



Market Abuse Directive

DILLON  EUSTACE

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MARKET ABUSE DIRECTIVE

Introduction

The EU Market Abuse Directive, implemented in Ireland on 1 July, 2005 by the Market Abuse (Directive 2003/6/EC) Regulations (the “Regulations”), imposes significant obligations on all listed issuers (both Irish and overseas) whose securities or instruments are listed on the Irish Stock Exchange (“ISE”). The Regulations strengthen and extend the existing Irish Stock Exchange rules relating to inside information. They also create a new offence of market manipulation¹.

The Regulations applies to issuers of all listed securities (including open and closed ended funds, debt securities and securitizations) or where a request for admission to trading has been made.

The new obligations imposed by the Regulations are set out below.

Disclosure of Inside Information

“Inside information” is information of a precise nature relating directly or indirectly to one or more issuer of financial instruments or to one of more financial instruments which has not been made public and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related derivative financial instruments.

“Information of a precise nature” is defined as information that indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an

¹ “market manipulation” is defined as (a) transactions or orders to trade (i) which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or (ii) which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for so doing are legitimate and that these transactions or orders to trade conform to accepted market practices on the regulated market concerned; (b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance; (c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

event which has occurred or may reasonably be expected to occur, and is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event, as the case may be, on the process of financial instruments or related derivative financial instruments.

The Regulations provide that it is an offence to use inside information to buy or sell financial instruments. It is also an offence to disclose inside information to any other person, unless this is done in the normal course of a persons employment, profession or duties. There are, however a number of defences. For example, engaging in buy-back programmes, own share purchases, or post-merger stabilisation measures would not be deemed to be market abuse provided certain relevant conditions are met. In addition, possessing inside information relating to a target company in a public takeover would not be considered market abuse if this is in conformity with the Irish Takeover Rules.

Issuers of financial instruments that are admitted to trading on a regulated market must inform the public as soon as possible of inside information which directly concerns the said issuers. The Regulations provide details on the measures required by issuers to disclose information and that information must be disclosed without delay and in a manner which allows fast access and a complete and accurate assessment of the information by the public. In addition the information must also be put on the issuer's website for not less than six months.

However, an issuer may under its own responsibility delay the public disclosure of inside information such as not to prejudice its legitimate interests provided that such omission would not be likely to mislead the public and provided that the issuer is able to ensure the confidentiality of that information. It is likely that Irish Financial Services Regulatory Authority (the "Financial Regulator") will interpret what constitutes "legitimate interests" in a strict manner. An issuer shall without delay inform the Financial Regulator or the ISE, as appropriate, of the decision to delay the public disclosure of inside information. Persons in possession of inside information are prohibited from dealing in the securities until such information becomes public.

Duty to Maintain Insider Lists

Issuers, and persons acting on their behalf or for their account, must maintain a list of persons working for them who may have access to inside information. The lists should state the identity of any person with access to inside information, the reason why they are on the list and the date on which the list was created and updated. These lists should be promptly

updated whenever there is a change in the reason why a person is on the list, to add a new person to the list and whenever any person on the list no longer has access to inside information. The requirement here is to 'maintain' insider lists rather than just compiling such lists in response to specific regulatory requirements. The issuer itself should maintain a list of its employees (i.e. the directors) and its principal contacts at each of its service providers (for example its financial, legal or tax advisers). Each service provider should then maintain their own lists of persons who may have access to inside information and should confirm to the issuer that such lists will be made available to the issuer on demand. These lists must be maintained for a period of at least 5 years after being drawn up or updated.

Disclosure of Transactions in Securities

The Regulations also introduce a requirement for persons discharging managerial responsibility and persons closely associated with them to disclose transactions in securities. Persons discharging managerial responsibilities (and, where applicable, persons closely associated with them) in an issuer must notify the issuer without delay of details of transactions carried out on their own account and must further notify the Financial Regulator within 5 business days of the transaction. The relevant person is obligated to notify the Issuer within 4 business days of the date on which the transaction occurred. The Issuer must notify the Financial Regulator (using a Schedule 11 form) no later than the end of the business day following receipt of the notification from the relevant person. This is an extension of the scope of the previous requirement relating to notification of dealings by directors and other interested parties and it will overlap with the existing obligations for Irish investment fund companies contained in the Companies Act, 1990. Such persons should sign a form acknowledging their responsibilities in this regard, a sample form is attached at Appendix I. A revised Schedule 11 reporting form is attached as Appendix III.

As a first step, an issuer must firstly identify a person discharging managerial responsibilities and must then educate those persons with regard to their legal obligations. Under the Regulations, a person discharging managerial responsibilities is defined as a director of a company, or a non-director who has access to inside information concerning the issuer and who has the power to make managerial decisions pertaining to the issuer (for example the directors of a management company in the case of a unit trust or possibly a senior executive with a specific power of attorney from the Board authorising him to make managerial decisions on their behalf). The disclosure obligations are very broad and also extend to persons closely associated such as spouses, children, any entity beneficially owned by such persons and persons who share the same household for at least one year from the date of the transaction.

Recommendations Produced by Third Parties

Persons who produce or disseminate recommendations or research concerning financial instruments or concerning the issuers of those instruments, or produce or disseminate information recommending investment strategy, to the public must, inter alia, present the information fairly and disclose interests or conflicts of interest. This does not apply to dissemination of information by a journalist subject to appropriate regulation and provided the journalist does not derive any direct or indirect advantage from the release of such information.

Other Obligations

Persons professionally arranging transactions in financial instruments are required to notify the Financial Regulator or the ISE, as appropriate, where they reasonably suspect that a transaction may constitute insider dealing or market abuse. Records of any such reports must be maintained for at least 6 years.

A copy of our Market Dealing Procedures Memorandum (which may be completed and retained as a guidance memorandum by all issuers) and associated Appendices may be obtained from Dillon Eustace upon request.

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