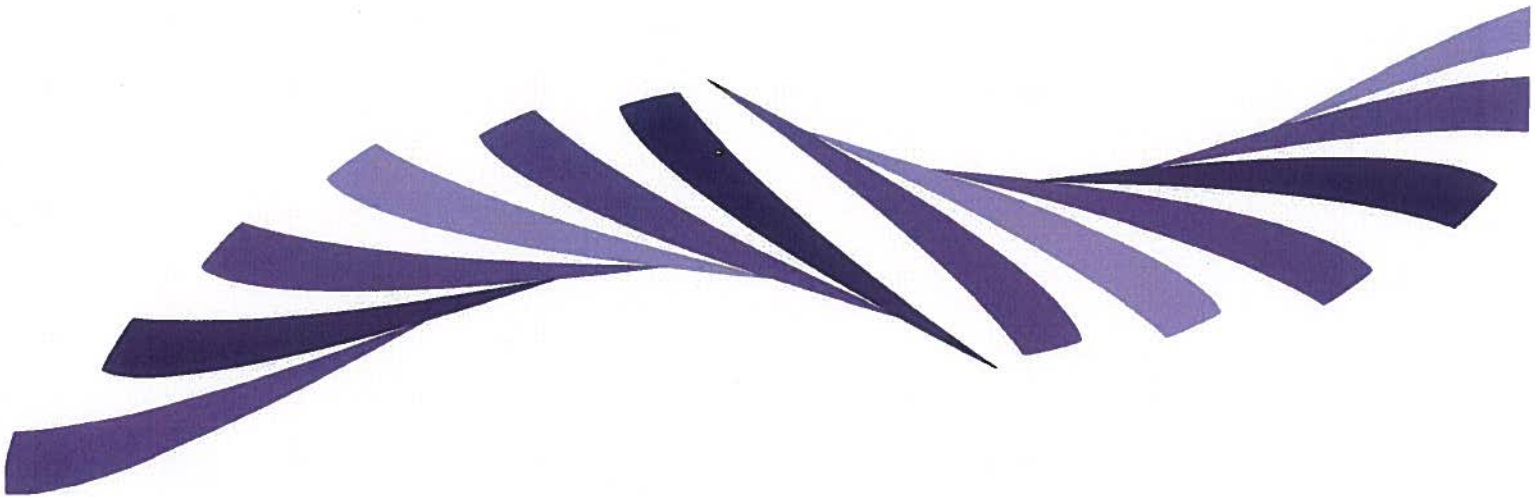
Annex F-4

AFM

Market manipulation



The Authority for the Financial Markets

The AFM promotes fairness and transparency within financial markets. We are the independent supervisory authority for the savings, lending, investment and insurance markets. The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Our aim is to improve consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad. In performing this task the AFM contributes to the prosperity and economic reputation of the Netherlands.

The AFM operates in two areas:

Financial services

The AFM promotes due care in the provision of financial services to consumers. Businesses and persons who provide financial services must be experts in their field, reliable and ethical. The information provided by financial undertakings and pension providers shall be accurate, clear and not misleading. Companies must act in the interests of their clients; a duty of care rests on them.

Capital markets

The AFM promotes the fair and efficient operation of the capital markets, on which investors can rely. We enforce the rules for participants in the markets for equities and other securities. Market abuse – use of inside information, market manipulation or misrepresentation – is forbidden. Listed companies must publish inside information correctly and in a timely manner. We enforce the rules for the issuance of securities and public takeover bids, for financial reporting and for auditors responsible for auditing this reporting.

Contents

1 Introduction

This brochure is published by the Authority for the Financial Markets [*Autoriteit Financiële Markten*, or AFM] to provide further explanation of the rules applying to the prohibition of market manipulation. These rules are based directly on the European Market Abuse Directive (2003/6/EC). With the implementation of the Market Abuse Directive as of 1 October 2005, the rules applying to the prohibition of market manipulation were expanded in comparison to the previously existing regulations.

A single European internal market for financial services is crucially important for economic growth and the creation of employment in the EU. Market integrity is a necessary precondition for an integrated and efficient financial market. The efficient operation of the markets for financial instruments and public confidence in those markets are necessary conditions for economic growth and prosperity.

The prohibition of market manipulation is intended to promote the integrity of the financial markets. This involves increasing and safeguarding the integrity of the market and investor confidence, by promoting the provision of complete, correct and timely information regarding financial instruments and the trading thereof in the financial markets, so that market abuse is prevented. Trading, and the prices that are formed, should be the result of legitimate supply and demand arising from investment decisions taken on the basis of reliable and timely information.

In order to contribute to the creation of one integrated European financial market, regulators in all member states must as far as possible apply the same terminology, definitions and law enforcement. The AFM accordingly follows the guidance established by CESR as closely as possible, and consults with foreign regulators in cases with cross-border implications. The AFM does not permit market manipulation. The law gives the AFM a wide range of powers (from the imposition of an order subject to a penalty for non-compliance instructing an offender to cease conduct that breaches standards, to the submission of a report to the Public Prosecution Service) that are deployed depending on the seriousness of the offence. The AFM strives to provide further clarification of the standards involved in the prohibition of market manipulation (or elements thereof) in consultation with the market where possible and desirable. Strict enforcement is applied in order to limit the number of cases of actual or attempted market manipulation as far as possible.

This brochure deals with the prohibition of market manipulation and contains references to relevant information.

Section 5.4 of the Financial Supervision Act [*Wet op het financieel toezicht*, or Wft], entitled 'Rules for the prevention of market abuse and for conduct in the markets for financial instruments' also contains obligations for listed companies to publish insideinformation without delay, and prescribes additional obligations for parties providing investment recommendations. These elements overlap the prohibition of market manipulation, and are also dealt with in this brochure.

This brochure is designed to provide a general impression of the rules applying to the prohibition of market manipulation. The brochure also refers to relevant (legal) documents and other sources of information. It is intended to provide information, and no rights may be derived from it. You should also not take action solely on the basis of this brochure. If the text of the brochure differs from the text of and notes to the Wft or the Market Abuse (Financial Supervision Act) Decree [Besluit marktmisbruik Wft, hereinafter "the Market Abuse Decree"], the text of the Wft and the Market Abuse Decree shall prevail.

2 Legal basis

The prohibition of market manipulation is contained in Section 5:58 of the Wft. The prohibition is pursuant to the Market Abuse Directive 2003/6/EC and the Implementation Directive relating to the prohibition of market manipulation 2003/124/EC. This implementation directive contains signals that the regulator must specifically take into account in its assessment of potential cases of market manipulation.

In addition, Commission Regulation 2273/2003 prescribes two exceptions from the prohibition of market manipulation. This Regulation has not been converted into Dutch law, but it has direct effect. Lastly, CESR, the collective body of European market regulators, has issued additional guidance and interpretation in relation to how its members, which include the AFM, should apply the prohibition of market manipulation. The actual texts of the European directive [1] and implementation directives, the Commission Regulation [2], the Wft, the Market Abuse Decree and the guidance from CESR can be found on the AFM's website (www.afm.nl) under 'Market Abuse'.

[1] *Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation.*
[2] *Commission Regulation (EC) no. 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments.*

3 Scope and prohibitory provision

The prohibition of market manipulation applies to everyone. The prohibition of market manipulation applies to both natural persons and institutions.

There are four categories of market manipulation:
It is prohibited to:

a) conduct or effect a transaction or order to trade in financial instruments that give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments;
b) conduct or effect a transaction or order to trade in financial instruments to secure the price of financial instruments at an abnormal or artificial level;
c) conduct or effect a transaction or order to trade in financial instruments which employ deception or contrivance; or
d) disseminate information which gives, or is likely to give, false or misleading signals as to the supply of, demand for or the price of financial instruments, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. The scope of the prohibition is very broadly formulated.

The term 'financial instruments' is defined as financial instruments admitted to trading or for which admission to trading has been applied for in a regulated market or multilateral trading facility situated or operating in the Netherlands or another member state, or in a system comparable to a regulated market or multilateral trading facility situated and officially recognised in a state that is not a member state.

If an offence against the prohibition of market manipulation originates in the Netherlands and takes place in another member state it is punishable in the Netherlands, however in this case the regulator in the other member state is the primary regulator and not the AFM. In cross-border cases, European regulators may exchange information and offer assistance to each other, and establish a collective enforcement strategy.

The AFM has the authority to designate categories of transactions or trade orders as transactions or trade orders that are considered to fall under categories a) to d) specified above.

4 Examples

The European Market Abuse Directive and the note to Section 5:58 Wft state certain specific examples of practices that qualify as market manipulation. In addition, the collective body of European regulators CESR has compiled a list of practices that, under certain conditions and circumstances, can be considered by the European regulators to constitute market manipulation. The list is not exhaustive. The following examples are quoted from the above-mentioned (and other) sources.

Examples of potential market manipulation

a) Transactions or orders giving a false or misleading signal:

- Entering into arrangements for the sale or purchase of financial instruments where there is no change in beneficial interests or market risk, or where the transfer of beneficial interest or market risk is only between parties who are acting in concert or collusion (other than repo transactions and securities lending).
- After institutions have been allocated financial instruments in the primary offering, they purchase these instruments in the secondary market in order to push up the price, and, in so doing, to be able to sell the financial instruments obtained in the primary offering and in the secondary market at a higher price.
- The purchase or sale of financial instruments at the close of the market in order to affect the closing price of the financial instrument concerned.
- The entry of an order or orders with a higher or lower price than the previous order with no intention of execution. The purpose of the orders is to give a misleading impression of demand for or supply of the specific financial instrument. The orders are subsequently cancelled before they are executed.
- Pretending there is market activity by conducting transactions shown on a public trading facility, in order to give the impression of activity or price movement in a financial instrument.

b) Transactions or orders designed to bring or maintain a price to an artificial level:

- Large-scale buying or selling of a financial instrument on the expiration date of a related derivative, or vice versa.
- Large-scale buying or selling of a financial instrument on the date when an index is reweighted while already holding a short or long position, in order to profit from the reweighting or change in composition of an index.
- Large-scale buying or selling of a financial instrument at the end of a month, quarter or other reporting period, in order to improve the performance of a portfolio or financial instrument.
- Taking actions to achieve an artificial price level at which other market participants are forced to make delivery, accept delivery or request deferral of delivery in order to meet their obligations in relation to a financial instrument. Such actions are taken by a market participant with a position in a financial instrument and thus having a significant influence on the supply of, demand for, or delivery conditions for that financial instrument or a derivative of that financial instrument.
- Trading in financial instruments in a market with a view to improperly influencing the price of the same or a related financial instrument in another market. This involves influencing the price of correlated financial instruments.

- The consistent prevention of a fall in prices in order to satisfy a credit assessment, bank agreement or other hedge-related purposes.
- The quotation of illogical, excessive or inconsistent bid or offer prices through an intermediary, in order to profit from a lack of competition or liquidity.
- To secure a dominant position over the supply of or demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions for the same or a related financial instrument.
- The simultaneous buying and selling of financial instruments by the same person (who is thus trading with himself) at a price that is different from the normal trading bandwidth, in particular if this person at the same time has a position in a related financial instrument (for example, derivatives).

c) Transactions or orders designed to deceive or mislead:

- Actions designed to conceal the actual beneficial interest, so that any kind of reporting requirement is evaded or avoided, or so that no actual information is otherwise disclosed regarding the underlying position in the financial instrument.
- The taking of a long or short position and the subsequent dissemination of a false or misleading positive or negative message, with a view to then closing the position.
- Entering into a position for which a reporting requirement exists, in order to cancel the position immediately after it is reported.
- Taking advantage of access to the media by disseminating an opinion regarding a financial instrument or institution while previously having taken positions in this financial instrument, in order to affect the price of the financial instrument by expressing this opinion without disclosing that one has a conflict of interest.

d) Dissemination of misleading or false information

- The dissemination of false or misleading information regarding a financial instrument or company by means of a press release or by placing a message on a website.
- Issuing misleading signals other than through communications or the media, for example by moving or storing commodities in order to give a false impression of the demand for or supply of a commodity.

For more examples, please refer to the brochure on Manipulative Trading Patterns.

5 Justification for misleading signals and artificial price levels

The first two variants of market manipulation (misleading signals and artificial price levels) relate to the effect on the market, and are thus classified as a *'gevolgdelict'*: the offence therefore lies in the effect of the action taken. The matter concerns the incorrect or misleading signal and the artificial price level that is created by the transactions or orders concerned. Under some circumstances and conditions however, it is possible that such transactions may be legitimate or justifiable. This exception is included in the prohibition provisions in Section 5:58(a) and (b) Wft as:
"(...) unless the party that conducted or effected the transaction or trade order demonstrates that it had a justified reason for conducting or effecting the transaction or trade order, and that the transaction or trade order is in agreement with the accepted market practice in the regulated market concerned."

CESR has additionally given various interpretations with examples of practices that could occasionally generate a misleading signal or an artificial price level but which nevertheless should not automatically be qualified as market manipulation. These include repo transactions, the lending of financial instruments, the giving of equities as collateral, and normal legitimate arbitrage transactions.

6 Accepted market practices

On the advice of the AFM, the Minister of Finance can exempt a specific practice that strictly speaking could be described as market manipulation but which should be permitted for good and sufficient reasons from the prohibition of market manipulation (Section 4 of the Market Abuse Decree). Before a specific trading practice can be exempted as an accepted market practice, it is tested in certain specific respects, including:

- the level of transparency of the practice compared to that of the market as a whole;
- the need of the practice to protect the normal operation of the market;
- the degree to which the liquidity and efficiency of the market are affected by the practice;
- the degree to which the practice affects the trading mechanism of the market and the extent to which other market participants can respond to it timely and properly;
- the risk that the practice entails for the integrity of the market.

The AFM has a duty to continually advise the Minister of Finance regarding potential accepted market practices. The establishment of accepted market practices is reserved for each individual member state. Accepted market practices established in other EU countries do not apply in the Netherlands and vice versa. In the testing of the above-mentioned justification, the designation of a practice as an accepted market practice is not automatically decisive. See also Section 4 and the related note in the Market Abuse Decree implementing Article 2(2) of Commission Directive 2004/72/EC, which states: "Member States shall ensure that practices, in particular new or emerging market practices, are not assumed to be unacceptable by the competent authority simply because they have not been previously accepted by it."

In its assessment of market manipulation, the AFM will, however, take account of the elements used to evaluate whether a market practice is acceptable as described above. Any appeal for exemption on the grounds of justification will be rejected by the AFM if the practice in question disrupts the market. A trading practice that is disruptive cannot be considered to be 'accepted'.

7 Exemptions

There are two practices that are explicitly exempt from the prohibition of market manipulation. In such cases, however, specific conditions must be met.
These concern:

i. the repurchase of own shares as part of a buy-back programme, and
ii. stabilisation of the price of a financial instrument immediately after an initial public offering.

These two practices are subject to special obligations with regard to publication. The transactions themselves must also satisfy a number of conditions. These conditions are specified in Commission Regulation 2273/2003 and relate to obligations with regard to publication, reporting requirements and limitative conditions in relation to price and the period in which the trading occurs. The AFM's preferred option for publication pursuant to the Commission Regulation is the manner specified for the publication of press releases in Section 5:25i(1) Wft.

8 Notification requirement for suspicious transactions

Investment firms are obliged to report suspicious transactions to the AFM. This applies to suspected cases of market manipulation as well as to suspicion of trading with inside information. A separate brochure has been published to deal with the notification requirement (see Section 5:62 Wft, the notification of suspicious transactions). The information in this brochure can be used by investment firms to determine when, how and in which cases suspicious transactions must be reported.

9 Signals

The signals that can be used by the AFM to decide to initiate an investigation include the following. They can also be taken into consideration in the assessment of the case if market manipulation is identified:

- The degree to which the market is disrupted in terms of the number and size of transactions in relation to the normal size of the market;
- The degree to which the resulting volatility and price differs from the normal conditions in the market;
- The degree to which the party conducting the trading has, obtains or loses a dominant market position in the financial instrument in question;
- The degree to which transparency in the market is negatively affected by the trading;
- The degree to which the risk/return profile of the party conducting the trading is improved as a result of the trading and that of other parties is negatively affected during or as a result of the trading;
- The degree to which additional benefits are sought or achieved through the conduct of the trading in addition to any intention to make a profit or avoid a loss.

10 Enforcement

Market manipulation is a crime. Not only can other investors suffer direct financial losses as a result of market manipulation, ultimately all citizens can be indirectly affected through their investments in insurances or pension funds. The legislator has therefore prohibited market manipulation by any party. In cases of market manipulation, the AFM can impose a duty backed by an astreinte or can impose a penalty. Serious cases will be referred to the Public Prosecution Service [*Openbaar Ministerie*] through an official report. Infringement of the prohibition of market manipulation is an economic offence.

Influential investors, major shareholders and professional market participants are in particular expected to set an example. Due to their size and specific roles in the market, they play an important part in the creation of a transparent and legitimate market.

11 Enforcement Overlaps with other elements in the Wft

Failure to satisfy the obligation to publish inside information in accordance with the notification requirement in the Disclosure of Major Holdings and Capital Interests in Securities-Issuing Institutions Act [*Wet melding zeggenschap en kapitaalbelang in effectenuitgevende instellingen*, or "Wmz 2006"] or the obligations to publish when making investment recommendations can also lead to an infringement of the prohibition of market manipulation. Concealing relevant facts in, for instance, a quarterly statement by an issuer, or concealing the existence of one's own position when making an investment recommendation, may constitute market manipulation. These examples could qualify as transactions intended to mislead or deceive, or as the dissemination of false or misleading information.

12 Additional notes on certain elements

'Artificial level'
The expression 'artificial level' requires further explanation. Its interpretation is difficult and therefore it is difficult to apply. The Explanatory Memorandum to the Market Abuse Act defines a price level as artificial if:

(1) the price is artificially created outside the normal supply and demand factors, and
(2) this does not form a real reflection of the actual financial and economic circumstances of the financial instrument in question or the issuer.

It is certainly not the case that price manipulation that does not create abnormal price levels can be justified. The Act speaks of the 'intention' to maintain or bring a price to an artificial level. The issue is therefore not restricted to the ultimately achieved price, it also concerns the nature and intention of the actions involved. So the question of whether a price is artificial is not determined solely on the basis of the price of the financial instrument in comparison to any other price, it also concerns the way in which supply and demand have been created.

The degree to which a price differs from a particular average is only relevant for a possible additional confirmation or negation of the suspicion of manipulation, and as an aspect in the determination of the seriousness of any (punitive) measures. A price that widely differs from normal values may also be a signal of possible market manipulation. However, a stable price may also be artificial, for example after bad news, or in order to satisfy the conditions of a convertible bond.

'Misleading signals'
The same principle applies to the term 'misleading signal'. Whether a signal is misleading cannot be determined solely by considering the nature of the signal or how it may be perceived by the average investor. This question may also be decided on the basis of the nature and intention of the action whereby the signal was created.

The role of special market participants
Market-makers, liquidity providers, major shareholders and issuers of instruments such as warrants and structured notes have a special role. Their responsibilities include the addition of liquidity. At the same time, this role means that in many cases they have a dominant position in a specific market. Due to this (dominant) position, they will sometimes have to act with caution. On the other hand, in certain circumstances they will be forced by market developments to take actions in order to be able to fulfil their special responsibilities that at first glance may appear to constitute market manipulation, but which cannot and should not be considered as such in order to allow the market to function properly.

The role of 'time'
The length of time is not a factor in market manipulation. The market can be manipulated over a long period or for only a few seconds. The length of time that a specific price is maintained at an artificial level or the period during which investors are

misled is not a factor in the determination of whether the market has been manipulated.

Action compared to 'transaction' or 'strategy'
Market manipulation is not defined as a single transaction or order. It concerns an action, defined as one or several transactions or orders, either in combination with other conduct apart from the transaction, or not. This other conduct may concern the dissemination of news, the reporting or failure to report a position, etc. The issue is the totality of actions that collectively form a strategy to manipulate the market. Whether the transactions ultimately lead to a profit, an avoidance of loss or another benefit is not relevant. A party operating from London who disseminates false information in the Netherlands with a view to realising a benefit in the German market is therefore punishable in the Netherlands.

The term 'market'
The term 'market' used in this brochure does not refer to one specific technical or legal trading platform. Market in this context means the meeting of supply and demand, regardless of whether this occurs on one or more platforms.

'Large-scale'
Some of the examples given mention 'large-scale buying or selling'. What is considered 'large-scale' cannot always be defined in advance; this is determined by the size of the trading compared to the market as a whole at the time or during the period that the trading takes place. Furthermore, some market participants, most notably liquidity providers and market makers, have a role that compels them to buy or sell large volumes of financial instruments. Trading is described as large-scale if at the time it takes place the price or unfair transaction conditions can be determined exclusively or imposed on other market participants.

The role of previously established investment or risk management policy
A previously established investment policy, risk management policy or investment mandate can force an asset manager to take actions that strictly speaking could be described as market manipulation. These cases can frequently involve legitimate reasons, and therefore the actions may possibly not be considered as market manipulation.

This does not change the fact that when determining such policy or concluding new investment mandates, investment firms are expected to comply with the rules applying to the prevention of market abuse and to the conduct in markets for financial instruments (as defined in Section 5.4 Wft), and must avoid market manipulation. Furthermore, such a policy or mandate can never be a licence to manipulate the market with impunity; the policy or mandate itself may not be designed to permit market manipulation.

13 Further questions?

The Securities Markets and Financial Infrastructure Supervision Division [*afdeling Toezicht Effectenmarkten en Financiële Infrastructuur*, or TEFI] of the AFM is the contact point for questions relating to market manipulation.

Further information can be found at *www.afm.nl* under 'Professionals'> 'Market Abuse'.

For questions and advice, you can send an e-mail to *marketsupervision@afm.nl* or contact the TEFI Department by telephone on +31 (0) 20 797 3777.

Please note that telephone conversations with the TEFI Department may be recorded for supervisory purposes.

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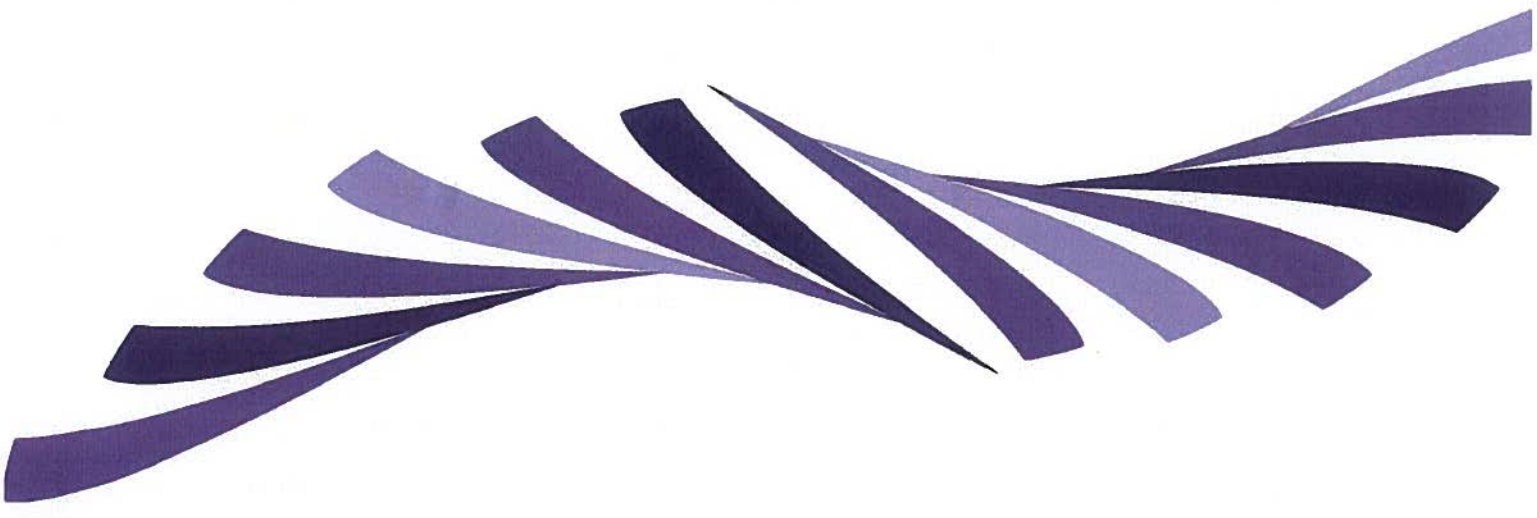
AFM

Explanatory brochure on manipulative trading patterns



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Institutional brochure

The AFM has been supervising the prohibition of market manipulation for over three years. In this period, the AFM has repeatedly encountered trading practices that it considers to be manipulative. This brochure gives an overview of the situations encountered by the AFM in practice in recent years. It is intended as a reminder to the market regarding trading practices that are prohibited at all times. By explaining these examples, the AFM wishes to provide guidance to market participants for their consideration of the question of whether their conduct could be considered to constitute manipulative.

The brochure is not intended as an account of past history. The descriptions given do not contain any implications with regard to the frequency with which particular types of market manipulation occur or the seriousness of the cases identified. The examples selected do not contain any indication regarding the priorities of the AFM, nor should they be considered to be exhaustive.

Background

The Market Abuse Act [*Wet marktmisbruik*] took effect on 1 October 2005, and as of that date the AFM accordingly became responsible for the supervision of the prohibition of market manipulation. The Market Abuse Act has now been incorporated into the Financial Supervision Act [*Wet op het financieel toezicht*, or Wft]. This incorporation did not affect the prohibition of market manipulation as stated in Section 5:58 Wft.

With the reprinting of the brochure 'Prohibition of Market Manipulation' in February 2007 and the report titled 'More than a year of market abuse' published in March 2007 the AFM provided further explanation of the rules and the way in which it conducts its supervision of the prohibition of market manipulation. In the past three years, the AFM has provided additional information on the prohibition, formulated as an open standard, through consultations held with the market and its fellow regulators, and through the undertaking of enforcement measures.

In its consultations with the market, the AFM notes that there is a need for additional guidance regarding the interpretation of the prohibition of market manipulation by the AFM and its application of the prohibition in practice. This brochure is intended to meet this need by describing trading practices that the AFM considers to be manipulative. It does not contain an exhaustive list of all manipulative trading practices. The examples given are intended to illustrate the general standard, and do not imply approval of other trading practices.
This brochure gives market participants guidance regarding the observance of the general standards established in Dutch and European regulation, legislative history and case law. Market participants have an own responsibility regarding their compliance with the regulations.

AFM guidance

The following overview is based on cases dealt with by the AFM and on the CESR's classification of various trading patterns and the indicated features of these patterns. Please see Level 3 - first set of CESR guidance and information on the common operation of the Market Abuse Directive (CESR/04-505b available at http://www.esma.europa.eu/ index.php?docid=3282). The situation sketches give some examples of trading patterns that the AFM considers could constitute cases of market manipulation. The Temporary Regulation regarding short selling introduced on 5 October 2008 is left out of consideration.

Wash Trades

- This is the practice of entering into arrangements for the sale or purchase of financial instruments where there is no change in beneficial interest or market risk or where the transfer of beneficial interest or market risk is only between parties who are acting in concert or collusion (other than repo transactions and securities lending).

Example:

Collaboration between two market participants executing a transaction visible to third parties on a trading platform (MTF or RM) and (at the same time) executing an opposite OTC transaction that is not immediately visible to third parties.

Colluding in the after market of an Initial Public Offer

- After institutions have been allocated financial instruments in the primary offering, they purchase more of these instruments in the secondary market in order to drive up the price in order to be able to sell the financial instruments obtained in the primary offering and in the secondary market at a higher price.

Example:

Institutions take the financial instruments allocated to them in a primary offering onto their own book and purchase additional financial instruments when trading begins, or shortly thereafter, for their own account and risk. This gives the appearance of heavy demand and leads to an exaggerated price, allowing these market participants to dispose of all or part of their position at this higher market price.

Abusive squeeze

- Actions designed to achieve an artificial price level at which other market participants have to deliver, take delivery or defer delivery in order to satisfy their obligations in relation to a financial instrument. Such actions are taken by a market participant with a position in a financial instrument and thus having a significant influence on the supply of, or demand for, or delivery mechanisms for that financial instrument and/or a derivative of that financial instrument.

Example:

A market participant purchases an (illiquid) stock to the extent that other market participants, such as a liquidity provider, have a short position in the stock in question. At the same time, the same market participant or an affiliated party creates a shortage of the stock, for example by borrowing the stock in order to subsequently enforce delivery.

Marking the Close / Ramping

- This is the purchase or sale of financial instruments at the close of the market in order to affect the closing price of the financial instrument concerned.

Examples:

- In a number of less liquid (auction) stocks, limited buy orders are placed, sized one with a bid price higher than the previous traded price. These orders achieve a higher closing (auction) price so that a (paper) profit is created on a previously existing position. This practice may take place on any trading day, but is particularly associated with derivative instruments expiry dates or quarterly/annual portfolio valuation dates.

- Influencing the closing price of a financial instrument so that the price of this financial instrument serves as the reference price for a different order matching system, with the intention of influencing the price at which orders on this order matching system are settled.

Placing orders with no intention of executing them

- The entry of an order or orders with a higher or lower price than the previous order with no intention of execution. The purpose of the orders is to give a misleading impression of demand for or supply of the specific financial instrument. The orders are subsequently cancelled before they are executed.

Example:

During the order entry phase preceding the closing/opening price rotation, (large, limited) sell orders are entered with a lower limit than the last (theoretical) price. This has a substantial effect on the theoretical auction price and the associated volume. The intention of the market participant is to encourage the entry of contrary orders. The initiating market participant cancels (a part of) its sell orders immediately prior to the auction or execution of the order(s). These cancelled orders are often preceded by orders entered by the market participant in question at more favourable prices that – as a result of the order cancellation – take precedence in the order book, and are thus executed at favourable prices.

Painting the tape

- This involves engaging in a transaction or series of transactions which are shown on a public display facility in order to give the impression of activity or price movement in a financial instrument.

Example:

The entry of orders and execution of transactions by a market participant or in collaboration with others without change of beneficial ownership or market risk in order to give third parties the impression that there is interest in the security in question, and to encourage these third parties to execute transactions in this security on this basis.

Trading on one market to improperly position the price of a financial instrument on a related market

- This practice involves trading in financial instruments in one market with a view to improperly influencing the price of the same or a related financial instrument in another market. This involves influencing the price of correlated financial instruments.

Examples:

- Influencing the price of an underlying security in order to be able to meet margin requirements on one's own position in a derivative instrument.
- Influencing the price of a financial instrument in order to profit from stop-loss orders in derivative instruments.

Collusion / Acting in concert:

- Collusion between two or more parties to give the impression of market activity or to artificially influence supply or demand.

Example:

Collusion between two market participants involved in a public offer for shares of a listed company whereby one party places a relatively large buy order above the price of the public offer and the other

party places a corresponding sell order. The buyer has an agreement with a third party to sell on part of the stock. These actions give the appearance of a higher takeover offer so that the market could be misled. The collusion in this example is primarily designed to frustrate a takeover bid.

Further questions?
The Securities Markets and Financial Infrastructure Supervision Division [*afdeling Toezicht Effectenmarkten en Financiële Infrastructuur*, or TEFI] of the AFM is the contact point for questions relating to the necessity and timing of publication of inside information and other queries regarding market abuse. In addition to this brochure, advice will be provided regarding good practices on a regular basis.

Further information can be found at www.afm.nl under 'Professionals' > Market Abuse'.

For questions and advice, you can send an e-mail to marketsupervision@afm.nl or contact the TEFI Department by telephone on +31 (0)20 797 37 77.

Please note that telephone conversations with the TEFI department may be recorded for supervisory purposes.

The Authority for the Financial Markets
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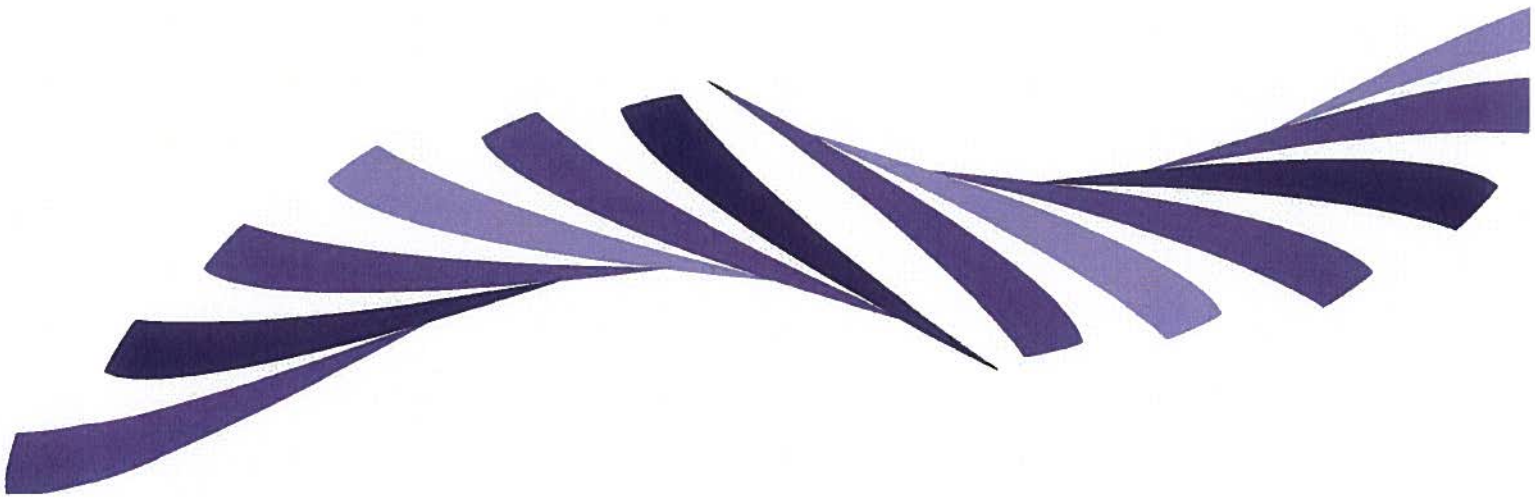
AFM

The Notification Requirement (reasonable suspicion of market abuse)



The Authority for the Financial Markets

The AFM promotes fairness and transparency within financial markets. We are the independent supervisory authority for the savings, lending, investment and insurance markets. The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Our aim is to improve consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad. In performing this task the AFM contributes to the prosperity and economic reputation of the Netherlands.

The AFM operates in two areas:

Financial services
The AFM promotes due care in the provision of financial services to consumers. Businesses and persons who provide financial services must be experts in their field, reliable and ethical. The information provided by financial undertakings and pension providers shall be accurate, clear and not misleading. Companies must act in the interests of their clients; a duty of care rests on them.

Capital markets
The AFM promotes the fair and efficient operation of the capital markets, on which investors can rely. We enforce the rules for participants in the markets for equities and other securities. Market abuse – use of inside information, market manipulation or misrepresentation – is forbidden. Listed companies must publish inside information correctly and in a timely manner. We enforce the rules for the issuance of securities and public takeover bids, for financial reporting and for auditors responsible for auditing this reporting.

Contents

Introduction

In this brochure the AFM explains the regulations applying to the obligation oninvestment firms to report reasonable suspicions of market abuse, the 'notification requirement for suspicious orders or transactions'. In addition to describing the rules that apply, this brochure addresses some of the practical aspects of the notification requirement.

Briefly put, the regulations place an obligation on investment firms to report cases involving a reasonable suspicion of trading with inside information or market manipulation to the AFM without delay (in other words, as soon as possible). The provision is preventive in nature: if people are aware that a 'suspicious' order or transaction will be reported by those involved in its execution, this may deter them from conducting the transaction.

The notifications submitted by investment firms also support the regulator in its supervision of market abuse, which contributes to investor confidence in the financial markets. The notification requirement relates to a transaction or an order to trade that may be in conflict with the prohibition of the use of inside information (Section 5:56(1) or (3) of the Financial Supervision Act [*Wet op het financieel toezicht*, hereinafter "Wft"] or the prohibition of market manipulation (Section 5:58(1) Wft). These rules are the direct consequence of the European Market Abuse Directive and are established in the Netherlands in Sections 5:62 and 5:63 Wft and Section 9 of the Market Abuse Decree [*Besluit marktmisbruik Wft*, hereinafter "the Market Abuse Decree"].

The purpose of this brochure is to provide general information on the rules applying to the notification requirement. The brochure also refers to relevant (legal) documents and other sources of information. It is solely intended to provide information. No rights can be derived from it.

If the text of the brochure differs from the text of above-mentioned Act and Decree and the notes thereto, the Act and Decree shall prevail. The actual texts of the European Market Abuse Directive, the Wft, the Market Abuse Decree can be found on the AFM's website *www.afm.nl* at the 'Market Abuse' section.

1 Who is subject to the notification requirement?

The notification requirement only applies to an investment firm that reasonably suspects that a transaction or an order to trade in relation to which the firm is carrying out activities in or from the Netherlands, is in conflict with the prohibition of the use of inside information or market manipulation. The requirement applies to both licensed investment firms and investment firms that are exempt from the licensing requirement.

2 What is a reasonable suspicion?

An investment firm should make its own assessment of whether there are reasonable grounds for suspecting that a transaction or order involves market manipulation or inside information. Should that be the case, it should be reported to the AFM. The employees of the investment firm are expected to possess sufficient professional judgement to be able to assess, in each case, whether a reasonable suspicion exists, and when a case should be reported to the AFM.

If an investment firm decides to investigate suspicious behaviour itself, the fact that it has initiated an investigation means that there is reasonable suspicion, which it should report to the AFM without delay. Investment firms do not have to prove that a case involves market manipulation or the use of inside information. Sufficient is that there are reasonable grounds for suspicion. Certain transactions by themselves may seem completely void of anything suspicious, but might deliver indications of possible market abuse, when seen in perspective with other transactions, certain behaviour or other information.

3 Examples

The European Market Abuse Directive and the explanation to Section 5:58 Wft state certain specific examples of practices that qualify as market manipulation or trading with inside information. In addition, the collective body of European regulators CESR (the Committee of European Securities Regulators) has compiled a list of practices that, under certain conditions and circumstances, can be considered by the European regulators to constitute market manipulation.

The following examples are quoted from, among others, the above-mentioned sources.

Examples of potential market manipulation

a) Transactions or orders giving an incorrect or misleading signal:

- Entering into arrangements for the sale or purchase of financial instruments where there is no change in beneficial interests or market risk or where the transfer of beneficial interest or market risk is only between parties who are acting in concert or collusion (other than repo transactions and securities lending).
- After institutions have been allocated financial instruments in the primary offering, they purchase further tranches of these instruments when trading begins in order to force the price to an artificial level and generate interest from other investors, at which point they sell their holdings.
- The purchase or sale of financial instruments at the close of the market in an effort to alter the closing price of the financial instrument concerned.
- The entrering of orders which are higher or lower than the previous order with no intention of executing the order. The intention is to give a misleading impression of demand for or supply of the specific financial instrument. The orders are subsequently cancelled before they are executed.
- Engaging in a transaction or series of transactions which are shown on a public display facility to give the impression of activity or price movement in a financial instrument.

b) Transactions or orders designed to bring or maintain a price to an artificial level:

- Transactions in a financial instrument on the expiration date of a related derivative, or vice versa.
- Transactions in a financial instrument on the date an index is reweighted while already holding a short or long position in order to profit from the reweighting or change in composition of an index.
- Transactions in a financial instrument at the end of a monthly, quarterly or other reporting period in order to improve the performance of a portfolio or financial instrument.
- Taking actions to achieve an artificial price level at which other market participants are forced to deliver, take delivery or defer delivery in order to satisfy their obligations in relation to a financial instrument. Such actions are taken by a party with a dominant position in a financial instrument and thus

having a significant influence over the supply of, demand for, or delivery mechanisms for that financial instrument or a derivative product.

- Trading in one market with a view to improperly influencing the price of the same or a related financial instrument in another market. This involves influencing the price of correlated financial instruments.
- Transactions which appear to have the purpose to prevent a fall in prices in order to satisfy a credit assessment, bank agreement or other hedge-related purposes.
- The quotation of illogical, excessive or inconsistent bid or offer prices through an intermediary in order to profit from a lack of competition or liquidity.
- The obtaining of significant influence over the demand for or supply of a financial instrument in order to materially distort the price or other delivery mechanisms of the financial instrument or derivative product.
- The simultaneous buying and selling of financial instruments by the same person (who is thus trading with himself) at a different price from the normal trading bandwidth, in particular if this person at the same time has a position in a related financial instrument (for example, derivatives).

c) Transactions or orders designed to deceive or mislead:

- Transactions designed to conceal the ownership of a financial instrument so that any kind of reporting requirement is evaded or avoided, or so that no information is otherwise disclosed regarding the true underlying holding.
- The taking of a long or short position and the subsequent dissemination of a false or misleading positive or negative message with a view to then closing the position.
- Opening a position for which a disclosing requirement exists in order to close the position immediately after it is disclosed.
- Profiting from access to the media by disseminating an opinion regarding a financial instrument or institution while previously having taken positions in this financial instrument in order to affect the price of the financial instrument by expressing this opinion without revealing that one has a conflict of interest.

Examples of potential trading with inside information

- A client opens an account and immediately gives an order to conduct a significant transaction in a specific financial instrument – especially if the client is insistent that the order is carried out very urgently, or must be conducted before a particular time specified by the client.
- The client's requested transaction or investment behaviour is significantly out of character with the client's previous investment behaviour (e.g. type of financial instrument, size of the order, amount to be invested, or duration of holding).
- The client specifically requests immediate execution of an order regardless of the price at which the order would be executed (this indicator pre-supposes more than the simple placing of a "market order" by the client).
- Significant trading by major shareholders or other insiders before the announcement of important corporate events.
- Unusual trading in the shares of a company before the announcement of inside information relating to the company; transactions resulting in sudden and

unusual changes in the volume of orders and shares prices before public announcements regarding the financial instruments in question.
- Employees' own account transactions and related orders timed just before clients' transactions and related orders in the same financial instrument.

Examples of potential market manipulation and/or trading with inside information

- A unusual concentration of transactions in a particular financial instrument (for example, with one or more institutional investors known to be affiliated with issuer or a party with a particular interest in the issuer such as a (potential) bidder.
- An unusual repetition of a transaction among a small number of clients over a certain time period.
- An unusual concentration of transactions and/or orders with only one client; or with the different securities accounts of one client; or with a limited number of clients (especially if the clients are related to one another).

The above-mentioned examples are intended as a guide only, not as a checklist for investment firms. Investment firms are expected to make a separate assessment, based on their professional judgement, in each case of a possibly suspicious transaction, in order to determine whether grounds for reasonable suspicion exist that must be reported to the AFM.

4 Whereto should notification reports be submitted?

The investment firm should report a suspicious transaction to the regulator. In the Netherlands, this is the AFM. If an investment firm for instance has its head office in London and a (branch) office in the Netherlands where the suspicious transaction or order occurs, the branch office should report the matter to the AFM (and not initially to the UK regulator, which is the primary regulator for the investment firm – although of course the firm can also inform the UK regulator).

Who should submit notification reports to the AFM?

A reasonable suspicion can be reported by any employee of an investment firm. Notifications may also be submitted through the Compliance Officer. The person submitting a specific report will be designated by the AFM as the contact person for this report.

The AFM has developed an electronic form that can be sent to the AFM in secure manner for the notification of suspicious transactions. The form can be used with Acrobat Reader version 7.0 or more recent versions, and allows for fields to be completed and electronic attachments to be added. Any investment firm can obtain this form from the AFM website. Investment firms can be, upon request, allocated a password-protected account by the AFM in order to access the AFM portal.

Immediately after receipt of the form by the AFM, you will receive a return copy of the form submitted as confirmation, to the contact person's e-mail address. This copy will state the date and time of receipt. The AFM will then assess whether the report justifies the initiation of an investigation as part of which the AFM may request additional information from the investment firms concerned.

5 What should be reported?

A report of a reasonable suspicion submitted by an investment firm should include the following information:

- a description of the transaction or order to trade, the type of order and the type of trading platform;
- the reasons for suspicion that the transactions might constitute insider dealing or market manipulation;
- the means for identification of the persons on behalf of whom the transaction has been carried out, and of other persons involved in the relevant transaction. Information should also be provided, if possible, showing whether the person issuing the order did so for their own account or for the account of a third party;
- the capacity in which the investment firm acted in the matter;
- any information which may have significance in reviewing the suspicious transaction by the AFM (such as, for example, recordings of conversations between a broker and the client).

If this information is not (immediately) available at the time of notification, the notification shall include at least the reasons why the notifying persons suspect that the transactions might constitute insider dealing or market manipulation (see the second bullet point above).

The AFM also requests those subject to the notification requirement to report cases requiring immediate attention to the AFM as soon as possible, even in the event that all necessary information is not yet available. All remaining information shall be provided as soon as it becomes available. The AFM will take all possible measures to ensure that the identity of the person making the notification will not be released to anyone if this would or could cause damage to this person.

6 Implementation of the notification requirement

Investment firms do not have to make adjustments to their computer systems in order to comply with the notification requirement, nor are they expected to actively monitor all transactions for possible abuses. The regulations assume that when an employee of an investment firm reasonably suspects that an order or transaction is in conflict with the prohibition of insider dealing or the prohibition against market manipulation, they will report their suspicions to the regulator.

The recognition of abuses heavily depends on the professional judgement of the employee concerned. The investment firm is expected to provide adequate training so that the professional judgement of its employees is brought and kept up to standard. The investment firm itself is also expected to have adequate compliance procedures installed. These (escalation) procedures ensure that:

- employees are aware of the obligation to notify without delay;
- employees know and recognise signals giving grounds for a reasonable suspicion of market manipulation or trading with inside information;
- employees know what to do when they have a reasonable suspicion that market manipulation or insider dealing is occurring;
- employees know who is responsible for establishing that a notification should be sent to the AFM, and how this is established;
- employees know who will notify the AFM on this matter and how they will do this; and
- all employees are aware of the potential internal and external sanctions that apply in case of failure to comply with the notification requirement.

Clients with direct access to the market

In the situation where orders are entered by a client via a system maintained by a broker/member or via a system providing direct access to the market without the intermediation of the investment firm, investment firms are not required to actively monitor these orders and transactions for suspicious trading.

In a situation where orders are entered or transactions are executed by a client in another way than described above, and there are other reasonable grounds for suspicion with regard to a particular client, the investment firm should include these orders (whether executed or not) in its assessment.

In this context the AFM notes the obligation for regulated markets and multilateral trading facilities to ensure that members, participants or users are in a position to establish or identify conduct suggestive of market abuse. Serious abuses shall be reported to the AFM.

The best-execution rule

The duty of investment firms to achieve the best execution of an order generally means that the firm - within the limits and priorities of its policy for order execution - - will execute the order on the trading platform offering the most favourable conditions for order execution. In a situation where there is reasonable suspicion of

trading with inside information or market manipulation, an investment firm must follow the rules that apply to this obligation. This may mean that the order will not be accepted, or that its execution will be delayed on the grounds that the investment firm is complying with its statutory obligations.

7 Liability and duty of confidentiality

An investment firm that submits a notification in good faith is not liable for damage suffered by a third party as a result of that notification. This could, for example, involve damage that a client of a bank could suffer as result of a notification. Additionally, if it retrospectively turns out that the notification was not justified - but was submitted in good faith - the investment firm cannot be held liable for damage caused.

In the assessment of whether the investment firm concerned acted in good faith, the circumstances in which it was operating at the time it had to decide whether or not to send a notification will be taken into account. One of these circumstances is the fact that an investment firm generally has only a short period of time to consider whether or not a notification should be submitted, as otherwise the notification would in most cases no longer be relevant.

An investment firm submitting a notification of reasonable suspicion of trading with inside information or market manipulation to the AFM is therefore obliged to keep the matter confidential. This duty of confidentiality also applies with respect to the originator of the transaction or other persons involved with the transaction. Although the duty of confidentiality for the investment firm also applies internally, communication between employees is permitted where this is necessary for the exercise of their duties.

8 How the AFM supervises the notification requirement

The AFM assesses each report of a suspicious transaction separately, to establish whether there has been an infringement of the prohibition of trading with inside information and/or market manipulation. The emphasis is on the quality of the reports, not the quantity. In each case, there has to be a reasonable suspicion that trading with inside information or market manipulation is involved. In its supervision of these matters, the AFM requests information from investment firms on the procedures they use for their compliance with the notification requirement.

In its ongoing investigations of trading with inside information or market manipulation, the AFM may encounter a failure by an investment firm to comply with the notification requirement. The practice by an investment firm of intentionally 'turning a blind eye' in order to preserve a good commercial relationship will not be tolerated.

The AFM can impose measures to enforce the notification requirement on an investment firm, including issuing a demand for information, issuing an instruction or imposing enforcement action, or it can impose a penalty retrospectively. The AFM can also refer a case to the Public Prosecution Service. The AFM determines which measure is appropriate in each individual case.

9 Further questions?

The Securities Markets and Financial Infrastructure Supervision Division [*afdeling Toezicht Effectenmarkten en Financiële Infrastructuur*, or TEFI] of the AFM is the contact point for questions relating to the notification requirement (and other queries regarding the Market Abuse Act [*Wet marktmisbruik*]).

Further information can be found at *www.afm.nl* under 'Professionals' > 'Market Abuse'.

For questions and advice, you can send an e-mail to *marketsupervision@afm.nl* or contact the TEFI Department by telephone on +31 (0) 20 797 3777.

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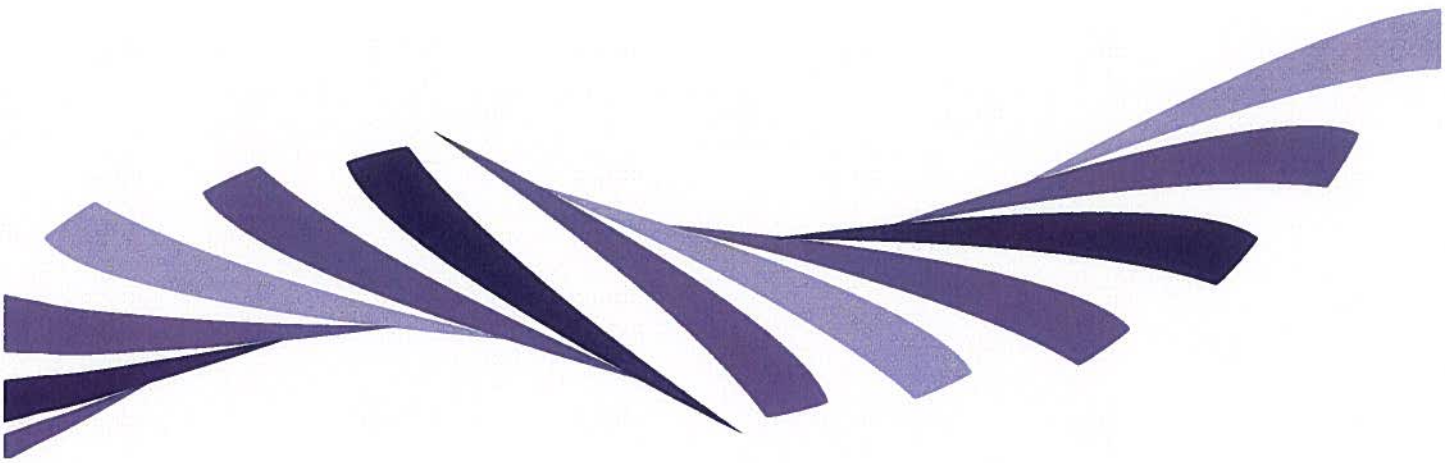
Insider dealing



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Contents

1 Introduction

Trading with inside information is a serious offence. It is prohibited for everyone. Trading in financial instruments with inside information undermines the confidence in the proper operation of the financial markets, since those who do so seek to obtain an unfair advantage on the basis of the information they possess. Adequate legislation to prevent the use of inside information has thus been introduced to protect investor confidence.

A person who possesses inside information possesses certain information that is confidential and not in the public domain. Such information, also known as 'inside information', can for instance relate to an imminent takeover or to financial difficulties at an issuer. A person may possess inside information as part of their duties, profession or position at an issuer, for example directors, lawyers or employees. It is also possible that a person may come into possession of inside information without intending to do so; for instance, this may occur because they hear their neighbour or acquaintance who happens to be a director of an issuer talking in the garden, or on the train.

When published, inside information can affect the price of an issuer's financial instruments. The issuer is obliged to publish this information without delay (i.e., as soon as possible), so that all investors are aware of the inside information and all investors have an equal opportunity to realise a good return.

If a person desires to profit from inside information (and therefore from the expected price development of the issuer's shares, for example) and decides to buy or sell these financial instruments before the inside information is published by the issuer, they are trading with inside information. This is forbidden. It is also forbidden to share inside information with a third party or to advise a third party to effect transactions in the financial instruments to which the inside information relates.

The AFM takes its duty as the regulator of the prohibition of trading with inside information extremely seriously. It actively monitors behaviour and transactions by investors in the market. If certain trading actions are in breach of the prohibition, these actions will result in an administrative-law or criminal-law sanction. In other words, the AFM can impose a penalty or refer the case to the Public Prosecution Service (*Openbare Ministerie*, or PPS).

In this brochure, the AFM explains the regulations applying to insider dealing. The regulations are pursuant to the European Market Abuse Directive, and are stated in Section 5:56 of the Dutch Financial Supervision Act [*Wet op het financieel toezicht, or Wft*] and in Section 2 of the Market Abuse (Financial Supervision Act) Decree [*Besluit marktmisbruik Wft*]. This brochure also describes the provisions related to the prohibition of insider dealing, such as the exceptions to the prohibition, the reporting scheme, the regulations for insiders and the insider lists. These provisions are included in Sections 5:59(1), 5:60 and 5:65 Wft and Sections 5 to 8, 10 and 11 of the Market Abuse (Dutch Financial Supervision Act) Decree. The brochure also contains a practical manual describing how notifications must be submitted to the AFM.

The purpose of this brochure is to provide a detailed description of the rules applying to insider dealing and other related provisions. The brochure also refers to relevant (legal) documents and other sources of information. This brochure is intended to provide information. No rights may be derived from it. The AFM advises persons consulting this brochure not take action solely on the basis of this brochure. If the text of the brochure differs from the text of and notes to the above-mentioned Act and Decree, the Act and Decree shall prevail.

The actual text of the European Directive, the Implementation Directives, the Wft and the Market Abuse (Financial Supervision Act) Decree can be found at the AFM's website: *AFM > Legislation > Act on Financial Supervision (Wft) > Wft Market Abuse Directive.*

2 Prohibition of insider dealing

2.1 Legal definition

It is generally prohibited to conduct or effect a transaction in financial instruments with the use of inside information in or from the Netherlands.

What is meant by inside information?

Inside information is "awareness of specific information that relates directly or indirectly to an issuer to which the financial instruments pertain or to the trade in those financial instruments that has not been publicly disclosed and which if disclosed could have a significant influence on the price of the financial instruments or on the price of financial instruments derived therefrom". (Section 5:53(1) Wft first sentence).

'Specific information'

Specific information is defined as information relating to

- a situation that exists or which may reasonably be expected to exist in future; or
- an event that has occurred or which may reasonably be expected to occur; and

that is specific enough to reach a conclusion regarding the possible effect of the situation or event on the price of financial instruments or financial instruments derived therefrom.

'Significant'

This concerns information that is meaningful. In other words, information which a reasonable investor would be likely to use as part of the basis of his investment decisions. The term 'significant' here does not therefore refer to its meaning in the context of statistics (as in "statistically significant"). It is defined as "meaningful".

'Making use of'

A person conducting or effecting a transaction is making use of inside information if he is aware or should be aware of the fact that there is information not available to the public that could have a significant effect on the price of financial instruments or financial instruments derived from those financial instruments. The basic principle is that the element of 'making use of' can be explained by the evidence of 'awareness'. This does not mean there must be a causal link. It does not have to be shown that the transaction is the result of the inside information concerned.

Commodity derivatives

The definition of inside information in the case of commodity derivatives differs from the common definition described above. With regard to financial instruments for which the value is partly determined by the value of commodities, inside information is defined as: "awareness of non-disclosed specific information that relates directly or indirectly to one or more commodity derivatives, which investors in those commodity derivatives may expect to be publicly disclosed in accordance with market practices that are customary in the regulated market, or the market for financial instruments that is not a regulated market for which the holder is recognised as referred to in Section 5:26(1), in which those commodity derivatives are traded." (Section 5:53 (1) Wft second sentence). Information which investors may expect to be publicly disclosed shall be involved if this information is of such a nature that it: i) is routinely made available to the investors in those financial instruments; or ii) must be publicly disclosed in accordance with the statutory regulations applicable in the market or in accordance with the market rules, contracts or customary practices in that market. (Section 5:56(4) Wft).

2.2 Scope of the prohibition

According to Section 5:56 Wft, it is forbidden to make use of inside information by conducting or effecting a transaction:

a. in or from the Netherlands or a non-Member State in financial instruments admitted to trading on a regulated market which has been licensed in accordance with Section 5:26(1) or a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96, or for which the admission to such trading has been requested;
b. in or from the Netherlands in financial instruments admitted to trading on a regulated market or multilateral trading facility in another Member State or admitted to trading on a system comparable with a regulated market or multilateral trading facility in a non-Member State, or in financial instruments for which the admission to such trading has been requested; or
c. in or from the Netherlands or a non-Member State in financial instruments other than financial instruments as referred to under a) or b), whose value partly depends on the financial instruments referred to under a) or b);
d. in or from another Member State in financial instruments admitted to trading on a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96.

It is not important whether the transaction actually takes place via the systems of the market in financial instruments in question. For example, bonds admitted to trading on Euronext Amsterdam also fall under the scope of the prohibition, as does a transaction in these financial instruments conducted over-the-counter (OTC) or via the systems of another platform.

Trading with inside information is therefore forbidden in or from the Netherlands. This also applies if the trading concerns financial instruments that are not admitted to trading on a Dutch regulated market but are traded on a European regulated market or one of the government-approved markets in financial instruments in a non-Member State (for instance, an American financial market).

To qualify as a transaction ***in*** the Netherlands, the person conducting or effecting the transaction may be in the Netherlands or abroad, while the transaction is conducted via the systems of a market in financial instruments in the Netherlands. A transaction also qualifies as a transaction in the Netherlands if the counterparty (in a private transaction) is located in the Netherlands. To qualify as a transaction ***from*** the Netherlands, the person must be in the Netherlands at the time the transaction is conducted or effected. In this case the transaction is effected via the systems of a market in financial instruments located abroad or with a counterparty located abroad (if for instance a transaction arising from a contract is involved). The location of the bank executing the transaction is not relevant, since the prohibition applies to the person effecting the transaction and not the bank.

The scope of the prohibition makes it clear that the prohibition of insider dealing also applies to trading in financial instruments admitted to a multilateral trading facility for which the investment firm holds a licence as referred to in Section 2:96 Wft, such as Alternext Amsterdam or NYSE Arca Europe.

2.3 Who is subject to the prohibition?

The prohibition of insider dealing applies to everyone. The prohibition distinguishes between two categories: primary insiders and secondary insiders. Primary insiders are (briefly) those who are in a special relationship with the issuer, such as managing and supervisory directors of an issuer, or persons who have a qualified holding in the issuer.

Persons who as a result of their profession, business or position have access to inside information also qualify as primary insiders. Persons in possession of inside information as a result of their involvement in criminal offences are also considered to be primary insiders.

Primary insiders are deemed by virtue of their relationship to the issuer to be in possession of non-public, inside information. As such, the question of whether this category of persons knew or reasonably should have known that they possessed inside information is not relevant.

Secondary insiders are all persons other than primary insiders. In the case of secondary insiders it must be proved that they knew or reasonably should have suspected that the information they possess constitutes inside information in the sense of the Act. The reason for this distinction between primary and seconday insiders lies in the fact that secondary insiders are less likely to realise that they are in possession of inside information.

3 Exemptions to the prohibition of insider dealing

There are a number of exemptions to the prohibition of insider dealing. Transactions whereby one of the parties may be or is in possession of information but which by nature do not form a threat to the integrity of the capital market or the interests of the parties operating in that market, are not considered to constitute insider dealing. These exemptions are specified in Sections 5:56(5) and (6) Wft, in Section 2 of the Market Abuse (Financial Supervision Act) Decree and the European Commission Regulation 2273/2003 regarding exemption rules for buy-back programmes and stabilisation of financial instruments.

The following transactions are exempt from the prohibition:

Compliance with an enforceable obligation (Section 5:56(5)(a) Wft)

The conducting or effecting of transactions in financial instruments to comply with an enforceable obligation that already existed at the time when the party conducting or effecting the transaction became aware of inside information is exempt.

In the context of monetary policy, foreign-exchange policy or the management of public debt (Section 5:56(5)(b) Wft).

Stabilisation and buy-back of financial instruments (Section 5:56(5)(c) and (d)

Transactions in the context of a buy-back programme or in the context of the stabilisation of financial instruments are exempt, as long as this occurs in accordance with the established measures, including those relating to transparency. Further details are given in the European Commission Regulation 2273/2003, which states the objectives and conditions with which buy-back programmes and the stabilisation of financial instruments must comply in order to qualify for the exemptions. If these objectives and conditions are not complied with, the exemption shall not apply. This EC Regulation is implemented in Section 5:56(5)(c) and (d) Wft and is directly applicable with respect to the objectives and conditions.

Allocation of financial instruments in the context of an employee benefit scheme (Section 2(a) of the Market Abuse (Dutch Financial Supervision Act) Decree

An exemption applies to the allocation of financial instruments to directors, supervisory directors or employees in the context of an employee benefit scheme, if a consistent course of action is followed with regard to the conditions and periodicity of the scheme. For the purpose of this article, an employee benefit scheme is defined as 'a scheme whereby certain financial instruments are offered to directors, supervisory directors or employees'. The issuer or its subsidiary or group company must follow a consistent course of action with regard to the conditions and the periodicity of the scheme. The main issues concerned include the time of allocation, the decision to allocate, the group of beneficiaries to which financial instruments are allocated and the number of financial instruments that are allocated.

These above-stated elements of the allocation must be in accordance with the procedure followed in preceding years. The allocation (this includes the combination of offer and acceptance, in other words, the entire agreement) of options, convertible bonds, warrants and similar rights to shares in an issuer in the context of an employee benefit scheme are exempt from the prohibition of making use of inside information. Share (participation) plans also fall under this exemption, since the definition states "the allocation of financial instruments". These plans are regularly employed as a compensation instrument in order to create a long-term commitment to the institution or subsidiary or group company from its directors, supervisory directors or employees.

It is possible that at the time the agreement is concluded – the allocation – the issuer concerned or the directors, supervisory directors or employees may be in possession of inside information, so that without this exemption they would be acting in breach of the prohibition.

The purpose of using a consistent course of action is to establish a strict framework for the allocation of financial instruments to directors, supervisory directors and employees, so that on the basis of actual circumstances it can be demonstrated that any inside information that was available at the time of allocation could not have played a role in the allocation.

The existence of a consistent course of action must be properly established by the company concerned. For instance, it must be able to demonstrate when the (annual) decision to allocate is made. The issuer is itself responsible for ensuring that if it introduces a new employee benefit scheme or changes the conditions of an existing scheme, that the decision to do so is taken during a period in which no use is made of inside information. It must also be able to demonstrate

that this is the case. A change to a scheme does not have to mean that there is a lack of consistency if it is made with the intention of continuing to apply the change in future years, since a new element of consistency is thus introduced to the scheme.

The timing of the allocation of a financial instrument must be a fixed and objectively determinable date, if possible a fixed date on which allocations are made. This prevents a situation in which the one-off allocation of financial instruments for a particular situation or frequent changes in the beneficiary group, the degree of participation and the conditions used could still be exempt from the prohibition. It is not necessary to inform the AFM of a proposed allocation. The AFM may, in the context of an investigation, request information from the issuer and check the extent to which the issuer can demonstrate the dates upon which decisions to establish an employee benefit scheme were taken and whether the scheme follows a consistent course of action as regards the conditions and periodicity of allocation.

For the sake of clarity, it should be added that financial instruments may be allocated to, for instance, employees entering service, or managing and supervisory directors on their appointment, or to employees or managing or supervisory directors in the event they attain an anniversary or are promoted, subject to the condition that the employee benefit scheme explicitly states that financial instruments can be allocated in these situations. This means that the employee benefit scheme is sufficiently consistent.

If the employee benefit scheme meets the requirement of a consistent course of action, then there is no conflict with the prohibition, despite the possibility that inside information may be available at the time of allocation.

Exercise of rights in the context of an employee benefit scheme (Section 2(b) of the Market Abuse (Financial Supervision Act) Decree)

The exercise of options, exchange of convertible bonds or exercise of warrants or similar rights to shares or depositary receipts for shares granted under an employee benefit scheme on the expiration date or within a period of five business days prior to this date are exempt from the prohibition of the use of inside information. This also applies to the sale of the shares or depositary receipts for shares acquired as a result of the exercise of these rights within this period, subject to the condition that - at least four months prior to the expiration date - the beneficiary notifies the issuer in writing of their intention to sell, or has given the issuer an irrevocable power of attorney to sell.

This exemption from the prohibition of the use of inside information is included because it is possible that some managing directors, supervisory directors or employees may regularly be in possession of inside information, so that it would actually be impossible for them to exercise the options, convertible bonds, warrants or similar rights granted to them under an employee benefit scheme. These persons would in that case have to let their rights expire unused, which would negate the purpose of granting them in the first place. The term of five business days is included in order to make the exemption from the statutory prohibition as brief as possible while giving sufficient opportunity for the actual exercise of the rights concerned.

The exemption from the prohibition also applies to the sale of shares and depositary receipts for shares arising from the exercise, if the sale takes place on the expiration date of the right concerned or during the preceding five business days. The person concerned must have notified the issuer in writing - at least four months before the expiration date - of their intention to sell the shares acquired immediately after the rights were exercised. This period of four months is intended to prevent a situation in which persons in possession of inside information at the time the rights are exercised can then decide whether to dispose of the shares immediately or not.

If this notification has been made, the person concerned is obliged to actually dispose of the shares they acquire. If they do not meet this obligation, the prohibition fully applies to the sale. As often happens in practice, it is possible for the beneficiary to establish their final decision by granting an irrevocable power of attorney to the issuer. Since the beneficiary can no longer change their mind, there is no possibility for them to make use of inside information.

Meeting delivery obligations (Section 2(c) of the Market Abuse (Financial Supervision Act) Decree)

Transactions conducted or effected in order to be able to meet an obligation to deliver shares or depositary receipts for shares are exempt from the prohibition of the use of inside information. For instance, this concerns the fulfilment of an obligation to deliver shares arising from the exercise of options or warrants under an employee benefit scheme.

This exemption also applies to obligations arising from the exchange of convertible bonds or similar rights to shares. There may, however, also be transactions that are necessary in order to meet delivery obligations arising for other reasons. In these cases the transaction conducted in order to meet the sale obligation or conversion obligation is exempt from the prohibition, but the preceding purchase transaction that is necessary in some cases is *not* exempt.

For the application of this exemption, it is not important whether the transaction takes place at the same time as, immediately after, or some considerable time after, the allocation of the option rights or the issuance of convertible bonds. Since these transactions are only exempt from the prohibition to the extent that they are necessary in unchanged circumstances in order to fulfil the obligation in question, the issuer must be able to demonstrate this necessity. It must demonstrate that the number of financial instruments that the legal entity possesses (either at that time, or in due course) does not exceed the total (potential) supply in order to meet the delivery obligation. In the case of interim disposal of financial instruments that are held in portfolio for a future obligation, the premature sale must be evaluated in the light of the prohibition of the use of inside information.

Commitment by a shareholder in the context of a public offer (Section 2(d) of the Market Abuse (Financial Supervision Act) Decree)

The following act is exempt from the prohibition of the use of inside information: entering into an agreement whereby a party entitled to financial instruments irrevocably makes a commitment to an offeror, in the context of a public offer that is (to be) proposed or is in preparation, to offer financial instruments related to that public offer, to the offeror. The party entitled must in this case establish the number of financial instruments to which the agreement relates in a written statement to the offeror.

A party who is intending to make a public offer for financial instruments, and who is therefore seeking the opinion of (major) shareholders as to whether they are prepared to offer their financial instruments if such an offer is made, is acting in accordance with the normal conduct of their duties, profession or position. For such a party, it is important to be able to establish whether a proposed public offer has a chance of success. The (major) shareholder approached by the offeror with regard to the offer is thus in possession of inside information. The testing of opinion by the offeror will be to no purpose if the (major) shareholder is not able to indicate to the offeror whether it will support the offer or not. Since the definition of the term 'transaction' in Section 5:56(1) Wft is rather broad in practice, it could be assumed that a commitment by a (major) shareholder constitutes the beginning of a transaction, and is therefore prohibited.

To clearly establish that a (major) shareholder is allowed to make a commitment to the offeror, the making of a commitment in this context is exempt from the prohibition of trading with inside information, subject to the condition that the (major) shareholder specifies to the offeror, in writing, the number of financial instruments it will offer. The offeror can moreover demonstrate with this written statement that the testing of opinion was necessary.

For the sake of clarity, it should be noted that the commitment to support the offer to the offeror is also made in the case that the opinion of the (major) shareholder is tested by the target company (the company that is the subject of the potential offer). This may or may not be as a result of the intermediation of the target company.

The commitment to support the offer is made to the offeror and the ultimate transaction will be concluded with the offeror. The exemption in this context therefore also applies to the commitment to the offeror.

The offeror may come into possession of inside information as a result of sounding out the opinion of (major) shareholders. By stating which (major) shareholders have already indicated that they will accept the offer with respect to their financial instruments in the offer announcement, the inside information is made public, and after publication of the offer announcement the offeror is no longer subject to the transaction prohibition. The same applies to the target company that sounds out the opinion of (major) shareholders.

Commitment in the context of an issue (Section 2(e) of the Market Abuse (Financial Supervision Act) Decree)

It is important to know whether a proposed issue or re-issue has a chance of success. Entering into an agreement whereby a party entitled to financial instruments or potentially entitled to financial instruments irrevocably commits itself to the purchase of one or more of these financial instruments prior to an issue or re-issue of these financial instruments by the issuer, is therefore exempt from the prohibition against the use of inside information.
This exemption is subject to the condition that the party entitled or potentially entitled has established the number of financial instruments or the financial sum to which the agreement relates in a written statement to the issuer.

Since in the context of a proposed issue or re-issue the opinions of future (major) shareholders are sometimes sounded out as are existing (major) shareholders, the exemption also applies to the sounding out of the opinions of potential (major) shareholders. The sounding out of opinions must be necessary, and the commitment must be specifically established in a written statement to the issuer. If the commitment is not established, the conditions attached to the

exemption have not been met and the prohibition of making use of inside information applies to both (major) shareholders and potential (major) shareholders.

Dividend distribution (Section 2(f) of the Market Abuse (Financial Supervision Act) Decree)

The acquisition of shares or depositary receipts for shares issued due to distribution of a dividend or dividend distribution other than in the form of a dividend with stock option is exempt from the prohibition of the use of inside information.

Although those entitled to the dividend or the issuer may possess inside information at the time the dividend is distributed, it does not make sense to make this distribution subject to the prohibition. The amount of the dividend and the manner of its distribution will have already been approved by resolution of the general meeting of shareholders and apart from the possibility of a stock option, are more or less completely separate from the influence of individuals entitled to the dividend.

The exemption for the acquisition of shares or depositary receipts for shares is not intended for the acquisition of shares or depositary receipts for shares as a result of the decision to take a dividend in the form of shares or depositary receipts for shares by the person entitled to dividend in the event of a stock option. Only the acquisition of shares or depositary receipts for shares in the form of optional dividend is not permitted, however the issuance thereof is permitted.

Intermediaries (Section 2(g) of the Market Abuse (Financial Supervision Act) Decree)

An intermediary acting in accordance with the rules of good faith in the service of his clients and thereby coming into possession of inside information is exempt from the prohibition of the use of inside information. This concerns persons (brokers) acting on the instructions of and for the account of third parties. Trading by such persons for their own account is not exempt from the prohibition.

Given the scope of Section 5:56 Wft, the exemption also applies to intermediaries trading in financial instruments not admitted for trading in a regulated market but traded in another market for financial instruments. Intermediaries are also not committing an offence when executing orders for clients as part of their professional trading activities.

Chinese walls (Section 2(h) of the Market Abuse (Financial Supervision Act) Decree)

The conduct or effecting of a transaction by employees of a legal entity that is in possession of inside information is exempt from the prohibition of the use of inside information if these employees are only in possession of information regarding trading. Situations can arise in which persons working for an issuer that is trading (and therefore the issuer itself) are in possession of inside information regarding the issuer to which the financial instruments being traded relate; however those who are actually involved in the conduct or effecting of the transaction are not aware of this information.

There can be several variations of this situation. For example, the lending department of a lending institution (and therefore the lending institution itself) is usually in possession of inside information regarding its clients. If the securities department of this lender were to trade in financial instruments relating to one of its clients, the lending institution would be acting in breach of Section 5:56 Wft even if the securities department was not in possession of the information in question.

There is also the situation in which, for instance, senior managers or managing directors of a lending institution listed on a market for financial instruments are in possession of inside information relating to their own company while the securities department of this lending institution is not. In this situation as well, under Section 5:56 Wft the persons concerned in the securities department are not permitted to trade in financial instruments relating to their own company, even though this is part of the normal activities of this department.
These situations do not qualify for the exemption for intermediaries in the context of professional trading (Section 2(g) of the Market Abuse (Financial Supervision Act) Decree). In these situations the inside information that the intermediary (the lending institution) possesses does not exclusively relate to trading, it also concerns the legal entity to which the financial instruments relate.

Since it is not the intention to make such transactions impossible (since this concerns a normal conduct of business), an exemption applies here. For the record, it should be noted that an appeal to this exemption cannot be made simply on the basis of a reference to the existence of so-called 'Chinese walls'. It must be demonstrated in the specific case that these 'Chinese walls' had also been effective in preventing the leakage of the information.

Stabilisation and buy-back of financial instruments (Section 2(i) of the Market Abuse (Financial Supervision Act) Decree)

The exemption rules for buy-back programmes and for the stabilisation of financial instruments (included in EC Regulation 2273/2003) also apply as an exemption from the prohibition of trading with inside information. This is also the case if these instruments are traded in a market for financial instruments that is not a regulated market for which the holder is licensed as stated in Section 5:26(1) Wft. For instruments traded in a regulated market, this is arranged in Section 5:56(5)(c) and (d) Wft.

4 Notification regulations

4.1 Introduction

The regulations established in Sections 5:60 and 5:61 Wft and Sections 5 to 8 of the Market Abuse (Financial Supervision Act) Decree contain – briefly put – the obligation for persons working at an issuer or persons closely connected to them to report transactions conducted or effected for their own account in financial instruments relating to the issuer in question (hereinafter: "the notification regulations"). They must notify the AFM of transactions for their own account in shares issued by the institution for which they work, or in financial instruments whose value is partly determined by the value of these shares. This provides transparency regarding transactions conducted by persons with policy-making responsibilities at issuers and, if applicable, by persons closely connected to them. This is a preventive measure against market abuse. Notification of these transactions is a valuable source of information for investors.

4.2 Who is subject to the notification requirement?

The obligation to report transactions in shares (or financial instruments whose value is partly determined by the value of these shares) of their own issuer applies to persons designated as insiders:

1 of an issuer with domicile in the Netherlands or an issuing institution with domicile in a state that is not a Member State that has issued or proposes to issue financial instruments as referred to in Section 5:56 (1)(a) Wft;
2 of an issuer with domicile in the Netherlands that has issued or proposes to issue financial instruments as referred to in Section 5:56 (1)(b) Wft, or
3 of an issuer with domicile in another Member State that has issued or proposes to issue financial instruments as referred to in Section 5:56 (1)(d) Wft,

or to any person on whose proposal a purchase agreement regarding a financial instrument as referred to in the subsection concerned other than a security is drawn up or who proposes to draw up a purchase agreement regarding a financial instrument other than a security as referred to in the subsection concerned.

Transactions that are exempt from the prohibition of the use of inside information must also be reported to the AFM.

The obligation to notify applies to all persons involved with an issuer as stated above, who:

1 determine or co-determine the day-to-day policy of an issuer (for example, the directors);
2 supervise the policy and the general affairs of an issuer and the related enterprise (the supervisory directors);

3 hold a management position and have the power for that reason to take decisions affecting future developments and business prospects and who may regularly have knowledge of inside information;
4 persons closely associated with the persons described in subsections 1, 2 or 3, namely:
   I spouses, registered partners or life companions, or other persons cohabiting with the persons described as if in a marriage or registered partnership;
   II children under their authority or placed in guardianship and for whom these persons have been appointed as guardian;
   III other relations by blood or affinity who on the date of the transaction concerned have maintained a joint household with these persons for at least one year; and
   IV legal persons, trusts or partnerships
      - where the executive responsibility rests with a person as described in subsections 1 to 4 III;
      - that are under the control of a person as described in subsections 1 to 4 III;
      - that were established for the benefit of a person as described in subsections 1 to 4 III; or
      - whose economic interests are essentially equivalent to those of a person as described in subsections 1 to 4 III.

The category of persons with a management position described in subsection 3 also includes persons working directly or indirectly under the management board and who share responsibility for the future developments and business prospects of the issuer as a whole.

4.3 What has to be notified?

The AFM must be notified of personal account transactions in shares issued by the institution to which the person subject to the notification obligation is affiliated, or in financial instruments whose value is partly determined by the value of these shares.

A notification must include the following information:
a the name of the party with a duty to notify;
b the address of the party with a duty to notify;
c the name of the issuer involved;
d the reason for the notification;
e a description of the financial instruments involved in the transaction concerned
f the nature of the transaction;
g the date and place of execution of the transaction;
h the price and size of the transaction.

By 'the nature of the transaction' under item 'f', reference is made for instance to purchase or sale.
Section 1:107(3)(c)(3°) Wft explicitly states that the addresses of persons with a duty to notify shall not be included in the register of the AFM.
The address of the person with a duty to notify will not be made public and will not be made available to third parties. The term 'address' of course also means the place of residence.

4.4 When should notification take place?

Persons with a duty to notify must report transactions conducted or effected for their own account not later than the fifth business day after the transaction date.

If the notification concerns an issuer domiciled in the Netherlands or in another Member State, notification must be made to the AFM. If the transaction concerns an issuer domiciled in a non-Member State, the notification must be made to the regulator in the Member State to which the issuer has to provide the annual information relating to the shares (Section 10 of the Prospectus Directive).

Notification can be delayed until such time as the value of the transactions conducted for one's personal account together with the value of the transactions conducted for the personal account of related persons reaches EUR 5,000 in the calendar year in question (Section 5:60(2) Wft). This means that notification is not compulsory if this amount is not reached in a calendar year. The sum of EUR 5,000 has to be calculated on the basis of the price of the financial instruments, in other words the purchase or sale price paid or received for the acquisition or sale of the financial instruments. In the case of financial instruments acquired for no consideration, this transaction does not need to be reported until the limit of EUR 5,000 is reached. As soon as the limit of EUR 5,000 is reached due to other transactions, the transactions for no consideration must be reported with the other transactions.

4.5 How should notification take place?

Notifications must be submitted to the AFM using the notification form established for this purpose. This means that the administrative costs for those with a duty to notify as kept as limited as possible, and that the flow of information is channelled as efficiently as possible for the AFM.

The notification form can be downloaded from the AFM's website (under 'forms'). You can send the completed form to the AFM, if applicable preceded by a fax message to +31(0)20-797 3822.

4.6 Exemptions

In addition to the possibility of delaying notification until the value of the transactions conducted in a particular calendar year reaches EUR 5,000, the Wft contains a number of other exemptions to the notification requirement.

Rules for the notification of control and capital holdings in issuers

The notification requirement pursuant to Section 5:60(1) Wft is met if the AFM has been previously notified on the basis of Section 5:38(1) or (2) or Section 5:48(6) Wft, or Section 7 of the Market Abuse (Financial Supervision Act) Decree. The notification requirement is, however, not met if a parent company reports transactions conducted or effected by subsidiary companies. This case does not actually involve a double notification requirement for the (legal) person conducting or effecting the transaction. See the explanatory brochure titled 'Managing and Supervisory Directors at Issuers' for more information.

Discretionary management mandates

Section 8 of the Market Abuse (Financial Supervision Act) Decree states that Section 5:60(1) Wft does not apply to transactions conducted on the basis of a discretionary management mandate. These transactions do not therefore have to be reported to the AFM.

In practice, directors of issuers regularly make use of discretionary management mandates for transactions in financial instruments relating to their own company. This kind of mandate involves a contractual relationship between the person entitled to the financial instruments (the principal) and an asset manager (the authorised representative). The discretionary management of the securities portfolio is transferred to the authorised representative on this basis. Naturally, when concluding the agreement the parties are permitted to agree on specific provisions, such as a description of the type of financial instruments or products in which transactions may be conducted, the objective, and the strategy to be pursued. The authorised representative must, however, perform all his management activities arising from the mandate without influence or consultation with the principal, and must invest or reinvest the assets according to his own view, while taking account of the limitations in the agreement.

Changes to the basic principles and objectives in asset management mandate are permitted. These may involve matters such as the investment policy, the risk profile and the reinvestment of released funds. However this is only permitted at an abstract level so that no influence is exercised over the actual individual

transactions conducted or effected by the authorised representative, and otherwise only in periods in which there is no question of inside information (as indicated in the issuer's regulations, known as 'open periods').

Since these transactions are not effected by the insider with the duty to notify, they are exempt from the notification requirement on the basis of Section 5:60(1) Wft. Obviously, the authorised representative does not have to report the transaction, as he does not belong to the group of insiders with a duty to notify.

For the sake of completeness, it should be noted that a single irrevocable buy or sell order whereby the authorised representative intends to buy or sell financial instruments of the issuer concerned during a certain period established in advance cannot be equated with a discretionary management mandate. As part of a discretionary management mandate the authorised representative has freedom of choice regarding investment and reinvestment, and is moreover authorised to replace the existing securities (funds, financial instruments, etc.) with others.

It should be noted that transactions pursuant to a discretionary management mandate, to the extent applicable, have to be reported to the AFM pursuant to Section 5:38(1) or (2), or 5:48(6) of the Wft.

4.7 The AFM register

With the exception of the address of the party with a duty to notify, the information notified is included in the public register on the website of the AFM..

5 Regulations for insiders

5.1 The obligation

An issuer domiciled in the Netherlands that has issued or intends to issue financial instruments as described in Section 5:56(1)(a) or (b) Wft or an issuer domiciled in another Member State that has issued or intends to issue financial instruments as described in Section 5:56 (1)(d) Wft or an issuer domiciled in a non-Member State that has issued or intends to issue financial instruments as described in Section 5:56(1)(a) Wft shall prepare regulations relating to the ownership of, and transactions in, its shares or in financial instruments whose value is partly determined by the value of these shares by its employees, directors and supervisory directors (the 'insider regulations') (Section 5:65 Wft).

The regulations comply with rules established by an order in council (Section 11 of the Market Abuse (Financial Supervision Act) Decree). An issuer that has issued or will issue financial instruments in the context of monetary policy, foreign-exchange policy or the management of public debt is exempt.

5.2 Content of the regulations

A model version of insider regulations is available for download from the website of the AFM. The insider regulations contain rules for:

a the duties and authorisations of the person designated by the issuer to provide notifications under the notification regulations, if the issuer has designated such a person (usually the Compliance Officer). If an issuer has designated a Compliance Officer, rules must be established for his duties and authorisations. The persons with a duty to notify on the basis of the notification regulations however remain personally responsible for the accuracy and promptness of the notification to the AFM. The appointment of a Compliance Officer does not affect this responsibility.

b the obligations of employees, directors and supervisory directors in relation to the ownership of, and transactions in, financial instruments relating to the issuer;

c if applicable: the period in which a person with a duty to notify may not conduct or effect transactions in financial instruments relating to the issuer. Additionally, 'closed periods' (periods in which certain persons within an issuer are prohibited from conducting transactions) must also be included in the regulations

The 'closed period' refers to the period in which inside information will regularly be available, such as the period in which the annual figures are prepared or a period in which a takeover is being discussed.
In practice the insiders with a duty to notify are normally not permitted to conduct or effect transactions in financial instruments of the issuer during this period. It is also possible that an issuer indicates the periods in which these persons are permitted to conduct or effect transactions in financial instruments of the issuer (known as 'open periods'). This also means that the objective of the regulations is achieved, namely that no trading takes place in periods when these persons have or could have access to inside information.

If either open or closed periods are used, the exact dates of the periods must be established on an annual basis so that the periods are clearly defined.

5.3 Submission to the AFM?

The insider regulations do not have to be submitted to the AFM. This of course does not mean that the preparation of such regulations is voluntary. The AFM supervises the compliance with the prohibition of the use of inside information. If the AFM wishes to review the regulations during an investigation into the use of inside information, it will request the issuer to provide a copy.

6 Insider lists

6.1 The obligation

An issuer domiciled in the Netherlands, an issuer domiciled in another Member State or in a non-EU Member State (with financial instruments admitted to trading in the Netherlands) and any party acting for or on behalf of the issuer must maintain a list of its employees who regularly or occasionally can have access to inside information (the 'insider list'). This includes the persons directly employed by the issuer, but also lawyers, auditors and other contractors (Section 5:59(1) Wft and Section 10 of the Market Abuse (Financial Supervision Act) Decree). The issuer shall inform these persons of the relevant prohibitions and the level of the sanctions entailed by their violation.

The maintenance of the insider list is designed to protect the integrity of the market. The lists can be useful to issuers to keep track of the information that qualifies as inside and thereby comply with their statutory obligations. The lists can moreover be a useful resource for the regulator in the conduct of its supervision.

6.2 Content and updating of the list

The insider list shall contain the following information:

a the names of all persons who regularly or occasionally may have knowledge of inside information;
b the reasons why these persons appear on the list;
c the dates on which the list was compiled and updated. The list must be updated as quickly as possible if:
    a the reason why a person who appears on the list has changed;
    b a person needs to be added to the list;
    c a person appearing on the list no longer has access to inside information.

The list must be archived (in electronic form, accessible and secured) for at least five years after it is compiled or updated. The outdated information must also be archived.

The 'reason why a person appears on the list' could for instance be a statement of the transaction or project in which the person concerned is involved. The knowledge that people have access to changes, and it is not practically feasible for example within a particular project to update the details of who had access to what inside information and when this was the case.

Choice of lists

The reasons why people may appear on an insider list falls generally into two categories: those who regularly may have knowledge of inside information, and those who occasionally may have knowledge of inside information.

An issuer or any party acting for or on its behalf may decide to use a list of all the employees that are or could be involved in a project or transaction whereby they could become aware of inside information, or to use separate lists (for example one list of employees and another list of projects) instead of one integrated list.

It is expressly not the intention that all the employees of the issuer or all the employees of the party acting for or on its behalf should be included on the list without further qualification. This does not benefit either the issuer or the AFM.

6.3 Submission to the AFM?

The insider list does not have to be submitted to the AFM. This of course does not mean that the preparation of such lists is voluntary. The AFM supervises the compliance with the prohibition of the use of inside information. If the AFM wishes to review the list during an investigation into the use of inside information, it will request the issuer to provide a copy.

7 Enforcement by the AFM

Trading with inside information is a serious offence. It is prohibited for everyone.

As stated in the introduction, the AFM proactively monitors the behaviour of and transactions by investors in the market. If it has reason to do so, it will conduct an investigation into compliance with the prohibition of the use of inside information. The AFM's proactive supervision of the compliance by issuers with their obligations - such as the publication of inside information without delay - functions as an important source of signals of potential offences.

Observed developments in price or volume prior to the publication of inside information can, after all, be an indication of trading with inside information. Furthermore, professional market participants and private investors can report suspicions of trading with inside information to the AFM.

In the context of its supervision of compliance with the regulations, the AFM has the power to obtain information from any party that may reasonably be assumed to possess information that is relevant to that supervision. If transactions or other actions are effected in conflict with the regulations relating to the use of inside information, administrative-law or criminal-law sanctions may be imposed. In other words, the AFM can impose an administrative penalty or refer the case to the Public Prosecution Service (PPS).

With regard to the supervision of compliance with the notification regulations, the insider regulations and the compilation and updating of insider lists, the AFM has a wide variety of supervisory measures at its disposal, such as the issuance of an instruction. It may also impose an order subject to a penalty for non-compliance or impose a penalty, or refer the case to the PPS. The measure taken depends on the specific circumstances of the case concerned.

8 Questions

Further information on the prohibition of trading with inside information is available at *www.afm.nl*.

The Securities Markets and Financial Infrastructure Supervision Division [afdeling Toezicht Effectenmarkten en Financiële Infrastructuur, or TEFI] of the AFM is the contact point for questions relating to inside information. For questions and advice, you can send an e-mail to marketsupervision@afm.nl or contact the TEFI Department by telephone on +31 (0) 20 797 3777.

Please note that telephone conversations with the TEFI Department may be recorded for supervisory purposes.

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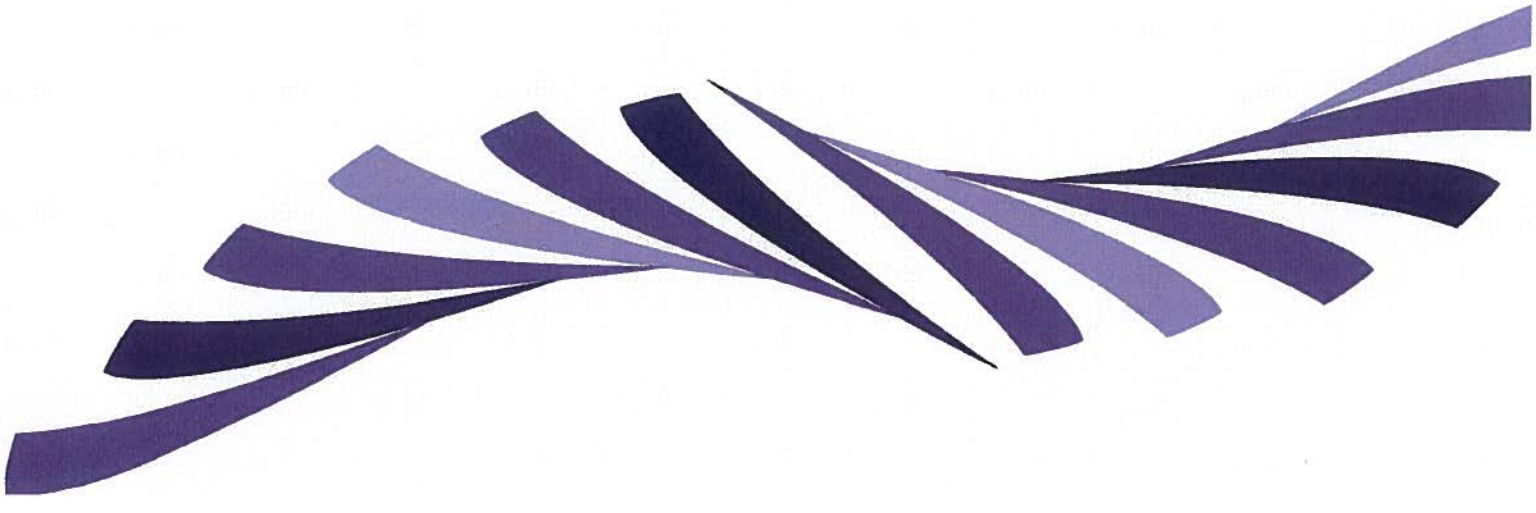
AFM

Quick Guide to Inside Information



The Authority for the Financial Markets

The AFM promotes fairness and transparency within financial markets. We are the independent supervisory authority for the savings, lending, investment and insurance markets. The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Our aim is to improve consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad. In performing this task the AFM contributes to the prosperity and economic reputation of the Netherlands.

The AFM operates in two areas:

Financial services

The AFM promotes due care in the provision of financial services to consumers. Businesses and persons who provide financial services must be experts in their field, reliable and ethical. The information provided by financial undertakings and pension providers shall be accurate, clear and not misleading. Companies must act in the interests of their clients; a duty of care rests on them.

Capital markets

The AFM promotes the fair and efficient operation of the capital markets, on which investors can rely. We enforce the rules for participants in the markets for equities and other securities. Market abuse - use of inside information, market manipulation or misrepresentation - is forbidden. Listed companies must publish inside information correctly and in a timely manner. We enforce the rules for the issuance of securities and public takeover bids, for financial reporting and for auditors responsible for auditing this reporting.

Institutional brochure

What is the legal definition of inside information? How should this information be made generally available and how to do this properly? What can market participants expect from the AFM? These and other questions are answered in this "Quick Guide to inside Information". This is not formal guidance, but a practical summary published by the AFM as a supplement to its explanatory brochure "Inside Information". The goal of this Quick Guide is to present a quick and convenient overview of the most important aspects of the obligations in relation to inside information and how to deal with these issues in practice.

The legal obligation

An issuer has to make inside information generally available without delay.

Why?
A transparent market in which companies provide complete, accurate and timely information to investors is a market in which its participants have the greatest confidence. This minimises risk, and contributes to keeping the cost of capital as low as possible. This is in the interests of both businesses and the investing public. Moreover, publication without delay ensures that trading on the basis of inside information is prevented as much as possible.

What is 'inside information'?
- Information that could have a significant influence on the price of financial instruments: Information that a reasonable investor would be likely to use as part of the basis of his investment decisions.
- Information that is specific and relates directly to the issuer:
  A decision, event or development that occurs, has occurred or which can be expected to occur that will (probably) affect the issuer's future development.
- Information that has not yet been made public:
  The information cannot or not easily be found by the investing public.

What is meant by 'to make generally available'?
There is only one permitted way to make information generally available. Publication has to take place by means of a press release in a non-discriminatory manner. Simultaneously, the press release must also be published on the company's own website and a copy must be sent to the AFM.

What is meant by 'without delay'?
As soon as possible.

What requirements must the press release meet?
The press release must contain complete and unadjusted information so that investors are able to form an accurate and timely assessment. It should be published in Dutch or English, or both.

When can publication be delayed?
Delay is only permitted if three conditions are met:
- the delay serves a legitimate interest of the issuer; *and*
- the delay will not lead to the public being misled; *and*
- the issuer can guarantee the confidentiality of the information.

Please note: the right to delay publication lapses if one of these three conditions is no longer met. In this case the information must be made generally available without delay.

What a company should avoid:
- Delaying publication solely because full clarification is not yet possible;
- Distributing a press release in which results or expectations are not immediately recognisable. Do not present a riddle or a puzzle;

- Disclosing new inside information during presentations, interviews etc.;
- Allowing the interests of shareholders to take precedence over those of the investing public at large;
- Referring in a press release to another location where (additional) inside information can be found;
- Referring in a press release to relevant information from previous press releases without including this information in the current press release;
- Including inside information in a prospectus;
- Publishing only parts of a coherent complex of facts;
- Delaying publication solely to protect the reputation of the company or of its directors;
- Sending inside information exclusively to regulators' register(s);
- Hiding bad news or burying it in a mass of information;
- Publishing only the consequences of issues or the restorative measures taken without stating the reason or cause;
- Waiting until the next regular reporting date before making inside information generally available;
- In the event of bad news, waiting until the situation or event has been dealt with;
- Protecting investors assuming their ignorance or lack of knowledge;
- Thinking that investors do not want to be overwhelmed with press releases.

What an issuer should do:

- Provide a clear header and summary that is appropriate for the full content and message of the press release;
- Either state its expectations clearly and unambiguously, or avoid such statements completely;
- Publish both good and bad news as quickly as possible;
- Publish deviations from previously announced expectations or targets without delay;
- Focus on the investing public as a whole: private investors are just as important as analysts and institutional investors;
- If in doubt, publish!
- Preferably use generally accepted concepts of profit;
- If concepts of profit are used that are not generally accepted, provide a clear indication and explanation thereof;
- Consider issuing a press release in the event of an unfounded rumour in the market if the issuer's reaction could have a significant effect on price or volume movements;
- Issue a press release if a director is incorrectly quoted with regard to inside information;
- Check a prospectus before publication for inside information, and if it contains such information, publish a press release;
- Issue a press release if inside information is unintentionally released during an interview or presentation;
- Strive to release news before or after market opening hours (without breaching the requirement to publish without delay).

Objectives of the legislation
For situations in which the above does not provide sufficient clarification, an understanding of the objectives and rationale of the legislation is useful. Some of the main considerations are therefore described below.

Prompt and fair disclosure of information enhances market integrity, whereas selective disclosure by issuers can lead to a loss of investor confidence in the integrity of the financial markets.
Efficient, transparent and integrated securities markets contribute to the creation of a true internal market in the European Community and benefit growth and the creation of employment through better capital allocation and reduced costs. The publication of accurate, comprehensive and timely information with regard to issuers creates sustainable investor confidence and makes it possible to form a well-founded opinion regarding the results and the assets of these issuers. This benefits both investor protection and market efficiency. To this end, issuers must guarantee that adequate transparency is provided to investors through a steady flow of information.

Modern communication methods make it possible for financial market professionals and private investors to have more equal access to financial information, but also increase the risk of the spread of false or misleading information. To protect investors, issuers must publish inside information not only timely, but also as quickly and as simultaneously as possible to all categories of investors in all member states in which the issuer has requested or approved its admission.
The permanent provision of information to holders of securities admitted to trading in a regulated market must at all times be based on the principle of equal treatment.

What can one expect from the AFM?
The AFM will insofar as possible respond to all queries regarding the obligation to make inside information generally available and how to deal with it in practice. The AFM acts in the interests of transparency and equality of information in the market for all market participants and will take action as soon as these interests are threatened.
The AFM reads press releases, listens in on conference calls and monitors capital market trading.
The AFM contacts an issuer as soon as there is confusion or unclarity in the market in relation to the issuer.
The AFM can suspend trading if there is a damaging or unlawful inequality of information (or misleading/false information) in the market.
The AFM will not normally suspend trading during a shareholders' meeting or at the request of an institution.

Further questions?
The Securities Markets and Financial Infrastructure Supervision Division [*afdeling Toezicht Effectenmarkten en Financiële Infrastructuur*, or TEFI] of the AFM is the contact point for questions relating to the necessity and timing of publication of inside information and other queries regarding market abuse. In addition to this brochure, advice will be provided regarding good practices on a regular basis.

Further information can be found at *www.afm.nl* under 'Professionals' > Market Abuse'.

For questions and advice, you can send an e-mail to *marketsupervision@afm.nl* or contact the TEFI Department by telephone on +31 (0)20 797 37 77.

Please note that telephone conversations with the TEFI department may be recorded for supervisory purposes.

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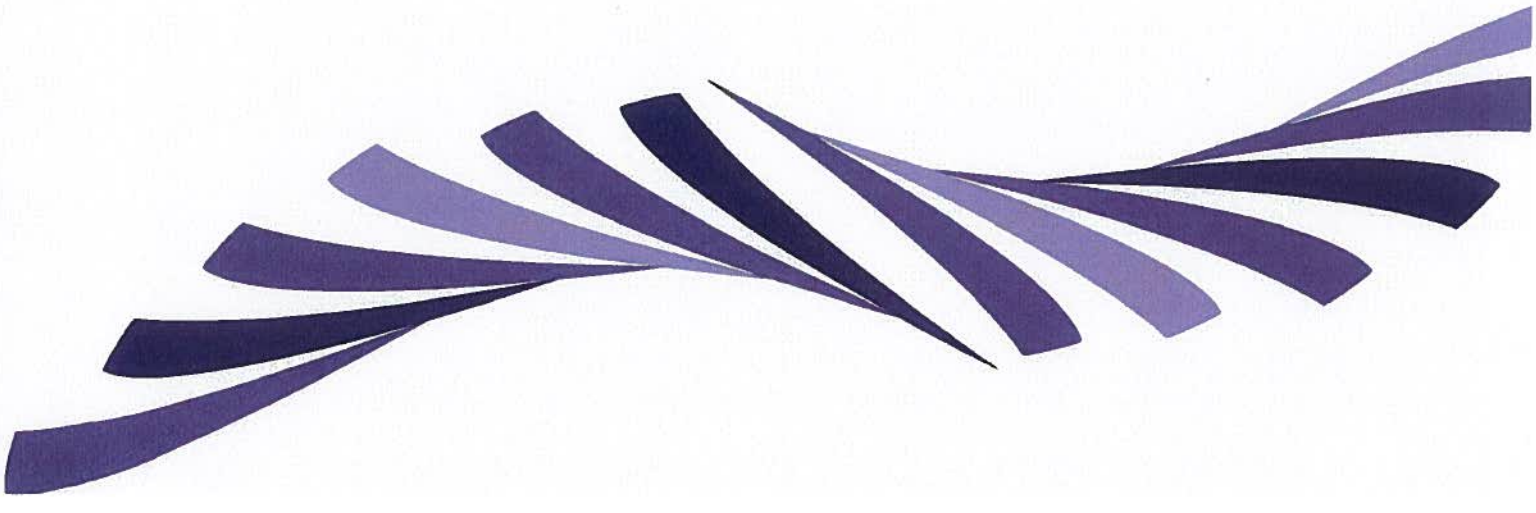
AFM

Inside information



The Authority for the Financial Markets

The AFM promotes fairness and transparency within financial markets. We are the independent supervisory authority for the savings, lending, investment and insurance markets. The AFM promotes the conscientious provision of financial services to consumers and supervises the honest and efficient operation of the capital markets. Our aim is to improve consumers' and the business sector's confidence in the financial markets, both in the Netherlands and abroad. In performing this task the AFM contributes to the prosperity and economic reputation of the Netherlands.

The AFM operates in two areas:

Financial services
The AFM promotes due care in the provision of financial services to consumers. Businesses and persons who provide financial services must be experts in their field, reliable and ethical. The information provided by financial undertakings and pension providers shall be accurate, clear and not misleading. Companies must act in the interests of their clients; a duty of care rests on them.

Capital markets
The AFM promotes the fair and efficient operation of the capital markets, on which investors can rely. We enforce the rules for participants in the markets for equities and other securities. Market abuse – use of inside information, market manipulation or misrepresentation – is forbidden. Listed companies must publish inside information correctly and in a timely manner. We enforce the rules for the issuance of securities and public takeover bids, for financial reporting and for auditors responsible for auditing this reporting.

Contents

Introduction

In this brochure the AFM explains the regulation applying to the obligation for an issuer to make generally available, in other words publish, inside information without delay. An issuer is a company that has issued financial instruments - for example shares - that are traded on a regulated market or multilateral trading facility (MTF) in the Netherlands. This regulation is based directly on the European Market Abuse Directive and is, in the Netherlands, included in Section 5:25i(2) of the Financial Supervision Act [*Wet Financieel Toezicht*, or Wft] and in articles 4 and 5 of the Decree on Implementation of the Transparency Directive for issuers in the Wft [*Besluit uitvoeringsrichtlijn transparantie uitgevende instellingen Wft*, or BT].

Before the implementation of the Transparency Directive in the Wft, the obligation was stated in Section 5:59(1) Wft (revoked). With the implementation of the directive, the obligation was moved to the new Part 5.1.a, which contains the rules applying to the provision of information by issuers.

The obligation has not changed. Moreover, the new wording 'to make generally available' does not differ in meaning from the previously used wording 'to make public'.

This brochure provides practical guidance for those willing to know how information has to be made generally available. It is intended to provide a general picture of the rules applying to making inside information generally available without delay. The brochure also refers to relevant (legal) documents and other sources of information.

No rights can be derived from this brochure. You should not take action solely on the basis of this brochure. If the text in the brochure differs from the text of the Wft and the notes thereto, the BT, or the Market Abuse Decree [*Besluit Marktmisbruik Wft*], the text of the Wft and decrees shall prevail. The actual text of the European Market Abuse Directive, the Wft, the BT and the Market Abuse Decree can be found at the AFM's website: *www.afm.nl* at the 'Market Abuse' section.

Legal definitions

Regulated information (Section 1:1 Wft)
Information which an issuer or a person who seeks, without the issuer's consent, the admission of its securities to trading on a regulated market makes generally available pursuant to Section 5:25c to 5:25f, 5:25h or 5:25i.

Issuer (Section 5:25i (1) Wft)
Any legal person, company or institution:

a. which issued financial instruments or other instruments which are admitted, with its consent, or for which admission has been requested, with its consent, to trading in the Netherlands on:
    1. a regulated market for which a licence as referred to in Section 5:26(1) was granted; or
    2. a multilateral trading facility for which a licence as referred to in Section 2:96 was granted; or
b. at whose proposal a purchase contract has been established in respect of a financial instrument, not being a security, which was admitted on a regulated market as referred under (a)(1), or a multilateral trading facility as referred to under (a)(2), or for which admission was requested.

Obligation to make information generally available (Section 5:25i(2) Wft)
An issuer shall, without delay, make information as referred to in the definition of inside information in Section 5:53(1) which directly pertains to itself generally available.

Inside information (Section 5:53(1))
Inside information is defined as awareness of specific information that relates directly or indirectly to an issuer as referred to in Subsection (4)(a) to which the financial instruments pertain, or to the trade in those financial instruments, which information has not been publicly disclosed and whose disclosure might have a significant influence on the price of the financial instruments or on the price of derivative financial instruments.

Delay in making inside information generally available (Section 5:25i(3))
The issuer or management company may delay the general availability of the information if:

a. the delay serves a legitimate interest of the issuer ; and
b. the delay is unlikely to deceive the public; and
c. the issuer can guarantee the confidentiality of this information.

This option of delay is elaborated further in Article 4 BT.

Inside information

The provision regarding the publication of inside information (Section 5:59(1) of the previous Wft) has been moved to Section 5.1.a of the Wft. The reason for doing so is that inside information is designated as regulated information as defined in the Wft.

Issuers are obliged to make inside information relating to their own company generally available without delay. 'Without delay' means as soon as possible. Publication should take place by means of a press release.

It is the responsibility of the issuer to make regulated (inside) information generally available in full and without amendment in such a way that:

a. it is clear that the announcement concerns regulated information;
b. the public is able to assess the information properly and timely;
c. the identity of the listed company concerned is clearly stated;
d. the substance of the regulated information is clear; and
e. the time and date of the press release is clearly stated.

'Specific information'
'Significant'
The determination of what information constitutes *inside information* varies for each company and sector, and furthermore depends on market sentiment and recent developments. Other issues affecting whether information is inside information or not are:

- how current is the information?
- to what degree does the information add to already existing information on the same issue?
- to what extent is it new information?

To what extent information is inside information depends moreover on the nature of the financial instruments concerned. Information having a significant effect on the price of one particular financial instrument (for example, a share), does not necessarily significantly affect the price of other types of financial instruments (such as bonds).

There is no fixed and uniform formula for establishing when information has a significant effect on prices. An issuer has its own responsibility for determining whether information is inside information or not. It knows what is important for its business and therefore for investors and potential investors in the company. In cases of doubt as to whether the information that the issuer possesses qualifies as inside information with respect to the issuer concerned, the AFM's advice is to publish it.

Examples of inside information

The Explanatory Memorandum of the Market Abuse Act [*Wet marktmisbruik*] cites a few examples of inside information. These include the following situations:

- if there are amendments to the management or supervisory board of an issuer;
- if a takeover is going to occur;
- if a decision is taken by the issuer to repurchase its own shares.

The obligation to make information generally available means that significant changes to previously published inside information must be published as soon as possible (regardless of the effect on prices).

In addition to the above, the AFM identifies the following (but not exhaustive) examples of information that may be inside information:

Important information regarding the issuer's financial position and/or results:

- the announcement of periodic financial results;
- significant differences from previous forecasts;
- the development of important new products;
- substantial changes in loans and collateral provided for loans, including the breaking of covenants;
- the cancellation of important credit facilities by one or more banks;
- substantial changes to the financial reporting procedure;
- negative equity;
- change of auditor (under unusual circumstances);
- important legal proceedings/claims/product liability/environmental damage/etc.

Important information regarding the company's strategy:

- the purchase or sale of important shareholdings/business units;
- the initiation or termination of important joint ventures;
- sizeable reorganisation;
- changes to strategy; radical changes to the business of the company;
- dissolution of the company;
- filing for suspension of payments or bankruptcy.

Important information on capital and governance:

- stock splits or reverse splits;
- changes to the rights associated with the various categories of financial instruments;
- dividend announcements, including the ex-dividend date or changes thereto and changes to dividend policy;
- significant changes to the distribution of share ownership and/or free float;
- the initiation or implementation of protective measures.

When is delay permitted?

Situations can occur in which an issuer may decide to delay the publication of inside information. This decision is for the issuer to make, and a decision to delay is the issuer's own responsibility.

Three cumulative conditions apply to the possibility of delay:

1. the delay serves a legitimate interest of the issuer ; *and*
2. the delay is unlikely to mislead the public; *and*
3. the issuer can guarantee the confidentiality of the information.

If the company can no longer meet one of the above conditions, it must publish the inside information concerned without delay. A decision to delay publication does not have to be reported to the AFM. Whether the company was legally entitled to delay publication may be retrospectively tested by the AFM.

Legitimate interest

First of all, a decision to delay must serve a legitimate interest of the company. A legitimate interest could in any case involve:

- *if making the information generally available could affect the result or normal progress of negotiations to which the issuer is a party.*
  The decision not to disrupt negotiations in which the company is involved can be considered to be a legitimate interest if publication of the fact that negotiations are in progress could influence the outcome or normal progress of these negotiations. This could for instance involve a situation in which the financial viability of an issuer would be seriously and imminently threatened.
  In that case, the condition applying would be that publication of the fact that negotiations are in progress and the identity of the parties involved could have an unfavourable effect on the negotiations themselves. This could seriously damage the interests of existing and potential shareholders, since safeguarding the financial recovery of the issuer in the long term could be threatened.
- *if decisions taken by the management board of an issuer still have to be approved by the supervisory board or similar body.*
  The condition that applies here is that making such decisions generally known before this approval has been given could prevent investors from properly assessing the situation. This mainly applies if, along with disclosing the decision, it's stated that the decision has not yet been approved. If the other conditions permitting delay are also met, the company is not (at this stage) obliged to make the information generally available without delay. The inside information must be made generally available without delay as soon as the decision is finalised.

The assessment of whether the issuer has a legitimate interest in delaying publication must also involve a consideration of the interests involved. An initially legitimate interest may no longer be legitimate in the light of certain

developments. The company must continuously assess whether its decision to delay publication is still based on a legitimate interest.

Unlikely to mislead

The second condition is that the delay is 'unlikely to mislead the public'. Misleading may be involved if the company withholds information with the intention of giving a false impression of the situation. Or, if the company reasonably could or should have known that withholding the information would give a false impression of the situation (by providing information in its other communications that does not correspond to the information for which publication has been delayed).

When delaying publication, the issuer must continually consider whether withholding the information is likely to mislead the public and whether this is justified in view of all the circumstances involved. In this respect it must also consider its relevant communications issued and actions taken prior to the existence of the inside information.

Guarantee of confidentiality

The third condition for delay concerns the ability to guarantee the confidentiality of the inside information. This guarantee has two elements:

- The issuer controls access to inside information and takes adequate measures so that access is limited to persons who need to know this information as part of the normal exercise of their work, profession or responsibilities; and
- The issuer moreover takes measures so that it is possible to make the inside information generally available without delay as soon as the confidentiality of the information can clearly no longer be guaranteed.

The AFM recommends that a fast-track scenario is prepared stating the steps to be taken and the persons involved (and their back-ups). There should also be a list of projects which could involve inside information and the persons who are involved in these projects. The AFM's advice to companies is to continually emphasise confidentiality at every opportunity.

Having a good procedure can ensure that the time between any leak of the information and making a press release generally available is kept to a minimum. Any potential 'information inequality' in the market can thus be kept as limited as possible.

The AFM's advice in this respect is to put proper internal AO/IC procedures in place in order to deal with the obligation to make inside information generally available.

Of course the issuer is obliged to make inside information available without delay as soon as confidentiality can clearly no longer be guaranteed, for instance if there has been a leak of this information. As soon as confidentiality can clearly no longer be guaranteed, the measures that the company has taken to ensure confidentiality are no longer relevant. The measures clearly were not adequate,

so the obligation to make the information generally available without delay is therefore applicable once again.

It could also be that the group of people aware of the inside information has become so large that the issuer can no longer guarantee confidentiality. In this case as well, the issuer must make the information generally available as soon as possible in order to prevent trading with inside information.

Way of making information generally available

The law is principle based on how to make inside information generally available. The issuer has its own responsibility for publishing the inside information, and therefore also for the way by which it is made generally available, as long as the following legal requirements are met.

How should information be made generally available?
The issuer makes regulated information generally available in full and without amendment so that:

a. it is clear that the announcement concerns regulated information;
b. the public is able to assess the information properly and in good time;
c. the identity of the issuer concerned is clearly stated;
d. the subject is clear; and
e. the time and date of the press release is clearly stated.

The content of the press release must be clear and not misleading. A specific headline that can be referred to, with a clear summary of the press release, is recommended. The press release may not be combined with advertising of the activities of the company if this would be potentially misleading.

Making information generally available simultaneously
Inside information must be made generally available in a press release. This must be simultaneously published in the Netherlands and (if applicable) any other Member State in which the financial instruments of the issuing institution have, with its consent, been admitted to trading on a regulated market or MTF.

What language should be used?
The text of the press release shall be in Dutch or English. If the press release is to be published in another Member State as well, the language accepted by the national regulator must be used, or a language normally used in international financial circles.

Website
The AFM opines that an issuer must have a website pursuant to Section 5:25m(3) Wft. In order to make the information easily accessible to investors, the issuer must publish inside information on the website it uses for communication with its shareholders.

In some cases this could also be the website of the issuer's parent company or another group company. This could be the case if:

1. the group structure is made clear on this website;
2. the issuer refers to this website in its own communication;
3. the issuer does not use another website to communicate with its shareholders.

The issuer should keep the information accessible on the website for at least one year. The AFM's advice, for that matter, is to keep press releases available for a longer period.

In order to meet the obligation to make information generally available, it is not sufficient to publish the press release only on the issuer's own website. The issuer must also publish a press release as described above ('how should information be made generally available?').

It is recommended that the issuer protects its information on a properly secured website, in order to prevent access to its inside information prior to the information being made generally available.

Send the press release also to the AFM

If the issuer decides to publish a press release, a copy must be sent to the AFM at the same time it is released to the market. Please note: since the issuer has its own responsibility for the distribution of the press release, sending it only to the AFM is not sufficient (see above). The AFM prepared an electronic form that can be sent to the AFM in a secure way for the notification of inside information. The form can be used with Acrobat Reader version 7.0 or more recent, and allows for fields to be completed and electronic attachments to be added. Any issuer can obtain this form from the AFM website. The issuer is allocated a password-protected account by the AFM in order to access the AFM portal.
After the AFM has established that the press release received has been made generally available, it is filed in the register maintained by the AFM (www.afm.nl), where it can be viewed by anyone for five years free of charge.

Time of publication

The AFM recommends that issuers make press releases relating to planned events generally available outside market hours, subject to legal conditions. This applies for instance to the publication of annual, semi-annual and quarterly figures. In case of 'unexpected' events, obviously these press releases must be issued without delay.

The issuer has its own responsibility

In all cases the issuer itself remains responsible for making inside information generally available, even when this is actually carried out by third parties such as a communications consultancy, a primary information provider or a receiver/administrator.

Communication with third parties

Obviously it can happen that an issuer passes on information that has not yet been published to third parties, such as analysts, journalists, investors, financiers, credit rating agencies and employees. As long as this does not concern inside information, this is permitted. If inside information is involved, the company must meet the following conditions:

- If the issuer or a representative thereof *intentionally* shares inside information with a third party as part of the normal exercise of their work, profession or duties, the information must simultaneously be made generally available by means of a press release.
- If the information is shared with a third party *unintentionally*, the issuer must make it generally available immediately thereafter.

This does not apply if the person with whom the information is shared is subject to a duty of confidentiality. This duty of confidentiality may be either legal or contractual. If for example an issuer consults a lawyer or civil-law notary, this person is bound by his statutory duty of confidentiality. In this case, inside information can be shared if this is necessary in order to protect the interests of the company. Obviously, the civil-law notary or lawyer may not trade in the financial instruments of the issuer from that moment onwards.

Role of the AFM

The AFM receives press releases at the same time as they are made generally available. In this situation everyone has access to the inside information concerned simultaneously. The AFM does not approve press releases prior to publication.

Enforcement
In its supervision on the duty to make inside information generally available without delay, the AFM has various enforcement measures at its disposal, including requesting information, imposing an administrative enforcement order or an administrative fine, and the publication thereof. The AFM can also refer a case to the Public Prosecutor.

Trade suspensions
The AFM can also suspend trading. In this case the AFM issues an instruction to a regulated market in the Netherlands, a MTF or a systematic internaliser to suspend, interrupt or cancel trading in certain financial instruments. The AFM may, for instance, take such action if an issuer fails to comply with the obligation to publish inside information without delay.

A consideration for the AFM to suspend trading would be for example if an inequality of information in the market needs to be resolved.

The AFM decides whether to suspend trading on a case-by-case basis. The AFM uses this power cautiously and with due care.

NYSE Euronext Amsterdam is normally responsible for technical trading measures. This also applies to other trading platforms. Examples are trade interruptions in the case of a large share price movement, whereby trading is automatically halted for a short time when a threshold value is breached. In the event of a technical failure, as well, whereby a significant proportion of stock exchange members are not able to enter orders in the trading system, NYSE Euronext or other trading platforms normally have their own responsibility for such measures.

Overlaps with other elements in the law

Market manipulation
Negligence with regard to the obligation to publish inside information could lead to a confluence with the prohibition of market manipulation. Withholding relevant facts in a press release published by an issuer may also constitute market manipulation as defined in Section 5:58(1d) Wft: "to disseminate information that sends or may send an incorrect or misleading signal with regard to the supply of, demand for or the price of financial instruments, while the party disseminating the information knows or should reasonably suspect that that information is incorrect or misleading". For further information, please refer to *www.afm.nl* and the brochure 'Market Manipulation'.

Misuse of inside information
If natural or legal persons make use of inside information when executing or effecting a transaction in financial instruments, this might fall under the prohibition of the use of inside information. Inside information may not be shared with a third party, other than in the normal exercise of one's work, profession or duties.
For further information, please refer to *www.afm.nl* and the brochure 'Inside Information'.

Rules for insiders
The Wft also contains obligations for the maintenance of insider lists and rules for insiders, and the reporting of insider transactions.
For further information, please refer to *www.afm.nl* and the brochure 'Inside Information'.

Public bids for securities
Anyone making a public takeover bid (the bidder) and the company which is the target of a bid (the target company) must comply with the rules in Part 5.5 Wft and the Public Takeover Bids Decree [*Besluit openbare biedingen Wft*, or "Bob"]. The rules state, among other things, that the bidder and the target company must issue public announcements at certain fixed times. Moreover, throughout the bidding process the bidder and the target company are subject to the obligation to publish inside information without delay pursuant to section 5:25i(2) Wft. Pursuant to article 4(3) Bob, a bidder that is not listed in the Netherlands is also subject to the obligation to publish inside information without delay.

Certain public announcements related to a public takeover bid are excluded from the option of delay in Section 5:25i(3) Wft because there is no legitimate interest to delay making the information generally available (see article 4(4) Bob). This information must be published without delay in all cases.
For full details of the obligations applying to public takeover bids, please refer to the bidding rules.

Further questions?

The Securities Markets and Financial Infrastructure Supervision Division [*afdeling Toezicht Effectenmarkten en Financiële Infrastructuur*, or TEFI] of the AFM is the contact point for questions relating to inside information and other queries regarding the provisions on market abuse in the Wft.

Further information can be found at *www.afm.nl* under 'Professionals' > 'Market Abuse'.

For questions and advice, you can send an e-mail to *marketsupervision@afm.nl* or contact the TEFI Department by telephone on +31 (0) 20 797 37 77.

Please note that telephone conversations with the TEFI department may be recorded for supervisory purposes.

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