

DISCLOSURE OF INSIDE INFORMATION

Guidelines for issuers on Nasdaq Iceland

Article 17 of the Market Abuse Regulation no. 596/2014 (“**MAR**”) sets out the disclosure obligation in respect of inside information. The term inside information is defined in Article 7 of MAR. According to Paragraph 4 of Article 17 of MAR the issuer can under certain circumstances delay the disclosure of inside information. In these cases the issuer must make sure that it complies with all applicable rules regarding delayed information.

Set out below is guidance on certain circumstances and events that in the Exchange’s view may involve inside information under MAR. The intention of the guidance is to facilitate the issuer’s compliance with the regulation and to provide guidance on the Exchange’s view on the issuer’s disclosure requirements under MAR. The guidelines are primarily intended for issuers of shares but may nonetheless serve as a useful reference for issuers of other financial instruments as well. Please see Appendix I for a brief discussion on bonds and the differences between shares and bonds, in terms of what may constitute inside information.

The issuer’s obligations to publicly disclose inside information is regulated by MAR and it is not the intention that the guidance provided in this section should impose additional obligations on the issuer than those imposed by MAR.

The issuer should ensure that all market participants have simultaneous access to any inside information about the issuer. The issuer should therefore ensure that inside information is treated confidentially and that no unauthorized party is given such information prior to disclosure. Unless the inside information is simultaneously made public to the market, it should not be disclosed to analysts, journalists, or any other parties, either individually or in groups.

In special cases, where the disclosure is made in the normal exercise of the employment or the profession or duties of the disclosing party and where the person receiving the information owes a duty of confidentiality it may, however, be possible for an issuer to provide information before the disclosure to persons who take an active part in the decision process, or as a part of their professional role, are involved in the information process. This could, for example, concern information to major shareholders or contemplated shareholders in conjunction with an analysis prior to a planned new share issue, to advisors retained by the issuer for work on prospectuses prior to a planned share issue or other major transaction, to contemplated bidders or target companies in conjunction with negotiations regarding takeover bids, to rating institutions prior to credit ratings or to lenders prior to significant credit decisions.

An issuer cannot evade its disclosure obligation by entering into an agreement with another party stating that specific information, or details in such information, should not be disclosed by the issuer.

The determination of what constitutes inside information must be based on the facts and circumstances in each case and, where doubts persist, the issuer may contact the Exchange for advice. The Exchange’s employees are subject to a duty of confidentiality. However, the issuer is always ultimately responsible for fulfilling its duty of disclosure under MAR.

In evaluating what may constitute inside information the factors to be considered may include:

- the expected extent or importance of the decision, fact or circumstance compared to the issuer's activities as whole;
- the relevance of the information as regards the main determinants of the price of the issuer's financial instruments; and
- all other market variables that may affect the price of the financial instruments.

When the issuer has received the information from an external party, also the reliability of the source can be taken into consideration.

An additional basis for evaluation is whether similar information in the past has had an effect on the price of the financial instruments or if the issuer has previously treated similar circumstances as inside information. Of course this does not prevent issuers from making changes to their disclosure policies, but inconsistent treatment of similar information should be avoided.

As a general rule the issuer should disclose information which, if it were made public, would be likely to have a significant effect on the price of the issuer's financial instruments. It is not required that actual changes in the price of the financial instruments occur. The effect on the price of the financial instruments may vary and should be determined on an issuer by issuer basis, taking into account, among other things, the price trend of the financial instruments, the relevant industry in question, and the actual market circumstances. Accordingly, an obligation to publish inside information may, for example, exist in the following situations:

- orders or investment decisions;
- co-operation agreements or other agreements of major importance;
- business acquisitions and divestitures;
- price or exchange rate changes;
- credit or customer losses;
- new joint ventures;
- research results, development of a new product or important invention;
- commencement or settlement of, or decisions rendered in, legal disputes;
- financial difficulties;
- decisions taken by authorities;
- shareholder agreements known to the issuer which may affect the use of voting rights or transferability of the shares;
- market making agreements;
- information regarding subsidiaries and affiliated companies;
- significant deviation in financial result or financial position; and
- substantial changes to the operations of the issuer.

Set out below is a more detailed description of some of the examples and guidance on which type of information the Exchange would normally expect the disclosure to include as well as guidance on the timing and methodology of disclosures which the Exchange would normally expect the issuer to follow.

Orders or investment decisions and co-operation agreements

If an issuer discloses a major order, it could be essential to provide information about the value of the order, including the product or other content of the order and time period to which the order relates.

Orders relating to new products, new areas of use, new customers or customer types, and new markets may constitute inside information under certain circumstances. In the context of co-operation agreements, it may be difficult to determine the financial effects and, therefore, it is very important to provide the securities market with a clear description of the reasons, purpose, and plans.

Business acquisitions and divestitures

If an issuer discloses inside information about the acquisition or a sale of a company or business the disclosure should normally include:

- purchase price, unless special circumstances exist;
- method of payment;
- relevant information about the acquired or sold entity;
- the reasons for the transaction;
- estimated effects on the operation of the issuer;
- the time schedule for the transaction; and
- any key terms or conditions that apply to the transaction.

The company or business acquired shall be described in a manner that addresses its key line(s) of business, historical financial performance and financial position.

In conjunction with corporate transactions considered inside information special attention should be given to the completeness of information. Based on the information disclosed about a transaction, the market participants should be able to assess the financial effects of the acquisition or sale as well as the effects on the operation of the issuer and the effect on the price or value of the issuer's financial instruments. Typically, such assessment requires knowledge of the financial effects of the acquisition or sale as well as the effects on the operation of the issuer.

The issuer should disclose the sale or purchase price of a company since it normally is a key element in assessing the effects of the transaction. In rare cases there may, however, be a possibility to withhold information regarding the price for an acquired or sold entity. This might be the case where the purchase price is not of importance for the valuation of the issuer. Another example could be when a disclosure is made before the price negotiations have been finalized. It is then impossible to inform about the price, but once the price has been agreed upon, relevant information thereon should be disclosed. It is not unusual that the purchase price is related to the future outcome of the acquired business. In such a case the issuer should disclose the maximum purchase price (including the maximum additional purchase price) at once, together with the parameters which may affect the amount of the additional purchase price, and disclose the final purchase price in future reporting.

Different kinds of transactions can be considered inside information and there can be different ways to evaluate the transactions depending on their strategic importance. Relevant information for the assessment could include the effects on the income statement or balance sheet resulting from the integration of operations or, alternatively, the effects of the sale.

In conjunction with the acquisition of business activities, where the acquired business unit is not an independent business unit, it may be particularly important to report information regarding the purchase price, the type of business that has been acquired, the assets and liabilities included in the acquisition, the number of employees transferred, etc.

Financial difficulties

In situations where an issuer encounters financial difficulties, such as a liquidity crisis or suspension of payments, there may be difficult questions regarding the obligation to disclose inside information. For example the issuer may find itself in a situation where significant decisions are taken by other parties, e.g. lenders or major shareholders.

It is, however, still the issuer that is responsible for disclosing inside information. This is achieved by the issuer staying continuously informed of developments through contacts with representatives from lenders, major shareholders, etc. On the basis of information then received, appropriate disclosure measures may be taken.

Not infrequently, loan agreements contain different types of limits in relation to equity ratio, turnover, credit ratings or suchlike (so called “covenants”) and if these limits are exceeded, the lender may demand repayment or renegotiation of the loan. Exceeding such limits may constitute inside information.

Decisions taken by authorities

Even though it may be difficult for the issuer to control processes where decisions concerning the issuer are made by authorities or courts of law, it is still the issuer’s responsibility to provide information regarding such decision(s) to the securities market as soon as possible if the consequences of a decision constitute inside information. The information should be sufficiently comprehensive and relevant from the market’s viewpoint to enable an assessment of the effect on the issuer and its operations, result or financial position and thus the extent of the information needed may vary.

If it is impossible for the issuer to provide an opinion on the consequences of the decisions made by authorities or courts of law, the issuer may initially make a disclosure regarding the decision. As soon as the issuer has made an assessment of the consequence of the decision, if any, the issuer should make a new disclosure regarding these consequences.

Information regarding subsidiaries and affiliated companies

Decisions, facts and circumstances pertaining to the group or to individual subsidiaries, and in some cases affiliated companies as well, may be inside information. Evaluation is naturally affected by the legal and operational structure of the group and by other circumstances.

A situation may occur in which an affiliated company discloses information independently with regard to its own operations regardless of whether the affiliated company itself has a similar duty of disclosure. In such cases the issuer is required to evaluate whether that information is inside information with regard to the issuer’s financial instruments.

When the subsidiary is an issuer whose financial instruments have been admitted to trading, circumstances in the subsidiary may be inside information in respect of the issuer’s financial instruments.

Significant deviation in financial result or financial position

In the event that the financial result or position of the issuer deviates in a significant way from what could reasonably be expected based on financial information previously disclosed by the issuer, information on such deviations may constitute inside information.

When deciding whether a change in financial results or the financial position of the issuer is significant enough to constitute inside information, the issuer should evaluate the deviation based on the last known actual financial performance, forecasts or forward-looking statements. In deciding whether to make a disclosure, the issuer should consider performance prospects and publicly known changes in financial conditions during the remainder of the review period. Matters affecting such prospects may include changes in the issuer's operating environment and seasonal patterns in the issuer's line(s) of business. Attention may also be given to any information the issuer has disclosed about the effect of external factors on the issuer, e.g. sensitivity analysis regarding commodity prices or in relation to specific market developments. Market expectations, such as analyst estimates, are not decisive for such evaluation; instead, the information disclosed by the issuer itself and what can justifiably be concluded from such information is decisive.

The issuer may also decide to disclose a complete financial report/statement ahead of the scheduled time.

Substantial changes to the operations of the issuer

If substantial changes are made to the issuer during a short period of time, or in its business activities in other respects, to such a degree that the issuer may be regarded as a new undertaking, information on such changes may constitute inside information. Where the issuer discloses such changes, the disclosure should include the consequences of the changes.

Timing and methodology for disclosure

An issuer should inform the public as soon as possible of inside information which concerns the issuer. The issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public. The issuer shall not combine the disclosure of inside information to the public with the marketing of its activities.

The information the issuer discloses must reflect the issuer's actual situation and may not be misleading or inaccurate in any manner. The information should contain facts which provide sufficient guidance to enable evaluation of such information and its effect on the price of the issuer's financial instruments.

Information omitted from an announcement may also cause the announcement to be inaccurate or misleading.

The most important information in an announcement should be clearly presented at the beginning of the announcement. Each announcement by the issuer should have a heading indicating the substance of the announcement.

It is not possible to provide inside information e.g. at general meetings or analyst presentations without, at the latest, simultaneous disclosure of the information.

Changes and corrections to previously disclosed information

Whenever the issuer discloses significant changes to previously disclosed information, the changes should also be disclosed using the same distribution channels as previously. Corrections to errors in information disclosed by the issuer itself need to be disclosed as soon as possible after the error has been noticed, unless the error is insignificant. When there are changes to financial information, it is not usually necessary

to repeat the complete financial information, but the changes can be disclosed in an announcement with a same distribution as for the financial information.

APPENDIX I: ISSUERS OF BONDS

Events or circumstances which are considered inside information with respect to shares may not necessarily be considered inside information with respect to bonds, and vice versa. For example, differences may arise due to the fact that an assessment of the market price of bonds typically involves assessing the issuer's ability to make payments on the bonds in question, whereas an assessment of the market price of shares typically involves assessing the issuer's ability to make future dividend payments.

It can also affect the assessment of whether information should be regarded as inside information that claims relating to bonds are prioritised before claims relating to shares in case of insolvency. Events or circumstances which may affect an issuer's ability to make dividend payments do not necessarily affect its ability to make payments on its bonds, and vice versa.

For bonds specifically, undisclosed information concerning the rights of bond holders is usually considered inside information. Information about decisions or events concerning the rights of bond owners should therefore be disclosed. This may involve events and factors such as:

1. exercise of call or put option prior to maturity;
2. drawn bonds;
3. delay of instalment payments of the principal and/or interest.