

Prism Briefing

The New Disclosure Rules

1. Introduction

- 1.1 On 1st July 2005, the Financial Services Authority (FSA) issued new Listing, Prospectus and Disclosure Rules. These were issued as a result of a review of the old Listing Rules the purpose of which was:
- to simplify and modernise the UK listing regime;
 - to incorporate changes required under European law, specifically the Prospectus Directive and the Market Abuse Directive; and
 - to cater for the introduction of International Financial Reporting Standards (IFRS)
- 1.2 This paper looks specifically at the new Disclosure Rules, specifically share dealing and insider trading and communication of information. It gives advice and guidance on actions companies should take now to ensure they comply with both the spirit and letter of the law.
- 1.3 The principles behind the new Rules are set out in six **Listing Principles** make directors responsibilities for communications and disclosure very clear and emphasise the importance of having appropriate systems and controls in place to ensure compliance. The former framework for compliance based on guidelines can no longer be relied on. Each company must set its own standards and publish them.
- 1.4 The new Disclosure Rules replace the previous price sensitive information guide. They don't substantially change existing obligations but impose a number of additional requirements.

2. Regulations at a Glance

Listing Principle Four states that

'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'

The disclosure rules state that inside information must be announced to the market via a Regulatory Information Service (RIS) as soon as possible.

The definition of inside information has not changed. It is defined as information that:

- is precise;
- has not been made public;
- relates directly or indirectly to the company; and
- if made public, would have a significant effect on the price of the company's shares

The guidance on identifying inside information depends on the 'reasonable investor test'. This test asks whether the information is *'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 issuer's financial instruments'*.

3. Key additional obligations

Insider lists

Listed companies must keep a list of everyone who has access to inside information, including both people inside the company and at each of its professional advisers. Lists must be kept for at least five years and made available to FSA on request.

Education of Insiders

Listed companies must ensure all those on its insider lists have been briefed on their legal and regulatory duties and made aware of the possible sanctions if they misuse the information. Directors who are 'knowingly concerned' in the breach of the rules can be held personally liable by the FSA.

Disclosure of inside information

Whilst the definition of inside information has not changed, it must be released to the market via a Regulatory Information Service (RIS) as soon as possible, (subject to certain limited exceptions).

Personal Share Dealings

The existing requirement to disclose director dealings to the market has been extended to include senior executives and their 'connected persons'. This includes senior managers who have regular access to the company's inside information and the authority to make management decisions.

Suspicious Transaction reporting

Advisers to the company will be under an obligation to report any transaction carried out by its client that it reasonably believes to be suspicious.

4. Best practice guidelines

4.1 Share dealing and insider trading

The following actions should be taken to ensure compliance with the requirements of the Disclosure Rules.

- Set up a formal share dealing policy that is signed off at Board level, including a formal process for obtaining clearance for dealing.
- Create a comprehensive insider list. Keep separate lists for those with access to confidential information on an on-going basis and those with access to specific project information which can be closed at a set date.
- If a separate project list is needed, the company needs to define at what point this should be set up, for example, when a project is approved by the board or due diligence commences.
- Update lists promptly with any additions or deletions.
- Ensure directors' induction programmes include briefing on insider trading obligations and update them as changes occur.

4.2 Communication of price sensitive information

- A formal, documented, corporation communications procedure needs to be set up, approved by the board and communicated to all relevant staff.
- This should include:
 - how press queries should be handled;
 - who can talk to analysts, journalists and shareholders;
 - how potentially price sensitive information should be communicated internally; and
 - a crisis management plan
- Make sure internal procedures are in place to ensure there is simultaneous disclosure of information to the market and third parties, particularly if the company is listed on more than one exchange.

The Prism perspective

Our view is that formal share dealing and insider trading policies are no longer optional under the new Rules mean: they are essential to protect directors. Maintaining insider lists may appear bureaucratic but the company must be able to produce these within 24 hours if the FSA decide an investigation is needed, and therefore are essential.

We would also strongly recommend the development of an explicit corporate communications procedure. The FSA are increasingly active in this area and the company will need to be able to demonstrate that these disciplines are not only in place, but well understood.

On the positive side, as the focus on corporate responsibility generally raises the profile of company ethics, taking a robust approach to preventing insider trading demonstrates the company's commitment to corporate integrity.

Useful links

www.icsa.org.uk

**Financial Services Authority Policy Statement
Implementation of Market Abuse Directive
March 2005**

www.fsa.gov.uk