

Disclosure of inside information

Guideline for Nasdaq Copenhagen

Introduction

This guidance explains the Exchange's expectations in relation to issuers' disclosure of information in scope of rule 3.1.1 in Nasdaq Nordic Main Market Rulebook (the Rulebook).

Rule 3.1.1 creates a link between the Rulebook and the legislative requirement to disclose inside information.¹ Missing or slow disclosure can constitute a violation of both legislation and the Rulebook. It also means that an Issuer can be subject to two investigation and sanction processes at the Exchange and the Danish Financial Supervisory Authority (FSA).

The Exchange expects that companies prior to the admission to trading dedicates and utilizes the necessary resources in order to prepare and stay compliant with the disclosure requirements. Most violations of the disclosure requirements occurs because the Issuer have failed to prepare its organization appropriately in relation to the requirements that follow an admission to trading.

If there is any doubt as to which rules apply or how a certain rule should be interpreted, the Issuer can contact Surveillance on telephone + 45 33 93 33 66 during market opening hours. It is also possible to send an e-mail to Surveillance at surveillancedk@nasdaq.com. Surveillance is more than willing to provide assistance with guidance on the rules, but cannot advise or take decisions on behalf of the Issuer.

The FSA has a section on its website dedicated to the market abuse regulation. In this section there is a lot of relevant information and templates etc. that companies could benefit from using in their efforts to stay compliant with the market abuse regulation. The website is here: <https://finanstilsynet.dk/Lovgivning/MAR1>.

WHAT do you have to disclose?

An Issuer shall disclose inside information

The disclosure requirement in 3.1.1 I the Rulebook relates to inside information, that also has to be disclosed according to the market abuse regulation. The disclosure requirement only applies to information which *directly* concerns the Issuer.

The Issuer has the responsibility to ensure that possible non-disclosure agreements does not limit the Issuers compliance with the disclosure requirements. It is not possible to agree with another party that an agreement in whole or certain elements of the agreement cannot be disclosed, if such information is necessary for the Issuer to describe the inside information in a complete, correct and timely manner.

¹Regulation no. 2014/596 of the European Parliament and of the Council on market abuse (market abuse regulation), article 17

What is inside information?

Inside information is defined in article 7 of the market abuse regulation. The definition contain four criteria:

1. Information of precise nature
2. Non-public information
3. Information relating directly or indirectly to Issuer
4. Information which, if it were made public, would be likely to have significant effect on the prices of the instruments

Information is *precise* when it indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which reasonably may be expected to occur.² It can be very challenging to determine when information is *precise*.

The European Court of Justice has in a decision³ interpreted the criterion, so that information is *precise*, if there is a realistic prospect that the event or circumstance will come into existence or occur. If it is unlikely that the event or circumstance will come into existence or occur, the information is not *precise*. On the other hand, it is not correct that it has to be more likely than unlikely for the information to be *precise*. The requirement should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration.

It is also not a requirement, that it is possible to determine how the information will affect the prices. In order for the information to be *precise*.⁴

The criterion on *significant price effect* should be understood as information a reasonable investor would be likely to use as part of his or her investment decision.⁵

Typical types of inside information

It is always a concrete assessment varying from Issuer to Issuer what constitutes inside information. The following list is non-exhaustive, but contains events or circumstances that can constitute inside information:

- Orders (because of its size or because it relates to a new product or market)
- Investment decisions
- Cooperation and joint ventures
- Mergers and acquisitions
- Financial difficulties
- Loss of a customer
- Research results
- (Intermediate steps in) Applications for authority approvals and patents
- Decisions from authorities

² Article 7(2) in the market abuse regulation

³ ECJ decision in case C-19/11 (Geltl vs. Daimler AG)

⁴ ECJ decision in case C-628/13 (Lafonta vs. AMF)

⁵ Article 7(4) in the market abuse regulation

- Agreements between an Issuer and a provider of liquidity support
- Remarks in auditors reports
- Changes in financial guidance⁶
- Change of management (there is a presumption that change of CEO and chairman of the board constitutes inside information)
- Significant changes in Issuer’s activities.

The Exchange expects that Issuers thoroughly and continuously considers and maps, which types of information der may develop into inside information for the company. At the same time Issuers should consider, specifically for that Issuer, when in the usual processes for the company, inside information may arise.

What should a company announcement contain?

It is essential for the proper function of the market, that the information disclosed by the Issuer are relevant and understandable. The Danish FSA has described that in a newsletter (only in Danish).⁷

The Exchange expects that company announcements contain a meaningful headline, that explains to the recipient which information in the announcement is the most important. An announcement on an approval from an authority can for instance have a headline saying, “Approval from X Authority”. A headline that for instance only contains a product name is too unclear. In the same way the headline can be misleading, if the heading describes a piece of information that is less relevant than the information mainly described in the announcement. That can be the case, if the Issuer significantly lowers its financial guidance and in connection with that had to change its strategy. In that case it will be misleading to have a heading saying “New strategy opens new possibilities in the Danish market”.

<p>A descriptive heading</p>
<p><i>Relevant background information</i> This could include a description of preceding, intermediate steps or references to earlier disclosed information.</p>
<p><i>The most important thing first!</i> The most important information in the announcement should be described in the beginning of the announcement. Describe the most relevante features in relation to each pice of information and why it constitutes inside information.</p>
<p><i>Other information</i> If an annoucement contains information about several events/cirumstances, then describe the significance for the company of each piece of information</p>

In addition to that it is significant, that the recipient of the announcement via the text is helped towards understanding which details are important. If an agreement on sale of a product is entered into, and the contract value is low, but the agreement is important because it represents access to a new market, that is the most important information. If only the contract value is mentioned, it may be insufficient.

When drafting the announcement, it can be beneficial to ask yourself: “Why is this inside information?” and then describe the answer in the announcement.

The name of a contractual party is typically important for the recipients understanding of the importance of the information, but the significance can depend on whether the information concerns an order, a joint venture or a merger/acquisition. In the latter two instances it is difficult to describe the information without mentioning the name of the other

⁶ See Danish FSA guideline no. 9973 af 9/10/2017: “Hvornår skal en udsteder offentliggøre oplysninger i finansielle rapporter som intern viden?” (only in Danish)

⁷ “Finanstilsynets nyhedsbrev for kapitalmarkedsområdet, oktober 2019”.

party. In exceptional cases it can be possible to describe the information in a complete and correct manner without naming the other party.

WHEN shall disclosure take place?

Inside information which directly concerns the Issuer shall be disclosed as soon as possible.⁸

There is no firm time limit for, when information is disclosed as soon as possible. It depends of the specific situation, and how much the Issuer has had the opportunity to prepare in advance. The Exchange finds it very important, that Issuer in its internal procedures has clear description of how the preparation takes place and has developed templates etc. that can shorten the time needed to finalize an announcement. The Issuer must also make sure that there is a certain progress in i.e. internal approval procedures leading to disclosure of inside information.

Under circumstances⁹ the Issuer has a possibility to delay the disclosure of inside information. Possible cases of violations of the rules on delayed disclosure of inside information is under the competence of the Danish FSA.

HOW shall disclosure take place?

Where shall inside information be disclosed?

Disclosure shall take place in a manner which enables fast access and complete, correct and timely assessment of the inside information.⁸ Typically disclosure via a distribution service provider will ensure disclosure and registration the necessary places.

Distribution of information in newsletters, via e-mail subscriptions etc. is always secondary in relation to disclosure to the market and registration at the Exchange and authorities.

Announcement categories

Different announcement types separate information disclosed to fulfill a legislative requirement or requirement stemming from the Rulebook (company announcements) from “voluntary” information in press releases and investor news.

When a company announcement is released it is of utmost importance to choose the correct announcement type and category. When an announcement contains inside information, it is always that category that must be used, even if the information also falls within one of the other disclosure requirements in legislation or the Rulebook. It is a requirement and necessary for the recipients’ assessment of the significance of the information. Issuers can also choose to write directly in the text of the announcement that it contains inside information.

The category “Other information disclosed according to the rules of the exchange” cannot be used for disclosure of inside information.

⁸ Article 17(1) in the market abuse regulation, cf. 3.1.1 in the Rulebook.

⁹ Article 17(4) in the market abuse regulation and Commission implementing regulation 2016/1055 from 29 June 2016. In addition to that, see ESMA Guideline (2016/1478) on <https://www.esma.europa.eu/document/mar-guidelines-delay-in-disclosure-inside-information>

After disclosure

When an announcement has been disclosed, the Exchange expects, that the Issuer checks if the information has reached the media, the Exchange's website and, if applicable, the Danish FSA database for company announcements (OASM).

The Exchange also expects that the Issuer checks if the announcement is presented correctly and that attachments can be opened.

This check should take place as soon as possible after the disclosure has taken place, so the Issuer itself discovers and corrects possible errors. The Exchange expects, that the Issuer in case of errors reacts within a short timeframe.

Technical problems

In case of technical problems within the Issuer or the distribution service provider, the Issuer should arrange for alternative distribution means to be initiated as soon as possible. At the same time, and if possible earlier, the Issuer should contact Nasdaq Surveillance on telephone + 45 33 93 33 66, so Surveillance can assess if market monitoring should be intensified or trading should be suspended until the information is distributed correctly.

Alternative means of distribution can for instance be e-mails to news agencies and manual reporting to surveillancedk@nasdaq.com.

The Exchange encourages Issuers to request their distribution service providers to inform them about planned maintenance and unexpected technical problems. In that way, the Issuer can initiate its back-up plan faster if necessary.

Annex 1 – Non-exhaustive list over relevant information in company announcements

<p>Orders</p> <ul style="list-style-type: none"> • Reason for significance (market/value) • Product • Timeline • Consequences (i.e. in relation to disclosed guidance) 	<p>Investment decisions</p> <ul style="list-style-type: none"> • Reason for significance • Purpose • Value • Timeline • Counterparty 	<p>Cooperation and joint ventures</p> <ul style="list-style-type: none"> • Reason for significance • Purpose • Plans and expectations • Counterparty 	<p>M&A</p> <ul style="list-style-type: none"> • Price • Method of payment • Description of the acquired/divested • Consequences • Timeline • Terms and conditions 	<p>Financial difficulties</p> <ul style="list-style-type: none"> • Reason • Creditor • Possible solutions • Timeline • Consequences if no solution is found
<p>Loss of customer</p> <ul style="list-style-type: none"> • Counterparty • Product • Timeline • Consequences 	<p>Research results</p> <ul style="list-style-type: none"> • Product • Status • Timeline • Consequences 	<p>Authority approvals or patents</p> <ul style="list-style-type: none"> • Product • Status • Timeline • Consequences 	<p>Decisions from authorities</p> <ul style="list-style-type: none"> • Product • Status • Timeline • Consequences 	<p>Agreements on liquidity support</p> <ul style="list-style-type: none"> • Counterparty • Terms and conditions • Timeline
<p>Remarks in auditors report</p> <ul style="list-style-type: none"> • Reason • Description • Consequences • Mitigation 	<p>Changes to financial guidance</p> <ul style="list-style-type: none"> • Change • Reason • Reference to previously disclosed guidance • Attn: FSA guideline 	<p>Change of management</p> <ul style="list-style-type: none"> • Name • Position • Timeline • If relevant, information about experience etc. 		