

Technical Note

Periodic financial information and inside information

DTR 2.2.1 G;
DTR 2.2.2 R;
DTR 2.5.1 R;
LR 7.2.1 R;
LR 7.2.3 G;
MAR

The Market Abuse Regulation ('MAR') requires an issuer to inform the public as soon as possible of any inside information which directly concerns that issuer, unless the narrow circumstances to delay the disclosure of inside information set out in Article 17(4) and (5) of MAR apply.

The requirement to disclose inside information applies even when issuers are in the process of preparing their periodic financial reports.

When preparing periodic financial reports, issuers should assess on an ongoing and case-by-case basis whether the information they hold fulfils the criteria defining inside information as set out in Article 7 of MAR. In undertaking this assessment, issuers should begin from the assumption that information relating to financial results could constitute inside information.

The FCA expects issuers to exercise judgment and to conduct this ongoing assessment in good faith. Issuers should record and be able to submit evidence of the assessment process to the FCA upon request.

It is not appropriate for issuers to take a blanket approach to the assessment of the status of the information they hold. Issuers should not consider that information to be included in periodic financial reports will always or never constitute inside information.

For the purposes of point (a) of Article 17(4) of MAR, the FCA considers that the cases where immediate disclosure of inside information is likely to prejudice the legitimate interests of an issuer include circumstances where:

the issuer is in the process of preparing a periodic financial report and immediate public disclosure of information to be included in the report would impact on the orderly production and release of the report and could result in the incorrect assessment of the information by the public.

In many cases, an issuer will be able to carefully and appropriately draft an announcement that will enable the correct assessment of the inside information by the public. We accept that in some cases this will not be practicable other than through publication of the full financial report.

Issuers are responsible for assessing, on an ongoing and case-by-case basis, the existence of a legitimate interest which would likely be prejudiced by immediate disclosure of inside information.

For the purposes of point (b) of Article 17(4) of MAR, issuers should also assess on an ongoing and case-by-case basis the extent to which the delay of disclosure of inside information is likely to mislead the public.

There is no possibility to delay disclosure of inside information under Article 17(4) of MAR in situations where to do so would mislead the public. ESMA has provided a non-exhaustive list of situations where delay of disclosure of inside information is likely to mislead the public. This list can be found at:

https://www.esma.europa.eu/sites/default/files/library/2016-1478_mar_guidelines_-_legitimate_interests.pdf

Issuers are reminded that when an issuer has delayed the disclosure of inside information under Article 17(4) of MAR, the issuer is required immediately after disclosing the information to the public to inform the competent authority that disclosure of the information was delayed, and to provide to the competent authority upon request a written explanation of how the conditions permitting such delay were met.

Article 4 of Commission Implementing Regulation (EU) 2016/1055 specifies the detail of the information which issuers must record when they make the decision to delay disclosure of inside information, and the information which should be notified to the competent authority.