Public disclosure of inside information

Publication date: June 2016

Update: July 2017

The Dutch Authority for the Financial Markets

The AFM is committed to promoting fair and transparent financial markets.

As an independent market conduct authority, we contribute to a sustainable financial system and prosperity in the Netherlands.

The European Securities and Markets Authority (ESMA) regularly publishes Q&As with regard to the Market Abuse Regulation (MAR). Although the AFM processes this information in its brochures on a regular basis, it may occur that certain information in this document no longer applies. Therefore, we advise you to consult the ESMA website for the latest information on this subject. In case of any uncertainties with regard to interpretations set out in this brochure, you should also consult the Q&As of ESMA.

Click on the following link for a current overview of the latest Q&As:

https://www.esma.europa.eu/questions-and-answers

In this brochure the Q&As of ESMA have been processed up to and including the version of 6 July 2017.

Table of contents

Introduction

In this brochure, the AFM explains the obligation an issuer has to publicly disclose inside information directly concerning the issuer, as quickly as possible. An issuer is a company that issues financial instruments – for example shares - that are traded on a regulated market, Multilateral Trading Facility (MTF) or Organised Trading Facility (OTF) in the Netherlands.

A transparent market where companies inform investors fully, correctly and timely, is a market that maximises the confidence of market participants. This leads to minimisation of the risks, which contributes to keeping the cost of capital as low as possible. This is in the interests of companies and the investing public alike. In addition, publishing inside information as quickly as possible ensures that insider dealing is prevented as much as possible.

The regulation that is applicable to the obligation to publicly disclose inside information as quickly as possible derives directly from the European Market Abuse Regulation (MAR). Prior to the MAR coming into force, the obligation was laid down in Section 5:25i(2) of the FSA. With the Regulation now in force the obligation can be found in Chapter 3 of the MAR, which contains the rules issuers are to follow when providing information.

MiFID II

If a provision of the MAR refers to Organised Trading Facilities (OTFs), SME growth markets, emission allowances or auctioned products based on the foregoing, the provision applies to them as soon as Directive 2014/65/EU (MiFID II) comes into force. Until such time, references to MiFID II and Regulation 600/2014 (MiFIR) are read as references to Directive 2004/39 (MiFID).

This brochure[1] is a "manual" for anybody wishing to know how inside information has to be disclosed publicly. It has been prepared to provide a general view of the rules for making the disclosure as quickly as possible. The brochure also contains references to relevant (legal) documents and other sources of information. In this brochure the AFM will use expressions that are in line with the text of the MAR, to ensure that meaning of legal and other terms are consistent. This means, for instance, that the AFM will stop using the term "price-sensitive information" and will only use the term "inside information" from now on.

[1] No rights can be derived from this brochure. You should not base actions solely on the content of this brochure. If the text of the brochure deviates from that of the MAR and the explanation this provides, the MAR will prevail. The actual text of the European Market Abuse Regulation (MAR) is available on the website of the European Union.

1. Legal framework

Issuer (paragraph 21 of Article 3(1) of the MAR)

"Issuer" means a legal entity governed by private or public law that issues or proposes to issue financial instruments, the issuer being, in the case of depository receipts representing financial instruments, the issuer of the financial instrument represented.

The MAR specifies one category of issuers that has to publish inside information relating to emission allowances: emission allowance market participants.

Emission allowance market participant (Article 3(1)(20) of the MAR)

The phrase "emission allowance market participant" means any person who enters into transactions, including the placing of orders to trade, in emission allowances, auctioned products based thereon, or derivatives thereof and to whom an exemption pursuant to the second subparagraph of Article 17(2) does not apply.

An emission allowance market participant is to publicly, effectively and in a timely manner disclose inside information concerning emission allowances that it holds in respect of its business, including aviation activities as specified in Annex I to Directive 2003/87/EC or installations within the meaning of Article 3(e) of that Directive that the participant concerned, or its parent undertaking or related undertaking, owns or controls or for the operational matters of which the participant, or its parent undertaking or related undertaking, is responsible, in whole or in part. With regard to installations, such disclosure is to include information relevant to the capacity and utilisation of installations, including planned or unplanned unavailability of such installations.

The first subparagraph does not apply to a participant in the emission allowance market where the installations or aviation activities that it owns, controls or is responsible for, in the preceding year have had emissions not exceeding a minimum threshold of carbon dioxide equivalent[2] and, where they carry out combustion activities, have had a rated thermal input not exceeding a minimum threshold.

Public disclosure obligation (Article 17 of the MAR)

An issuer is to publicly disclose inside information that directly concerns the issuer without delay.

The obligation to publicly disclose inside information directly concerning an issuer falls on issuers:

1. that have requested or approved admission of their financial instruments to trading on a regulated market in a Member State; or

[2] https://ec.europa.eu/transparency/regdoc/rep/3/2015/NL/3-2015-8943-NL-F1-1.PDF

2. in the case of an instrument only traded on an MTF or an OTF, have approved trading of their financial instruments on an MTF or an OTF; or
3. have requested admission of their financial instruments to trading on an MTF, in a Member State.

Inside information (Article 7 of the MAR)

a. Information of a precise nature, that has not been made public, relating directly or indirectly to one or more issuers or to one or more financial instruments, and that, 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.
b. In relation to **commodity derivatives**, information of a precise nature, that has not been made public, relating directly or indirectly to one or more such derivatives or relating directly to the related spot commodity contract, and that, if it were made public, would be likely to have a significant effect on the prices of such derivatives or related spot commodity contracts, and where this is information that is reasonably expected to be disclosed or is required to be disclosed in accordance with legal or regulatory provisions at the European Union or national level, market rules, contracts, practices or customs, on the relevant commodity derivatives markets or spot markets;
c. In relation to **emission allowances or auctioned products based thereon**, information of a precise nature that has not been made public, relating directly or indirectly to one or more such instruments and that, if it were made public, would be likely to have a significant effect on the prices of such instruments or on the prices of related derivative financial instruments.
d. For persons charged with the execution of orders concerning financial instruments, it also means information conveyed by a client and relating to the client's pending orders in financial instruments, that is of a precise nature, relating, directly or indirectly, to one or more issuers or to one or more financial instruments and that, if it were made public, would be likely to have a significant effect on the prices of those financial instruments, the price of related spot commodity contracts, or on the price of related derivative financial instruments.

An intermediate step in a protracted process is deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article. In the case of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, an issuer or an emission allowance market participant may on its own responsibility delay the public disclosure of inside information relating to this process, provided that three deferment conditions continue to be met during the process (see section 3 of this brochure, page 12).

Of a precise nature

Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur, where it is specific enough to enable a

conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of the financial instruments or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances. In the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of the process that are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be specific information.

Significant effect

For the purposes of paragraph 1, information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

In the case of participants in the emission allowance market with aggregate emissions or rated thermal input at or below the threshold set in accordance with the second subparagraph of Article 17(2) of the MAR, information about their physical operations will be deemed not to have a significant effect on the price of emission allowances, of auctioned products based thereon, or of derivative financial instruments.

2. Inside information required to be made public

An issuer is under an obligation to inform the public as soon as possible of inside information that directly concerns the issuer. This has to be done in the form of a press release. A further condition is that the issuer needs to submit the press release to the AFM and publish it on its own website (see second paragraph of Article 17(1) of the MAR).

The issuer ensures that the inside information is made public in a manner that enables fast access, is complete, and can be properly and timely assessed by the public. As applicable, the issuer also sends the information to the AFM register.

The inside information is disseminated[3]:

a. to as wide a section of the public as possible, on a non-discriminatory basis;
b. free of charge;
c. simultaneously throughout the European Union.

Inside information can be transmitted directly or by a third party to media that the public can trust to disseminate it effectively. The communication is transmitted using electronic means that ensure the completeness, integrity and confidentiality of the information is maintained during the transmission, and will clearly show:

a. that the information transmitted concerns inside information;
b. the identity of the issuer or emissions allowance market participant (full legal name);
c. the identity of the person making the notification: name, surname, position within the issuer or whether the person is an emission allowance market participant;
d. the subject matter of the inside information;
e. the date and time of the communication.

Issuers and emission allowance market participants ensure safe receipt of such notifications by resolving all data losses and interruption problems, if any, during the transmission of inside information as quickly as possible.

The contents of the press release must be clear and not misleading. A specific headline, for reference purposes, and a clear summary are recommended. No advertisements for the activities of the company are to be combined with the press release. The information must be placed on the issuer's website, and is to remain accessible for at least five years.

[3] The requirements set out below are those currently applying, as stated in the ESMA Final Report Draft technical standards on the Market Abuse Regulation (ESMA/2015/1455). If the European Commission adopts the aforementioned standards as the Regulatory Technical Standards (RTS), these requirements will continue to apply.

2.1 ‘Of a precise nature’ and ‘significant’ information

What constitutes inside information depends on the company and its sector, as well as on market sentiment and recent developments. Furthermore, it depends on questions such as:

- How up-to-date is the information?
- How much does this information add to the existing information on the same subject?
- To what extent is the information new?

The degree to which the public disclosure of information could have a significant effect on the price of the financial instrument concerned also depends on the nature of these instruments. Information that has a significant effect on the price of a particular financial instrument (for example a share) does not necessarily have a significant effect on the price of other types of financial instruments (for example bonds).

There is no hard and fast rule to determine whether there will be a significant effect on the price. An issuer is responsible for assessing whether or not there is inside information. It knows what is important for the organisation and hence what is important for (potential) investors in the company. Where the issuer possesses information and is uncertain whether this qualifies as inside information relating to the organisation, the AFM's advice is to publicly disclose the information.

2.2 Examples of inside information

A number of examples are given below of possible inside information:

Significant facts concerning the financial position and/or results:

- disclosure of periodic financial results;
- significant deviations from earlier forecasts, and generally accepted market expectations or ratings;
- development of major new products;
- substantial changes in credit and in security provided for credit, including covenants being broken;
- cancellation of significant credit facilities by one or more banks;
- substantial changes in reporting policies;
- an equity deficit;
- replacement of external auditor;
- significant legal cases, fines, claims, product liability, environmental damage, etc.

Significant facts concerning the company's strategy:

- purchase or sale of key shareholdings and/or business units;
- forming or dissolving significant joint ventures;

- extensive reorganisation;
- strategic change of direction; radical change in the company's operations;
- dissolution of the company;
- merger or acquisition;
- significant intervention by external supervisors;
- application for suspension of payments or bankruptcy.

significant facts concerning capital, control or governance:

- combining or splitting of shares;
- change in the rights of the different categories of financial instruments;
- changes in the executive or supervisory board of an issuer;
- dividend announcements, including the ex-dividend date (or changes to it) and changes to dividend policy;
- major change in spread of shareholdings and/or free float;
- implementing or activating anti-takeover measures;
- If a decision is taken to buy back shares in the company.

2.3 Situations to be avoided

- delaying publication simply because complete clarity cannot be provided;
- delaying solely to protect the image of the company or the directors;
- delaying publication of inside information until the publication of the next scheduled report;
- in the case of bad news, delaying publication until the situation or event has been resolved;
- issuing a press release that does not directly provide a clear interpretation of results or forecasts (e.g. use of the Mock scale);
- disseminating inside information during presentations, interviews, etc;
- allowing the interests of individual shareholders to prevail over those of the investing public as a whole;
- including a reference in a press release to another source where (supplementary) inside information is available;
- referring in a press release to relevant information contained in previous press releases, without including that information in the new press release;
- placing inside information in a prospectus;
- publicly disclosing only parts of a constellation of facts;
- disclosing inside information solely in records kept by supervisory authorities;
- hiding or disguising bad news in a whole package of information;
- publishing only the effects of situations or the corresponding remedial measures, and not informing about reason or cause;

- protecting investors because of their perceived inexperience or lack of knowledge;
- believing that investors prefer not to be ‘flooded’ with information.

2.4 What must an issuer publicly disclose?

- Publish good news and bad news, both as soon as possible;
- publicly disclose deviations from previously published forecasts or targets as soon as possible;
- if and when a rumour relates explicitly to inside information, the disclosure of which has been delayed, and if that rumour is sufficiently accurate to indicate that the confidentiality of this inside information is no longer ensured, that issuer shall disclose that inside information to the public as soon as possible. In such a case, a policy of staying silent or of “no comment” by the issuer would not be acceptable.
- in the event of a false rumour going around the market, consider issuing a press release if the response of the company could cause a significant movement in price or trading volume;
- have a press release issued if inside information is disclosed unintentionally during an interview or presentation;
- issue clear and unambiguous forecasts, or avoid issuing any at all;
- serve the entire investing public: private investors are just as important as analysts and institutional investors;
- in case of doubt, publish!
- preferably use accepted profit terminology, and use it consistently;
- if non-accepted profit terminology is used, indicate and explain it clearly;
- consider issuing a press release if a director is quoted incorrectly about inside information;
- check forthcoming prospectuses for inside information, and if present, issue a separate press release;
- provide a clear heading and summary that accurately reflect the contents and meaning of the press release;
- aim to publish news before or after trading hours (while not forgetting the "without delay" criterion).

The relevant considerations depend on the actual situation and circumstances.

3. When to delay?

There are situations where an issuer or emission allowance market participant can rightfully decide to delay the public disclosure of inside information. It decides independently and bears sole responsibility for the delay.

Three conditions all have to be satisfied to justify a decision to delay:

1. immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
2. it is unlikely that the delay in disclosure would mislead the public; and
3. the issuer or emission allowance market participant is able to guarantee that the information concerned is kept confidential.

In the case of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, an issuer or an emission allowance market participant may, on its own responsibility, delay the public disclosure of inside information relating to this process, provided that all three delaying conditions described above continue to be met during the process. If just one of these conditions ceases to be satisfied, the inside information in question must be publicly disclosed as quickly as possible.

As soon as the deferred inside information has been publicly disclosed, the issuer or emission allowance market participant concerned has to inform the AFM as quickly as possible that fulfilment of the disclosure obligation had been deliberately delayed.

If an issuer delays publicly disclosing inside information, it must document how the deferment conditions were satisfied. A copy of this written explanation should be submitted to the AFM on its request. The minimum data the issuer must keep in order to continue satisfying the deferment conditions are:

- the date on which the inside information came into being;
- the date on which the decision to delay publication was made;
- the date on which the issuer or emission allowance market participant expects it can publicly disclose the information;
- the names of the persons responsible for delaying the disclosure, as well as of those whose responsibilities include monitoring compliance with the conditions and possible publication of the inside information;
- evidence of the continuing fulfilment of the deferment conditions, including every change during the delay period, as well as the restricted sharing of the information concerned and the procedures that have to be initiated if preserving confidentiality of the inside information can no longer be guaranteed.

The three necessary conditions for delaying the public disclosure of inside information are explained further below.

3.1 Immediate publication would probably prejudice the legitimate interests of the issuer

The first condition for delaying publication is that public disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant. Legitimate interests always include the following:

- *If public disclosure would probably affect the outcome or the normal course of ongoing negotiations, or related aspects, in which the issuer is a party.*

Non-interference with negotiations to which the company is a party may qualify as a legitimate interest. For this to be so, public disclosure of the item being negotiated would probably affect the outcome or the normal course of the process of these negotiations. In particular, if the financial viability of the issuer is under serious, imminent threat, excluding application of the relevant insolvency legislation, the public disclosure of information may be delayed for a limited period.

An essential criterion here is that public disclosure of the fact that negotiations are taking place and the question of which parties are involved may adversely affect the negotiations. This could harm the interests of both existing and potential shareholders.

- *Where the executive board of an issuer has made decisions or concluded agreements and these must still be endorsed by the supervisory board or similar company body.*

This requires that public disclosure before endorsement has been obtained, together with the simultaneous announcement that endorsement is still outstanding, could prevent the public from making a correct assessment of the information.

If the other provisions applying to deferment are also satisfied, the company will not (yet) need to initiate the public disclosure as quickly as possible. Once the decision is definite, the issuer shall publish the inside information immediately

In addition, when assessing whether the issuer has a legitimate interest, a weighing up of interests will have to be performed. An interest that is initially legitimate can cease to have this status owing to particular developments. The company must continually assess whether the delay is still legitimate.

3.2 Unlikely that the public is misled by the delay

The second condition is that it is unlikely that the delay of disclosure would mislead the public. Misleading can take the form of the company withholding information in order to present an

incorrect picture of the situation. It can also occur if the company could reasonably have been expected to know that withholding information would create a false picture of the situation (owing to the company providing information in other communications that is out of line with the information whose disclosure was delayed).

Where publication is delayed, the issuer must continually question whether the public is being led astray through the withholding of information and, taking all aspects into account, whether the delay is justified.

3.3 Guaranteeing confidentiality

The third condition for delaying publication is to guarantee that the inside information will be kept confidential. This guarantee comprises two parts:

- *The issuer controls the access to inside information. It implements adequate measures to ensure this access is restricted to persons needing to know the information for the normal course of their work, profession or position; and*
- *The issuer also has measures in place to enable immediate public disclosure of inside information if the confidentiality of the information can evidently no longer be guaranteed.*

The AFM recommends preparing an emergency scenario. This should include the actions to be taken, the persons to be deployed (as well as their deputies), and an emergency press release already prepared and as up-to-date as possible. There must also be a list of the projects that could give rise to inside information, together with the names of the persons involved in them. The AFM advises companies to stress the confidentiality of the information constantly and at every opportunity.

Having an effective procedure in place ensures that the time between any instance of inside information leaking out and the publication of the press release is kept as short as possible. This will limit the potential information inequality in the market to a minimum.

Further to the above, the AFM recommends the drawing up of appropriate internal procedures in order to fulfil the obligation to publicly disclose inside information.

Naturally, the issuer is under an obligation to publicly disclose inside information without delay once its confidentiality can evidently no longer be guaranteed and the information has leaked out. As soon as the confidentiality can evidently no longer be guaranteed, it is of no further relevance whether or which measures the company has implemented to guarantee confidentiality. These measures were obviously not adequate, resulting in the obligation to disclose the information publicly without delay to apply again.

Another possibility is that the issuer can no longer guarantee the confidentiality of the inside information because the group of persons who know it has become so large. In this situation too,

the issuer must publicly disclose the information as soon as possible, in order to prevent insider dealing taking place.

3.4 Delay in order to maintain stability of the financial system

In order to preserve the stability of the financial system, an issuer that is a credit institution or a financial institution may, on its own responsibility, delay the public disclosure of inside information, including information that is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided all of the following conditions are met:

1. *the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;*
2. *it is in the public interest to delay the disclosure;*
3. *the confidentiality of that information can be ensured; and*
4. *the AFM has consented to the delay on the basis of the aforementioned conditions being met.*

Accordingly, the issuer shall notify the AFM of its intention to delay the disclosure of the inside information and provide evidence that all the conditions set out in points 1, 2 and 3 are met. The AFM shall consult, as appropriate, De Nederlandsche Bank (Dutch central bank).

The AFM shall ensure that disclosure of the inside information is delayed only for a period as is necessary in the public interest. The AFM shall evaluate at least on a weekly basis whether the conditions set out in points 1, 2 and 3 are all still met. If the AFM does not consent to the delay of disclosure of the inside information, the issuer shall disclose the inside information immediately.

This exceptional rule is included in order to preserve the stability of the financial system. See consideration 52 and Article 17(5) of the MAR.

3.5 Disclosure of inside information related to Pillar II requirements

Many credit institutions across the European Union are issuers of financial instruments and thus subject to the regime established under MAR, when at the same time they are also subject to the prudential supervision of the banking regulators. Consequently, in the context of the Supervisory Review and Evaluation Process (SREP) to be conducted in accordance with Article 97 of Directive 2013/36/EU (CRD IV), whenever a credit institution subject to the market abuse regime is made aware of information, notably the results of the exercise, it is expected to evaluate whether that information meets the criteria of inside information. If these criteria are met, the MAR provisions apply with respect to the relevant disclosure requirements. Such a credit institution would have then to publicly disclose the inside information as soon as possible unless it has delayed such a disclosure after having assessed that all the conditions for delaying apply.

4. Process for public disclosure

The issuer itself is responsible for publicly disclosing the inside information. This is also the case if the information comes from a third party, such as a communication & consulting firm, distributor of press releases, or receiver/administrator. For the disclosure, the requirements set out below need to be met.

4.1 Simultaneous disclosure through a press release.

Inside information has to be disclosed via a press release. This must be published simultaneously in the Netherlands and (if applicable) in every other Member State where the financial instruments of the issuer are being admitted to trading on a regulated market, MTF or OTF.

In what language?

The press release to be published must be in Dutch or English. If the press release is published in another Member State as well, it must also be in a language that this State's competent authority finds acceptable, or in a language customary in the sphere of international finance.

4.2 Website

The MAR stipulates that an issuer must have its own website. To make information easily accessible for investors, the issuer has to place inside information on the website that is used for communicating with its shareholders. The issuer ensures that the disclosed inside information clearly indicates date and time of disclosure and that the information is organised in chronological order.

In some cases this website might also be that of the issuer's parent company or of another group company. This is permissible, provided:

a. the group structure is made clear on this website;
b. the issuer refers to this website in its own communication; and
c. this is the only website the issuer uses to communicate with its shareholders.

The issuer keeps the information accessible on the website for a period of at least five years.

In order to comply with the obligation of public disclosure, it is not enough for the issuer to place the press release solely on its own website. The company must also publish a press release as described above.

It is recommended that the issuer protects its information on a properly secured website. This is to prevent premature access (i.e., before publication) to the inside information that directly relates to the issuer.

4.3 Press release also to the AFM

If the issuer decides to publish a press release, the AFM has to receive the release the same time as the market does. NB: as the issuer itself is responsible for distributing the press release, it is not sufficient to send the release only to the AFM (see above). To notify inside information, the AFM has developed an electronic form that can be sent securely to the AFM. The form is usable with an Acrobat Reader version 7.0 and higher. Fields can be filled in online and attachments added. Every issuer can obtain the form through website of the AFM. In order to enable access to the portal of the AFM, a password-protected account is created for the issuer.

The press release will be stored in the register of the AFM (www.afm.nl) only after the AFM has verified that the press release it received has been published. The press release will remain there, with everyone being able to view it free of charge for five years.

4.4 SME growth market

Inside information relating to issuers whose financial instruments are admitted to trading on an SME growth market, may be posted on the trading venue's website instead of on the website of the issuer where the trading venue chooses to provide this facility for issuers on that market.

5. Communication with third parties

The idea is that an issuer shall inform the public as soon as possible of inside information which directly concerns that issuer.

An issuer sometimes provides information to third parties, such as analysts, journalists, investors, financiers, credit rating agencies and employees, before it has been disclosed publicly. As long as this does not involve inside information, it is permitted. However, if inside information is involved, the issuer must always take the following into consideration:

If the issuer or a person acting on its behalf or for its account *intentionally* discloses inside information to any third party in the normal course of the exercise of an employment, profession or duties as referred to in Article 10(1), they must make complete and effective simultaneous public disclosure of that information.

If the information is *unintentionally* disclosed to any third party in the normal course of the exercise of an employment, profession or duties as referred to in Article 10(1), then this information must be publicly disclosed as soon as possible.

The above does not apply, however, if the person receiving the information is under an obligation of confidentiality. This can be a legal obligation, or a contractual one. If an issuer consults a lawyer or a notary, for example, this person is bound by a legal obligation of confidentiality. In this case, the inside information can be communicated if this is necessary to serve the interests of the company. Obviously, from the time the notary or lawyer receives the information, it may not trade in the financial instruments of the issuer concerned.

NB: communicating inside information can constitute a violation of Article 10 (unlawful disclosure of inside information) of the MAR.

6. Role of the AFM

The AFM is to receive the press release at the same time it is published. After verifying that the release has indeed been published, the AFM enters it in the register on the AFM's website. In this situation everyone possesses the inside information at the same time.

The AFM does not approve the press releases, neither before nor after publication.

The AFM acts in the interests of transparency and information equality in the market for the benefit of all market participants. It will take immediate action if these interests come under threat.

The AFM studies press releases, listens to conference calls and follows the stock markets. If AFM will contact the issuer immediately if something is not clear.

6.1 Enforcement

For its supervision of compliance with the obligation to publicly disclose inside information as soon as possible, the AFM has a variety of enforcement measures at its disposal. Among them is the imposition of an order for incremental penalty payments or an administrative fine, including publication of this. The AFM can also report the matter to the Public Prosecution Service.

6.2 Trade measure

The AFM also has the power to take a trade measure: The AFM can suspend trading if damaging and unlawful information inequality is present in the market (or misleading/incorrect information). The AFM will do so by issuing an instruction to a regulated market in the Netherlands, an OTF or an MTF to suspend or cancel trading in specific financial instruments. The AFM can take this step if, for example, an issuer does not fulfil its obligation to publicly disclose inside information as soon as possible. In principle, the AFM does not suspend trading while a shareholders' meeting is in progress, or at the request of an issuer.

A possible consideration for the AFM regarding an instruction to halt trading is that information inequality in the market has to be removed. The AFM decides whether or not to take a trade measure on a case-by-case basis. The AFM exercises this power cautiously and diligently.

In principle, a trading venue bears responsibility for technical trading measures. One example is a suspension of trading in the event of a large price movement, where trading is automatically stopped for a short period if a threshold is exceeded.

7. Common ground with other elements of the Market Abuse Regulation

7.1 Market manipulation

Failure to fulfil the obligation to publicly disclose inside information as soon as possible could come within the scope of the prohibition of market manipulation. The omission of relevant facts from an issuer's press release may also constitute market manipulation. This is set out in paragraph c of Article 12(1) of the MAR[4].

For more information on market manipulation, see www.afm.nl and the brochure "Market Manipulation".

7.2 Prohibition of insider dealing and of unlawful disclosure of inside information

It is forbidden to:

- engage or attempt to engage in insider dealing;
- recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- unlawfully disclose inside information.

7.3 Rules for insiders

Articles 18 and 19 of the MAR also specify obligations to maintain insider lists and rules, as well as the obligation to notify insider transactions.

For more information, see www.afm.nl and the brochure "Insider Dealing".

7.4 Public bids for securities

Everyone who makes a public bid (offeror) and the company that is the subject of a bid (target company) must abide by the rules set out in Chapter 5.5 of the FSA and in the Public Takeover Bids Decree. One of the things the rules relating to takeover bids stipulate is that the offeror and the target company make public announcements at a number of fixed times. In addition, throughout the entire bid process, the offeror and the target company are both under the obligation to publicly disclose inside information as soon as possible. This obligation is pursuant

[4] Paragraph c of Article 12(1): "disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, a related spot commodity contract or an auctioned product based on emission allowances or secures, or is likely to secure, the price of one or several financial instruments, a related spot commodity contract or an auctioned product based on emission allowances at an abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading."

to Section 5:25i(2) of the FSA. By the operation of Section 4(3) of the Public Takeover Bids Decree, this obligation also applies to an offeror not listed in the Netherlands. Regarding public takeover bids, certain public notifications are excluded from the deferment rule of Article 17(4) of the MAR, because no legitimate interests exist for invoking the rule. For all such bids, any inside information involved must be publicly disclosed as soon as possible.

For a complete picture of the obligations applying in the case of public bids, please refer to the rules relating to public takeover bids.

8. Other questions?

The AFM is the contact for questions about market inside information, and other questions concerning the market abuse provisions. More information is available on www.afm.nl under the heading "Market Abuse".

For questions and advice, you can send an email to marketsupervision@afm.nl, or call the monitoring team on +31 (0)20 797 3777.

Please note that telephone calls with the monitoring team are recorded for supervisory purposes.

The Dutch Authority for the Financial Markets
T +31 (0)20 797 2000 | F +31 (0)20 797 3800
Postbus 11723 | 1001 GS Amsterdam
www.afm.nl