

## FCA publishes additional guidance on MAR

United Kingdom · 26/11/2024

On 15 November 2024, the Financial Conduct Authority (**FCA**) published [Primary Market Bulletin 52 \(PMB 52\)](#), which provides helpful guidance on applying the UK Market Abuse Regulation (**MAR**) in different scenarios. PMB 52 focuses on identifying and managing inside information, communicating with shareholders during calls and meetings, and releasing regulatory information during disruptions to primary information providers (**PIPs**). The guidance is aimed at listed companies subject to MAR (e.g. Main Market, AIM or Aquis companies) and their advisers. The FCA's key observations are set out below.

### Identifying inside information on a takeover

The FCA clarifies that the receipt of a takeover offer can qualify as inside information before it is formally considered or recommended by the target board. Whilst this will depend on the facts, relevant factors to consider include the identity of the bidder, the nature and size of the offer, and the likelihood that the offer will be recommended by the target board. The FCA reminds issuers, following the 2014 case of *Hannam v FCA*, that information is "precise" (for the purpose of assessing whether it is inside information under MAR) if there is a "*more than a fanciful chance*" of the offer proceeding, which is a notably lower threshold than the offer being "*more likely than not*".

PMB 52 also reminds issuers that:

- whilst there is no obligation under MAR to correct a false rumour or speculation during a takeover process, the issuer should assess whether the rumour or speculation itself amounts to inside information. If so, and it has been delaying disclosing to protect its legitimate interests, it may need to disclose the information as soon as possible, as it is no longer able to maintain its confidentiality;
- where disclosure of inside information has been delayed and the information ceases to be inside information as it has lost its price sensitivity as a result of the offer falling away, the obligation to disclose ceases. However, issuers must still maintain accurate insider lists for any period during which the information qualified as inside information; and
- there may be circumstances where a matter is not required to be made public under the Takeover Code (assuming it applies to the takeover offer) but which nonetheless triggers a disclosure obligation under MAR.

Whilst not covered in PMB 52, we note that, on the flip side, there may be circumstances where an announcement is required under the Takeover Code, even though an announcement is not required under MAR. In all cases during a takeover offer, we recommend that issuers should seek advice from their lawyers and financial advisers to ensure that they comply with their regulatory obligations.

### Identifying inside information when preparing financial information

The FCA has previously published [guidance](#) that issuers must assess on a case-by-case basis whether information relating to financial results constitutes inside information.

PMB 52 explains that:

- a finance pack presented to the board ahead of a scheduled earnings statement may constitute inside information if it shows, for example, revenues are significantly behind internal forecasts and external consensus estimates by analysts;
- the loss of a major contract may similarly constitute inside information (even if the financial impact to the issuer is yet to be determined);
- if there is inside information, then the issuer will need to disclose this information as soon as possible ahead of its scheduled earnings statement, unless it is permitted to delay disclosure (e.g. to protect its legitimate interests and where delay of disclosure is not likely to mislead the public). As set out in the FCA's previous [guidance](#), immediate disclosure is likely to prejudice its legitimate interests where it would impact the orderly production and release of the financial results and could result in the incorrect assessment of the information by the public. The FCA reminds issuers that the public is likely to be misled by delayed disclosure if they have previously stated financial objectives or targets which are now unlikely to be met; and
- offsetting negative and positive news does not justify the non-disclosure of inside information.

## Identifying inside information on CEO resignations and appointments

The FCA emphasises that:

- the resignation of a CEO and the appointment of a successor are separate pieces of information which may on their own constitute inside information at different points in time;
- inside information could arise at an early stage and before the formal resignation of the existing CEO and/or appointment of their replacement. This could include where the CEO has signalled their intention to resign and/or the board has started discussions to appoint potential successors; and
- if the issuer has delayed disclosure of inside information, it will need to continually assess whether there has been a leak, which would prompt public disclosure as soon as possible. Continuous press speculation may indicate a leak. Factors to consider include the accuracy of the speculation in relation to both the identity and number of potential successors and the stage at which the appointment of the new CEO has progressed.

PMB 52 also reminds issuers with a listing on the ESCC category on the Main Market of their obligations under the UK Listing Rules to notify the market of any board changes as soon as possible (and, in any event, no later than the close of business on the day following the decision or receipt of notice of the change).

## Actions to help identify and manage inside information

To strengthen issuers' ability to identify and manage inside information, the FCA recommends that issuers consider the following measures:

- establish a disclosure committee whose role is to determine when information meets the threshold for inside information, as well as the timing and content of announcements. It should have access to external counsel, including legal and corporate brokers, at short notice;
- ensure the CFO, CEO and company secretary are authorised to make announcements regarding performance or event-based inside information outside of normal reporting timetables and absent a formal disclosure committee;

- train relevant employees, including the finance team, so that they can recognise when inside information meets the threshold;
- ensure that inside information is promptly controlled and managed, including the timely creation and updating of insider lists; and
- maintain detailed records explaining why information is classified as inside information – or why it is not.

## Sharing information during shareholder calls and meetings

The FCA warns issuers to exercise caution when communicating with shareholders via apps such as WhatsApp, LinkedIn or Telegram (especially when interacting with groups of smaller private shareholders). Statements made during these interactions could inadvertently be perceived as price-sensitive or as introducing material new information. Issuers risk committing market abuse under MAR, such as the offences of unlawful disclosure of inside information, insider dealing and market manipulation<sup>[1]</sup>.

To mitigate these risks, the FCA recommends:

- avoiding calls or making communications during MAR closed periods where information involved with the preparation of financial reports could constitute inside information;
- arranging communications to take place after financial reports have been published, or after an update to the market has been made, so that management can align its messaging with those statements;
- ensuring that prior to a communication, all inside information has been published;
- stating at the outset of the call that no inside information will be disclosed during the communication;
- management avoid deviating from the language and tone of previously published statements to prevent any misconception that new information is being disclosed, particularly around the issuer's outlook and future performance or strategy;
- preparing a script or speaking notes in advance of such call or meeting;
- if meetings or calls are not recorded, management should prepare contemporaneous notes of the discussions; and
- in certain circumstances, it may be appropriate to announce that the call or meeting took place, set out what information was shared and confirm that the issuer does not deem it to be inside information.

## Managing disruptions to PIPs

PMB 52 reminds issuers that if they wish to publish regulated information on their website (or via social media) they can only do so once the information has been released via their PIP.

Following the CrowdStrike-related IT outage in July 2024, which disrupted PIP services, the FCA observed instances where issuers published regulated information on their websites before it was released via their PIP. To avoid such issues, the FCA advises issuers to:

- check that announcements have been successfully released via their PIP before uploading regulated information to their website; and
- consider setting up a secondary PIP account to ensure regulatory disclosures can continue in

the event of service interruptions.

[1] Please see our earlier [Law-Now](#) briefing on the FCA's decision to fine Sir Christopher Gent for unlawful disclosure of inside information.

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