

# Unlawful disclosure of inside information

## FCA Primary Market Bulletin No.42 & The Insider Dealing (Securities & Regulated Markets) Order 2023

*June 2023*

### FCA Primary Market Bulletin No.42

In this Primary Market Bulletin, the Financial Conduct Authority (**FCA**) noted that its Primary Market Oversight department (**PMO**) conducts numerous enquiries each year into suspected unlawful disclosures of inside information by issuers, directors, advisers and other parties. These enquiries may lead to a disciplinary outcome being published by the FCA's enforcement division, such as the Final Notice against Sir Christopher Gent published in August 2022. The PMO noted common situations/ behaviours where it has previously had cause to investigate, as a reminder to issuers:

#### Social Media

Where issuers disclose inside information, this must be done via a RIS and without the addition of marketing information. 'Numerous' enquiries have been made where the PMO has suspected disclosure of inside information only on social media channels such as Twitter. Issuers must also take care to avoid disclosure of inside information exclusively through direct communications between the management team and investors on social media.

#### Mainstream Media

Issuers should take care to ensure requisite RIS announcements, containing information which may be inside information, are issued before articles including that information appear in mainstream media outlets. The FCA does not consider it a 'significant mitigant' that the article is published outside market hours.

#### Fundraisings

Issuers should avoid potential leaks of inside information in respect of fundraising activities, including placings, subscriptions and rights issues. Leaks are often in relation to smaller issuers, where the information appears on small media outlets or bulletin boards and blogs. The PMO recommends tight systems and controls to restrict access to information in respect of fundraisings, the use of insider lists and following the wall-crossing procedures set out in the UK version of the Market Abuse Regulation (**UK MAR**).

### Analyst and Media Briefings

Issuers must take care to consider their market disclosure obligations in analyst briefings, earnings calls and media events. Executives may make problematic disclosures when unsure about the detail of results being presented, or when speaking unscripted, including in Q&A sessions. Proper preparation by executives is necessary to avoid selective disclosure of information to analysts.

### Systems and Controls

Issuers should consider formulating policies and procedures for handling inside information that set out the issuer's legal obligations in the context of its day-to-day activities, and identify practical behaviours that create risk. Issuers might explicitly recognise the risk of unlawful disclosure of inside information on social media in such policies. The FCA notes that many issuers' policies simply reproduce (at great length) UK MAR and the relevant FCA rules and guidance, in a way which is not easy for executives and employees to digest. The FCA encourages issuers to assess the adequacy of their policies in this context and update them, as necessary.

### Shareholder Engagement

Issuers are reminded that the FCA is keen not to inhibit or stifle high quality engagement with shareholders. Following the publication of the Final Notice against Sir Christopher Gent, concern was raised by a number of stakeholders over the extent to which collective engagement by shareholders may be seen as inconsistent with UK MAR. Those concerns were noted as going beyond the type of engagement that was covered by the facts of that case. FCA analysis is likely to focus primarily on the nature of the information shared and the rationale for doing so, rather than on the number of shareholders involved in the discussion.

### **The Insider Dealing (Securities and Regulated Markets) Order 2023**

In a separate development, this Order came into force on 15<sup>th</sup> June 2023. It has extended the scope of the criminal offences for insider dealing and unlawful disclosure of inside information set out in the Criminal Justice Act 1993, to cover a similar range of securities exchanges and financial instruments to those the subject of the civil offences in UK MAR.

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## Note to editors

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