

## Italy's Inside Information Disclosure Requirements Addressed in CONSOB Guidelines

### IN SHORT

**The Situation:** In July 2016, the Market Abuse Regulation ("MAR") came into effect, introducing detailed requirements for EU listed issuers regarding disclosure of inside information, with a view to fighting market abuse.

**The Result:** In October 2017, CONSOB issued a set of Guidelines providing Italian listed issuers operational guidance regarding the proper implementation of MAR disclosure principles.

**Looking Ahead:** The CONSOB Guidelines are an opportunity for many Italian listed issuers to update their internal policies on inside information management. Failure to do so may expose them and their officers to increased risks associated with potential market abuse conduct.

On October 13, 2017, CONSOB (the Italian securities market regulator) issued a set of long-awaited Guidelines aimed at providing Italian listed issuers operational guidance and best practices regarding the proper implementation of the principles set forth by Regulation (EU) No. 596/2014 on market abuse ("MAR") in connection with inside information.

The Guidelines have been developed using a one-size-fits-all approach that has an "average issuer" in mind and therefore, when implemented, should be adapted on a case-by-case basis.

#### "Relevant Information" Versus "Inside Information"

A fundamental distinction lies at the core of the Guidelines, between:

- "Relevant Information," which is information that, in the issuer's judgment, is material to the issuer because it relates to data, events, projects, or circumstances that directly pertain to that issuer and at a later time may become Inside Information; and
- "Inside Information," which (in the basic notion set forth by Article 7(1), item (a), of MAR) is information that: (i) is of a precise nature; (ii) has not been made public; (iii) relates to an issuer or to financial instruments; and (iv) if made public, would likely have a significant effect on the prices of the financial instruments or related derivatives.

In light of this distinction, the Guidelines recommend that issuers implement internal policies and processes in order to (among other things):

- Identify the corporate function or officer who is responsible for managing Relevant Information and Inside Information ("Inside Information Management Unit");
- Identify and monitor Relevant Information and determine when this becomes Inside Information; and
- Decide whether to promptly disclose or delay disclosure of Inside Information pursuant to MAR rules.

#### Inside Information Management Unit

The Guidelines require that issuers clearly identify an Inside Information Management Unit, which may be a corporate officer or a corporate function responsible for managing Relevant Information and Inside Information, including deciding whether to promptly disclose Inside Information or delay disclosure under MAR rules.

#### Identification and Management of Relevant Information

The Guidelines do not provide a precise definition of "Relevant Information," leaving it up to the issuer's judgment to identify, on a case-by-case basis, those categories of information that can be deemed material to the issuer because:

- The information relates to data, events, projects, or circumstances that pertain to that issuer; and
- The information may at a later time evolve to become Inside Information.



The Guidelines do not provide a precise definition of 'Relevant Information,' leaving it up to the issuer's judgment to identify, on a case-by-case basis, those categories of information that can be deemed material to the issuer.



According to the Guidelines, through the Inside Information Management Unit, issuers should monitor the circulation of and access to Relevant Information by creating and maintaining a "Relevant Information List," which is a simplified version of the "Insider List" contemplated by Article 18 of MAR.

### Identification and Management of Inside Information

In light of the definition of "Inside Information" provided by Article 7(1) of MAR, the Guidelines recommend that:

- Issuers' internal policies identify general criteria to assist in determining the moment when a specific piece of Relevant Information becomes Inside Information;
- The Inside Information Management Unit document and keep track of the assessment set forth above; and
- Issuers implement procedures (including the Insider List) aimed at segregating Inside Information.

The Guidelines contain a noncomprehensive series of indicators to be taken into account in performing the assessment discussed above.

### Delayed Disclosure of Inside Information

The Guidelines provide operational and interpretive guidance regarding the processes that issuers should have in place in order to effectively manage a potential decision to delay disclosure of Inside Information, including in relation to:

- Procedures allowing the issuer to timely act in the event of a decision to delay disclosure of Inside Information;
- The assessment that the conditions justifying a delayed disclosure under Article 17(4) of MAR are met;
- The minimum contents of the decision to delay disclosure of Inside Information and of the records to be kept about such decision;
- Procedures to monitor that the conditions justifying a delayed disclosure continue to be met until disclosure; and
- Procedures ensuring that, if any of the conditions justifying a delayed disclosure cease to apply, the Inside Information be disclosed as soon as possible and, immediately thereafter, CONSOB be notified of the reasons for the decision to delay disclosure.

### Disclosure of Inside Information

The Guidelines provide guidance about how to interpret MAR's requirement that Inside Information should be disclosed to the public "as soon as possible," pointing out that an acceptable time lag is that necessary to draft a complete and accurate press release. They also provide minimum requirements to be met for Inside Information to be appropriately disclosed to the public.

#### TWO KEY TAKEAWAYS

1. CONSOB issued a long-awaited set of Guidelines providing Italian listed issuers operational guidance and best practices regarding the proper implementation of MAR principles about Inside Information management.
2. Italian listed issuers' failure to update their internal policies to make them compliant with MAR and the Guidelines may expose such issuers and their officers to increased risk associated with potential market abuse conduct.

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