



An overview of capital markets

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What will this presentation cover?

- What is the regulatory environment for capital markets offerings
- When do I need to produce a prospectus?
- What does a prospectus need to contain?
- What happens once I have listed?
- **Will I go to jail?**

Regulatory Framework

- European Directives
 - **Prospectus Directive**
 - **Transparency Directive**
 - **Market Abuse Directive**
- **Part VI and Part VIII FSMA**
- **Listing Rules, Prospectus Rules and Disclosure and Transparency Rules**
- Section 397 FSMA
 - Dishonestly or recklessly make misleading statements
 - Dishonestly conceal material facts
 - Conduct that creates false or misleading impression re market/price/value
- Criminal Justice Act – insider trading
- **“Guidance” – List!, Market Watch and CESR Level 3**
 - Where is the PSI Guide?
 - *List!* (ps, it's not guidance) and guidance in DTRs



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Initial disclosure

When do I need to produce a prospectus?

- Admission to trading on exchange
 - IPOs
 - Debt listings
- Offer to the public
 - Exemptions
 - Professionals
 - Numbers

The Prospectus

- Content:
 - Summary
 - Business
 - Risk Factors
 - OFR/MD&A
 - Terms of the securities

- Liability
 - Company
 - Directors

Due diligence

■ What might diligence entail?

- The same level of diligence as for an SEC registered offering, which is driven by the highest levels of fear of litigation and regulatory enforcement action
- Involvement of counsel trained to fear the worst
- Management presentations and q&a with often aggressive questioning
- Diligence session with controlling shareholder
- Diligence sessions with auditors
- Directors and officers questionnaires
- Due diligence list and a very large data room
- Days of documentary due diligence
- Drafting sessions with senior participation
- Sessions with other experts, like mineral or property experts
- Legal opinions
- Detailed representations and warranties and fulsome indemnity from the Company
- Review of prospectus and accounts by US arms of the big four
- SAS 72 comfort letters
 - SAS 100 or IAS equivalent review of interim financials
 - Extraction comfort
 - No change in specified line items since last annuals or interims



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Financial reporting

Continuing obligations

- Annual reporting
 - Audit
 - IFRS etc
- Half yearly reporting
 - Unaudited
- Interim management statements or quarterly reporting



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Ongoing disclosure of inside information/PSI

What is the purpose of all of this PSI stuff?

- Two key principles:
 - Timely disclosure of all relevant information; and
 - Equal treatment of all shareholders
- Why?
 - Protect investors by achieving an orderly market and ensuring that all investors have access to the same relevant information
- But why?
 - Investors may accept different business risks but investors have tendency to avoid markets with insufficient information or where members of the “in” crowd get all the juicy information
 - Helps sustain trading in company’s shares
 - Enhances reputation of the company (contrast to poor discloser)

Basic obligation to disclose

- An issuer must notify an RIS **as soon as possible** of any inside information which directly concerns the issuer
- An issuer will be deemed to have complied with the disclosure obligation where, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, the issuer notified an RIS as soon as possible
- Note also Listing Principle 4 which requires listed companies to communicate information in such a way as to avoid the creation or continuation of a false market in its securities.

Is the information of a precise nature?

- If the answer is “yes”, go to the next question slide. If the answer is “no”, the relevant information is **not** inside information
- Information is precise if:
 - it indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and
 - it is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of the securities or related investments
- As an example, information that the Company is in negotiations to acquire another company is precise in that the fact of the negotiations is already in existence, whether or not the acquisition may reasonably be expected to occur
- Whether the fact of the negotiations satisfies the other requirements for it to constitute inside information, or whether disclosure can be delayed, needs to be tested against the other conditions set out below

Is the information generally available?

- If the answer is “yes”, go to the next question slide. If the answer is “no”, the relevant information is **not** inside information
- The fact that the information has become generally available because of a leak, or because of another means of communication (rather than an RIS announcement) does **not** mean that the information is not inside information
- For example, changes in interest rates is generally available, but is there any special impact on the company?

Does the information relate to the company?

- Does the information relate, directly or **indirectly**, to the Company or to the listed securities? If the answer is “yes”, consider the next question slide? If the answer is “no”, the relevant information is not inside information
- The reference to “indirectly” is new, (resulting from MAD) and arguably catches more...

Is the information price sensitive?

- If the information were generally available, would it be likely to have a significant effect on the price of the listed securities or related investments - that is, is the information “price sensitive”? If the answer is “yes”, the information **is** inside information. If the answer is “no”, the relevant information is not inside information and no announcement is required
- Generally companies take a cautious approach to whether information is price sensitive

Factors to consider in determining price sensitivity

- Information is likely to have a significant effect on price if it is information of a kind that a reasonable investor would be likely to use as part of the basis of his investment decisions
- The Company should take into account that the significance of the information in question will vary widely from issuer to issuer, depending on a variety of factors such as the issuer's size, recent developments and the market sentiment about the issuer and the sector in which it operates
- The Company should also assume that a reasonable investor will make investment decisions relating to the relevant securities to maximize his economic self interest
- The FSA emphasizes that there is no numeric definition of what a significant change in a price of securities is, and that a "one size fits all" numeric definition is not appropriate

Factors to consider in determining PS (cont'd)

- The FSA believes that the issuer and its advisers are best placed to make an initial assessment of whether any particular information amounts to inside information. Any assessment should take into consideration the anticipated impact of the information in light of the totality of the Company's activities, the reliability of the source of the information and **other market variables likely to affect the relevant financial instrument in the given circumstances**
- However, information which is likely to be considered relevant to a reasonable investor's investment decision includes information affecting the following:
 - assets and liabilities of the Company;
 - performance, or expectation of performance, of the Company's business; the Company's financial condition;
 - the course of the Company's business;
 - major new developments in the Company's business; and
 - information previously disclosed to the market

Factors to consider in determining PS (cont'd)

- Trading information:
 - Does the trading information differ materially from the company's internal forecasts?
 - Does it result in the company changing its forecasts?
 - What are market expectations?

- Projects
 - Acquisitions and disposals, JVs, financings
 - Strategic developments (commencing or terminating a business activity)

Factors to consider in determining PS (cont'd)

- Internal events
 - Loss of a regulatory licence
 - Major litigation claim
 - Major systems failure
 - Gain or loss of a major customer

- External events
 - Insolvency of a major customer or supplier
 - Fire at a supplier's plant
 - Natural disasters



SO, it's inside information –
what now?

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When do I have to disclose?

- As soon as possible!!!
 - Have a system in place
 - Responsibility is that of the board, but execution usually delegated
 - Inability to convene a board meeting no excuse
 - Delegate to a few directors/disclosure committee who can react quickly
- Directors must monitor carefully and continuously any changes in such company's circumstances that call for an announcement.
- Listing Principle 1
 - A listed company must take reasonable steps to enable its directors to understand their responsibilities as directors
- Listing Principle 2
 - A listed company must take reasonable steps to establish and maintain adequate procedures, systems and controls to enable it to comply with its obligations

When do I have to disclose? (cont'd)

- If the Company is faced with an unexpected and significant event, a short delay may be acceptable if it is necessary to clarify the situation
- If danger of leak before the facts and their impact can be confirmed, it should make a “holding announcement” via the RIS
 - This announcement should detail as much of the subject matter as possible, contain the reasons why a fuller announcement could not be made and include an undertaking to announce further details as soon as possible
- If the Company is unable to make a holding announcement, it may be appropriate to suspend the trading of its listed securities until the Company is in a position to make an announcement

Please please please can I delay?

- Delaying disclosure of inside information will not always mislead the public, although a developing situation should be monitored so that if circumstances change an immediate disclosure can be made
- Investors understand that some information must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the Company
- In order not to prejudice its legitimate interests, the Company will be entitled to delay the public disclosure of inside information, provided that:
 - such omission would not be likely to mislead the public;
 - any person receiving the information from the Company or its agents owes an actual duty of confidentiality to the Company; and
 - the Company is able to ensure the confidentiality of that information
- Prepare a holding announcement in case of leak

Examples of when you might be able to delay

- Negotiations in course, or related elements where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure:
 - Acquisitions or disposals
 - Negotiations where the financial viability of a listed company is in grave and imminent danger (although not within the scope of the applicable insolvency law), public disclosure of information may be delayed for a limited period, where such a public disclosure would seriously jeopardize the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long term financial recovery of such company – this is much more limited than appears at first sight – can delay announcement of negotiations, but not that company is in grave danger
 - Distinguish between cause (e.g. loss of contract – can't delay if PSI) and effect (negotiations of that contract – may be able to delay)
- Dual board companies:
 - Decisions taken or contracts made by the management body which need to be approved by another body in order to become effective, as long as public disclosure of the information before such approval, together with the simultaneous announcement that this approval is still pending, would jeopardise the correct assessment of the information by the public

Rumours and leaks...

- What if the truth leaks out?
 - Speculation is largely accurate? Suggests there has been a breach of confidence
 - Must announce as soon as possible (but see below)
 - Use the pre-prepared holding announcement if necessary

- What if the rumours are untrue?
 - The knowledge that press speculation or market rumour is false is not likely to amount to inside information , and even if the rumour itself amounts to inside information, the FSA expects that in most of those cases the Company would be able to delay disclosure (often indefinitely)

- Indicators that suggests a breach of confidence has occurred will vary from case to case
 - Eg a large multinational that is known to have been in talks with a number of potential US partners in the past is not necessarily obliged to respond to a rumour in the press that it is once again in talks with a US company – even if it is true

Rumours and leaks... (cont'd)

- “No comment”
 - Issuer’s should be prepared to give a “no comment” answer where journalists press for inside information
 - Use the no comment policy consistently!
 - Use it when you can delay AND when there’s no truth to it. Otherwise audience can infer an answer which is tantamount to selective disclosure
- Remember that the FSA might contact you if rumours are circulating – and you better have a good answer!

Can I tell my friends?

- No, no no!!!
 - An issuer must take the necessary measures to ensure that its employees with access to inside information acknowledge the legal and regulatory duties entailed (including dealing restrictions in relation to the issuer's financial instruments) and are aware of the sanctions attaching to the misuse or improper circulation of such information.
 - An issuer must establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the issuer.
 - The Company must ensure that no inside information is released selectively, but if it is released to a third party in the normal exercise of its employment, profession or duties, the Company must make complete and effective public disclosure of that information via the RIS, simultaneously if it was an intentional disclosure or as soon as possible if it was non-intentional
 - An issuer must have in place measures which enable public disclosure to be made via a RIS as soon as possible in case the issuer is not able to ensure the confidentiality of the relevant inside information

But I'm delaying and I have to tell somebody or I'll just burst...

- If the Company delaying under the rules, it may selectively disclose that information to persons bound by a duty of confidentiality (for example as a result of a contract or professional obligations):
 - the Company's advisers (including lawyers and auditors) and advisers of any other persons involved in the matter in question;
 - persons with whom the Company is negotiating, or intends to negotiate, any commercial, financial or investment transaction (including prospective underwriters or placees of the Company's financial instruments);
 - employee representatives or trade unions acting on their behalf;
 - any government department, or any other statutory or regulatory body or authority;
 - major shareholders of the Company;
 - the Company's lenders; and
 - credit-rating agencies.

- But you can't tell someone just because you are bursting to...
 - Must be in normal course of the exercise of employment, profession or duties.
 - And can't tell someone just because they owe a duty of confidentiality – must be a legitimate reason (eg could tell a major shareholder about a transaction for which the Company required shareholder support)

Accuracy of information

- An issuer must take all reasonable care to ensure that any information it notifies to a Regulatory Information Service is not misleading, false or deceptive and does not omit anything likely to affect the import of such information.
- An issuer must not combine in a manner likely to be misleading, a RIS announcement with the marketing of its activities.

Publication

- Inside information announced via a RIS should be available on the issuer's internet site by the close of the business day following the day of the RIS announcement.
- An issuer must ensure that inside information is notified to a RIS before, or simultaneously with, publication of such inside information on its internet site.
- An issuer must, for a period of one year following publication, post on its internet sites all inside information that it is required to disclose via a RIS.

Will I go to jail?

- Breach of disclosure rules entitles FSA to impose penalty on an issuer, director, person discharging managerial responsibilities or a person connected to such a person for contravention of rules.
- May alternatively publish statement censuring that person.
- Listed securities may be suspended from trading or cancelled.
- Dishonestly misleading could lead to jail time
- Insider dealing or tipping could lead to jail time

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