The Brokers' Bible

MemeryCrystal

Memery Crystal LLP

Memery Crystal LLP has an enviable reputation as a leading commercial legal practice. Our main practice areas include corporate, dispute resolution, real estate and tax, intellectual property and employment. We have particular expertise in a number of industry sectors, including natural resources, financial services and technology.

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Memery Crystal was named Litigation Team of the Year at The Lawyer Awards 2014 and Dispute Resolution Team of the Year at the Legal Business Awards 2014 – the first time a firm has won both awards in the same year. We are also recognised as a leading firm for dispute resolution by Chambers UK and The Legal 500 UK.

Our team has a wealth of experience in handling complex High Court litigation, and we have an international network of lawyers to assist on any foreign law aspects of a case. We also appear regularly before English and foreign arbitral bodies including LCIA, ICC, ICSID, AAA, LMAA and WIPO.

We pride ourselves on a business focused approach which puts clients' strategic objectives at the heart of our thinking. We recognise that effective dispute resolution involves much more than advising on the law. We achieve results by being tactically astute and imaginative in our approach, and we work alongside clients to achieve results quickly and cost-effectively.

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Introduction

Every year, we like to send something useful to our broking clients.

Over the past couple of years, we've provided a comprehensive guide to corporate governance. This year we want to do something a bit different. We want to give you a guide to all of those awkward questions that arise on capital markets transactions. We want to give you the **Brokers' Bible**.

Over the following pages we will cover the difficult areas of market practice where it's hard to find guidance. Now you have all of the following in one handy volume:

- Guidance on **MAR, and other relevant market abuse legislation**, and in particular the answers to the difficult questions that we are asked on deals.
- **Placing into overseas jurisdictions**. Some of the best independent firms in each jurisdiction have helped us produce an overview of the restrictions that would apply to a typical institutional placing, as well as relevant restrictions on the most popular local exchanges where companies are often dual-listed.
- **Guidelines to market practice** – the important parts of the ESMA guidelines, DTRs, Inside AIM and other guidance.

We hope that this volume becomes a well-thumbed companion over the coming year.

If you don't find the answer you're looking for, please contact me or any member of our ECM team. Our contact details are on the next page.

Our intention is to update the Brokers' Bible annually, so if you have any suggestions for areas that you would like us to cover then please do let me know.

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Head of Corporate, Memery Crystal
January 2018

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“They are able to process significant volumes for us very efficiently and leverage their knowledge of the sector to flag risks and issues”

Chambers UK - 2016

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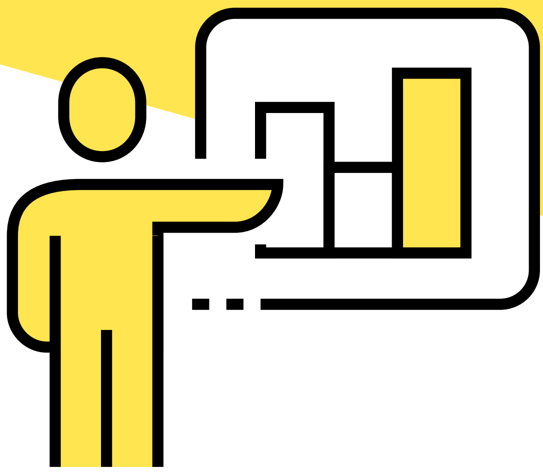
Market Practice on Market Abuse



The Market Abuse Regulation seems to tie practitioners up in knots.

It needn't.

Let us untangle you with a practical guide to help you apply MAR and the other market abuse legislation to everyday transactional situations.

A Brief MAR Recap

To recap, MAR broadly covers the following areas:

- Inside information and insider dealing
- Insider lists
- Market soundings
- Dealings by 'Persons Discharging Managerial Responsibility' (**PDMRs**) and their related parties
- Market manipulation

MAR applies equally to companies listed on AIM and on the Main Market.

MAR supplements, rather than replaces, the UK's Criminal Justice Act 1993 (CJA), which also governs insider dealing and the disclosure of inside information. For practical purposes, one can assume that the definitions of **inside information** under MAR and the CJA are broadly the same. MAR sits alongside AIM Rule 11 on the disclosure of price sensitive information. It replaces the previous AIM Rules on directors' dealings and close periods, but AIM Rule 21 does require companies to have an appropriate dealing policy which should reflect the requirements of MAR. DTR2 and DTR3 now contain the FCA's guidance on disclosure of inside information and dealings by PDMRs, and these apply equally to Main Market and AIM companies.

The principal source materials relating to market abuse are MAR itself, the ESMA Guidelines and Q+A relating to MAR, DTR2, DTR3 and the CJA. Additionally, the City of London Law Society has produced a helpful Q+A on MAR. The AIM Rules for Companies and the Listing Rules will also remain of relevance to their respective markets. Some of the guidance materials, as well as Inside AIM, are reproduced in Part 3 of this Bible.

Key definitions and Concepts

We want this guide to be practical rather than overly legalistic, but it is useful to bear in mind two key definitions from MAR:

1

Inside information is information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, 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.

Information is **precise** 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 on prices – this means that a reasonable investor would be likely to use that information as part of the basis for an investment decision. Analogous caselaw suggests that a 'reasonable expectation' that an event will occur means that there is a **realistic prospect**, and not necessarily a high probability, of it occurring.

DTR2, reproduced in Part 3, gives some further guidance on identifying inside information.

Where there is a protracted series of events, each intermediate step may of itself constitute inside information – the test is whether each particular intermediate step, by itself, satisfies the above criteria of insider information.

Such intermediate steps could, for example, relate to the state of contract negotiations, terms provisionally agreed in negotiations, the possibility of a placement of securities and the provisional terms of such a placement. As explained below, in certain circumstances an issuer is permitted to delay disclosure of insider information, and typically the status of ongoing contract negotiations or the proposal to conduct a placing will fall within this exemption.

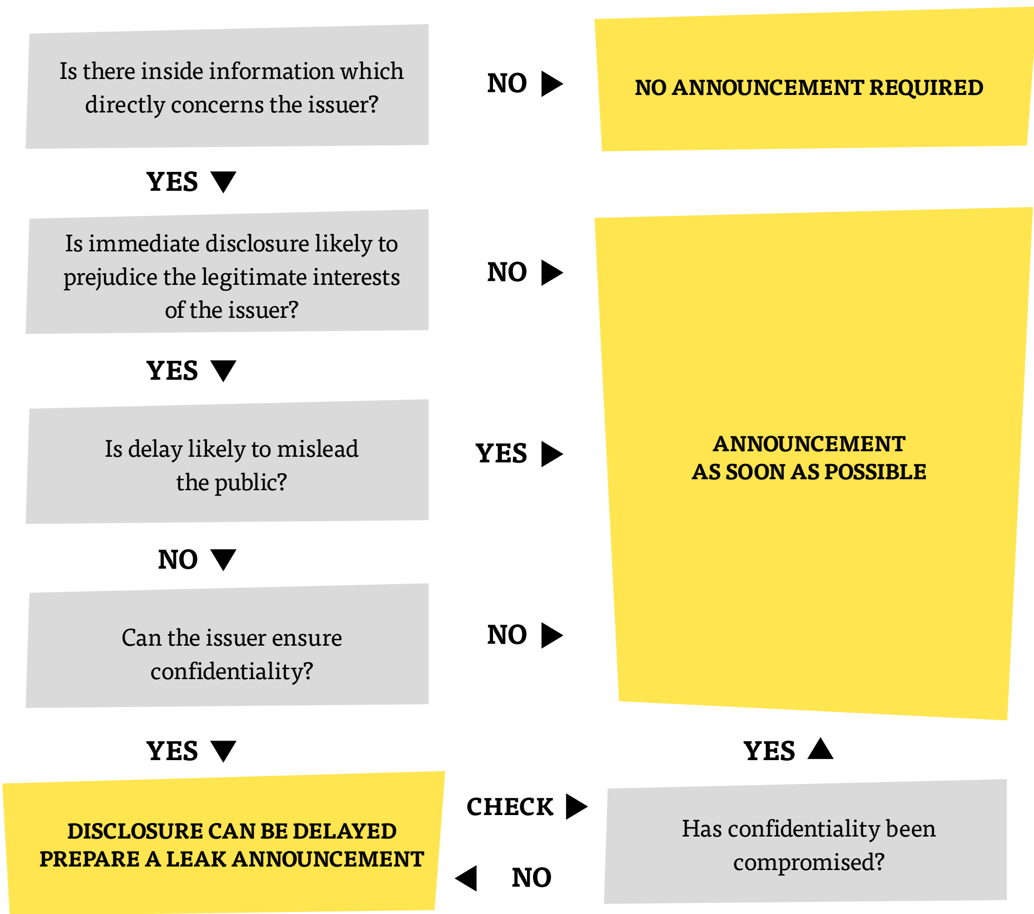
2

A **person discharging managerial responsibility** or **PDMR** is a person within an issuer who is a member of the administrative, management or supervisory body of that issuer, or a senior executive who has regular access to insider information relating directly or indirectly to that issuer and the power to take managerial decisions affecting future developments and business prospects of that entity. For a typical listed company this is going to mean not just the board but also most other senior management.

A key starting point, which underpins a number of the practical applications of MAR, is MAR's requirement that an issuer must inform the public as soon as possible of inside information which directly concerns the issuer, unless an exemption applies. For the LSE and AIM announcement must be via RNS.

The ESMA Implementing Technical Standard for disclosure of inside information requires that inside information disclosed should be clearly identified as such – accordingly a typical RNS would have a general statement to the effect that it contains inside information being disclosed in accordance with MAR. Common consensus is that a general statement is sufficient, and you don't need to highlight specifically which parts of the RNS are inside information and which aren't. However, the inside information should be clear and should not be 'buried' in the RNS, and where an RNS is particularly long and covers several separate matters, some of which are inside information and some of which aren't, it would be good practice to indicate which are and which aren't.

The exemptions for which delayed disclosure is permitted are explained in the following flowchart:



You'll notice that the three limbs to the exemption must all be satisfied - for disclosure to be delayed, immediate disclosure must prejudice the issuer's legitimate interests, the public mustn't be misled by the delay and the issuer must be able to ensure confidentiality.

ESMA has published guidance on the legitimate interests of issuers that permit delayed disclosure and the situations in which delay is considered likely to mislead the public. The summary below is limited to the examples most likely to be relevant to small- and mid-cap listed companies.

- negotiations are being conducted which would likely be jeopardised by immediate disclosure – e.g. in relation to potential M&A or purchases or sales of major assets;
- the issuer's financial viability is in grave and imminent danger, although not yet within the scope of insolvency law, and immediate disclosure would seriously prejudice the conclusion of rescue negotiations;
- the immediate announcement of a new product or invention is likely to jeopardise intellectual property rights; or
- a plan to buy or sell a major holding in another company would likely be jeopardised by immediate disclosure.

Delayed disclosure is considered likely to mislead the public where the inside information:

- is materially different from a previous announcement on the subject;
- regards the fact that the issuer's previously announced financial objectives are not likely to be met; or
- is in contrast to market expectations based on previous communications.

ESMA notes that these examples are not exhaustive. The full guidance is reproduced in Part 3 of this Bible.

It should be noted that where there is a rumour in the market relating explicitly to a piece of inside information, an issuer is expected to consider whether confidentiality can still be ensured – if it can't, then an announcement will likely be required. A policy of 'no comment' would not suffice.

DTR2.6.3 requires a company delaying disclosure under MAR to prepare a holding announcement in the event of an actual or potential leak.

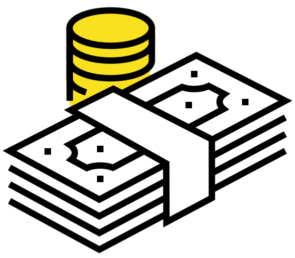
The guidance in DTR2 provides that a short delay in disclosure may be acceptable if it is necessary to clarify the situation where a company is faced with an unexpected and significant event. A holding announcement should be used where there is a danger of a leak before the facts and their impact can be confirmed.

Where a company has delayed disclosure of inside information it must inform the FCA immediately after it is disclosed using the usual online form.

Part 4 of this Bible contains an Emergency Checklist to be followed if inside information is inadvertently disclosed – for example, by management during an AGM, non-deal roadshow or similar presentation.

Practical Situations

We've set out below a number of practical situations that commonly arise, particularly in connection with listings and fundraisings, and we've explained how they are affected by MAR and the other market abuse legislation.



Secondary Fundraisings

1

Wall-crossing

Wall-crossing is a market sounding for the purposes of MAR – i.e. the communication of information, prior to the announcement of the fundraising, in order to gauge the interest of potential investors in the fundraising and the conditions of the fundraising such as the potential size and pricing. It is therefore permitted provided the obligations in respect of market soundings are adhered to.

As a broker, to fall within the market sounding safe harbour you must be acting on behalf of, or on the account of, the issuer. Whilst it would be best practice to be formally mandated by the issuer – i.e. have a signed engagement letter in relation to the fundraising – before wall-crossing investors, in our view (based on ESMA commentary) it would not be fatal if the mandate had not formally been signed. However, you must be acting on the issuer's instructions rather than, for example, sounding out potential investors on your own initiative without a mandate, and so you should keep a written record of the instructions.

Each broker's compliance department will have developed their own wall-crossing protocols and scripts – and the purpose of this section is not to set out an exhaustive list of the requirements relating to market soundings - but in summary you must:

- prior to wall-crossing, consider whether inside information will be disclosed and record your conclusion and reasoning in writing. With a fundraising, the existence of the proposed fundraising itself will of course constitute inside information. There may also be other inside information disclosed, and this will be particularly relevant for cleansing, for example if the fundraising is subsequently abandoned. You will need to carefully consider this in advance – this is explained in more detail below;
- obtain the recipient's consent to receive inside information;
- inform the recipient that they are prohibited from using the inside information, or attempting to use it, by acquiring or disposing of, for their account or on another's behalf, directly or indirectly, financial instruments relating to that information;
- inform the recipient that they are prohibited from using the inside information, or attempting to use it, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates;
- inform the recipient that by agreeing to receive the information they are obliged to keep it confidential;
- record the information disclosed, the identity of the recipient and the date and time of each disclosure; and
- inform the recipient as soon as the information ceases to be inside information. Again, this is important in respect of cleansing.

You should consider what information it is necessary and appropriate to disclose in order to gauge investor interest. Beyond the potential terms of the fundraising, there may be other information that it is necessary to disclose to give important context to the transaction. You should avoid disclosing any unnecessary additional inside information.

Each potential investor should have their own internal procedures in respect of being wall-crossed, as set out in ESMA's MAR Guidelines – Persons receiving market soundings, which is included in Part 3 of this Bible. You will need to take this into account when approaching them to potentially wall-cross them – for example, ensuring that any communication is only with the correct designated person and any previous notifications that they do not wish to receive market soundings, or particular types of market soundings, are respected.

2 Cleansing an abandoned fundraising

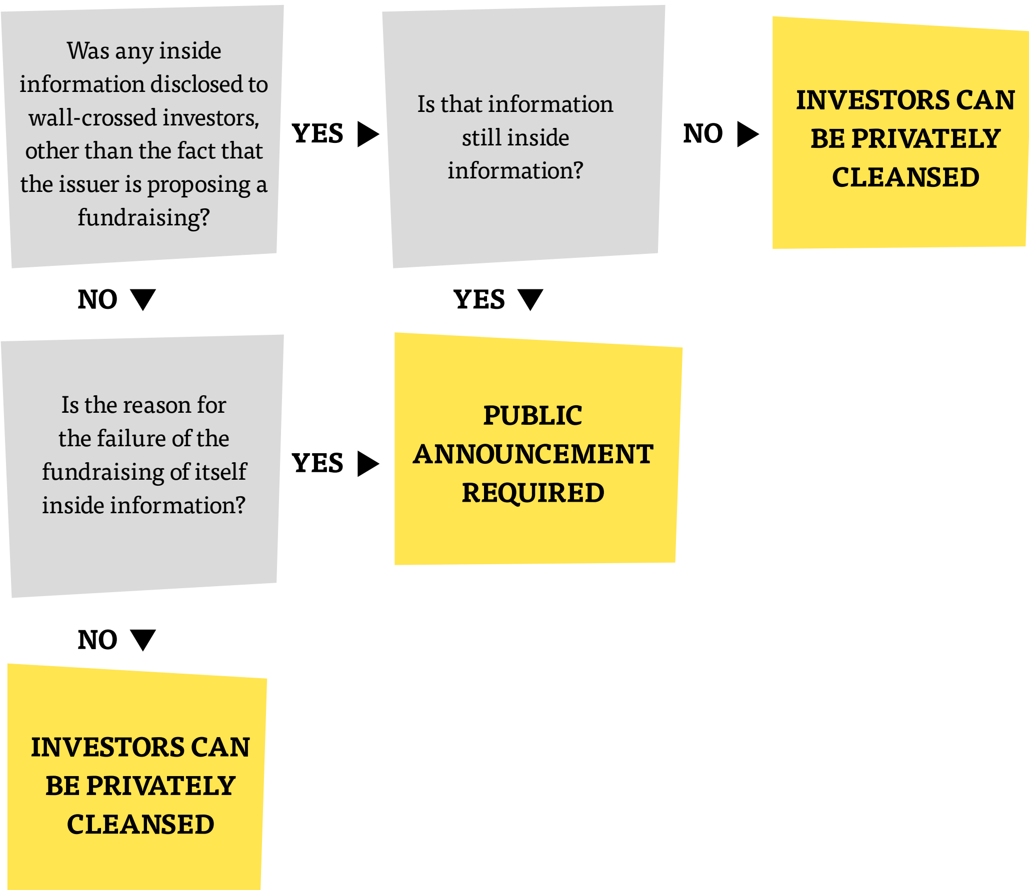
What happens when a fundraising is abandoned before it is announced? Does the issuer need to announce the failed fundraising, or can wall-crossed investors be privately cleansed?

A 'private cleansing' is simply where you confirm to the potential investor that they are no longer an insider, because the information that they have received no longer constitutes inside information. This confirmation is required by MAR as soon as the information ceases to be inside information. Contrast this with 'public cleansing' where the information ceases to be inside information upon announcement via RNS.

Bear in mind that each individual investor will have its own views as to whether information has ceased to be inside information, and they may disagree with your analysis. Under MAR and the ESMA Guidelines, it is the responsibility of the recipients of market soundings to independently assess whether they are in possession of inside information, including after you have notified them that you believe that the information disclosed has ceased to be inside information. Bear in mind that the investor would also need to take into account other information that it has about the issuer, and that this, combined with the information you have disclosed, may in combination amount to inside information. It is always important to consider this in advance before wall-crossing, taking into account your knowledge of the potential investors' respective approaches, so that you, the issuer and its advisers are in agreement on the approach to any cleansing that might become necessary, and any likely issues or disagreements. Where possible you want to avoid having to publicly announce information that you would otherwise be allowed to delay announcement of under MAR, because it is necessary to cleanse a wall-crossed investor.

Whether or not you can privately cleanse depends on whether or not the wall-crossed investors are still in possession of inside information. You need to consider what they have been told, and whether this still constitutes inside information. Broadly, they will have been told about the proposed fundraising and the reasons for it, and they may also have been told other information about the issuer that constitutes inside information.

Use the following flowchart to determine whether a public announcement is required so that wall-crossed investors are no longer insiders, or whether they can be privately cleansed.



Examples of information disclosed to wall-crossed investors that could be inside information the delayed announcement of which is permitted by MAR, in addition to the fact that the issuer is considering a fundraising, could include:

- the issuer's need for the funds and the reason for the fundraising – for example, if this is because of the investor's dire financial condition, which has not been announced (for reasons permitted under MAR and the ESMA guidance); or
- a potential acquisition or other material development in the issuer's business (again, for reasons permitted under MAR).

This requires careful consideration though – for example, if the proposed fundraising was required to fund a potential acquisition, and the acquisition has therefore been abandoned because there is no reasonable alternative source of funding, then the potential acquisition ceases to be inside information when the fundraising is abandoned. If however the acquisition may still proceed with alternative financing, it could still constitute inside information.

Similarly, where the abandoned placing was a rescue fundraising, if no other funding is being negotiated then the issuer would likely be obliged to announce its dire financial condition immediately, but if an alternative rescue was being negotiated, such that delayed disclosure was permitted in accordance with the ESMA guidance, the issuer may not ordinarily be obliged to make an announcement and wall-crossed investors would remain insiders.

Of course the issuer also needs to be satisfied that any delay in announcement of inside information is permitted under MAR – this should be the case in respect of the potential fundraising, a potential acquisition and the company's dire financial condition, in each case whilst negotiations are ongoing, but potentially not in respect of other inside information. In other words, the issuer may be required to announce the other inside information in any event. Circumstances in which an issuer can delay disclosure of inside information are considered above.

Examples of situations where the reason for the failure of the fundraising could itself constitute inside information could include where the fundraising is required to fund a previously announced project, and the fundraising has failed because of the lack of support of the most likely investors to support it – here, market expectation is that the project could be funded, whereas the wall-crossed investors will know that it is unlikely to be.

3 Structure – Placing Letters or Accelerated Book-build?

In an accelerated bookbuild, whilst you will have wall-crossed potential investors in advance of announcement, and you will likely have 'soft circled' the fundraising, the fundraising is made public before investors commit. It is important to ensure that potential investors are provided with no inside information concerning the issuer that is not then disclosed, and therefore cleansed, in the launch announcement for the fundraising.

Prior to wall-crossing investors, and when drafting and giving any presentation in connection with the fundraising, it is important therefore to consider whether any information disclosed might be inside information that the issuer would not want to announce publicly when the fundraising is launched (if, of course, it is permitted to delay disclosure of that information under MAR).

Where there is any such information, and it is material to the issuer, an assessment will need to be made as to whether a failure to disclose this information to potential investors could itself attract criticism or liability for the issuer. Ultimately, this is a balance for the issuer and its advisers, and the issuer must of course always adhere to the MAR requirement to disclose inside information as soon as possible unless it falls within an applicable exemption (as outlined above).

Where placing letters are used, investors are asked to sign their placing letters ahead of the announcement of the placing. Signed placing letters are typically held in an informal escrow until the fundraising is announced, when they are released. The actual commitment therefore doesn't occur until the moment when the fundraising, and potentially any other inside information, is made public. Legally, the investors are entitled to revoke their placing letter at any time up until this point, although this would be rare unless something material had happened in the interim. But in reality, the investor has made their investment decision and given their instruction in advance of the fundraising being announced - does this offend MAR?

In our view it doesn't. We agree with the City of London Law Society's assessment of the transaction based on the recitals to MAR and analogous caselaw: the conduct of a placing in this way is consistent with market practice and doesn't constitute misuse of inside information or undermine the integrity of the financial markets. There is equivalence of information as between the issuer and the placees, and no unfair advantage is taken of the information by either party, as by its nature the signing of a placing letter is not to the detriment of other market participants who do not have access to the information and are not able to, and do not, participate in the placing. The placing is not a 'market' transaction as such. Accordingly, placings can continue to be conducted on the basis of placing letters and don't require either an accelerated bookbuild or an artificial separate cleansing announcement of inside information disclosed to investors immediately prior to the announcement of the fundraising.

4 Directors and management participating in placings

Persons discharging managerial responsibilities, or **PDMRs**, and their **'close associates'** (broadly, spouse or civil partner, dependent children, relatives who have cohabited for at least a year and any company, trust or partnership managed, directly or indirectly controlled by, or set up for the benefit of, the PDMR or such persons) are subject to specific dealing restrictions and disclosure requirements under MAR.

Often directors and senior management, and possibly 'friends and family', may participate in a placing. Whether or not they can participate, and what they must do if they do participate, are governed by the following simple principles:

- PDMRs must not participate in the 30 days prior to publication of the issuer's annual or interim accounts. This replaces the old 'close period' restrictions under the AIM Rules and the Model Code. Note that MAR does not restrict close associates of PDMRs participating during a close period, although the usual insider dealing restrictions would apply and commercially this may look suspicious;

- careful consideration must be given to whether any of the PDMRs who are participating in the placing are in possession of any inside information that is not being cleansed in connection with the placing – for example, negotiations in respect of an acquisition which the issuer is permitted to delay announcement of under MAR, but which is not being announced at the time of the fundraising. If this was the case then they would not be entitled to participate in the placing; and

- finally, PDMRs and their close associates must formally notify the issuer itself, and the FCA, of their participation in the placing (including the details specified in Article 19(6) of MAR) within three business days of completion. There is a *de minimis* for persons whose aggregate participation in any year is less than €5,000 (where the transaction is in another currency you look at the ECB spot rate applicable at the end of the business day of completion of the transaction). You do not aggregate the transactions of the PDMR with his or her close associates when calculating whether the €5,000 has been crossed. The issuer must then announce this information, again within three business days of completion of the transaction (which is unhelpful if the PDMR only discloses to the issuer at the end of this period). Companies should also have regard to whether or not the participation constitutes a related parties transaction under the AIM Rules or (for Premium Listed companies) the Listing Rules, which would require additional disclosure or shareholder approval.

Each issuer is required by MAR to maintain a list of PDMRs and their close associates, and it would be good practice for you to request an up-to-date copy of this ahead of any fundraising.

Where PDMRs or their close associates are proposing to participate in a placing it would be good practice to have them confirm, in the board minutes approving the placing and/or the bring-down due diligence session ahead of the placing, the extent of their proposed participation and that they (and their close associates) are not in possession of any inside information that is not being announced in connection with the placing.

As an aside, MAR also makes clear that the pledging or lending of financial instruments by PDMRs and their close associates must also be notified. Over the past few years there have been a number of examples of 'exotic' lending arrangements for directors, which are secured over shares. Some of these are genuine pledges, whereas some actually involve the transfer of the 'pledged' shares to the lender. Be aware that these arrangements can be complex, and the true treatment of the 'pledged' shares is sometimes not fully appreciated by the director and therefore properly disclosed to the market. Accordingly, close scrutiny of these arrangements is recommended.

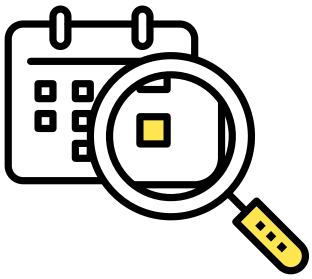
ESMA have given some guidance on close periods – in particular for the annual accounts, the close period ends on the announcement of prelims, provided that the prelims contain all of the key financial information expected to be included in the annual report itself. If anything is not included, or if the information included in the prelims subsequently changes, the usual prohibition on insider dealing applies.

5 Price Stabilisation and Over-Allotment Options

MAR defines price stabilisation as a purchase or offer to purchase securities by an investment firm in the context of a significant distribution of such securities exclusively for supporting the market price of those securities for a predetermined period of time, due to selling pressure. It is recognised that stabilisation transactions provide price support after a placing, during a limited time period, in case the shares come under selling pressure, thus reducing sales pressure generated by short term investors and maintaining an orderly market. Accordingly, they are permitted under MAR. MAR, and in particular the ESMA Technical Standards, set out the detailed requirements of the price stabilisation safe harbour.

In our experience, greenshoes and other price stabilisation structures are very rare in small-cap capital markets transactions, and so this Bible does not provide any detail on the market practice around these structures.

However, in some placings we have seen the use of 'over-allotment options' which are not used for price stabilisation purposes, but rather to enable a broker to place a limited number of additional shares to satisfy excess demand in a placing. In our view, these sorts of 'sell side' over-allotment options do not fall within the MAR price stabilisation safe harbour and so do not need to satisfy the limitations of the safe harbour. Provided that the option, and its terms as to maximum number of shares, price and duration, are announced at the time of the placing, and are adhered to, there are no particular considerations under MAR or any other market abuse legislation. Nevertheless, they should be carried out in a way that minimises market impact and having consideration for prevailing market conditions.



Research Black-out Periods

Historically, market practice for IPOs and other fundraisings in the UK has been to include a blackout period, typically of around 14 days, between the publication of research by a bank connected with the transaction and the circulation of the pathfinder admission document, or prospectus, or the launch of a placing.

COBS 12.2.12G expects firms to consider whether or not other business activities, such as acting as a broker on a placing, could create the reasonable perception that investment research may not be an impartial analysis and encourages firms to consider whether they should restrict publication of relevant investment research around the time of an investment offering. However, no specific blackout period is imposed by legislation. Rather, it is what market practice considers to be an appropriate period of time to distance the issuer and its management, and the sell-side of banks connected with the transaction, from connected research, thus attempting to minimise the risk that an investor could argue that connected research forms part of the issuer's offering materials, and therefore any misrepresentation in the research has impliedly been made or endorsed by management or the sell-side of the bank.

Some commentators have questioned whether a short black-out period of two weeks really has any effect, one way or the other, on whether liability could attach to the issuer or its bank for comments made in connected research. Buy-side participants are sophisticated enough to know the role of connected research and will discount its 'independence'; and arguably it is far more important to ensure that potential liabilities are managed in other ways – for example, ensuring that analyst research is properly independent and verified, and including appropriate disclaimers – rather than imposing an artificial short black-out period.

A longer black-out period would probably have more of an effect on liability as, with the passing of time, the information in the research would become 'stale', reducing the risk that an investor could successfully argue that they had relied upon it in making their investment decision. However, this is unlikely to be practicable in the timetable for a typical IPO or secondary fundraising.

A recent FCA policy statement, following a period of consultation, sets out new COBS provisions, effective 1 July 2018, that are less about minimising issuer and bank liability and more about encouraging independent research and ensuring that the prospectus, rather than connected research, is the primary document upon which investors rely. There is also a desire to restrict the conflict of interest that arises when analysts interact with a company's management around the time that a mandate is being pitched for.

New COBS 11A, which applies to primary rather than secondary offerings, on the Main Market and not on AIM, requires banks to ensure that a range of unconnected analysts have access to the issuer. It also imposes a restriction on the publication of investment research or non-independent research until the day after the publication of the prospectus (if unconnected analysts are given access to management at the same meeting as connected analysts) or seven days after publication (if access for unconnected analysts is at a separate meeting).

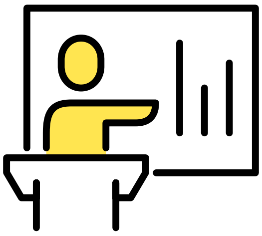
New guidance on COBS 12 seeks to address conflicts of interest in the production of connected research by restricting the interaction of management teams with research analysts during a pitch process.

It should be noted that the new COBS provisions apply to the Main Market, but not to AIM, although the FCA encourages banks acting on AIM transactions to consider adopting the reformed practices.

For secondary fundraisings, our view is that a reasonable blackout period may help address liability concerns, but it should not be relied upon as a complete solution, and therefore liability risk should also be addressed in the other ways outlined above.

MAR should also be considered. Information disclosed to analysts for the purposes of their research may constitute inside information, although of course this is more a concern in the context of a secondary fundraising than an IPO, where MAR is not relevant until a request for admission has been made. However, the fact of a proposed IPO itself may constitute inside information where for example that IPO is the spin-out of a business of a listed company.

Naturally, from 3 January 2018 all research must also comply with the updated COBS rules and guidance as required by MiFID II.



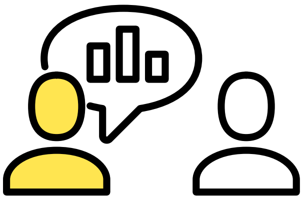
Non-Deal Roadshows

MAR makes clear that it is not intended to prohibit discussions of a general nature regarding business and market developments between shareholders and management – such relationships are essential for the efficient functioning of markets and therefore should not be prohibited.

It is important to review the proposed contents of any non-deal roadshow presentation to ensure that it doesn't contain inside information. This includes not only the proposed slides for the presentation, but also the contents of any oral presentation intended to be made. Whilst it is not possible to predict in advance all the questions that may be asked of them, management must be advised that they cannot disclose inside information.

Part 4 of this Bible contains an Emergency Checklist to be followed if inside information is inadvertently disclosed during a non-deal roadshow or similar presentation.

Where any proposed investor presentation or discussion does contain inside information, a proper wall-crossing procedure must be followed, and the inside information would subsequently need to be cleansed by public announcement to enable those who have been wall-crossed to deal.



Selective Disclosure

A company may sometimes come under pressure from key stakeholders to disclose selective confidential information concerning its current commercial and corporate activities.

Regardless of whether these recipients are happy to be considered ‘insiders’ following such disclosure and can provide assurances as to confidentiality of such information, the company should carefully consider whether such selective disclosure will breach its obligations under MAR.

Under MAR, selective disclosure of inside information is permitted when the company is delaying disclosure to the market to the extent permitted by MAR but only where the recipient owes a duty of confidentiality to the company AND requires the information to carry out duties for the company.

Further, DTR 2.5.7 specifically states that selective disclosure cannot be made to any person simply because they owe the issuer a duty of confidentiality. This means there must be a good reason for the person to receive the information.

In light of MAR, it is understood that an issuer contemplating a major transaction which requires shareholder support (e.g. receipt of irrevocable undertakings) or which could significantly impact its lending arrangements or credit-rating may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency as long as the recipients are bound by a duty of confidentiality.

Accordingly, under MAR, depending on the circumstances, an issuer may be justified in selectively disclosing inside information to certain categories of recipient that require the information to perform their functions. The categories of recipient may include, but are not limited to, the following:

- The issuer’s advisers and the advisers of any other persons involved in the matter in question.
- Persons with whom the issuer is negotiating, or intends to negotiate, any commercial financial or investment transaction (including prospective underwriters or placees).
- Employee representatives or trades union acting on their behalf.
- Any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority.
- The issuer’s major shareholders.
- The issuer’s lenders.
- Credit rating agencies.

Note that the above list of persons is not exhaustive. Selective disclosure to any of the above persons is not automatically justified in every circumstance.

Issuers should bear in mind that the wider the group of recipients of inside information, the greater the likelihood of a leak that will trigger the need for public disclosure under MAR, as explained at the start of this Part 1.

In the event that the company makes a selective disclosure, to demonstrate compliance with the requirements of MAR the company should document the nature of the duty of confidentiality on which it is relying in releasing inside information. If the confidentiality obligation is not set out in writing, the issuer may wish to record the terms and, if appropriate, nature of the obligation.

In addition the company should record the rationale for such disclosure, specifically noting the necessity for such disclosure and how the disclosure of such information assists the company in the context of the particular matter.

If an issuer selectively discloses information to any person, it should prepare a holding announcement which can be released as soon as possible if there is a leak.

Block Trades

Block trades can be viewed in the same way as placings. Information regarding the volume and price of the block trade could constitute inside information. However, where you are mandated to perform a block trade on behalf of a shareholder, and you wish to sound out potential buyers, you can do so within the market soundings safe harbour. Our comments on wall-crossing in relation to placings above apply equally to block trades.

Takeovers and Acquisitions

1

Mandate and market soundings

As with a wall-crossing for a fundraising, to fall within the market sounding safe harbour you must be acting on behalf of, or on the account of, the issuer. Whilst it would be best practice to be formally mandated by the issuer – i.e. have a signed engagement letter in relation to the fundraising – before sounding out a third party, in our view (based on ESMA commentary) it would not be fatal if the mandate had not been formally signed. However, you must be acting on the issuer's instructions rather than, for example, sounding out shareholders' views on a potential acquisition on your own initiative without a mandate, and you should keep a written record of the instructions. Where you are acting on your own initiative to sound out shareholders or other market participants on a potential acquisition to assess whether the time is right to pitch it as an idea to the issuer, and you are not mandated by the issuer, you cannot fall within the market sounding safe harbour. Extreme caution must be exercised in these circumstances so as not to be disclosing inside information.

In all other respects, the considerations already outlined above on wall-crossing and insider lists for a fundraising apply equally to a takeover.

2

Irrevocable Undertakings

Seeking irrevocable undertakings or letters of intent from target shareholders, or otherwise approaching target shareholders to gauge their interest in the potential bid, constitutes a market sounding under MAR, and is therefore permitted provided that the information disclosed is necessary to enable target shareholders to form an opinion as to whether to sell their shares, and this is reasonably required for the bidder's decision to make the bid. As with wall-crossing on a potential fundraising, MAR imposes obligations on the conduct of market soundings.

Timing is particularly important, and issuer clients must be advised that they cannot approach shareholders 'informally' to sound out their support for a potential bid. Typically, shareholders should only be approached to solicit an irrevocable undertaking or a letter of intent at the very last minute. The Takeover Panel must be consulted in advance before any private individual or small corporate shareholder is asked to provide an irrevocable undertaking, and they must also be consulted before more than six external parties are approached about an offer or possible offer – this would include target shareholders being approached to gauge their interest in the bid or provide an irrevocable undertaking.

Because of the restrictions on PDMRs dealing during a close period, a bidder would not be able to obtain an irrevocable undertaking from a PDMR during a close period. Where a PDMR has given an irrevocable undertaking outside a close period, they can satisfy that undertaking during a close period. Where a bid is announced at the same time as results or prelims are released, irrevocable undertakings that are pre-signed and held in escrow for release at the time of the bid being announced are not counted as 'dealings' during the close period, because they only take effect upon their release from escrow when the close period has ended.

3 Inside Information and Stakebuilding

During the course of a takeover, particularly a recommended takeover, the bidder may be provided with information in the course of its due diligence and that information may constitute inside information. MAR makes clear that where inside information has been obtained by a bidder in the conduct of a public takeover or merger and the bidder uses that information solely for the purpose of proceeding with the takeover or merger – i.e. uses the information to make a decision as to whether to proceed and on what terms – then this doesn't constitute insider dealing if, at the point of approval of the merger or acceptance of the takeover offer, any inside information has been made public or ceased to be inside information. In practice, this would mean cleansing the inside information by announcing it at the time that the offer is announced.

It should be noted that this safe harbour does not apply to stake building, so bidders must be advised that if they are in possession of inside information in the course of considering a bid they cannot build a stake in the target, for example with market purchases, until the inside information is cleansed.

A person's own knowledge that it is going to buy or sell shares – for example, a bidder's knowledge that it may make a bid or stake build – does not of itself constitute inside information as regards that person.

Tail Fees and Rights of First Refusal

Finally, although it doesn't relate to market abuse, we thought it would be useful to summarise the current position on tail fees in brokers' engagement letters.

Typically, a broker's engagement letter would provide that, should the engagement be terminated, if the issuer conducts a similar transaction within a reasonable period of time, and with investors introduced by the broker, the issuer would be obliged to pay the broker a fee equivalent to what they would have received had the engagement not been terminated. Some engagement letters will also attempt to give the broker the right to provide future services to the issuer, thereby restricting the issuer from engaging an alternative provider of those services – this would usually be in the form of a 'right of first refusal', or even a simple 'right to act'.

Following a recent consultation, the FCA has made clear that it wants to prevent firms from using clauses in engagement letters which oblige their clients to do future business with them. Accordingly, from 3 January 2018 the FCA Handbook will be amended to prohibit firms from entering into an agreement with a client which grants the firm the right, or a right of first refusal, to provide primary market and M&A services to the client. This would include services comprising the structuring, underwriting or placing of an issue of shares.

However, what the FCA is trying to prevent is firms locking clients in to future transactions which are uncertain – for example, a general obligation on a client to engage a firm if and when it needs any future M&A advice where no particular transaction is currently contemplated. It does not prevent agreements for the provision of a specified or certain future service. For example, an engagement letter to advise on a pre-IPO fundraising which committed the issuer to engage the firm for the IPO itself would not be prohibited.

The guidance to the amended rules specifically makes clear that tail fees are not prohibited. They are intended to compensate the firm for work already done, and are not intended as a bar to an issuer engaging an alternative firm in the future.

Provisions that only give the firm a right to pitch for future business, to be considered in good faith alongside other providers of future business or to match quotations from other providers (but which do not prevent the issuer from selecting other providers) are not prohibited.

In our view, the restrictions do not prevent a broker from being engaged on an exclusive basis for a period of time, or subject to the usual termination provisions in an engagement letter. Crucially, the restrictions that are prohibited are those which *"in addition to the products or services to which the agreement relates"* grants the right to provide future services. Where, for example, a broker is engaged by an issuer to act as the issuer's retained AIM broker, and the engagement letter contains on obligation to use the broker for future placings during the term of the engagement, that is clearly a *"service to which the agreement relates"* and not a broader restriction on engaging other advisers for other future business.

Although this will be of limited relevance to most brokers, it should be noted that the rules also contain an exemption for certain bridge loans on the basis that bridge loans are typically entered into on the expectation that the lender will provide the eventual refinance.

2

Placing into Overseas Jurisdictions

Practically every placing has an element of overseas participation.

Each jurisdiction has its own securities laws which may (or may not) restrict the offering of shares to its residents. We have asked some of the best independent law firms in each of the most common jurisdictions where investors are based or incorporated to provide a high level guide to the restrictions in those jurisdictions.

We have also asked them to provide a brief summary of the relevant restrictions on the most popular local stock exchanges where a company may have a dual listing. As a refresher, we've also included the equivalent restrictions for the UK.

In each case, the assumption is that a private placement of shares is being made by a trading company (i.e. not a fund) to sophisticated institutional investors, and that there is no general offer to the public or retail investors.

We wouldn't be lawyers if there wasn't some small print. Whilst we believe the summaries below to be accurate as at the date of publication, these are for general information only and they don't constitute legal advice from us or from any of the other firms who have provided the summaries. Accordingly, no reliance may be placed on the summaries. Each transaction is different, and specific legal advice should be taken in each relevant jurisdiction, as applicable to your transaction. The point of this section is to help you to plan your transaction and understand when formal advice might be required. Further details are set out at the end of this bible.

United Kingdom
Memery Crystal

United States
Foley Hoag

Canada
Torys

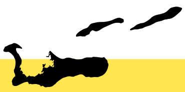
Australia
McCabes

South Africa
Werksmans

Switzerland
Bratschi

Ireland
Whitney Moore

Bermuda
Cox Hallet Wilkinson



Cayman Islands
Carey Olsen

British Virgin Islands
Carey Olsen

Guernsey
Carey Olsen

Jersey
Carey Olsen

United Kingdom

Restrictions on Financial Promotions

Any offer of shares into the UK as part of a secondary fundraising will be a 'financial promotion' for the purposes of the Financial Services and Markets Act 2000. The fundraising presentation, bookbuild launch announcement, distribution of pathfinder documents, placing letters and (potentially) market soundings in connection with the fundraising may all constitute financial promotions.

Financial promotions must be either: (i) formally approved by an authorised person, or (ii) only aimed at certain categories of investors set out in the FSMA Financial Promotions Order (FPO). In a typical UK secondary fundraising the broker will be an authorised person, but would not formally approve the financial promotion for the purposes of FSMA. Accordingly, the promotion will typically only be made to exempt investors.

Institutional investors will typically fall within the FPO exemptions relating to 'investment professionals' (i.e. either FCA authorised, or otherwise someone whose ordinary activities involve him carrying on the investments to which the promotion relates for the purpose of a business carried on by him) or 'high net worth companies', which include companies with share capital or net assets exceeding £5m (or £500,000 if they have more than 20 shareholders) and trusts with over £10m of gross assets.

Certain individuals will also fall within the FPO exemptions if they are 'certified high-net worth individuals' or 'certified sophisticated investors', who in each case satisfy the requirements set out in the FPO. These individuals must produce an appropriate certificate – it is not enough for the broker simply to assume that they are high-net worth or sophisticated.

Prospectus and other Filing Requirements

A UK prospectus, which must be approved by the UKLA, is required in two situations:

1

Where transferable securities (e.g. shares in a listed company) are offered to the public. 'Offer to the public' is broadly interpreted, but there are exemptions where the offer is only made to 'qualified investors' (which should cover most institutional investors) and otherwise to fewer than 150 persons, excluding qualified investors, in any EEA state.

A prospectus is not required for an offer to the public if the total consideration of the offer in the EEA States is less than €5 million (or equivalent), taken together with any other offer of transferable securities of the same class open within the last 12 months (but excluding those where a prospectus was published or another exemption applied).

2

Where the transferable securities are to be admitted to trading on a regulated market – for example, the Main Market (Standard or Premium), but not AIM.

There is an exemption where the securities offered represent, over a rolling period of 12 months, less than 20% of the number of securities already admitted to trading on the same regulated market.

Accordingly, for a typical private placing to institutional shareholders, a prospectus will not be required unless the issuer is listed on the Main Market and the shares offered breach the 20% limit referred to above.

Where there is a placing and open offer, the open offer will most likely constitute an offer to the public. However, provided the open offer element of the fundraising is less than €5 million no prospectus would be required irrespective of the size of the placing element provided the placing element is only offered to 'qualified investors' and (for Main Market companies) provided that overall the 20% limit is not breached.

Whilst it is possible to make multiple offers in any 12 month period which, in aggregate, are less than €5 million, it is not possible to 'roll over' the headroom from a partially subscribed offer (e.g. a €5 million offer which is undersubscribed and only raises €4 million does not permit the company to make a further €1 million offer in the same 12 month period).

Similarly, we have seen structures proposed where individual group companies each make offers under €5 million. In these cases our view is that extreme care should be taken to ensure that the securities offered and the use of proceeds are differentiated. No artificial mechanisms should be used.

Stock Exchange Restrictions – Main Market

Standard Listing

There are no material restrictions on secondary fundraisings, save for the prospectus requirements referred to above. There are no limits as to the size of the fundraising or the pricing of the securities being offered.

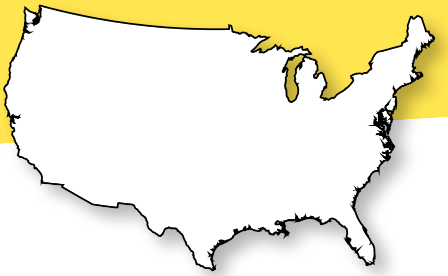
Premium Listing

In addition to the prospectus requirements referred to above, placings which exceed certain class tests may require a shareholder circular and potentially shareholder approval. The price of a placing must not be at a discount of more than 10% to the middle market share price at the time of announcement, unless otherwise approved by shareholders or the placing is within an existing pre-emption rights disapplication. There are also restrictions and requirements relating to rights issues, open offers, etc.

Stock Exchange Restrictions – AIM

The AIM Rules contain no material restrictions on secondary fundraisings. There are no limits as to the size of the fundraising or the pricing of the securities being offered.

United States



Restrictions on Financial Promotions

The offer and sale of securities in the United States is regulated under both federal and state law. The federal Securities Act of 1933, as amended (Securities Act), requires that any offer or sale of securities in the United States, including secondary offerings, must be registered with the Securities and Exchange Commission (SEC) unless an exemption applies. The term ‘offer’ is broad and includes every attempt to offer to dispose of, and every solicitation of an offer to buy, a security or interest in a security, for value. Each state has its own securities or ‘blue sky’ law, and available exemptions are not always uniform.

The offer and sale of securities to a limited number of sophisticated institutional investors may be exempt from the registration requirements of the Securities Act, including under the following statutory and regulatory exemptions. All securities issued under these exemptions constitute ‘restricted securities’ subject to waiting periods and other limitations on resale.

a

Section 4(a)(2) of the Securities Act provides an exemption for ‘transactions by an issuer not involving any public offering.’ Under this exemption, offers and sales can generally be made to investors with whom the issuer or its broker had, prior to the commencement of the offering, a substantive relationship sufficient to permit the issuer to confirm the investors’ sophistication. The Section 4(a)(2) exemption does not permit general solicitation or advertising to market the offering and does not mandate any particular disclosures. Under this exemption, investors must determine for themselves what information they require from the issuer prior to investing. Offerings under Section 4(a)(2) must also comply with applicable state ‘blue sky’ laws.

b

Rule 506(b) of Regulation D provides a safe harbour for private placements under Section 4(a)(2), provided certain conditions are met. Like Section 4(a)(2), Rule 506(b) does not permit general solicitation or advertising. If an offering under Rule 506(b) is made only to ‘accredited investors,’ the rule does not require the issuer to provide any particular disclosures to investors. Institutional ‘accredited investors’ generally include banks, savings and loan associations, registered brokers and dealers, insurance companies, registered investment companies, and private business development companies, as well as other corporations, trusts and partnerships with total assets exceeding US$5.0 million. Companies that are ‘bad actors’ are disqualified from using Rule 506(b). Offerings under Rule 506(b) generally need not comply with the registration requirements of state ‘blue sky’ laws, other than certain fee and notice filing requirements.

c

Rule 144A under the Securities Act provides another safe harbour exemption for a financial intermediary to make private resales of certain unlisted securities to ‘qualified institutional buyers’ (QIBs). In a Rule 144A offering, an issuer typically sells securities to a placement agent (under Section 4(a)(2) or Rule 506(b)) that immediately resells the securities to QIBs. QIBs generally include certain banks, savings and loan associations, registered dealers, insurance companies, registered investment companies, business development companies, investment advisors and other institutions that, in the aggregate, each own and invest on a discretionary basis at least US$100.0 million in securities of unaffiliated issuers or, in the case of registered dealers, at least US$10.0 million. The placement agent must take steps to establish a reasonable belief that the investor is a QIB. Under Rule 144A, issuers must give QIBs the right to request certain financial statements for the two most recent fiscal years and other limited information.

Requirements for Foreign Brokers to be registered

In general, brokers and dealers that solicit or otherwise induce US investors to purchase or sell securities must register as broker-dealers with the SEC. However, foreign broker-dealers may be exempt from registration in narrow circumstances. Rule 15a-6 under the Securities Exchange Act of 1934, as amended (Exchange Act), provides a safe harbour exemption for foreign broker-dealers in several situations, including:

a The foreign broker-dealer engages directly with certain US investors, such as (a) US registered broker-dealers and banks acting in a broker-dealer capacity, (b) foreign persons temporarily in the US with whom the broker-dealer had a bona fide relationship before the person entered the US, (c) agencies or branches of US persons permanently located outside the US (in transactions outside the US) and (d) certain US citizens residing outside the US (in transactions outside the US).

b The foreign broker-dealer establishes a chaperoning relationship with a US registered broker-dealer that takes responsibility for certain regulatory compliance matters to facilitate trades with certain US institutional investors, including banks, savings and loan associations, insurance companies, registered investment companies, business development companies and certain investment advisors and other major institutional investors.

c The securities transactions are not solicited by the broker-dealer.

Foreign broker-dealers may also be required to register at the state level unless an appropriate exemption is available.

Prospectus and other Filing Requirements

Companies offering securities in reliance on exemptions from registration do not need to file a prospectus or registration statement with the SEC. However, all offers and sales of securities, whether registered or exempt, are subject to federal and state antifraud laws, and a disclosure document may be advisable in certain transactions, particularly those not involving direct investor diligence. For example, a confidential offering memorandum is customarily used in Rule 144A offerings.

Issuers conducting an offering under Rule 506(b) must file a simple notification on Form D with the SEC within 15 days after the first sale and may need to make similar notice filings in various states.

Offerings conducted under Section 4(a)(2) or Rule 144A do not require any filing under the Securities Act, but state filing requirements may apply.

Stock Exchange Restrictions – NYSE

Companies with securities listed on the NYSE must generally obtain prior shareholder approval for an issuance of securities if:

(a) The issuance will result in a change of control. Whether a transaction involves a change of control depends on the facts and circumstances, but issuances that result in a change in the identity of the issuer's largest stockholder or that create a 20% stockholder raise particular concerns.

(b) The shares to be issued will equal or exceed 20% of the shares outstanding before the issuance, or the shares have voting power that will equal or exceed 20% of the voting power outstanding before the issuance. However, shareholder approval is not required for a 'bona fide private financing' where the offer price equals or exceeds the greater of book or market value. A bona fide private financing requires either (a) that the issuer sell through a registered broker-dealer or (b) that the issuer sell to multiple investors and that no investor (or group of related investors) acquire more than 5% of the shares or voting power outstanding before the issuance.

(c) The shares to be issued to directors, officers, substantial stockholders and certain related persons exceeds 1% of the shares or voting power outstanding before the issuance (or, in the case of sales to substantial stockholders at a price above the greater of book and market value, 5% of such shares or voting power).

Stock Exchange Restrictions – Nasdaq

Companies with securities listed on Nasdaq must generally obtain prior shareholder approval for an issuance of securities if:

(a) The issuance will result in a change of control.

(b) In the case of a private placement at a discount to the greater of book or market value, the shares to be issued will equal or exceed 20% of the shares outstanding before the issuance, or the shares have voting power that will equal or exceed 20% of the voting power outstanding before the issuance. Sales by directors, officers and substantial shareholders count toward the 20% threshold if those sales are part of the same transaction.

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Canada

Restrictions on Financial Promotions

Foreign issuers can make private placements of securities in Canada without a prospectus if the transactions fall within specific exemptions. The principal private placement exemptions have been harmonized across the country, including an exemption for sales of securities to "accredited investors" (such as institutional investors and high net worth individuals) and an exemption to non-individuals for sales if the cash purchase price for the securities is at least C$150,000. Certain provinces have more flexible exemptions to facilitate capital-raising activities for junior issuers. The issuer must exercise reasonable diligence in confirming that a prospectus exemption is available, and will typically obtain a certificate or a representation from the purchaser confirming its exempt status.

Accredited investors include the following:

- financial institutions;
- regulated pension funds;
- registered charities;
- registered advisers and dealers (other than limited market dealers);
- individuals who, either alone or jointly with a spouse, beneficially own cash,
- securities, insurance contracts and deposits having an aggregate realizable
- value that, before taxes but net of any related liabilities, exceeds C$1 million;
- individuals whose net income before taxes exceeded C$200,000 in each
- of the last two years (or whose net income with that of a spouse exceeded
- C$300,000 in each of those years) and who have a reasonable expectation of
- reaching the same net income level in the current year;
- corporations, trusts, estates and limited partnerships with net assets of at
- least C$5 million;
- certain mutual funds and non-redeemable investment funds; and
- certain similar entities organized outside Canada.

Fully managed accounts of portfolio advisers are also treated as accredited investors, other than for purchases of mutual funds or non-redeemable investment funds.

While a private placement memorandum to prospective investors is not a prerequisite to using most prospectus exemptions, a foreign issuer will often choose to prepare and deliver one. Whether information used in connection with an offering constitutes an "offering memorandum" for securities law purposes will depend on its content and whether it is accompanied by other documents that, together, have been prepared to describe the business and affairs of the issuer to prospective investors. A term sheet that merely outlines the features of an issue – but does not describe the business and affairs of the issuer – generally will not be regarded as an offering memorandum.

The securities laws of some provinces impose content requirements for an offering memorandum if the offering is made under certain capital-raising prospectus exemptions. However, there is no detailed content requirement for an offering memorandum under the accredited investor and "C$150,000 purchase" exemptions.

Although Canadian securities regulators do not review an offering memorandum when it is delivered in connection with the most commonly used private placement exemptions, it must be delivered to the regulator in certain jurisdictions where the trade is made, together with a report of the trades and a filing fee (which is either a nominal flat rate or a percentage of sales made within the jurisdiction, depending on the province).

Requirements on Foreign Brokers to be registered

A foreign securities dealer that has no head office or principal place of business in Canada and that is registered and carries on business as a securities dealer in a country other than Canada may conduct limited trading activity with "permitted clients" in Canada without registering as a dealer if it satisfies the conditions for the international dealer registration exemption. This exemption is not onerous to obtain but is subject to a number of restrictions. The exemption is necessary even if the foreign securities dealer is located and conducts its activities outside Canada or its securities trading services are unsolicited.

A foreign securities dealer that carries on business as a dealer or adviser in a country other than Canada may apply for registration as a non-resident exempt market dealer. The clients of a non-resident exempt market dealer are typically restricted to "accredited investors" as defined in NI 45-106 (including individuals). A non-resident exempt market dealer can trade in all types of securities (including Canadian securities).

Registration as a non-resident exempt market dealer requires full compliance with securities laws, including requirements related to capital, insurance, financial reporting and conflicts of interest. The chief compliance officer and trading individuals must either be registered and satisfy Canadian proficiency standards regarding industry exams and industry experience or obtain a discretionary exemption. All non-trading directors, senior officers and 10% shareholders must file a comprehensive regulatory form with the securities regulators and be approved. Registration under applicable corporate legislation may also be required.

Prospectus and other Filing Requirements

When a foreign issuer carries out a private placement in Canada concurrently with an offering of securities in a foreign jurisdiction, the prospectus or offering document from the foreign offering – with the addition of a few wraparound pages – is commonly used as an offering memorandum.

The only language required to be included in the wraparound pages in Canada is the statutory right of action and the forward-looking financial information disclosure, however the statutory right of action is not required to be included if the distribution is to "permitted clients" and certain alternative (simpler) disclosure is provided. Typically, the wraparound pages also include deemed representations as to the purchaser's eligibility under the private placement exemptions, a description of the plan of distribution in Canada, the Canadian tax consequences of an investment in the securities, the resale restrictions on the securities and a notice to investors about the filings that may be made with securities regulatory authorities. If the securities are being privately placed in Quebec, the wraparound pages will include an acknowledgment that the offering memorandum and related documents will be provided in English only.

Most provinces require an approval from the relevant securities regulator if the offering memorandum includes a statement that the securities will be listed or quoted on a particular market, unless that statement has been approved by the applicable market regulator or securities of the issuer are already traded on that market. However, if the offering is restricted to "permitted clients" such listing representation may be made provided it does not contain a misrepresentation and is in compliance with the rules and by-laws of the applicable exchange.

Stock Exchange Restrictions – TSX

TSX policies have certain pricing limitations in respect of private placements as follows:

- Market price of $0.50 or less-maximum discount of 25%
- Market price of $0.50 to $2.00-maximum discount of 20%
- Market price above $2.00-maximum discount 15%

There are generally no restrictions on the number of shares that may be issued pursuant to a private placement, provided that an issuance of greater than 25% of the issued and outstanding shares, on a non-diluted basis, will require shareholder approval. Such shareholder approval may be obtained by written consent of 50%+1 of the shareholders.

Stock Exchange Restrictions – TSX-V

TSXV policies have the same pricing restrictions as noted above in respect of the TSX, and additionally have a minimum price per share requirement of $0.05.

TSXV policies require shareholder approval in connection with a private placement offering where a new "control person" is created.

Certain Canadian domiciled companies impose a 4 month hold period for non-residents of Canada. Currently, this affects issuers in Alberta and British Columbia, but similar legislation is being proposed for Ontario. In addition, the TSXV imposes its own 4 month legend for certain types of issuances, typically where the discount to market price is greater than 10%. This generally applies to sales to Canadians or over the TSXV. So a company incorporated outside of Canada that is dual-listed in Canada should generally not have a 4 month hold for a secondary fundraising unless it is mandated by the TSXV.

Torys LLP (www.torys.com) is a leading Canadian law firm with offices in Toronto, Calgary, Montreal, Halifax and New York. For further information please contact:

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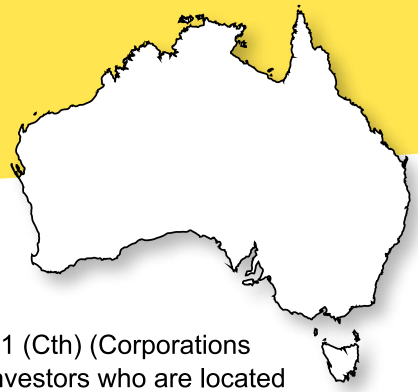
Australia



Restrictions on Financial Promotions

Australian fundraising laws under the Corporations Act 2001 (Cth) (Corporations Act) apply to offers of new securities that are received by investors who are located in Australia, regardless of where the issuer or broker is based or where the resulting issue, on-sale or transfer occurs.

Under the Corporations Act, an offer for issue of securities in Australia will require a prospectus unless a specific exemption applies.

An exemption to making an offer under a prospectus will be available if an offer is made to specified people who are presumed not to need disclosure because of their financial capacity, experience, association with the issuer or wholesale status. In the context of a placement to sophisticated or wholesale investors, exemptions will be available in the following circumstances:

- if the amount payable by the investor for the securities is at least A$500,000 or if the investment will bring the total amount paid by that investor for securities in the relevant class to over A$500,000;
- for high net worth investors that either:
  - had a gross income of A$250,000 or more per annum in each of the previous two years; or
  - have net assets of at least A$2.5 million; and
- for certain 'professional investors' that, amongst other things:
  - hold an Australian financial service licence (**AFSL**);
  - are regulated by the Australian Prudential Regulation Authority; or
  - are a listed entity, or a related body corporate of a listed entity.

In most circumstances it will be a question of fact as to whether the individual investors that are offered securities will satisfy the criteria for the relevant exemptions for having to issue a prospectus. However, when approaching high net worth individuals, issuers or their brokers must request that the investor provide a certificate from a qualified accountant that confirms the investor satisfies either the minimum gross income test or the net assets test.

Additionally, the relevant subscription agreement under which the securities are issued should contain warranties from the investor, in favour of the issuer, that the investor qualifies for one or more of the relevant exemptions from having to be provided with a prospectus.

Importantly, investors in Australia who are issued shares without a prospectus, in reliance on a statutory exemption, may be subject to the 12 month 'on-sale restrictions' under the Corporations Act. Unless an exemption applies, the 12 month on-sale restrictions will prohibit such investors from transferring those shares without disclosure for a period of 12 months. Two exemptions that may apply would be if the

sophisticated or wholesale investor transferred those shares to:

- another sophisticated or wholesale investor; or
- a third party who was not based in Australia.

For this reason, it is usual for an issuer to include covenants in the relevant subscription agreement under which the securities are issued restricting the investor from on-selling the securities within 12 months of issue if a disclosure document would be required to be issued to do so.

Requirements on Foreign Brokers to be registered

Foreign brokers who arrange for a person to engage in certain conduct in Australia, such as applying for or acquiring shares, will need to hold an AFSL unless an exception applies.

Foreign brokers may be exempt from having to hold an AFSL if they are regulated by an overseas regulatory authority that is recognised in Australia, the provision of the service is covered by an exemption specified by the Australian Securities & Investments Commission (ASIC) and the broker is only approaching wholesale clients.

The relevant exemption that UK brokers may be able to rely on is ASIC Class Order [CO 03/1099] UK FSA regulated financial service providers. Before seeking to rely on this Class Order, UK brokers must first notify ASIC that they propose to do so and should ensure that they meet any conditions of relief that ASIC imposes at that time.

Prospectus and other Filing Requirements

Although there is no requirement to issue a prospectus for a placement to sophisticated and wholesale investors, issuers and brokers are not completely absolved from potential exposure to liability in relation to such offers. There is a general rule under the Corporations Act that prohibits individuals from engaging in conduct in relation to the issue of securities that is misleading or deceptive or likely to mislead or deceive. Accordingly, issuers and brokers need to ensure that any information that they provide to prospective investors in Australia in relation to a placement will not breach this prohibition.

Stock Exchange Restrictions – ASX

A UK listed entity that is granted an ASX listing must comply with all applicable ASX Listing Rule requirements in the same way as any Australian entity, unless it is granted a specific waiver by ASX. Such waivers have historically been granted sparingly and the onus is on the applicant to show good cause as to why it should be granted such a waiver.

Under ASX's Listing Rules, a company may issue up to 15% of its issued capital on a non-pro-rata basis without shareholder approval in any rolling 12-month period.

Companies that propose to issue additional securities under a placement that will exceed the 15% placement capacity will need to obtain shareholder approval to do so. In order to obtain shareholder approval for the issue of securities in excess of the 15% placement threshold, the notice of meeting must include certain information prescribed by ASX's Listing Rules, including:

- the maximum number of securities the entity is to issue (if known) or the formula for calculating the number of securities the entity is to issue;

- the date by which the entity will issue the securities
- the issue price of the securities;
- the names of the persons to whom the entity will issue the securities (if known) or the basis on which those persons will be identified or selected;
- the terms of the securities; and
- the intended use of funds received.

Certain 'eligible entities' may issue an additional 10% of their issued capital in any rolling 12-month period, bringing its total head-room or placement capacity to 25%. ASX listed companies that are not in the ASX/S&P 300 Index and have a market capitalisation of less than $300 million are considered 'eligible entities'.

'Eligible entities' are able to apply a discount of up to 25% of the volume weighted average market price for securities in that class over the 15 trading days to the date the placement price is agreed, or if securities are not issued within five trading days of the price being agreed, to the date before securities are issued.

An 'eligible entity' that wishes to seek approval to increase its placement capacity by 10% for the next 12 months must obtain shareholder approval by special resolution at its annual general meeting. Among other things, the issuer will need to disclose:

- the purpose of the issue;
- its dilutive impact on current shareholders; and
- the allocation policy.

As noted above, the Corporations Act imposes 'on-sale restrictions' on shares that are not issued under a prospectus, which means that such shares cannot be sold without disclosure for a period of 12 months after the date of issue unless certain exemptions apply, including the issue of a cleansing notice. This exemption is only likely to be available to UK entities that have a dual listing on an approved Australian stock exchange. Provided the company has issued a cleansing notice in accordance with the Corporations Act, there will generally be no other on-sale restrictions imposed by ASX.

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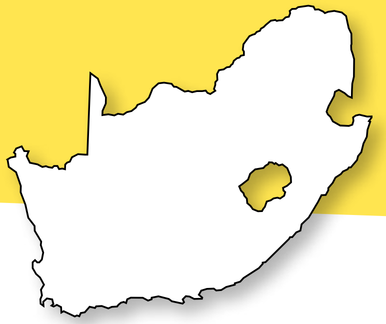
South Africa



Restrictions on Financial Promotions

Prohibition on Providing Financial Services

Capital raising activities by a foreign company are subject to regulation under South African law to the extent that they take place in South Africa or are directed to prospective South African investors. In particular, the Financial Advisory and Intermediary Services Act, 37 of 2002 (FAIS) provides that no person may act or offer to act as a financial services provider (FSP) unless such person has been issued with a licence under section 8 of FAIS.

Consequently, if any person renders "advice" in relation to a "financial product" (which includes securities in a foreign company), that person must be registered as an FSP. Any person who acts as an FSP without the appropriate licence commits an offence. FAIS prohibits any unlicensed person from acting as an FSP or offering to act as an FSP in South Africa. The prohibition on providing "financial services" includes any person providing "advice" or an "intermediary service" to a "client" in respect of a "financial product".

A broker seeking to offer a placing of shares in a foreign company to South African residents would be likely to be giving “advice” and/or offering “intermediary services” in relation to a “financial product” for these purposes.

Offers to the Public

The Companies Act, 71 of 2008 (Companies Act), regulates public offerings of securities (both primary and secondary offerings). Public offerings include offers made to any section of the public, whether selected as holders of company securities, as clients of the person issuing the prospectus, or as the holders of a particular class of property.

The Companies Act specifically excludes from the meaning of "offers to the public" offers made to, inter alia, brokers, dealers, financial advisors or financial institutions. An offer is also not considered public if the amount offered to a single offeree exceeds a certain threshold (presently R1 million). There is no specific exemption, however, for "sophisticated investors" or the like.

That being said, as a rule of thumb, provided that the shares are offered to institutional investors only and provided that such offer is not an offer to the public, there is currently nothing in South African law which would preclude, for instance, an employee of a foreign company or a broker from visiting prospective investors to discuss a private placement (subject to what is said above in relation to FAIS).

Offers that are considered "offers to the public" require a prospectus, as contemplated by the Companies Act, to be approved and filed with the CIPC, and are also subject to other prohibitions and restrictions on the manner of marketing or advertising the offer.

Exchange Controls and Financial Surveillance

The investment by South African residents in the securities of non resident companies requires the approval of the South African Reserve Bank ("SARB"). Accordingly, no resident may, generally speaking, invest in offshore securities or may purchase, hold or transfer the securities of non resident companies without the prior approval of the SARB. Transfer of funds out of South Africa and/or in relation to the making of investments in the securities of non resident companies and/or for the purchase or transfer of such securities are, generally speaking, also not permitted without the prior approval of the SARB from time to time.

South African resident retirement funds, long term insurers, collective investment scheme managers and investment managers who have registered with the SARB as so called “institutional investors” for South African Exchange Control purposes may invest in the listed securities of non resident companies and may purchase, hold and transfer such securities up to the respective foreign investment allowances approved by the SARB. Insofar as the marketing of financial products is concerned, there are prudential requirements in terms of South African law which apply to certain categories of institutional investors. Many of these institutional investors are subject to regulations which prescribe the kind and spread of investments they can hold. Furthermore, an offer of shares to sophisticated investors does not affect the level of regulation applicable.

Other resident clients, including private individuals not referred to above and companies, trusts and partnerships not registered as “institutional investors”, may only invest in the securities of non resident companies if the investment has been approved by the SARB and if it meets certain tests, including one of benefit to South Africa, as determined by the SARB, which specifically excludes holdings where the only benefit is a dividend return. Similarly, they may only purchase, hold and transfer securities of non resident companies if they have obtained the prior approval of the SARB.

The South Africa Exchange Control Regulations further provide that residents may only engage with foreign brokers through an “authorised dealer”. An authorised dealer is, in respect of any transaction pertaining to foreign exchange, a person authorised by the Minister of Finance (or an officer in the Department of Finance, who by virtue of the division of work in the Department is authorised to deal with the matter by the Minister of Finance) to deal in foreign exchange.

Requirements on Foreign Brokers to be registered

Any arranger, broker, dealer or underwriter who furnishes advice in respect of financial products or renders an intermediary service, such as entering into and administering contracts in relation to financial products, collecting or accounting for premiums or other monies payable in respect of those products, and dealing with any claims arising from the investments, in South Africa or to prospective South African investors, is subject to FAIS. As referred to above, under FAIS no person may act or offer to act as an FSP, unless such a person has registered as an FSP in terms of FAIS and has been issued with a licence under section 8 of FAIS.

An FSP is any person, other than a representative, who as a regular feature of the business of such person provides financial services by furnishing advice and/or rendering intermediary services. In this regard, FAIS also requires foreign based FSP’s (such as foreign brokers) to apply for authorisation.

Therefore, foreign brokers would need to be registered with the FSB to approach institutional investors in South Africa for the purposes of promoting a private placing or other public offering.

Prospectus and other Filing Requirements

As referred to above, where an offer is not an offer to the public in terms of the Companies Act (i.e. the offer falls under one of the exemptions set out above), there is no requirement that such offer be accompanied by a prospectus as required by the Companies Act. There are no set requirements for the form of documentation to be used to effect such a private placement. However, where the products are listed on an exchange, the issuer is required to comply with the documentation and disclosure requirements set out in the listing requirements of the relevant exchange.

However, if the offer does constitute an offer to the public for purposes of the Companies Act, then the foreign company would need to publish a prospectus to the potential South African investors. The contents of this prospectus are not dissimilar to or more comprehensive than the contents of the analogous offering memorandum or prospectus that would be provided in, say, England. This document would need to be registered with the CIPC before the offer is launched, and this registration process usually takes between three and four weeks.

If securities are offered to the public pursuant to a prospectus, every person (including a foreign broker) who authorised the issue of the prospectus, or is regarded as having authorised the issue of the prospectus or made the offer to the public, is liable to compensate any person who acquired securities on the faith of the prospectus or any loss or damage that person may have sustained as a result of an untrue statement in the prospectus, or in any report or memorandum appearing on the face of, issued with, or incorporated by reference in, the prospectus.

Stock Exchange Restrictions – JSE (Main Board and AltX)

The JSE operates two markets, namely the Main Board and the AltX. Each of these markets has different criteria for listing and there are no material restrictions on secondary fundraisings, save for the prospectus requirements referred to above and what is mentioned below.

Secondary fundraisings that are done by way of a general issue for cash (where the investors are not known at the time of launching the process) need to meet certain requirements. Of relevance here are the following requirements:

- such an general issue for cash must be supported by a resolution of shareholders achieving a 75% majority of the votes cast;
- the shares may not be issued at a discount that is more than 10% of the weighted average traded price of the shares over the 30 business day period prior to the date that the price of the issue is agreed between the issuer and the investor;
- not more than 15% of the listed issued shares of the issuer may be issued pursuant to a general issue for cash; and
- it is not possible to issue shares by way of a general issue for cash where the investors are "related parties".

If, however, the secondary fundraising is undertaken by way of a specific issue for cash (where the investors are known upfront), then the following requirements apply:

- the maximum number of shares to be issued must be disclosed to shareholders;
- the issuer must disclose either that there is no limit to the discount at which shares are to be issued or, if there is a limit, the issuer must disclose this limit;
- if the issue is to related parties or is undertaken at a discount to the weighted average traded price over the 30 business day period prior to the date that the price of the issue is agreed between the issuer and the investor, then the board needs to confirm that the price is fair to shareholders and obtain a fairness opinion from an independent expert confirming this point; and
- such an issue for cash must be supported by a resolution of shareholders achieving a 75% majority of the votes cast.

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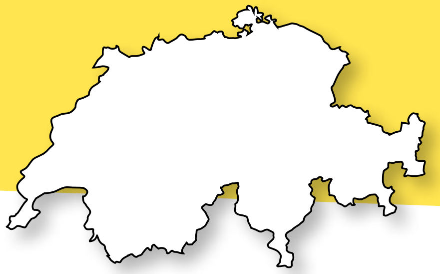
Switzerland



Restrictions on Financial Promotions

In Switzerland, no material restrictions apply to financial promotions. Foreign issuers and their advisers may therefore engage in market soundings, fundraising presentations, distribution of information memoranda or any other kind of marketing activities in connection with a contemplated private placement of shares.

Requirements for Foreign Brokers to be registered

Foreign brokers promoting private placements of shares in Switzerland are not subject to any registration requirements.

Prospectus and other Filing Requirements

Private placements of shares by foreign issuers are not subject to clearance, registration or review by any governmental or self-regulatory body.

In contrast to public placements, no prospectus requirements exist for private placements. A placement is considered private if it involves a 'limited circle of persons'. In the absence of any clarifying case law, there is vital controversy about whether this criterion should be construed as qualitative (a number of 20 investors is widely believed to be a safe harbour) and/or quantitative (degree of sophistication of investors resp. the way they are approached). As a consequence, private placements must be structured carefully on a case-by-case basis in order to avoid the risk of triggering the prospectus requirement.

Notwithstanding the above exemption from the prospectus requirement, the Swiss prospectus liability regime extends to similar communications (e.g. information memoranda) circulated in connection with a private placement. Foreign issuers, their brokers and any other contributing advisers may thus be held liable for damage caused by untrue or misleading information.

On a prospective basis: In November 2015 a new bill called the Financial Services Act (FinSA) was put before parliament. If enacted in its original form, it will introduce a range of new obligations for financial services providers (including a registration requirement for foreign brokers) and, most notably, change the Swiss prospectus regime (including the requirement for ex ante approvals for prospectuses issued in connection with public placements and clarifications on private placement exemptions). Whereas FinSA will likely not come into effect before 2019, it cannot be fully excluded that some of its key features find their way into practice even before FinSA's entry into force.

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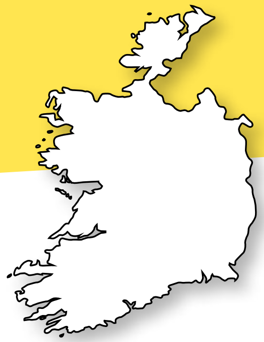
Ireland



Restrictions on Financial Promotions and Requirements for Foreign Brokers to be registered

Any offer of shares into the Republic of Ireland as part of a secondary fundraising will be subject to the Irish MiFID Regulations, which provide that a person shall not act as an investment firm (which would include a broker offering shares as part of a private placing) in Ireland or represent that they are an investment firm in Ireland, unless the person is an authorised investment firm which has been granted an authorization by the Central Bank of Ireland. Alternatively an investment firm authorized in another Member State of the EU can apply to the Central Bank to be "passported" by the Central Bank in order to be authorized to provide investment services in Ireland. An exemption where these obligations do not apply is set out below. It is an offence for a person to carry on investment services without a required authorization.

It is likely that the fundraising presentation, bookbuild launch announcement, distribution of placing letters and (potentially) market soundings in connection with a fundraising by a broker may all fall within the meaning of investment services so that the broker would be obliged to obtain an authorisation as an investment firm under the Irish MiFID Regulations. There are also additional restrictions in the Irish MiFID Regulations and elsewhere relating to advertising.

There are exemptions to the need for authorization, but these are unlikely to apply in the context of a UK broker offering shares to Irish investors in a secondary fundraising – accordingly, such a broker would require authorization or passporting, irrespective of whether the target investors are sophisticated or not. If a broker needs to have an existing authorization "passported" by the Central Bank at least 4 weeks would need to be allowed for this to be processed by the Central Bank. Accordingly, for the Irish portion of a secondary fundraising the issuer would typically engage an Irish broker or a UK broker would engage an Irish broker as a sub-agent.

Prospectus and other Filing Requirements

The Irish Prospectus Regulations provide that no offer of securities to the public shall be made in the Republic of Ireland without publication of a prospectus in respect of the offer. Failure to comply with the obligation to prepare a prospectus is a criminal offence. The exemptions to the requirement to publish a prospectus are similar to those applicable to the UK, including offers of securities addressed solely to qualified investors, offers of securities addressed to fewer than 150 natural or legal persons other than qualified investors and offers where the total consideration for the offer in the EU is less than EUR5 million (although, as with the UK, no offer of securities will fall within this exemption unless the amount of the total consideration for the offer when aggregated with the consideration for all previous offers of securities of the same type made by the same offeror or issuer within the period of 12 months expiring on the date the offer is made is less than EUR5 million).

Under the Irish Prospectus Regulations as set out above, a UK broker could have liability where a prospectus is not prepared by a client in breach of an obligation to do so under the Irish Prospectus Regulations. In addition, under the Irish MiFID Regulations a UK broker could have liability for failure to obtain an authorisation where one is required to be obtained by it in connection with its activities related to the offering documents.

Takeovers of Irish incorporated companies

Takeovers of public limited companies incorporated in Ireland, the shares of which are listed on or admitted to a stock exchange in Ireland or elsewhere (including the London Stock Exchange Main Market (Standard or Premium) or AIM), are regulated by the Irish Takeover Panel. The Irish Takeover Rules while similar to that of the UK in many respects, differ in several areas.

In particular, mandatory bid obligations may be triggered where any person, or persons acting in concert:

a acquire control of a relevant company. "Control" means the holding, whether directly or indirectly, of securities of the company that confer, in aggregate, not less than 30 per cent. of the voting rights in that company; or

b who control a relevant company acquire within any period of 12 months additional securities of such an amount as will increase by more than 0.05% the aggregate percentage of the voting rights in that company conferred by the securities held by him or them.

The Irish Takeover Rules are very detailed and there are additional limitations under the Rules in relation to the acquisition of control including Rule 5 which deals with additional restrictions on acquisitions. We have only focused on the Rule 9 Mandatory Offer provisions. As a result, it is strongly recommended that if a broker is advising in relation to a possible acquisition of a relevant company it should obtain Irish law advice in relation to the Irish Takeover Rules.

The acquisition of shares in a relevant company is also subject to the Irish Takeover Panel Act, 1997, Substantial Acquisition Rules, 2007 (SARs). The SARs govern the speed at which a 29.9% interest in a relevant company can be acquired. An acquisition of voting securities of a relevant company or of rights over voting securities (such as irrevocable undertakings) will be regarded, as a "substantial acquisition of securities" if:

a any voting securities so acquired and the voting securities the subject of any rights so acquired confer in aggregate 10% or more of the voting rights in the company; and

b any voting securities so acquired and the voting securities the subject of any rights so acquired when aggregated with any voting securities already held by that person and any voting securities over which that person already holds rights, confer 15% or more, but less than 30%, of the voting rights in the company; and

c in the case of a series of acquisitions, all of such acquisitions are made within 7 days.

Particular case should be exercised in taking irrevocable undertakings. In general, if an offeror acquires shares, convertible securities or irrevocable undertakings it is required to disclose that acquisition and that person's total holdings of voting securities to the company, the Stock Exchange and the Irish Takeover Panel on the business day following the date of the acquisition.

This is if:

i. the voting rights conferred by any voting securities already held by that person and by any voting securities over which that person already holds rights, confer in aggregate less than 15% of the voting rights in the company and that percentage is increased to or beyond 15%; or

ii. the voting rights in the company conferred by any voting securities already held by that person and by any voting securities over which that person already holds rights, confer in aggregate 15% or more but less than 30% of the voting rights in the company and that percentage is increased to or beyond any whole percentage figure.

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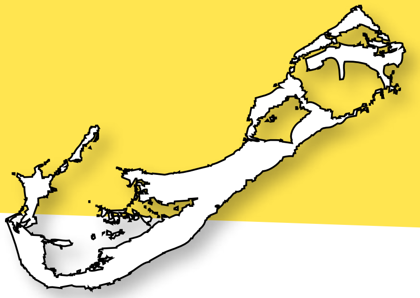
Bermuda



Restrictions on Financial Promotions

There are no securities or similar laws of Bermuda which would limit or restrict the marketing or offering of shares or units of a vehicle established in a foreign jurisdiction outside Bermuda (a Foreign Issuer).

Under the Investment Business Act, 2003, the making of unsolicited calls to potential clients in Bermuda is prohibited except by licensed persons and then only in accordance with certain regulations. "Unsolicited Calls" are defined as personal visits or oral communications made without express invitation. Written communications, including electronic mail, does not appear to fall within this definition. Sending written materials to a person in Bermuda, on an unsolicited basis, is likely to fall outside or the rules against carrying on business in Bermuda.

Nothing prevents a non-Bermuda-based promoter (a Promoter) or the Foreign Issuer from marketing to or soliciting potential Bermuda-based investors or clients at a time when the individual or company representative is outside Bermuda.

Requirements on Foreign Brokers to be registered

A Foreign Issuer and any Promoter carrying on business in or from Bermuda would each be regarded as an "overseas company" for the purposes of the Companies Act.

Section 133 of the Companies Act generally prohibits exempted and overseas companies from carrying on a trade or business in Bermuda. If (i) the Promoter markets the shares or units of the Foreign Issuer, or (ii) the Foreign Issuer itself markets its shares or units in Bermuda, either such activity would constitute carrying on a trade or business in Bermuda and would be prohibited on the basis that Bermuda-based companies are engaged generally in that activity.

Prospectus and other Filing Requirements

Only Bermuda Funds (being either incorporated in Bermuda or deemed to be "overseas companies" for the purposes of the Companies Act, 1981) are capable of being filed with the Registrar of Companies under the Companies Act. There are no other requirements for a prospectus to be published in relation to an offer of securities in Bermuda by a Foreign Issuer in the context of a secondary fundraising.

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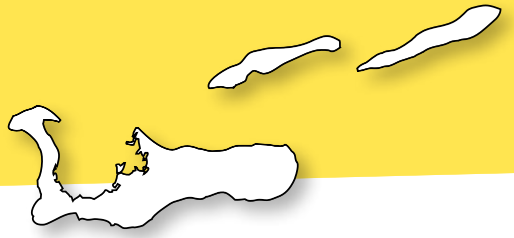
Cayman Islands



Restrictions on Financial Promotions

Assuming that a UK-listed company is not an open-ended fund (i.e. that shares are not redeemable at the option of investors) and that it is not "carrying on business" in the Cayman Islands, there are no restrictions on the offer or sale of a UK-listed company's shares to investors in the Cayman Islands.

A company will not generally be deemed to be "carrying on business" in the Cayman Islands if: (i) it is incorporated outside of the Cayman Islands, and has not subsequently registered as a foreign company in the Cayman Islands; (ii) the offer is made from outside of the Cayman Islands; (iii) the company does not establish a physical presence within the Cayman Islands; (iv) any marketing activities conducted in the Cayman Islands are infrequent; and (v) no transactions are concluded, or agreements executed, by the company in the Cayman Islands.

Requirements for Foreign Brokers to be registered

Assuming that the broker is not "carrying on business" in the Cayman Islands, it will be permitted to approach investors based in the Cayman Islands and will not have to register or be licensed in the Cayman Islands.

Prospectus and other Filing Requirements

Assuming that the UK-listed company is not an open-ended fund and is not "carrying on business" in the Cayman Islands, there are no prospectus or filing requirements in the Cayman Islands.

If a prospectus contains misrepresentations or is otherwise inaccurate or misleading, the UK-listed company and/or the broker may incur liability under common law or statute.

Other issues

Assuming that a Cayman Islands company is not listed on the Cayman Islands Stock Exchange and is not regulated in the Cayman Islands, there are no mandatory bid or other similar takeover regulations (as a matter of Cayman Islands law) that might restrict participation by material shareholders.

The articles of association of the company or other contractual arrangements may, of course, contain takeover provisions, but these are not required as a matter of law.

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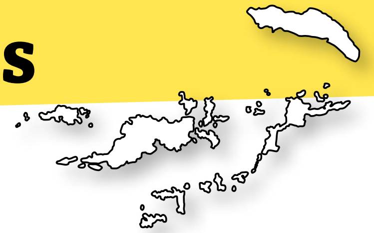
British Virgin Islands



Restrictions on Financial Promotions

Assuming that a UK-listed company is not an open-ended fund (i.e. that its shares are not redeemable at the option of its investors) and that it is not “carrying on business” in the British Virgin Islands, there are no restrictions on the offer or sale of a UK-listed company’s shares to investors in the British Virgin Islands.

A company will not generally be deemed to be “carrying on business” in the British Virgin Islands if: (i) it is incorporated outside of the British Virgin Islands, and has not subsequently registered as a foreign company in the British Virgin Islands; (ii) the offer is made from outside of the British Virgin Islands; (iii) the company does not establish a physical presence within the British Virgin Islands; (iv) any marketing activities conducted in the British Virgin Islands are infrequent; and (v) no transactions are concluded, or agreements executed, by the company in the British Virgin Islands.

Requirements on Foreign Brokers to be registered

Assuming that the broker is not “carrying on business” in the British Virgin Islands, it will be permitted to approach investors based in the British Virgin Islands and will not have to register or be licensed in the British Virgin Islands.

Prospectus and other Filing Requirements

Assuming the UK-listed company is not an open-ended fund and is not “carrying on business” in the British Virgin Islands, there are no prospectus or filing requirements in the British Virgin Islands.

If a prospectus contains misrepresentations or is otherwise inaccurate or misleading, the UK-listed company and/or the broker may incur liability under common law or statute.

Other issues

There are no mandatory bid or other similar takeover regulations (as a matter of British Virgin Islands law) that might restrict participation by material shareholders.

The memorandum and articles of association of the company or other contractual arrangements may, of course, contain takeover provisions, but these are not required as a matter of law.

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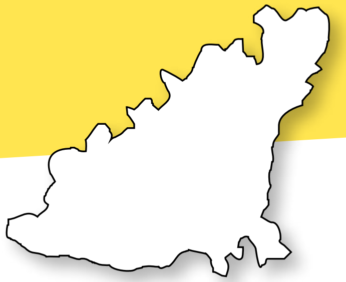

Restrictions on Financial Promotions

Pursuant to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) (the POI Law), the promotion of controlled investments is a restricted activity and requires a licence under the POI Law (a POI Licence) if carried on in or from within Guernsey, unless one of the statutory exemptions applies. Promotion is defined in the POI Law as (i) advertising, (ii) issuing a prospectus, application form or proposal form or (iii) circulating or making available promotional material. Controlled investments are (i) collective investment schemes and (ii) general securities and derivatives, as more particularly described in the POI Law.

The statutory exemptions applying to all controlled investments are as follows:

1 An overseas promoter does not require a licence to promote any controlled investments to those persons licensed in accordance with (e) below, provided that the requirements at (a) to (f) below inclusive are met:

(a) the promotion in or from within Guernsey is carried out in a manner in which the overseas promoter is permitted to carry it out in or from within and under the laws of a country or territory designated for the purposes of the POI Law (which includes the United Kingdom);

(b) it is an entity established in such country or territory;

(c) its main place of business is in such country or territory;

(d) it does not have a permanent place of business within Guernsey;

(e) the promotion is only carried out to persons licensed to carry on business under certain laws of Guernsey, which will include a collective investment scheme's Guernsey administrator, Guernsey general partner (if a limited partnership fund) and any Guernsey manager or adviser, together with Guernsey brokers, who will be licensed under the POI Law; and

(f) prior written notice of the date from which the overseas promoter intends to carry out the promotional activity is given to the Guernsey Financial Services Commission (GFSC) online.

(There are separate exemptions applying only to collective investment schemes, which is beyond the scope of this section).

2 An overseas promoter does not require a POI Licence if it engages the services of a person who is suitably licensed (the POI Licensee) and the POI Licensee carries out the promotion in Guernsey on the overseas promoter's behalf, provided that the overseas promoter enters into the service contract with the POI Licensee outside of Guernsey.

3 Where restricted activities are conducted in connection with any controlled investments by an overseas firm without a base in Guernsey at the initiation of the client, i.e. on a reverse-solicitation basis, then neither a POI Licence nor a notification (as per paragraph 1(f) above) is required. It should be noted that a typical accelerated bookbuild, particularly where investors have been 'soft-circled' in advance, would not constitute reverse-solicitation unless it was following an initial response from the investor to the announcement or any other generally advertisement not specifically targeted at Guernsey residents.

Furthermore, it is the GFSC's view that marketing campaigns by an overseas promoter that do not originate from within Guernsey and do not specifically target Guernsey residents (but might include Guernsey as part of a wider population) are unlikely to constitute a restricted activity. Caution should be exercised here. Any targeting of Guernsey investors, even if minimal in number compared to the investors targeted overall in a placing, would likely constitute promotion to those persons. Marketing campaigns which do not specifically target Guernsey investors are permitted, but any unsolicited approach is not. The specific targeting of existing clients in Guernsey may potentially be classed as reverse-solicitation if, without being solicited, the investor has previously expressed a willingness to be advised of such opportunities. This depends on how the contact between investor and placing agent originates, and so advice should be sought on a case-by-case basis.

Accordingly, the most likely exemption for a typical institutional private placing would be that in paragraph 1 above, which requires a prior notification to the GFSC, or that in paragraph 2, which would require engaging a Guernsey sub-agent who is a POI Licensee licensed to undertake promotion.

Requirements on Foreign Brokers to be registered

Under the POI Law, dealing in controlled investments is a restricted activity requiring a POI Licence if carried on in or from within Guernsey. Dealing is defined in the POI Law as (i) buying, selling, subscribing for, borrowing, lending or underwriting an investment; (ii) making arrangements for another person to buy, sell, subscribe for, borrow, lend or underwrite an investment; and (iii) providing facilities for another person to realise the value of an investment.

However, a foreign broker is unlikely to require a POI Licence for dealing if they do not have a base in Guernsey and provided that any promotion to the foreign broker's clients in Guernsey which has led to the provision to such clients of brokerage services was in accordance with the laws of Guernsey in respect of promotion, as set out above.

Prospectus and other Filing Requirements

The Prospectus Rules 2008 (Prospectus Rules) may apply to certain offers of securities in Guernsey. It is important to note that the Prospectus Rules do not require the issuance of a prospectus in relation to such offers but rather provide that if a prospectus is to be issued then the Prospectus Rules must be complied with.

However, in the context of a typical institutional private placing by a company listed on the Main Market or AIM, the Prospectus Rules are unlikely to apply.

It should be noted that the Prospectus Rules are in addition to the restrictions on financial promotions summarised above – an exemption from the Prospectus Rules does not provide an exemption to the financial promotions restrictions, which may still apply.

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Jersey

Restrictions on Financial Promotions

Any 'financial service advertisement' published or communicated in Jersey must comply with the provisions of the Financial Services (Advertising) (Jersey) Order 2008 (the Jersey Advertising Order). A 'financial service advertisement' means, broadly, an advertisement containing an invitation to transact 'financial service business' as defined in the Financial Services (Jersey) Law 1998 (the FSJL) or information that is intended, or might reasonably be presumed to be intended, to lead directly or indirectly to the transaction of such business.

The Jersey Advertising Order prescribes certain items of content for financial services advertisements, as well as requirements around retention of documents and information. Any person who issues or causes to be issued in Jersey a financial service advertisement in breach of the Jersey Advertising Order commits an offence under the FSJL.

The content requirements of the Jersey Advertising Order include that the advertisement must state:

- the name of the person who issues it;
- where not issued by the issuer of the securities to which it relates, the name of the issuer of those securities; and
- either or both of the physical address and email address of the issuer of securities to receive postal and electronic correspondence in relation to the transaction of the financial service business to which the advertisement relates.

Further, the advertisement must:

- make it clear (whether expressly or by necessary implication) that it is a financial service advertisement;
- be clear, fair and not misleading;
- name the authority that has given authorization (if any) to the issuer of the securities in relation to the financial service business to which the advertisement relates, whether that authority is the Jersey Financial Services Commission (the JFSC), a relevant supervisory authority or another authority;
- not claim to have itself been approved by the JFSC; and
- not claim that any service provided in the course of the financial service business to which the advertisement relates has been approved by the JFSC.

There are certain exemptions to the applicability of the Jersey Advertising Order, including where the advertisement consists only of a prospectus approved by the JFSC (no which see below).

Requirements on Foreign Brokers to be registered

All 'financial service business' undertaken in or from within Jersey must be undertaken by a person who is appropriately registered under the FSJL. This would generally include the circulation in Jersey of an offer of shares of a UK company as part of a secondary fundraising.

There are certain exemptions to the FSJL registration requirement that may apply to a non-Jersey broker. The scope of those exemptions is limited, and advice should be taken to confirm their applicability in the particular circumstances.

The principal such exemption is known as the 'overseas persons exemption', and applies where an 'overseas person' deals with a person in Jersey and either (i) the person in Jersey approaches the overseas person on an unsolicited basis or in response to an advertisement that complies with the Jersey Advertising Order or (ii) the overseas person approaches the person in Jersey by an advertisement that complies with the Jersey Advertising Order.

Prospectus and other Filing Requirements

Under the Control of Borrowing (Jersey) Order 1958 (COBO), any offer circulated in Jersey for the subscription for securities of a foreign body corporate must be approved by the JFSC unless (i) the foreign body corporate does not have a 'relevant connection' with Jersey and (ii) the offer either (a) does not constitute an 'offer to the public' in Jersey or (b) is valid in the UK or Guernsey and is circulated in Jersey only to persons similar to those to whom, and in a manner similar to that in which, it is circulated in the UK or Guernsey (as applicable).

COBO prescribes the circumstances in which a foreign body corporate has a relevant connection with Jersey. These include where the foreign body corporate (i) is wholly or partly managed in Jersey or by Jersey residents, (ii) is controlled in Jersey, (iii) has entered into, or is about to enter into, an agreement with a person resident in Jersey material to the offer, or (iv) undertakes a business material to the offer directly or indirectly in or from within Jersey.

An offer is not an 'offer to the public' if it is 'addressed exclusively to a restricted circle of persons', which broadly means that it is (i) directly communicated to an identifiable category of persons who are the only persons who can accept the offer, (ii) those persons are in possession of sufficient information to be able to make a reasonable evaluation of the offer and (iii) the number of persons in Jersey to whom the offer is so communicated does not exceed 50.

In most circumstances (i.e. where there is no 'relevant connection') it would not be necessary to obtain a consent under COBO to the circulation of an offer document because the offer would not constitute an 'offer to the public', or (if it did) the 'valid in the UK' exemption would apply.

There are no prescribed content requirements to obtain a consent under COBO, but the JFSC generally expects the offer document to comply broadly with the provisions applicable to a prospectus issued by a Jersey company. If the offer document is prepared to UK standards, it would generally also comply with Jersey standards. Foreign company prospectus approved under COBO are not required to be filed with any public registry in Jersey.

COBO does not extend any prospectus-type liability to a foreign issuer or broker, but any breach of COBO is a criminal offence.

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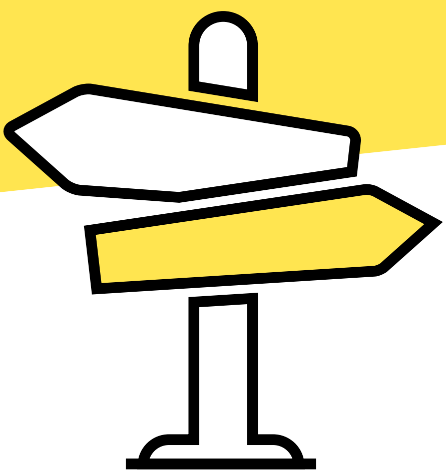
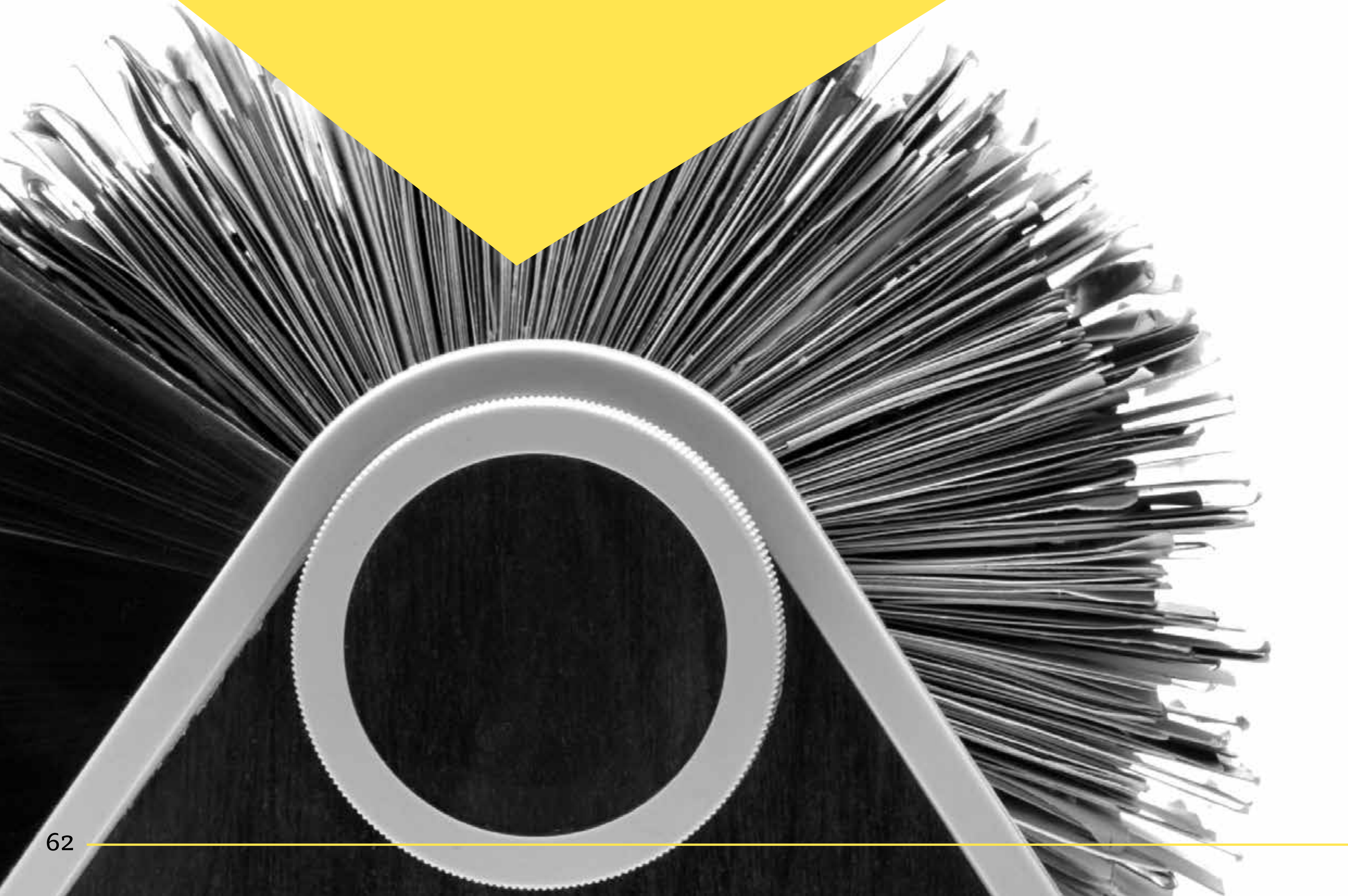
Guidance on Market Practice



AIM Regulation, ESMA and the City of London Law Society provide some useful guidelines and Q+A on market practice, but it is not all in one place.

Now it is.

This section includes the relevant parts of the ESMA Guidelines and Q+A, DTR2 and DTR3, CLLS Q+A and Inside AIM.



ESMA Guidelines

- Questions and Answers on the Market Abuse Regulation, Version 9 (21.11.2017)
- MAR Guidelines – Delay in the disclosure of inside information (20.10.2016)
- MAR Guidelines – Persons receiving market soundings (10.11.2016)

Disclosure Guidance and Transparency Rules

- DTR2 – Disclosure and control of inside information by issuers (Dec 2017)
- DTR3 - Transactions by PDMRs and their connected persons (Dec 2017)

City of London Law Society

- Market Abuse Regulations Q+A (30.10.2017)

Inside AIM

- Index of Inside AIM Issues 1 – 5
- Issue 1 – December 2009
- Issue 2 – July 2010
- Issue 3 – February 2011
- Issue 4 – September 2011
- Issue 5 – October 2012

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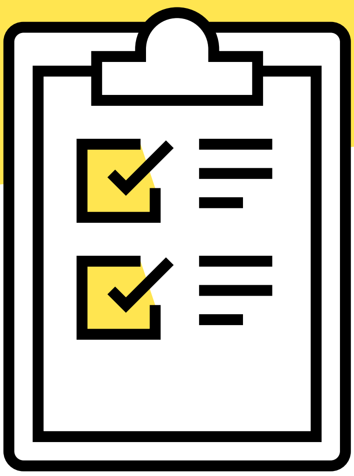
Emergency Insider Checklist



Accidents happen.

Here's what to do when someone spills the beans.

Let's use the example of a Chairman accidentally revealing some inside information – perhaps the ongoing negotiation of an acquisition - to a room full of shareholders and advisers at an AGM. Ordinarily, this inside information might fall within the safe harbour permitting delayed disclosure (summarised in Part 1). Accidentally disclosing it to a room full of people changes the situation dramatically.

Everyone in the room is now an insider

Nobody leaves the room until the following process has been completed.

A record must be taken of the date and exact time of the accidental disclosure. A careful contemporaneous note should be taken of what exactly has been disclosed so that any subsequent announcement adequately cleanses the inside information.

You must explain to each person in the room:

- That for the purposes of MAR and the CJA they are insiders in respect of the inside information they have been provided with.
- That they must keep such inside information confidential until it has been publicly announced, and they must not disclose it to any other person.
- That they must not deal, or recommend or induce any other person to deal, in securities in the company until the inside information has been publicly announced.
- That if they breach such obligations there may be criminal and civil penalties for such breach.

The company should ask each person in the room, including shareholders and advisers, to write down as many of the following details as possible so that an insider list can be drawn up:

- Name
- Surname
- Birth surname (if different from surname)
- Professional telephone numbers (direct line and mobile)
- Company name and address
- Function and reason for being an insider
- Date of birth
- National identification number (if applicable)
- Personal telephone numbers (direct line and mobile)
- Home address

Bear in mind that some of this information may be difficult to obtain, for example NI numbers. You should just methodically collect as much as you can from everyone in the room.

At the same time as providing the above details, each person should be asked to sign an acknowledgement that they understand the implications of their being included on the insider list, in particular their duties as an insider and all applicable sanctions. It is unlikely that you will have prepared a pre-drafted note on the relevant duties and sanctions, so a handwritten confirmation would suffice – for example, you could provide a sheet of paper with the following confirmation written on it for each person to sign and print their name:

"Each of the following persons acknowledges their understanding of the implications of their being on an insider list for [XXX plc] in respect of [brief details of insider information]. In particular, each of the following persons confirms their understanding of their obligations as an insider (which have been explained to them), including the need to keep such inside information confidential and not to deal, or recommend or induce another person to deal, in the securities of such company when in possession of such inside information, and the applicable sanctions for any breach of such obligations."

Keep a close eye on people using mobile phones in case someone is trying to post details of the leak in a chatroom.

Do you need to announce?

Almost certainly. And as soon as possible. One of the necessary limbs for permitted delayed disclosure is that the company must be able to ensure confidentiality. This will be practically impossible with a room full of insiders.

Practically speaking, you may be unlikely to be able to fully announce before people have left the room. As above, each person must be reminded that they are an insider, that they must not deal on the basis of the inside information or recommend or induce others to do so and that the information is confidential and must not be disclosed.

Under DTR2.6.3 a holding announcement should already have been prepared and, if so, ideally this would be released before people leave the room.

You need to carefully consider what needs to be announced. There are various potential layers of inside information. For example, if an acquisition is being negotiated, and the Chairman has simply disclosed this fact without disclosing the counterparty, the details, the price, etc., then the announcement could simply reflect the holding announcement that should otherwise have been prepared. If details of the counterparty, target or indicative price have been disclosed, this may also need to be announced, if it, of itself, constitutes inside information. As normal, the FCA should be informed of the delayed disclosure.

Once the announcement has been released, you must inform the insiders that the information is no longer inside information. As normal, the FCA should be informed of the delayed disclosure.

As an aside, there may also be obligations under Rule 2 of the City Code on Takeovers and Mergers in respect of the announcement of potential takeovers to which the Code applies where there has been a leak. As part of any such negotiations it would be good practice to have a leak announcement already prepared.

IMPORTANT INFORMATION

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