The Disclosure Rules –
A practical guide for listed companies

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I. INTRODUCTION

On 1 July, 2005 the Disclosure Rules made by the Financial Services Authority (“FSA”) in implementation of Article 6 of the Market Abuse Directive\(^1\) will come into force.

**A new continuous disclosure regime**

The Disclosure Rules replace the continuous disclosure obligations under the existing Listing Rules\(^2\). The FSA does not expect the new rules to change the number or scope of announcements made by companies but the new formulation of the rules will lead to a change in the way circumstances are analysed to determine whether an announcement is required.

**Insider lists**

The Disclosure Rules also introduce new rules regarding the way companies manage inside information. Most importantly these rules require companies to maintain “insider lists” and to require their advisers to do the same.

**Notification of dealings**

Finally, the Disclosure Rules impose requirements for the notification of dealings by “persons discharging managerial responsibility” and their connected persons. These rules are similar to the existing rules requiring disclosures of dealings by directors but apply to a broader section of management. The range of individuals whose dealings must be notified has also been extended by widening the category of connected persons.

**Implications of the new Listing Rules**

Any consideration of the Disclosure Rules must also include consideration of the implications of Listing Principles 2 and 4, which are introduced as part of the new Listing Rules that also come into force on 1 July 2005.

Listing Principle 2 requires companies to establish “procedures, systems and controls” to ensure compliance with their obligations, inter alia, under the Disclosure Rules. Given the emphasis within the Disclosure Rules on the responsibility of directors to “carefully and continuously monitor whether changes in circumstances are such that an announcement obligation has arisen” (DR 2.2.8G), it is likely that most companies will need to examine carefully the procedures they have in place in relation to the Disclosure Rules.

Listing Principle 4 requires companies to communicate information to shareholders and potential shareholders in such a way as to avoid the creation or continuation of a false market in its securities.

\(^1\) Directive 2003/6/EC .

\(^2\) Listing Rules 9.1 – 9.15.
**FSA Guidance**

The form of the Disclosure Rules follows that in the new Listing Rules (and therefore the rest of the FSA handbook). This distinguishes between Rules (denoted by "R") and Guidance (denoted by "G"). The Guidance contained within the Disclosure Rules replaces all previous guidance (for example, the PSI Guide, which will cease to have any formal force). However, we expect the UK Listing Authority ("UKLA") to continue to issue informal guidance in List! and some of this may reinstate (informally) some of the pre-existing guidance. Given the FSA's stance that the new rules do not represent a change in substance it should be assumed that earlier editions of List! indicate how the UKLA will expect the new rules to be applied.

The Disclosure Rules encourage early consultation with the FSA (DR 1.2.4G). Under the existing rules, consultation with the UKLA has not been common and it will be interesting to see whether this new guidance is followed to a significant extent. The risks of consulting are clear. The risk of not consulting will be that a failure to do so may be a negative factor in any enforcement action, should the FSA disagree with a decision that no announcement is required.
II. THE OBLIGATION TO ANNOUNCE INSIDE INFORMATION

2.1 Overview

The obligation under the Disclosure Rules is deceptively simple:

“An issuer must notify a Regulatory Information Service ("RIS") as soon as possible of any inside information which directly concerns the issuer…” (DR 2.2.1R)

This obligation is qualified only by the ability in certain circumstances to delay the disclosure of the inside information under DR 2.5.1R.

When considering whether there is an obligation to make an announcement via a RIS in respect of any information the following questions must be asked:

> does the information amount to “inside information”?
> does it “directly concern” the company?
> are there grounds to justify a delay in announcement?

If the answer to the first two questions is “Yes” and the answer to the third is “No”, an announcement must be made as soon as possible.

2.2 Does the information amount to “inside information”?

2.2.1 Definition of inside information

The definition of “inside information” is the same as applies to the prohibition on market abuse (insider dealing). This definition3 sets out four requirements, of which three are considered below4. The information must be:

> precise;
> not generally available; and
> price sensitive.

2.2.2 The information must be precise

For information to be “precise” for this purpose two requirements must be satisfied:

> the information must be:

- about circumstances that exist or may reasonably be expected to come into existence;

3 Contained in section 118C Financial Services and Markets Act 2000 ("FSMA") also in force from 1st July, 2005.

4 The fourth requirement, that the information relates directly or indirectly to one or more issuers of financial instruments or one or more financial instruments is subsumed in the requirement that the information “directly concerns” the company (see Section 2.3).
OR

- about an event that has occurred or may reasonably be expected to occur; and

> the information must be specific enough to enable a conclusion to be drawn as to the effect on the price of the company’s traded securities.

These conditions are potentially significant. In particular, when considering whether an announcement is required in relation to something that may happen or something where the consequences are uncertain, these conditions will need to be considered carefully.

**Practical Examples**

*Example 1* - A company is notified by a major customer that it is evaluating a competitor’s product with a view to switching all of its supply requirements to that product.

The company may conclude that they believe that its product is superior to the alternative and therefore that it is not “reasonably expected” that it will lose the customer. In that case there is no “inside information”.

*Example 2* - A company is notified of a fire at a plant of a major supplier. Initially it is unclear whether this will affect supplies to the company.

The company may conclude that until it has more information it is not in a position to assess the effect of the information on the price of its shares, so there is no inside information.

Caution needs to be exercised before relying on these conditions to justify not making an announcement as in any case it may be possible to analyse the information differently to reach a different conclusion. For example, in Example 1, the notification that the customer is conducting an evaluation is itself an event that has occurred whatever the outcome and information about that event could be said to be “precise” for these purposes.

**2.2.3 The information must not be generally available**

In most cases it will be clear whether information is generally available. The FSA has set out a number of factors to be taken into account (in the context of market abuse), including (MAR 1.2.12):

> whether the information is contained in records which are open to the public;

> whether the information can be obtained by observation; and
> the extent to which the information can be obtained by analysing other information that is generally available.

The FSA gives as an example (MAR 1.2.14G), the passenger on a train passing a burning factory. That passenger may sell shares in the company that owns the factory as the information about the fire can be obtained by observation and therefore is “generally available”. However, whilst the existence of the fire may be “generally available”, an announcement by the company may still be required if information about its impact on the company is not “generally available”.

2.2.4 The information must be price sensitive

Prior to the introduction of the Disclosure Rules we have been used to a simple test of price sensitivity: if the information is announced, would it be likely to have a significant effect on the price of listed securities? Under the new rules (DR 2.2.4G) it is necessary to assess:

> whether the information would be likely to be used by a reasonable investor as part of the basis of his investment decisions; and

> would therefore be likely to have a significant effect on the price of the company’s securities.

The FSA has provided Guidance (which is consistent with existing guidance from the UKLA) which makes it clear that it is not possible to reduce the “significant effect” requirement to a fixed percentage price change (so there is no 10% rule) and the significance of any likely price change will vary from issuer to issuer.

The FSA’s Guidance (DR 2.2.5G and DR 2.2.6G) suggests that a variety of factors should be taken into account when applying the "reasonable investor test". In addition to an assessment of the significance of the information in relation to the company, and the market’s attitude to the company and its sector two particular points are worth noting:

> it should be assumed that a reasonable investor will make investment decisions to maximise his economic self-interest (DR 2.2.5G(2)); and

> the reliability of the source of the information should be taken into account (DR 2.2.6G).

This “reasonable investor” test may allow companies some leeway to assess the underlying significance of information rather than simply look to initial price volatility in relation to any particular information. In particular this may allow companies to avoid premature announcements where information is uncertain.
Practical Example

A company is threatened with legal proceedings that it believes (and it is advised) are without basis and it will be able to defend successfully.

In this case, instead of simply assessing likely market reaction to news of the threat (which may not include a proper assessment of the chances of a successful defence) the company may argue that a reasonable investor will give due weight to the company’s own assessment and taking that into account the information about the threat of proceedings would not form part of the basis of his investment decision.

2.3 Does the information directly concern the company?

Inside information is announceable by a company only if it “directly concerns” the company. The Disclosure Rules contain no guidance on the scope of this limitation. Perhaps the most significant area is in relation to activities of shareholders. A shareholder’s intention to dispose of its shareholding is not information directly concerning the company (rather than its shares) and, accordingly, even if the company becomes aware of that intention, no announcement is required.  

2.4 Can a delay in announcing be justified?

2.4.1 Conditions to delaying announcement

Announcement of inside information may be delayed if such a delay is necessary so as not to prejudice the “legitimate interests” of the company (DR 2.5.1R) and three conditions are met:

> the public will not be misled;

> prior to an announcement being made information is only disclosed by the company subject to duties of confidentiality; and

> the company can in fact ensure the information remains confidential.

The scope of the ability to delay announcement depends principally on the scope of the company’s legitimate interests, which is discussed below (see Section 2.4.2). The first of the conditions is problematic as it creates a circularity: an announcement can be delayed if doing so will not mislead but we can only know whether “the public” is misled if we know whether the public is entitled to assume that the information in question should have been announced. This circularity gives the FSA significant scope (which they have taken) to define the ability to delay announcement in the way they think fit.

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5 Committee of European Securities Regulators (CESR) Advice on Level 2 Implementing Measures for the proposed Market Abuse Directive dated December 2002 gave advice on what constitutes information which directly concerns the issuer in paragraph 35.
The second and third conditions are less difficult. It is routine for companies to protect their confidential information with appropriate confidentiality undertakings. Although the third condition appears to bring in an element of strict liability, the FSA has recognised that the company may not be in breach of the rules if a leak is a result of a breach of a duty of confidentiality (DR 2.6.4G). Nevertheless the emphasis is on the company to ensure that information remains confidential and decisions about what information is given to whom may be subject to close scrutiny.

2.4.2 Protecting the “legitimate” interests of the company

As conceived in MAD the ability of companies to delay announcements in order to protect their legitimate interests appeared to be wide. Two specific examples were given in one of the implementing directives:

- negotiations in course need not be announced if to do so would affect their outcome or “normal pattern”; and
- for companies with a dual board structure it would be legitimate not to announce management board decisions that have no effect without approval of a supervisory board.

The first of these examples is further developed with the case of a company whose solvency is threatened and public disclosure would “seriously jeopardise” the interests of existing and potential shareholders by undermining negotiations designed to ensure long term financial recovery.

However, the FSA has taken the position (DR 2.5.5G) that the ability to delay announcement to preserve “legitimate interests” is limited essentially to the same grounds that would have justified a delay under the existing rules: matters in course of negotiation and impending developments. Given the requirement to avoid misleading the public the position taken by the FSA on this has considerable force.

An example of the restricted approach taken by the FSA is in relation to the ability to delay announcement of solvency problems while seeking a solution. Although the wording of the directive would enable the company to delay both announcing the solvency problem and the negotiations to preserve the company, the FSA’s position (DR 2.5.4G) is that the company may delay announcing the negotiations but it must announce the underlying problem.

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6 Directive 2003/124/EC
7 Listing Rule 9.4. Arguably, the scope for delay under the Disclosure Rules is more limited than previously as announcement of negotiations and impending development may only be delayed if they would be “jeopardised by premature disclosure” (DR 2.5.5G), a condition which did not apply under Listing Rule 9.4.
2.5 FSA Guidance

The FSA has included specific guidance on two areas that cause difficulty in practice:

> rumours; and

> where there is a need to clarify an uncertain situation.

2.5.1 Rumours

The FSA has provided guidance that essentially confirms that the position will be the same as under the existing rules:

> rumours that are accurate are evidence that the confidentiality of the inside information has not been maintained (one of the conditions to delaying announcement) so an immediate announcement is required (DR 2.7.2G(2)); and

> knowledge that a rumour is false is not likely to be inside information and if it is the company may usually delay announcement (and “delay” may be indefinite) in order to avoid prejudice to its legitimate interests (DR 2.7.3G).

2.5.2 Clarifying Uncertainties

The requirement to announce “as soon as possible” can give rise to significant problems in practice if information emerges of an event or change in circumstances where the details of what has occurred or its significance are not immediately known. The FSA has provided formal guidance that where a company is faced with an unexpected and significant event a short delay may be acceptable if it is necessary to clarify the situation (DR 2.2.9G). In these circumstances if there is a danger of a leak the company should use a holding announcement setting out the reasons why a fuller announcement cannot be made and including as much detail of the subject matter as possible along with an undertaking to announce further details as soon as possible.

This guidance is considerably more helpful than that which was originally proposed, which emphasised the need for a holding announcement in all cases of uncertainty.

The FSA Guidance also suggests that in these cases, where a company is unable or unwilling to make an announcement a suspension of trading may be appropriate (DR 2.2.9G(3)). However, such a suspension alone will not be sufficient to prevent a continuing breach of the rules. It is clear that the obligation to make announcements continues during the period of suspension (DR 1.4.2R). It may, therefore, be necessary to apply for a waiver of that requirement at the same time as the suspension is sought.
2.6 Application of the obligation to announce inside information

The obligation to announce inside information applies to companies with shares or debt securities (or other financial instruments\(^8\)) admitted to trading on a regulated market\(^9\). The rules apply from the time a request for admission is made (DR 1.1.1R(1)). The obligation therefore applies to:

> a company with shares and/or debt securities admitted to the Official List and traded on the London Stock Exchange.

The obligation does not apply to:

> companies whose securities are quoted on AIM; or

> companies with debt securities listed on the Professional Securities Market (PSM) and which do not have shares or other securities traded on the LSE or another regulated market.

2.7 Implications of the Listing Principles

2.7.1 The Listing Principles

Two of the new Listing Principles included within the new Listing Rules, which also come into force on 1 July 2005, are of particular relevance to the Disclosure Rules. These are:

> Principle 2: A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations.

> Principle 4: A listed company must communicate information to holders and potential holders of its listed equity securities in such a way as to avoid the creation or continuation of a false market in such listed securities.

These Principles are enforceable as rules, although the FSA has indicated that it would rarely seek to take enforcement action in respect of a breach of a Principle alone. Nevertheless, in many cases where there is an investigation into whether information was announced sufficiently promptly it is likely that the FSA will look at how the systems and procedures in place worked in relation to the information. It may not be a defence to say “the Board did not know of the problem” to explain a delay in an announcement as the

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\(^8\) “Financial instrument” is defined as meaning: (a) transferable securities as defined in the ISD; (b) units in collective investment undertakings; (c) money-market instruments; (d) financial-futures contracts, including equivalent cash-settled instruments; (e) forward interest-rate agreements; (f) interest-rate, currency and equity swaps; (g) options to acquire or dispose of any instrument falling into these categories, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates; (h) derivatives on commodities; and (i) any other instrument admitted to trading on a regulated market in an EEA State or for which a request for admission to trading on such a market has been made.

\(^9\) The regulated markets in the UK are primarily: the London Stock Exchange plc Domestic Market; virt-x; and The London International Financial Futures and Options Exchange (LIFFE).
FSA may assert that there should have been procedures in place to ensure that the Board or at least some of the directors would have known. Failure to have effective procedures may be a breach of Principle 2.

The significance of Principle 4 is to emphasise the importance of complete and timely disclosure of information to investors and potential investors. Although the Principle does not appear to widen the scope of the disclosure obligation under the Disclosure Rules in a marginal case it will be likely to lead to a decision to announce rather than delay announcement.

2.7.2 Designing procedures, systems and controls

Companies will need to consider whether their procedures, systems and controls are adequate to comply with Listing Principle 2. The following points should be considered:

> while existing procedures may be adequate, it is likely to be helpful to record them in a single document;

> the procedures need to:

- ensure that information that may be inside information is identified;

- provide a process for a proper assessment of the information for decisions whether an announcement is required or may be delayed;

- ensure that announcements that are made are properly verified;

> the procedures need to deal with different kinds of inside information:

- information about transactions or other strategic projects;

- one-off unplanned events;

- information about the performance of the business;

> it may be helpful to specify Key Performance Indicators for use within the organisation to assist in the identification of potential inside information at an operational level;

> it is likely to be helpful to identify individuals with primary responsibility for decisions in relation to inside information (this may be in the form of a Disclosure Committee or less formalised, for example, referring all matters to the CEO and CFO). Certain matters would normally be referred to the full Board, time permitting;

> companies should ensure that all those involved in the reporting process have adequate training;
> keeping formal records will assist in demonstrating that the procedures are operated properly; and

> companies may find it helpful to have a communications policy setting out responsibility for communications and policies for dealing with analysts, rumours, leaks of inside information.
III. MANAGING INSIDE INFORMATION

3.1 Publication requirements

3.1.1 Manner of publication

Inside information that is required to be disclosed must be announced by notifying a Regulatory Information Service (RIS). If the RIS is not open for business the information must (as under the existing rules) be distributed to two national newspapers in the UK, two newswire services in the UK and to a RIS for release when it opens (DR 1.3.6R). In addition, if a company has an internet site, it must make the information available on its internet site by close of the business day following the day the announcement is released (DR 2.3.2R). The announcement must be retained on the internet site for at least one year.

The requirement for internet publication is unlikely to present any difficulty in practice although the timing requirements will need to be watched. Where a company is making an offer of securities and it wishes to take advantage of private placement exemptions (for example in the US) it will no longer have the option of not publishing announcements relating to the offer on its internet site. It will instead have to put in place appropriate restrictions to prevent access from restricted jurisdictions. The Disclosure Rules do not expressly contemplate such restrictions but there is no reason to think that the FSA will regard them as inappropriate.

3.1.2 Standard of disclosure

The existing requirement that a company must take all reasonable steps to ensure that information announced through a RIS is not “misleading, false or deceptive and does not omit anything likely to affect the import of the information” is retained (DR 1.3.4R). A new requirement (taken directly from the Market Abuse Directive) is that the RIS announcement must not be combined with marketing material in a way that would be misleading.

3.1.3 Equivalent information

Companies with securities listed on markets in other jurisdictions must ensure that announcements of inside information are so far as possible synchronised. This may involve announcements in the UK while a RIS is closed (see Section 3.1.1 above) (DR 2.4.1R and DR 2.4.2R).

3.2 Selective Disclosure

3.2.1 Permitted selective disclosure

While a company is delaying the announcement of inside information it may disclose that information to those of its employees who need the information to perform their functions. It may also, where justifiable, disclose to:
its advisers (and other parties' advisers);

> counterparties with whom it is or intends to negotiate;

> employee representatives or trade unions;

> government departments etc.;

> major shareholders;

> lenders; and

> credit rating agencies (DR 2.5.7G).

The last three categories are new and are a welcome correction of (frequently ignored) omissions from the list of categories of persons to whom disclosure may be made under the existing rules. There is still no official sanction of pre-announcement briefings of analysts and these will continue to have to be brought within the “adviser” category to be legitimate. However, it is worth noting that the FSA has issued guidance under the existing rules that such pre-announcement briefings are acceptable subject to certain conditions being satisfied and it will be interesting to see if this guidance is repeated in relation to the new rules.

3.2.2 Other selective disclosure

If there are no grounds for delaying announcement of inside information any disclosure of that information triggers an obligation to make "complete and effective disclosure" simultaneously (if intended) or as soon as possible (otherwise) (DR 2.5.6R). This adds little but emphasis of the importance of public disclosure as soon as possible if the circumstances do not justify delay. It is likely to be relevant, if at all, if a company compounds a failure to make an announcement by making selective disclosures.

3.3 Control of inside information

As already noted, the rules place great emphasis on the need to maintain confidentiality of inside information prior to its announcement through formal channels. In addition there are specific obligations to be complied with:

> companies must have effective arrangements to prevent anyone having access to inside information other than those who require it to perform their functions (DR 2.6.1R);

> companies should have arrangements in place to make an announcement immediately if there is a leak (DR 2.6.2R). This may be a holding announcement; and

10 Market Watch April 2002
anyone with access to inside information (both employees and others who have access to the information) must acknowledge legal and regulatory duties to which they are subject and be aware of the sanctions attaching to misuse or improper circulation of the information (DR 2.8.9R and DR 2.8.10R).

3.4 Insider Lists

3.4.1 The requirement to maintain Insider Lists

One of the changes introduced by the Disclosure Rules likely to have greatest practical significance (at least in terms of paper generated and efforts expended) is the new requirement for the maintenance of Insider Lists. The requirement is straightforward to describe (but may be less easy to implement in practice).

The requirement is that lists must be maintained that show certain prescribed details of every individual who has access to inside information relating directly or indirectly to the company (DR 2.8.1R). This applies to employees of the company and of its advisers and agents.

Insider Lists may be of those with access to inside information on a regular or occasional basis. It is likely that companies will maintain lists of employees who regularly have access to inside information (e.g. employees involved in financial reporting) and of employees involved in specific projects that involve inside information.

Insider Lists must be provided to the FSA on request (DR 2.8.2R).

3.4.2 Who needs to be included on an Insider List?

The requirement is to include all individuals with “access” to the inside information. No guidance has been provided on what “access” means in this context. It has been suggested that it may include anyone who could theoretically have obtained the information but that approach misses the apparent purpose of the requirement, which is to allow the regulator speedy access to those whose conduct may merit close examination. That objective is met by ensuring that all those who actually were aware of the information are included on the list. Through the use of prudent security measures such as the use of codenames, password protecting documents and clear desk policies it should be possible to limit the number of insiders whose names must appear on the Insider Lists.

3.4.3 Advisers and agents

As mentioned above, the requirement extends to employees of advisers and agents of the company (strictly, “persons acting on its behalf or on its account”). Note, however,
that the requirement does not extend to third parties with whom the company is dealing (e.g. the seller or purchaser in a mergers and acquisitions transaction). The company is responsible for ensuring these lists are kept but it should be sufficient for the company to:

> keep a record of the principal contact(s) at each adviser or agent; and

> include in the terms of engagement an obligation for the adviser or agent to keep a list and to provide a copy to the company on request (DR 2.8.7G and DR 2.8.8G).

3.4.4 Maintaining Insider Lists

The information to be included in the Insider List is (DR 2.8.3R):

> the identity (name and address, which may be a cross reference to personnel records) of each insider;

> the reason each person on the list is an insider;

> the date the list was created and updated (because of a change to the information on the list, including the date a person ceases to be an insider); and

> for its advisers and agents, the names of its principal contacts.

Each list must be kept for five years from the date of creation or last update (DR 2.8.5R).

The rules do not specify the form lists should take (hard copy or electronic) although companies must be capable of reducing the list to a hard copy to deliver to the FSA if required.

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13 The obligation is to make “effective arrangements” but it is not clear what these can be beyond including appropriate contractual terms.
IV. DISCLOSURE OF DEALINGS

4.1 Overview

The Disclosure Rules introduce a new regime for the notification to companies and by companies to the market of details of dealings in the company’s securities by “persons discharging managerial responsibilities” and their connected persons. This regime will apply alongside the existing rules requiring disclosure of dealings by directors and their connected persons under the Companies Act.\(^\text{14}\)

4.2 Persons discharging managerial responsibilities

The definition of “persons discharging managerial responsibilities”\(^\text{15}\) includes:

> directors; and

> senior executives who

  - have regular access to inside information relating directly or indirectly to the issuer; and

  - have power to make managerial decisions affecting the future development and business prospects of the company.

The category of senior executive referred to is new to English law and without further guidance companies may find it difficult to be confident that all relevant executives have been identified. If a company is organised with a management committee or executive committee it may be appropriate to treat all members of that committee as within the scope of the definition. In a more autonomous structure individual business unit heads may qualify (depending on the scope of their authority).

4.3 Connected persons

The scope of “connected persons” (whose dealings must also be notified) is much broader than the definition used for Companies Act notifications of directors’ interests. In addition to those categories:

> spouse and infant children;

> associated body corporate (20% ownership or control); and

> trustees of trusts of which the director is a beneficiary.

\(^{14}\) Section 324 Companies Act 1985 (as amended) ("Companies Act")

\(^{15}\) Section 96B(2) FSMA.
the following will be connected for these purposes:

> a person with whom the individual concerned is in partnership;

> a relative of the individual who has shared the same household for at least 12 months; and

> a body corporate in which the individual or any person connected with him is a director (or a person discharging managerial responsibilities).

The last category is potentially the most problematic in practice. On one view it is limited to cases where the person concerned is sole decision maker in the other company. A more cautious view would be that any company of which the relevant person is a director would be connected with that person. If this is right, a person with multiple directorships (including non-executive directorships) will have to arrange for each company of which he is a director to notify dealings in the other companies. The narrow approach is thought to be supported by the FSA but until definitive guidance is given it would be prudent to notify dealings on the wider basis.

4.4 Dealings requiring disclosure

The dealings to be disclosed are transactions:

> on the “own account” of the person discharging managerial responsibilities; and

> in shares, derivatives relating to shares and other financial instruments relating to those shares.

No guidance has been provided on the scope of “own account” but the words suggests transactions in which the person concerned has a beneficial interest.

The definition of “financial instrument” is broad (it is the same term used in the context of market abuse) but limited because it must relate to shares of the company. It covers, therefore, forward transactions and options (both for physical and cash settlement) and equity swaps. Some have suggested that it includes units in collective investment undertakings but unless the shares of the company constitute a very material part of the assets of the collective investment undertaking this view seems too cautious.

4.5 Notification and publication

4.5.1 Timing of notification obligation

A person discharging managerial responsibilities must notify dealings within four business days after the transaction (DR 3.1.2R). The rules specify the information to be provided, which include the date and place of the transaction and the price and volume (DR 3.1.3R).
4.5.2 Timing of publication

The company must announce any information relating to dealings notified to it by no later than the end of the business day following its receipt of the information (DR 3.1.4R(2)). The disclosure must include all the details notified to the company and the date of the notification (DR 3.1.5R). A form is provided for making the required disclosure but use of this is optional.

4.6 Application of the obligation to notify transactions

The obligation to notify transactions applies to UK incorporated companies whose shares or debt securities (or other financial instruments) are admitted to trading on a regulated market (whether or not that market is in the UK) (DR 1.1.1R(2)(a)). It also applies to UK incorporated companies after an application has been made for admission to trading on a regulated market in the UK.

The obligation also applies to a company incorporated outside the EEA if that company has securities (other than high denomination non-equity securities) admitted to trading on a regulated market and the UK is that company’s home member state.

Companies incorporated in another Member State with securities admitted to trading on a regulated market in the UK will be subject to similar rules in the Member State where they are incorporated. Such companies must announce through a RIS equivalent information regarding dealings as they become aware of it.
V. SANCTIONS

The sanctions available to the FSA in the event of breach of the Disclosure Rules are the same as those for breach of the Listing Rules:

> financial penalty; and/or
> censure statement.

These sanctions may be imposed on the company concerned, on a person discharging managerial responsibilities; or on a connected person (DR 1.5.3G). If the company is in breach of its obligations a financial penalty may be imposed on a person who at the time of breach was a director of the company and was knowingly concerned in the breach.

The FSA also has powers to require companies, persons discharging managerial responsibilities and their connected persons to provide information to the FSA. It may also require a company to publish information, failing which the FSA may itself publish that information.

The FSA may require the suspension of trading of any securities if it determines that there are reasonable grounds to suspect the Disclosure Rules have not been complied with.

Slaughter and May
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