must be made through an approved Regulatory Announcement Service, to the exchange (the AMI) on which the Security is admitted to trading, on the website of the Reporting Entity and to the DFSA, as set out in MKT 4.7.

A list of approved Regulatory Announcement Services can be found on the Listing Authority section of the DFSA website.

Is it possible to delay market disclosure?

A Reporting Entity may delay market disclosure of Inside Information so as not to prejudice its legitimate interests, if the following two conditions are met:

1. the delay is not likely to mislead the market; and
2. if the information is to be selectively disclosed to a Person prior to market disclosure, the requirements governing such selective disclosure are duly observed (see MKT 4.2.2).

In order to rely on MKT 4.2.2, the Reporting Entity must have some legitimate interest that would be prejudiced by immediate disclosure. There are very limited circumstances in which such a situation would arise. However, the DFSA is aware that some information must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the Reporting Entity. For example, depending on the circumstances, it may be acceptable to delay the announcement of a takeover bid until the offer is firm i.e. it has developed beyond tentative discussions. Any delay of market

disclosure, if permitted under this Rule, should be for no longer than is reasonably necessary.

What is clear is that a Reporting Entity must not rely on this Rule to delay public disclosure of bad news, for example, by delaying public disclosure of the fact that it is in financial difficulty or of its worsening financial condition.

Selective disclosure of Inside Information

During the period for which public disclosure of the Inside Information is delayed, provided certain conditions are met, limited selective disclosure is permitted. For example, where it is necessary, Inside Information may be selectively disclosed to advisers, underwriters, a major shareholder, the Sponsor or a compliance advisory to the Reporting Entity. The conditions for such selective disclosure are that:

- it is for purposes of the exercise of their profession or employment,
- they owe the Reporting Entity a duty of confidentiality; and
- they are put on notice by the Reporting Entity before the selective disclosure is made that the information is provided in confidence, may not be misused and that it is not permitted to trade on the basis of the information until it has been made public.

A Reporting Entity should ensure the following if it delays the publication of Inside Information:

- keep the Inside Information strictly confidential;
- keep the circle of insiders involved as small as possible; and
- keep an emergency market disclosure available in case of a leak.

Disclosure Exceptions

Under MKT 4.2.4, a Reporting Entity does not need to make disclosure of information where,

in the reasonable opinion of the Reporting Entity, the disclosure required would be either:

1. unduly detrimental to the legitimate interests of the Reporting Entity; or
2. disclose commercially sensitive material.

For this exception to apply the Reporting Entity must file a report with the DFSA and the non-disclosure must be permitted by the DFSA (see later below).

There are very limited circumstances in which the exceptions will be likely to arise. Examples of circumstances under which a Reporting Entity might rely on MKT 4.2.4 are:

1. where disclosure of information would be in breach of a law;
2. where the information is a trade secret or as of yet unpatented inventions, for example, where a Reporting Entity has discovered and is internally developing a new medicine that is likely to be lucrative to the Reporting Entity;
3. where the Reporting Entity is conducting negotiations and where the outcome of such negotiations would be affected by public disclosure;
4. where the information is still provisional and generated for internal management purposes prior to later disclosure; or
5. where there are impending developments that could be jeopardised by premature disclosure.

As with MKT 4.2.2, a Reporting Entity must not rely on this Rule to delay public disclosure of bad news, for example, by delaying public disclosure of the fact that it is in financial difficulty or of its worsening financial condition.

Using a disclosure exception

Where a Reporting Entity intends to not disclose certain Inside Information and make use of a disclosure exception due to the circumstances set out above, it must **immediately** file a confidential report with the DFSA, providing details on the information it intends not to disclose and the reasons for

non-disclosure as well as supporting documentation.

What happens when you file a confidential report?

Upon receipt of a confidential report the DFSA may specify the period during which the information included in the confidential report need not be disclosed to the markets. This period may be extended upon application by the Reporting Entity.

The Reporting Entity need not comply with the obligation to disclose Inside Information during the period permitted by the DFSA upon filing a confidential report, unless or until one of the following events occurs:

1. the DFSA directs the Reporting Entity to disclose the Inside Information;
2. the Reporting Entity becomes aware that there is a material change of circumstances that render the reason for non-disclosure no longer valid; or
3. the Reporting Entity becomes aware or has reasonable grounds to suspect that the relevant Inside Information has or may have come to the knowledge of any person or persons (other than by way of selective disclosure expressly permitted under the Rules), for example, the Inside Information has been leaked to outside persons and is no longer controlled.

Control of Inside Information

A Reporting Entity should put effective and adequate systems and controls in place to comply with the obligations to control Inside Information set out in MKT 4.2.6 to 4.2.9.

These Rules require that a Reporting Entity establish a policy on the handling of Inside Information. The Board of the Reporting Entity is responsible for ensuring the adequacy of that policy.

The guidance to the Rule describes some of the matters which should be covered by the policy. The DFSA considers that the policy should cover the following matters:

- why the policy has been produced;
- what is Inside Information;
- who is responsible for internal reporting and escalation of information which may be Inside Information;
- who is responsible for deciding whether information is Inside Information;
- when legal advice should be sought on whether information is Inside Information;
- what to do in the event of an emergency;
- how and when to use holding announcements;
- dealing with rumours;
- dealing with inadvertent disclosure of Inside Information;
- who is responsible for approving the release of, and verifying information in, market disclosures;
- how Inside Information is actually disclosed to the market;
- how the Reporting Entity will control Inside Information within the company, such as rules to be applied to ensure that internal disclosure of Inside Information can be limited and the risk of leaks limited;
- who is responsible for keeping “insider lists” and for communicating close periods to relevant employees;
- how decisions about Inside Information are recorded; and
- guidelines for communication with the press and media, PR companies, analysts, and the use of social media.

The internal policy on control of Inside Information may need to include other matters depending on the nature of the company.

Reporting Entities should note that having a policy is one thing, but for the policy to be effective a Reporting Entity should ensure that the contents of the policy are communicated to

employees and that adequate training is given to all relevant employees.

The Code of Market Conduct – Risk of breaching the Markets Law

A Reporting Entity should be aware of Part 6 of the Markets Law which sets out the Market Abuse provisions, which include a prohibition on ‘disseminating false or misleading information’ (Article 55), a prohibition on Insider Dealing (Article 58), a prohibition on ‘providing inside information’ (Article 59), a prohibition on ‘inducing persons to deal’ using inside information (Article 60) and a prohibition on misuse of information (Article 61).

The CMC provides guidance to market participants about behaviour that in the opinion of the DFSA would, or would not, amount to Market Abuse, as well as certain factors that the DFSA may take into account when making such a determination.

Examples of bad practices in relation to Inside Information

A Reporting Entity should not:

- assume that investors do not want to be overwhelmed with market disclosures;
- delay making a market disclosure only for the reason that full clarification is not yet possible;
- make a market disclosure in which financial results or projections are vague or unclear even though more precise information is already available within the Reporting Entity;
- disclose unpublished Inside Information during presentations of any kind, such as to analysts, potential investors, during press conferences or during interviews with the press;
- allow the interests of existing shareholders to take precedence over those of the market and potential investors;
- refer in a market disclosure to another location where (additional) Inside Information can be found;

- include Inside Information in a Prospectus in relation to a new Offer without making a market disclosure of this Inside Information;
- publish only parts of a complex set of facts without providing an accurate summary;
- delay making a market disclosure solely to protect the reputation of the company or its directors;
- send Inside Information exclusively to the DFSA (except where the Reporting Entity is making use of an exception from the obligation to disclose Inside Information);
- delay an announcement in the DIFC to wait for another market to open;
- hide bad news or bury it in a mass of information;
- publish only the consequences of certain material events or the corrective measures taken without stating the reason or cause;
- wait until the next periodic reporting date or Annual Report before disclosing Inside Information; or
- in the event of bad news, wait until the situation or event passes or has been dealt with.

Examples of good practice in relation to Inside Information

A Reporting Entity should:

- if some doubt exists on whether information is Inside Information, err on the side of caution and make a market disclosure;
- publish both good and bad news as soon as possible;
- publish any changes or amendments from previously published expectations or targets as soon as possible;
- focus on the investing public as a whole, not a selective group of investors;
- consider issuing a market disclosure in the

event of an unfounded rumour in the market if the rumour is seen to have a significant effect on the price or volume of the Security;

- issue a market disclosure if a director is incorrectly quoted in the media with regard to Inside Information;
- issue a market disclosure immediately if Inside Information is inadvertently released to an analyst (or select group of analysts) or during an interview or a presentation;
- aim to make market disclosure before market opening to allow the market to take the disclosed information into account (however, the Reporting Entity should be careful not to breach the requirement to publish Inside Information without delay);
- provide a clear headline and summary in its market disclosure; and
- make clear and unambiguous statements

and avoid misleading or unclear statements.

Communication with third parties

A Reporting Entity may accidentally disclose information that has not yet been published by way of market disclosure to third parties such as analysts, journalists, investors, or to employees. Such accidental disclosure does not lead to a disclosure obligation to the market as long as this information is not Inside Information.

However, in the case of the information being Inside Information, a market disclosure must be made immediately to prevent any information asymmetry. This requirement does not apply if the third party with whom the information is shared is subject to a duty of confidentiality, i.e., if the selective disclosure is in accordance with the requirements for selective disclosures as explained above.

Regulatory Powers - Suspension

The DFSA has the power to suspend Securities from the Official List with immediate effect or from a specified date and time. The

DFSA may exercise this power where it considers it is warranted in the circumstances or it is in the interests of the DIFC. A suspension from the Official List will immediately trigger a suspension from trading on the AMI on which the Securities are admitted to trading, typically NASDAQ Dubai.

It should be noted that such a suspension is not considered a punitive measure on the Reporting Entity *per se* but that it is a mechanism to protect the market from information asymmetry. Once the Reporting Entity makes a disclosure to rectify any information asymmetry the suspension from the Official List and from trading would be lifted and investors would be able to transact on a well-informed basis.

The Markets Rules provide examples of circumstances where the DFSA may decide to order a suspension from the Official List and consequently from trading.

Examples given that may involve non-disclosed Inside Information include the following:

- the Reporting Entity has failed to meet its continuing obligations;
- the Reporting Entity has failed to publish financial information in accordance with the Markets Rules;
- the Reporting Entity is unable to assess accurately its financial position and inform the market accordingly;
- there is insufficient publicly available information in the market about a proposed transaction which involves the Reporting Entity or relevant securities;
- the Reporting Entity has appointed administrators or receivers or is winding up;
- the Securities have been suspended elsewhere; or
- in the case of Derivatives, where the underlying instrument is suspended.

Lifting of Suspension

If the DFSA suspends the listing of Securities, it may impose such requirements and conditions on the procedure of lifting the suspension as it considers appropriate.

Dual listings

In case a Security is listed on an AMI in the DIFC and also on an exchange in a jurisdiction outside the DIFC, disclosures that are required by applicable regulations of that other jurisdiction and exchange should also be made in the DIFC so as to avoid information asymmetries.

Conclusion

In conclusion, the DFSA wishes to remind Reporting Entities that, while the DFSA may require certain disclosures to be made, the obligation to ensure that Inside Information is disclosed to the market in a timely and clear manner is ultimately the responsibility of the Reporting Entity. Directors should be aware that they may be held personally liable for breaches of the Rules. Well-informed and well-regulated markets are more efficient, and tend to attract investors, increase liquidity and ultimately result in better price discovery.

If in doubt as to whether a disclosure is warranted, the DFSA recommends that a Reporting Entity err on the side of caution and make a market disclosure.

Finally, readers may recognise similarities between the DFSA Market Abuse regime and the market abuse regulations of the European Union set out in the Market Abuse Directive and, regarding the disclosure of inside information, the Transparency Directive. However, differences do exist so care should be taken to ensure correct application of the DFSA regime.

The DFSA Markets team can be reached on markets@dfsa.ae or 04 362 1585. The DFSA will not advise a particular course of action or provide (legal) advice, but it is prudent to keep the DFSA informed of ongoing developments in relation to the Reporting Entity.

Arabic edition

Every Markets Brief is produced in both English and Arabic and is available on the DFSA website.

Contact us

Visit the DFSA website www.dfsa.ae for:

- other editions of the Markets Brief;
- access to DFSA-administered legislation and the DFSA Rulebook, including a full text of the Markets Law 2012 and Markets Rules; and
- the Code of Market Conduct (in the Sourcebook Modules part of the DFSA website).

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Feedback

We appreciate your feedback and welcome any suggestions that you may have. Please email us at markets@dfsa.ae