

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR ON THE MARKET ABUSE REGULATION (EU) 596/2014 (‘MAR’ OR THE ‘REGULATION’)

DELAY IN DISCLOSURE OF INSIDE INFORMATION BY ISSUERS

This Circular is being addressed to all issuers of financial instruments, admitted to trading on a trading venue or for which a request for admission to trading has been made.

As you are aware, an issuer shall inform the public, as soon as possible, of inside information which directly concerns that issuer, in a manner which enables fast access and complete, correct and timely assessment of the information by the public. There are however exceptions to this requirement, as follows:-

1.0 Delay in Disclosure of Inside Information by All Issuers (Article 17(4) of MAR)

In terms of Article 17(4) of MAR, an issuer, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

- (a) Immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
- (b) Delay of disclosure is not likely to mislead the public; and
- (c) The issuer is able to ensure the confidentiality of that information.

2.0 Notification of Delayed Disclosure of Inside Information under Article 17(4) and Written Explanation

Please note that in terms of Article 4 of Commission Implementing Regulation (EU) 2016/1055, for the purpose of delaying the public disclosure of inside information in accordance with Article 17(4) of MAR, issuers shall use technical means that ensure the accessibility, readability, and maintenance in a durable medium¹ of the following information:-

¹ A durable medium needs to enable for information to be stored in a way that is readily available for future reference and for a period of time adequate for the purposes of the information and it needs to allow the unchanged reproduction of the information stored. Many forms of media can be considered technical means through which to maintain information in a durable medium.

- (a) The dates and times when:
 - (i) the inside information first existed within the issuer;
 - (ii) the decision to delay the disclosure of inside information was made; and
 - (iii) the issuer is likely to disclose the inside information;
- (b) The identity of the persons within the issuer responsible for:
 - (i) making the decision to delay disclosure and deciding on the start of the delay and its likely end;
 - (ii) ensuring the ongoing monitoring of the conditions for the delay;
 - (iii) making the decision to publicly disclose the inside information; and
 - (iv) providing the requested information about the delay and the written explanation to the MFSA (referred to in section 2.1 below);
- (c) Evidence of the initial fulfilment of the conditions referred to in Article 17(4) of MAR, and of any change of this fulfilment during the delay period, including:
 - (i) the information barriers which have been put in place internally and with regard to third parties to prevent access to inside information by persons other than those who require it for the normal exercise of their employment, profession or duties within the issuer; and
 - (ii) the arrangements put in place to disclose the relevant inside information as soon as possible where the confidentiality is no longer ensured.

2.1 When to Submit Notification

Where disclosure of inside information was delayed, immediately after disclosure of such information, an issuer must inform the MFSA that the disclosure was delayed. Issuers must do this by completing the delayed disclosure notification form, which can be accessed from the MFSA website. A copy of the notification form can also be found through the following [link](#).

Issuers are also requested to provide the Authority with a written explanation of how the conditions set out in Article 17(4) of MAR were met, immediately after the information is disclosed to the public.

The notification shall be submitted to the MFSA using electronic means which ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

3.0 Notification Form

As aforesaid, in order to inform the MFSA of a delay in disclosure of inside information made under Article 17(4) of MAR, issuers are expected to use the notification form which is available on the MFSA website. Below is a brief overview of the information which the notification form is expected to contain. The notification of delayed disclosure is divided into five main sections as follows:

- i. Identity of the issuer

In this section, the full legal name and the address of the issuer should be disclosed.

ii. Identity of the person making the notification

The person submitting the notification on behalf of the issuer, shall disclose their name and surname, as well as their designation/position and their professional contact details.

iii. Identity of the persons responsible for delaying the disclosure of inside information

This section shall contain, the first name(s), surname, and position of the persons within the issuer responsible for (a) making the decision to delay disclosure and deciding on the start of the delay and its likely end; (b) ensuring the ongoing monitoring of the conditions for the delay; (c) making the decision to publicly disclose the inside information; and (d) providing the requested information about the delay and the written explanation to the MFSA, should be disclosed.

iv. Identification of the inside information

The form shall contain a description of the inside information which is subject to the delayed disclosure.

Furthermore, the date and time when (a) the inside information first existed within the issuer; (b) the decision to delay the disclosure of inside information was made; and (c) the issuer is likely to disclose the inside information should also be notified.

v. Additional information

This section shall contain, explanations on:

- how immediate disclosure is likely to prejudice the legitimate interests of the issuer;
- how the delay of disclosure is not likely to mislead the public;
- how the issuer is able to ensure the confidentiality of the inside information;
- the information barriers which have been put in place internally to prevent access to inside information by persons other than those who require it for the normal exercise of their employment; and
- the arrangements put in place to disclose the relevant inside information as soon as possible where the confidentiality is no longer ensured.

4.0 ESMA Guidelines on Delayed Disclosure of Inside Information

Issuers should be aware that ESMA has, under Article 17(1) of MAR, issued Guidelines on Delayed Disclosure of Inside Information. The purpose of these guidelines is to provide guidance by giving examples to assist the issuers in their decision to delay public disclosure of inside information under Article 17(4) of MAR.

A copy of the Guidelines can be accessed through this [link](#).

5.0 Delay in Disclosure of Inside Information by Issuers that are Credit/Financial Institutions (Article 17(5) of MAR)

In accordance with Article 17(5) of MAR, in order to preserve the stability of the financial system, an issuer that is a credit institution or a financial institution, may, on its own responsibility, delay the public disclosure of inside information, including information which is related to a temporary liquidity problem and, in particular, the need to receive temporary liquidity assistance from a central bank or lender of last resort, provided that all of the following conditions are met:

- (a) The disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system;
- (b) It is in the public interest to delay the disclosure;
- (c) The confidentiality of that information can be ensured; and
- (d) The competent authority has consented to the delay on the basis that the conditions in points (a), (b) and (c) are met.

ESMA has, through its [Questions and Answers on Market Abuse Regulation](#) ('Q&As'), *inter alia*, clarified which elements should be taken into consideration by issuers that are credit/financial institutions intending to delay disclosure of inside information, in their assessment of the conditions contained therein. In this respect, issuers shall refer to Q&A 5.3 of the ESMA Q&As.

6.0 Notification of Delayed Disclosure of Inside Information under Article 17(5)

For the purpose of delaying the public disclosure of inside information in accordance with Article 17(5) of MAR, an issuer that is a credit institution or a financial institution shall immediately notify the MFSA, in writing, of its intention to delay the disclosure of inside information in order to preserve the stability of the financial system, ensuring the completeness, integrity and confidentiality of the information, through the dedicated contact points specified below.

Credit/financial institutions are required to notify the MFSA of the expected duration of the delay under Article 17(5) of MAR.

The issuer shall also inform the MFSA of any new information that may affect its decision regarding the delay of the disclosure of the inside information.

Notifications shall be submitted to the MFSA using electronic means which ensure that completeness, integrity and confidentiality of the information are maintained during the transmission.

7.0 Delayed Disclosure under Article 17(4) vs. Delayed Disclosure under Article 17(5)

- Unlike the delayed disclosure under Article 17(4), the delayed disclosure under Article 17(5) only applies to issuers that are credit/financial institutions.

- The MFSA shall give prior consent. An issuer that is a credit/financial institution shall notify the MFSA of its intention to delay the disclosure of the inside information and must provide evidence that the conditions set out in points (a), (b) and (c) of Article 17(5) are met.
- The financial stability of the issuer and of the financial system must be at risk.
- If the MFSA does not consent to the delay in disclosure, immediate disclosure is necessary (the issuer has no possibility to delay disclosure under Article 17(4) of MAR).

Where disclosure of inside information has been delayed in accordance with Article 17(4) or Article 17(5) and the confidentiality of that inside information is no longer ensured, the issuer shall disclose that inside information to the public as soon as possible. This includes situations where a rumour explicitly relates to inside information, the disclosure of which has been delayed, where that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.

May we remind you that, where an issuer, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duties as referred to in Article 10(1) of MAR, they must make complete and effective public disclosure of that information (simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure); unless the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract. In order to avoid full public disclosure in the aforementioned instances, issuers are encouraged to narrow down, as much as possible, the group of recipients of inside information in order to avoid undesirable leaks.

MFSA Contact Points

The designated contact points for the MFSA with respect to notifications of delayed disclosure of inside information are the following:-

Ms Lorraine Vella, Deputy Head, Securities and Markets Supervision Unit (LVella@mfsa.com.mt)

Dr Anneliese Gixti, Senior Analyst, Securities and markets Supervision Unit (AGixti@mfsa.com.mt)

Should you have any queries relating to delayed disclosure of inside information, kindly contact the Authority on pfma@mfsa.com.mt

**Communications Unit
Malta Financial Services Authority
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