

AMF Position No. 2006-11 Insider lists established by issuers of financial instruments

Reference texts: Article 223-27 of the AMF General Regulation

Pursuant to Article L. 621-18-4 of the Financial and Monetary Code, an issuer whose financial instruments are admitted to trading on a regulated market or for which a request for admission to trading on such a market has been made shall draw up, update and submit to the AMF, in hard copy or by email, whenever the AMF so requests, a list of persons working for it and having access to inside information concerning it directly or indirectly, as well as third parties acting on their behalf or for their account and having access to such information as a result of their professional relations with said issuer. Likewise, these third parties shall draw up and update their own lists and submit them to the AMF.

Issuers and third parties are free either to establish a single list of persons with regular or occasional access to inside information about the issuer or to establish lists of permanent insiders and occasional insiders.

- **Permanent insiders** are persons with regular access to inside information about the issuer by virtue of their duties. Permanent insiders can belong to one of two categories:
 - Persons "working" at the issuer, who include (depending on the issuer's size, method of organisation or business) members of the administrative, management or supervisory bodies, as well as the issuer's other employees or workers, where such persons have regular access to inside information concerning the issuer directly or indirectly.
 - Third parties acting on behalf or for the account of the issuer and having access to inside information "through their professional relations" with the issuer, namely professionals having regular relations that give them access to inside information, such as the issuer's statutory auditors and regular advisers or companies undertaking duties that the issuer has outsourced.

In turn, these third parties shall draw up their own lists which, further to the list drawn up by the issuer, shall include the names of staff members having insider status by virtue of their professional relationship with the issuer. The issuer's list shall show only the registered name (for legal entities, the most common case) or the name (for independent service providers) of third parties but shall not include the names of the individual employees of the third parties who are responsible for the issuer's dossier.

From 1 November 2007, statutory auditors carrying out their legal engagement in accordance with Articles L. 823-9 et seq of the Commercial Code are no longer subject to this procedure. Because this statutory engagement is performed in the public interest, statutory auditors are not deemed to be acting "for the account of the issuer".

By contrast, contractual engagements are still subject to the insider list requirement. Where such engagements are entrusted to an audit firm, the issuer's insider list shall show the name of the legal entity for which the individual auditor carries out his or her duties. For its part, the signatory audit firm shall draw up its own list, specifying inter alia the names of the auditors, the staff members responsible for these engagements, as well as any outside experts on which the firm may call for the purposes of these tasks.

- **Occasional insiders** are persons with intermittent access to inside information about the issuer, especially because of their involvement in preparing a specific corporate finance transaction. Occasional insiders can belong to one of two categories:
 - Persons "working" at the issuer, e.g. employees or workers with access to inside information by virtue of their special skills as regards a planned acquisition, for example.
 - Third parties acting on behalf or for the account of the issuer and having access to inside information "through their professional relations" with the issuer when preparing or carrying out a specific transaction, e.g. investment services providers such as lawyers and corporate and investment banks that are working with the issuer on arranging a transaction or a planned transaction, for example, or the public relations agencies chosen for such transaction. Rating agencies are also concerned insofar as they are acting at the behest of the issuer and have access to inside information about the issuer.

These third parties shall draw up their own lists. For example, where an issuer seeks the advice of a law firm for the preparation of a corporate finance transaction, the issuer must add the firm's name to its list. In turn, that firm must include on its list the names of all persons working for it who have access to inside information because of their involvement in that transaction, e.g. co-workers, translators or archivists with access to the case file. The firm's list must also include the names of third party providers whose services it has engaged for the purpose of preparing the transaction.

Investment analysts and financial journalists are not concerned, in principle, since they are not supposed to have inside information about the issuer. Should they come into possession of such information through their professional relations with the issuer, they would have to be added to the issuer's insider list.

Pursuant to Article 223-30 of the AMF General Regulation, issuers and third parties are required to inform the persons named on the list that they have been included thereon and are therefore subject to the abstention requirements arising from possession of inside information. This information may be given to the persons concerned either on the day they take up their duties (permanent insiders) or on the day they are added to the list (occasional insiders).