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Disclosure of inside information - Best practices

The Autorité des marchés financiers reviews best practice rules aiming at the correct handling of inside information within listed issuers.

An investigation conducted by the AMF led to the following findings:

- following the implementation of new integrated-management software, an issuer experienced an accumulation of dysfunctions over a three-month period which significantly affected its production;
- these problems led to an unannounced visit by a supervisory authority and subsequently to a full shutdown of activity at a major production site, this last piece of information having been publicly disclosed;
- before this information was publicly disclosed, some employees sold their holdings in the employee savings fund while being aware of the difficulties faced by the issuer.

Article 7 of the EU's Market Abuse Regulation (MAR) specifies that inside information may take the form of "a set of circumstances or an event which may reasonably be expected to come into existence [...] if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances [...] on the prices of financial instruments [...]". Article 17 of the MAR regulation stipulates that: "An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer [...]." Consequently, it is the issuer's responsibility to determine the moment at which a piece of information takes on an inside nature.

Either there is no doubt as to the existence of inside information, which must thus be publicly disclosed ^[1], or a doubt does exist as to the inside nature of the information in question. If the latter is the case the AMF urges issuers to disclose such information in the timeliest manner to ensure equal access to accurate investor information. This may be the case where an accumulation of dysfunctions affecting the issuer's business activity is observed. Such a disclosure may usefully be accompanied by further details on the resources deployed to remedy the malfunctions, followed by regular updates on how the situation is evolving.

The AMF would like to stress the importance of providing proper information to investors, as well as the measures that issuers must take so that their employees do not transmit or use, for personal purposes, any inside information they gain knowledge of as part of their duties. In this respect, appropriate vocational training provided to issuer's employees is a way of preventing the occurrence of insider dealing.

[1] Pursuant to Article 17 of the MAR, the ability to delay the publication of inside information constitutes an exception to the obligation to inform the public as soon as possible, with said exception requiring three conditions to be in force: (i) preserving a legitimate interest and (ii) being able to ensure confidentiality (iii) the delay to publication must not be of such nature as to mislead the public. The ability to make use of this exception ceases once one of these conditions is no longer fulfilled.

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