VERDIPAPIRFORETAKENES FORBUND

NORWEGIAN SECURITIES MARKETS ASSOCIATION

Recommendation no. 4.

Order book information and insider dealing

This translation is provided for informational purposes only and may not be entirely accurate or complete. In the event of any discrepancies with the original Norwegian text, the Norwegian version shall prevail and take precedence over the English translation.

This recommendation was adopted by the Board of the Norwegian Securities Markets Association on 28 November 2001. The Board issued a revised edition of the recommendation which entered into force on 17 October 2016. This was updated on 2 March 2021 as a result of the Market Abuse Regulation (MAR). Recommendation updated 20 May 2022 due to a judgement in the Supreme Court. Annex 1 and 2 updated 15 March 2023. Point 7.2 corrected 3 November 2023. Modified 30 April 2025.

1. Introduction

Insider dealing can be briefly described as situations in which a person who possesses exclusive additional information regarding circumstances likely to have a significant effect on the price of a financial instrument, and thus has an advantage over the market at large, either carries out or encourages others to carry out transactions in the financial instruments to which the information pertains. Insider dealing also includes situations where a person in possession of inside information amends or cancels orders that were placed before the person obtained the inside information. Subject to certain exceptions, insider dealing is prohibited and, under Norwegian law, carries a maximum penalty of six years' imprisonment. There are strong general deterrence considerations that speak in favour of severe penalties for this type of offence. The Supreme Court of Norway has stated the following in a judgment[1] regarding the general deterrent rationale:

> "Insider crime is often easy to carry out, and may result in large gains or prevent large losses. The act affects "the market", and does not lead to losses for specific individuals in the same way as other economic crime. The offence is also often difficult to uncover. Regarding the harm to the securities market that such offences may lead to, I refer to Rt. (Supreme Court law reports) 2007, page 275, paragraph 10, with further references, and to Proposition to the Odelsting no. 29 (1996-1997) concerning the Securities Trading Act, which on page 24 states the following with which the Ministry agrees:
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> 'If some people have access to more information, or receive information at an earlier date, than other players and utilise this, these people may obtain an extraordinary gain or avoid an extraordinary loss. This may lead to players that do not have the same access to information not finding it expedient to invest in the Norwegian securities market. A badly functioning securities market may make it difficult and more expensive for companies to raise capital. The prohibition against insider dealing, other preventive provisions and effective enforcement therefore strengthen the market's ability to attract investors and thus contribute to increased liquidity'."

Some groups of employees in investment firms will regularly be in possession of, or have access to, inside information. This situation may potentially be exploited by clients if the employee does not handle the inside information with a sufficient degree of caution. Employees must therefore have a good understanding of what inside information is, and firms must have good information-handling procedures. Investment firms have a duty to report so-called suspicious transactions, ie, transactions that may be based on inside information, to Finanstilsynet (the Financial Supervisory Authority of Norway).

This memo aims to clarify some issues relating to the application of the rules governing insider dealing in connection with order book information. The memo is not meant to be exhaustive, but will provide guidelines and indications regarding how such information can and should be handled.

2. The scope of the insider dealing provisions

The EU regulation on market abuse (hereafter called MAR)[2], including the prohibition against insider dealing, has become Norwegian law through so-called incorporation, ie, the regulation's provisions apply as Norwegian law.

[1] HR-2013-01977

[2] Regulation (EU) No. 596/2014 on market abuse (MAR). Market abuse includes insider dealing and market manipulation.

The insider dealing provisions are applicable to trades in financial instruments (for example equity instruments, debt instruments, derivatives):

a) that are admitted to trading on a regulated market (for example a stock exchange) or for which a request for admission to trading on a regulated market has been made
b) that are traded on an MTF or an OTF, or for which a request for admission to trading on an MTF has been made, or
c) the price or value of which depends on or has an effect on the price or value of a financial instrument mentioned in a) or b)

Investment firms mainly take part in trading in financial instruments that are covered by the provisions regarding insider dealing. However, the scope of the provisions means that investment firms that, for example, take part in trading in unlisted shares on the Euronext NOTC List or bonds on the Nordic ABM List must check whether the shares or bonds also are traded on an MTF or OTF. The same applies to transactions in unlisted derivatives where the underlying instrument is covered by a) or b) above.

If the firm takes part in trading in financial instruments that are not covered by MAR, this does not mean the firm can use inside information or contribute to its use. Other statutory provisions, for example the provisions concerning good business practice and/or the prohibition against the use of "unreasonable business methods" in the Securities Trading Act[3] may be applicable.

There are therefore many reasons why investment firms must handle inside information with the same caution irrespective of whether the inside information is linked to financial instruments that are within or outside the scope of MAR.

3. The definition of "inside information"

In brief, inside information exists when the following conditions have been met:

a) The relation condition, ie, the information must directly or indirectly affect one or more issuers or one or more financial instruments
b) The unavailability criterion, ie, the information must not have been made public
c) The precise nature condition, ie, the information must be sufficiently specific (precise) that a deduction (conclusion) on the possible effect on the price can be drawn
d) The price-affecting condition, ie, the information must be able to have a significant effect on the price of the financial instrument(s) or derived financial instruments.

In practice, it is the content of the conditions in items c) and d) that require further explanation.

3.1 The precise nature condition – "Specific information (precise)"[4]

The concept of specific (precise) is included as a condition to rule out simple rumours and speculation. Rumours and speculation of this nature are in other words not "information" in a legal sense.

The precise nature condition covers both information on factual circumstances that have occurred and information on future events. Certainty that the factual circumstance has occurred or that an event will occur is not required. It is enough that it may "reasonably be expected" that the circumstance or event has occurred or will occur.

The circumstance may be linked to the financial instrument as such, for example that a large shareholding in a company has been sold or will be sold, or to the company as such, for example that

[3] Section 3-7 of the Securities Trading Act
[4] MAR Article 7

the company has entered into, or is expected to want to enter into, a merger agreement with another company.

In several court decisions concerning insider dealing, the question has been raised as to whether a balance of probabilities is required for the circumstance/event to occur. In a 2012 judgment by the Court of Justice of the European Union (Geltl)[5], the following was stated:

> "Consequently, Article 1(1) of Directive 2003/124, in using the terms 'may reasonably be expected […]', cannot be interpreted as requiring that proof be made out of a high probability of the circumstances or events in question coming into existence or occurring."

According to the Geltl judgment, high probability is not required, but it also means that the circumstance must not be unlikely. In a Supreme Court judgment from 2022[6] it is stated: " …. the text in the directive and regulation and the Geltl judgment collectively indicate that the minimum probability requirement for a possible future circumstance to constitute inside information is *close to probability equilibrium, but somewhat lower*" (highlighted by us). In such case, there is "precise information" in the sense of MAR.

MAR[7] also explains in further detail what can be counted as specific (precise) information in processes that consist of several steps, such as share issues, mergers, acquisitions, etc.

If the information is linked to a process that is carried out in several steps, both the knowledge that a process has been started and knowledge of one or more of the steps in the process may be inside information.

Circumstances/events of the nature referred to above are "specific (precise) information" if the information is specific enough to enable the recipient to draw "a conclusion". "A conclusion" means that a specific effect can be determined (as opposed to a guess). In relation to the provision, this means the information must be specific enough that the recipient is made able to determine whether the price will be affected[8]. If the information is of such a nature that the recipient can draw the conclusion that the information may have a "significant" effect on the price, see item 3.2, then the situation is that the recipient will be prohibited from misusing the information.

3.2 The price-affecting condition – "significant"

The concept of "significant" must not be understood as meaning that it is a requirement that the effect on the price must be quantifiable. Nor is it a condition that the information must be crucial to the investor's decision – it is sufficient if the information will probably form part of the basis for the investor's decision. In this assessment of the evidence, a preponderance of the evidence is sufficient[9].

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[5] European Court of Justice, 28 June 2012, Markus Geltl vs Daimler AG.
[6] The Supreme Court in case HR-2022-695-A
[7] MAR Article 7 no. 2 second sentence and Article 7 no. 3.
[8] The following is stated in Press Release No. 33/15 from the European Court of Justice: "By today's judgment, the Court states that it is not apparent from the wording of the directives that 'precise' information covers only information which makes it possible to determine the likely direction of a change in the prices of the financial instruments concerned. The only information that may be regarded as imprecise is information that is vague or general, from which it is impossible to draw a conclusion as regards its possible effect on the prices of the financial instruments concerned". This statement related to the question of a company's duty of disclosure regarding inside information, but is regarded as being relevant to the provision prohibiting insider dealing.
[9] The Supreme Court in case HR-2012-(Rt. 2012 page 629 paragraphs 57 and 58)

What is crucial is whether "*a reasonable investor would be likely*[10] " to use the information as part of the basis of his or her decision to trade (subscribe, buy, sell or swap). The effect that the inside information actually has when it is made public will just be one of the elements to be reviewed in an overall assessment.

It is not a requirement that one must be able to draw a conclusion about the direction that the price will take based on the information. This has been stated in a judgment of the European Court of Justice[11]. The Court among other things places emphasis on the fact that the complexity of the financial markets makes it difficult to accurately assess the direction in which the information will affect the price, and that being able to exclude information as inside information if the direction that the price will take is uncertain will allow misuse.

It is important to note that the investor must make the assessment before he/she trades (ex ante).

3.3 The prohibition against insider dealing

The prohibition provision in MAR[12] applies to the following circumstances:

a) engaging or attempting to engage in insider dealing
b) recommending that another person engage in insider dealing or inducing another person to engage in insider dealing
c) unlawfully disclosing insider information.

What is insider dealing and thus covered by the prohibition provision is specified in MAR[13] to be that:

a) a person who possesses inside information uses that information by acquiring or disposing of, for his/her own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates,
b) a person who possesses inside information uses the inside information to cancel or amend an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information,
c) a person who possesses inside information recommends, on the basis of that information, that another person acquire or dispose of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal, or
d) a person who possesses inside information recommends, on the basis of that information, that another person cancel or amend an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment.

The recipient's use of the recommendation or inducement comprises insider dealing on the part of the recipient if the recipient knew or ought to have known that the recommendation or inducement was based on inside information.

3.4 Failure to trade/recall of orders[14]

Assume that a client obtains inside information and interrupts a trade he/she had thought of doing. For example, the client may have placed an order to sell shares. The client subsequently finds out that the broker has a large buying assignment that will probably push the market price upwards. He/she then

[10] MAR Article 7 no. 4
[11] Case C-628/13 (the Lafonta case)
[12] Article 14
[13] Article 8
[14] See also Finanstilsynet's guide on the market abuse regulation (MAR) article 8 (1) dated 2 February 2021.

withdraws the sales order. This is a breach of the prohibition against insider dealing. The prohibition applies not only to acquisitions and disposals but also to the recall and amendment of orders that have been placed.

MAR Article 8 (1) sentence two states:

"The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information shall also be considered to be insider dealing."

Based on the wording of item 25 of the foreword ("orders placed before a person possesses inside information should not be deemed to be insider dealing"), it is of major importance to clarify when an "order" can be regarded as having been "placed" because this will represent the cut-off point for whether or not there is a presumption that inside information has been utilised (misused) in the case of a purchase/sale/cancellation/amendment, etc.

The standardised general business terms and conditions for investment firms prepared by the Association state the following in clause 1:

> "8.1 Placing and acceptance of orders and formation of contracts
> Orders from clients may be placed orally, in writing or electronically. Restrictions may apply to orders placed via electronic communication channels. Further information on this is available from the Investment Firm. The order is binding on the Client when it has been received by the Investment Firm unless otherwise separately agreed (underlined by us)."

The condition "received" (thus not "come to the knowledge of") has been chosen because a written or electronic order does not necessarily come to the knowledge of natural persons in the investment firm at the same time as the order is received by the investment firm or the relevant person(s). The order must fulfil the requirements of an order, ie, it must state (1) a financial instrument, (2) purchase/sale, (3) quantity or value, and (4) any other conditions linked to the order, and must not be subject to any proviso. When an order that fulfils the requirements of an order has been received by the investment firm, it must be regarded as having been "placed".

If the client places the order orally with a broker on the phone, at a meeting or via a chat, the order must be regarded as having been placed with the investment firm when the client and broker have agreed on a purchase or sale (financial instrument, purchase/sale, quantity/value, any conditions), ie, the time when the client has given the broker an assignment to either carry out or make an offer on behalf of the client.

At the time when the order is placed, the investor has made an investment decision and arranged with the investment firm to carry out the investment decision. It will be in connection with the investment decision that the investor possibly "utilises" (misuses) the information, not when the actual trade is carried out/executed/concluded. Once the investor has placed the order with the investment firm and thus left it up to the investment firm to carry out this investment decision, this will normally mean that the investor has "ceded control" to the investment firm as regards when the order is actually executed in the market. In other words, the investor should not have to bear the risk of something that he/she no longer has control over. For example, the investor will not have control over how the investment firms' trading systems are organised in relation to the execution time and execution of orders (technically speaking, orders may be amended by the systems, ref. functionality such as smart order routing, etc). For instance: the investment firm receives an order at 12 noon, the investor receives inside information

at 12.05, but the order is not carried out (for various reasons that the investor has no control over) until 12.07. In our opinion, the cut-off point is 12 noon (when the order was placed).

In our view, this starting point is supported by the objective of the prohibition (see items 23 and 25 of the foreword), where the point is that investors in possession of inside information must not be able to misuse ("take unfair advantage of") information that others do not have to obtain an unfair advantage by entering into transactions in accordance with the information. If an investor obtains inside information after an order has been placed, the investor was not in possession of this information when the investment decision was made, and it is therefore difficult to say he/she has misused (utilised) this information when he/she placed the order.

As the prohibition against insider dealing is subject to criminal sanctions, it is furthermore important that there is a clear and practicable rule regarding the relevant point in time from which the prohibition applies.The time when an order is placed (or amended) will be documented (refer to the detailed requirements regarding the documentation of client orders to which investment firms are subject), so that it will be possible to state the exact time when the order was placed, what it entailed and any amendments to it.

If there is any further communication between the broker and investor after the order is placed, we believe it must be assessed whether the subsequent dialogue entails a new order or an amendment/cancellation of an existing order.

In this assessment, the subsequent dialogue must be assessed in comparison to the original order. For example, if the broker asks the investor whether the order price is to be adjusted and this is rejected by the investor, there will not be any amendment since the original order remains in force. The same will be the case if the broker asks if the investor wishes to withdraw or maintain his or her original order and the investor confirms that the original order is to remain in force. The contact between the broker and investor will in such cases not be necessary for the order to be maintained or executed.

Normally, an order will remain in force until the end of the day unless otherwise agreed. This follows from the standardised general business terms and conditions for investment firms[15]. If, in such a case, the broker asks the investor if he/she wishes to allow the order to remain in force until the next day, confirmation of this will entail a new order. Difficult questions may arise if a large order is to be executed over a period, where there will normally be a "continuous dialogue" on the execution. Here, too, the crucial factor must be whether the content of the original order is amended.

For the sake of good order, we wish to add that an indication is not an order. By an indication, we mean in this context an interest in carrying out a trade, but where the actual order/conclusion of the contract is conditional on further negotiations. Without further negotiations, an indication will not lead to an actual trade.

4. The misuse proviso - legitimate behaviour

Before MAR, the provision prohibiting insider dealing contained a misuse proviso, ie, that the prohibition was only applicable to the misuse of inside information. The explanatory notes to the

[15] 8.2 Assignment period for orders
Regarding orders linked to trading in financial instruments, the order applies on the assignment date or until the regulated market where the order has been placed closes, and it thereafter lapses unless otherwise agreed on or is apparent for the order

former statutory provision listed examples of trades that could nevertheless be executed even if the person trading was in possession of inside information, see further details below.

MAR does not include a corresponding proviso, but it must nonetheless be possible to interpret the inclusion of a misuse proviso for the application of the prohibition. This can be deduced from the foreword to MAR[16] which states, among other things, that insider dealing is characterised by "an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence."

Although MAR prohibits the use of inside information, it must thus be understood that it is the "misuse" of inside information that is illegal. This means that the prohibition provision's wording is to be interpreted restrictively so that cases that are objectively speaking covered by the wording will not be affected by the prohibition if there is no unlawful misuse of inside information. That which is to be regarded as misuse will depend on a specific assessment in each case.

The foreword to MAR[17] states that when a person (legal or natural) who is in possession of inside information trades in financial instruments to which the information relates, it should be implied that that person has used that information. This presumption is not absolute and may be refuted. It is also stated that this presumption is without prejudice to the rights of the defence[18].

However, MAR[19] describes the following situations as "legitimate behaviour", ie, behaviour, transactions and orders to trade where there is to be no presumption that there is a misuse of inside information[20]:

a) It shall not be deemed from the mere fact that a legal person is or has been in possession of inside information that that legal person has used that information if that legal person has established effective procedures that ensure that the natural person who made the decision to trade on behalf of the legal person was not in possession of inside information
b) If the person in possession of inside information is a market-maker or acts as a counterparty in the financial instrument(s) to which the information applies, as long as the activity takes place in a legitimate manner as part of the normal exercise of the person's function.
c) If the person in possession of inside information is authorised to execute orders on behalf of third parties and the transaction is made to carry out such orders legitimately in the normal course of the exercise of that person's work.
d) If a person in possession of inside information conducts a transaction in order to discharge an obligation that has become due, and not to circumvent the prohibition against insider dealing, and the obligation applies to either (a) an order placed or an agreement concluded before the person concerned possessed inside information, or (b) the transaction is carried out to satisfy a legal or regulatory obligation that arose before the person concerned possessed inside information.

[16] Item 23 of the foreword
[17] Item 24 of the foreword
[18] A so-called presumption of innocence applies in Norwegian criminal law, ie, that the guilt of the defendant must be proven beyond reasonable doubt, and it is the prosecuting authority that bears the onus of proof. This is not the case according to the MAR regulation of insider dealing. The onus of proof is the opposite. It is the defendant who must prove his/her innocence.
[19] MAR Article 9
[20] This list of points is a considerably abbreviated version of the situations referred to in Article 9 Proposition to the Odelsting no. 80 (2000-2001) Proposition to the Odelsting no. 12 (2004-2005)

e) If the person concerned came into possession of the inside information in connection with a public takeover or merger with a company and uses the information solely for the purpose of proceeding with that merger or public takeover, provided that, at the point of approval of the merger or acceptance of the offer by the shareholders of that company, the information has been made public or has otherwise ceased to constitute inside information. (This exception is not applicable to stake-building).

f) The mere fact that a person uses his/her own knowledge that he/she has decided to acquire or dispose of financial instruments.

The explanatory notes to the Act in 2001[21] and the explanatory notes in 2004[22] to the now superseded prohibition provision in Norwegian legislation provide some examples of transactions that are not affected by the prohibition against insider dealing as they were regarded as being covered by the misuse proviso. The Ministry believes that previous explanatory notes' descriptions of the misuse proviso will be relevant for assessing whether a person has "used" the inside information in light of the objective of MAR[23]. If these examples are covered by the definition of insider dealing and are not covered by the examples of legitimate behaviour given in MAR, there will thus be a presumption that insider dealing has taken place, and in such case it will be the person that has carried out the transactions that must prove that inside information has not been unlawfully used.

The aforementioned examples are commented on below:

- transactions where the person in possession of inside information fully informs the counterparty or makes sure that the counterparty has been informed. Note: the European Court of Justice[24] has in two previous cases concluded that a transaction between two persons who were both in possession of inside information was not covered by the prohibition against insider dealing. It must be assumed that MAR has not altered the law here. (However, it cannot be ruled out that the provisions regarding the proper handling of information prevent the exchange of information between the parties).
- transactions where the investor *sells* a security he/she is in possession of information on that appears likely to affect the price in a *positive* direction. NB: this is not misuse of inside information because the person concerned suffers a loss.
- transactions where the investor *buys* a security he/she is in possession of information on that is likely to affect the price in a *negative* direction. Note: this is not misuse of inside information because the person concerned suffers a loss.
- transactions carried out by a broker that is in possession of inside information but where the broker only completely passively executes an order following a concrete initiative by the client. NB: refer to item c) in the above list. Not misuse.
- transactions (purchases) where two or more people cooperate on, for example, an acquisition even though they know that those they are cooperating with also trade in shares, and that publication of this matter would have helped to push the price up. Note: refer to item f) in the above list. Not misuse.

[21] Proposition to the Odelsting no. 80 (2000-2001)
[22] Proposition to the Odelsting no. 12 (2004-2005)
[23] Proposition 96 LS 2018-2019 item 6.4.5.3
[24] Case C-391/04 and Case C-45/08

- transactions (purchases) where the party that is going to acquire a company or merge with a company has obtained inside information through a due diligence investigation[25]. Note: refer to item e) in the above list. Not misuse.
- transactions (sales) that are brought about in cases where there is a statutory duty to trade, for example a duty to sell according to the licensing legislation, a duty to realise liens and security, etc. However, the chargee will not normally be subject to such a duty, but may in the case of a breach choose when the security is to be realised. In such cases, it is assumed in legal theory that the realisation must be equated with a sale, so that the decision to realise made by someone with inside information is covered by the prohibition. Note: refer to item e) in the above list. Not misuse.

The Association takes the view that an **investment firm's** realisation of financial instruments that have been provided as security, for example in relation to the clearing of derivatives contracts, securities loans, credit, etc, cannot be regarded as misuse even if there are persons in the firm that are in possession of inside information. The same applies to transactions that investment firms are under an obligation to carry out as a result of the general duty to limit losses in contractual relationships, or a sale to cover losses as a result of the statutory right to security pursuant to the Securities Trading Act[26]. This is obvious if the party who decides that realisation is to take place, for example the head of the settlement department, does not have inside information. The fact that some people in the investment firm have inside information does not infect the entire firm or other persons in the firm. But if the person who is to decide on the realisation consults a person in the investment firm who has inside information, such as the compliance officer, the conclusion may be more debatable. As stated above, in legal theory it is assumed that realisation must be equated with a sale, so that realisation is covered by the prohibition if the decision to realise is made by someone that possesses inside information. In loss-settlement transactions that take place in accordance with pre-defined deadlines, for example the forced sale of unpaid shares, it is not very natural to talk about "a decision to realise". If the firm has stipulated in its general business terms and conditions or some other agreement that unpaid financial instruments must, if defaulted on, be sold seven days after the settlement date, a person in the firm that possesses inside information must be able to carry out such a sale provided he/she follows pre-agreed procedures. This case is more similar to a passive execution of an order than "a decision to realise". However, if the pre-agreed procedures and deadlines, such as automatic realisation seven days after the settlement date, are not followed, the relevant person in the insider position may come to a point where he/she should hand over the matter and the associated decision to realise to an employee who is not in an insider position.

5. Further limitations on/exceptions from the prohibition

In item 4 above regarding the misuse proviso, it is mentioned that brokers who have inside information may only passively execute orders. This follows from 1) the prohibition against "urging" and "recommending" insider dealing, 2) the prohibition against unlawful disclosure of inside information[27] and 3) the duty to act in accordance with good business practice. However, these provisions cannot affect the broker's opportunity to execute such an order. If a broker has received a large order to buy or sell in a company, he/she must be able to carry out the activity that the principal

[25] This proviso is probably meant in comparison to the "original" offer. It can be questioned whether a buyer that obtains inside information through a due diligence investigation can make a **new** offer, for example because a competing bid has been received from another buyer.
[26] Section 16-2 of the Norwegian Securities Trading Act
[27] MAR Article 10

is entitled to; namely that the broker actively seeks out potential clients with the aim of bringing about a transaction. This is obviously not a misuse of information. It is further clear that it is also not misuse if the clients who are sought out accept the offer to buy or sell and the transaction thus comes into being. If the sought-out clients do not accept the offer they may, however – in certain cases – be regarded as insiders and thus prohibited from trading in the opposite direction to the offer.

6. Handling of orders that may constitute inside information (hereinafter referred to as "sensitive orders")

6.1 Introduction

The unlawful disclosure of inside information is prohibited under MAR[28]. Unlawful disclosure arises "where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties[29].". The Financial Supervisory Authority of Norway (Finanstilsynet) has assumed that the term "normal course" implies that the disclosure of inside information must take place in a way that limits the risk of misuse and does not place the recipient in an involuntary insider position. Certain orders require those handling them to assess whether they constitute inside information.

6.2 Orders in shares listed on a regulated market or admitted to trading on an MTF

In this recommendation, sensitive orders are defined as orders that contain elements which may trigger market sounding rules and/or potentially constitute inside information. Such elements may include, among others, the size of the transaction (block trade) and circumstances related to the investor and/or the issuer.

If an order contains elements that render it sensitive, the employee should always assess whether the transaction can be executed without moving the price "significantly". A thorough assessment must be made of whether the information related to such an order meets the criteria for inside information under Article 7 of MAR. An incorrect assessment of whether a sensitive order is or may potentially constitute inside information may lead to a breach of the prohibition against the unlawful disclosure of inside information under MAR.

Firms must therefore have internal guidelines in place that ensure such assessments are made, and that relevant control and documentation procedures are implemented.

What constitutes a sensitive order will depend on several factors that must be considered in each individual case. Firms may consider, among other things, the following factors:

- Pricing of the transaction – discount/premium relative to the market price
- Size of the transaction:
  - in relation to the total outstanding shares in the company
  - in relation to the daily liquidity of the share
- Investor-related factors:
  - whether the investor is a primary insider, company founder, strategic investor, significant investor, or a key investor
  - whether there are specific market expectations related to, e.g., the expiry of a lock-up period

[28] MAR Article 14 c)
[29] MAR Article 10 no 1

    - whether the investor has issued specific instructions
    - whether there are other circumstances, e.g., knowledge in the market that the investor intends to divest
- Issuer-related factors:
    - recent or imminent corporate events such as capital raising
    - recent or imminent company reporting, such as quarterly reports or profit warnings

Employees who handle front-line orders must be attentive to factors that may render an order inside information, and exercise sound judgement when handling sensitive orders. If the employee has indications that the order may constitute inside information, the assessment must be documented.

Firms should standardise their procedures for assessments related to sensitive orders. This can be done through the establishment of dedicated committees or by other means.

Firms/employees must be mindful that when they are working to assemble a group of buyers or sellers without a mandate (see section 8.5 c) "Trading without an order or instruction"), such a process may develop to the point that the firm/employee must take into account factors that render an order "sensitive".

6.3 Orders in unlisted shares

For orders in unlisted shares outside the scope of MAR, the firm/employee must also be attentive to circumstances that make such orders sensitive and act in accordance with the conduct of business rules when handling such orders.

For example, if the seller or a potential buyer is a member of the issuer's board or holds another position equivalent to a primary insider, or is a related party to such persons and therefore may have access to information about the issuer or the securities that is not available to other investors, the firm/employee must carefully assess whether there is an information asymmetry between the parties and how this should be handled. The assessment will also depend on the professionalism of the other relevant investors and their familiarity with the issuer, as well as how much publicly available information exists about the issuer, for example through annual reports published on the issuer's website, and how up-to-date such information is.

6.4 Orders and requests for quotes related to bonds

What constitutes sensitive orders and sensitive requests for quotes (RFQs) related to bonds, and what may constitute inside information relating to such instruments, depends on several factors that must be assessed in each individual case. Investment firms should be particularly attentive to the following factors, which may involve a risk that the information is to be regarded as inside information. In the following, the term order also includes RFQs:

- Trading information – large orders and orders that deviate significantly from the current market price (especially if such an order originates from the issuer itself or a primary insider), or knowledge of the strategic intention behind the order.
- Corporate events – financial difficulties, default, need for restructuring, mergers, acquisitions, sale of material assets, changes in company management, litigation, regulatory investigations, operational disruptions, etc., that affect the issuer's ability to service the debt.
- Bond-related events – breaches of bond covenants and changes to the terms such as early redemption (call) or interest rate adjustments.
- Credit ratings – knowledge of upcoming credit assessments or changes in existing ratings.

- Market events – regulatory changes that may affect the bond market or specific issuers.

Employees who handle orders must be aware of these factors, and any other factors that may affect the price of the bond. If employees suspect that information related to a bond may constitute inside information, the assessment must be documented in writing.

7. Market soundings according to the MAR regulations[30]

7.1 Introduction

MAR contains provisions regarding market sounding (often also called pre-sounding). If the players comply with the provisions, the market sounding will not be regarded as contravening the rules governing the handling of inside information, such as the prohibition against disclosing information to unauthorised third parties. In other words, the provisions function as a "safe harbour". However, the fact that the market sounding provisions are unlawfully not complied with is not the same as that the insider dealing provisions have been contravened. The market sounding provisions apply to soundings both with inside information and without inside information. Templates for communication with clients regarding both types of sounding are included in an annex to this recommendation.

7.2 Definition

A "market sounding" comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it, such as its potential size or pricing, to one or more potential investors by:

- an issuer
- a secondary offeror of a financial instrument, in such a quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors (block trade)

Communication of information by a person wishing to make a takeover bid for securities or a merger with a company to investors entitled to the securities/company, provided that

- the information is necessary to enable the investors to form an opinion on their willingness to offer their securities; and
- the person who is considering making the offer believes it is necessary to obtain information on the investors' interest before this person makes a final decision.

7.3 The investment firm's obligations

7.3.1 Introduction

The investment firm must have internal guidelines that describe how market soundings are to take place. Market soundings may take place verbally in a face-to-face meeting, via the telephone or a video call, or in writing. In those cases where the market sounding takes place via the telephone, the telephone must be linked to sound recording equipment. In the Association's view, market soundings with investors must not take place via the telephone if the call is not recorded.

[30] MAR Article 11 and Commission Delegated Regulation (EU) 2016/960

7.3.2 Prior to the market sounding

Before carrying out the market sounding, the investment firm must carefully consider whether the market sounding will involve the disclosure of inside information to the persons who are contacted. The conclusion of such an assessment must be stated in writing. This obligation applies to each disclosure of information throughout the entire process. If the investment firm concludes that the market sounding means that inside information is provided, the items below apply.

7.3.3 The market sounding

Before disclosing inside information, the investment firm must:

1. Make it clear that the communication is taking place in connection with a market sounding.
2. State that the call is being recorded if the investor is contacted by telephone.
3. Make sure that the person who is contacted is authorised by the investor to receive information in connection with a market sounding (if relevant).
4. Obtain the consent of the person contacted to receive inside information, and inform the investor of the investor's duty to consider whether the information is inside information.
5. If possible, provide a discretionary assessment of when the information will cease to be inside information, the factors that may alter this discretionary assessment, and how the investor will be informed of changes to this discretionary assessment.
6. Inform the person concerned that he/she is prohibited from using the information for his/her own or a third party's account to acquire or dispose of, directly or indirectly, financial instruments relating to that information.
7. Inform the person concerned that he/she is prohibited from using or attempting to use the information to cancel or amend a trading order that has already been placed.
8. Inform the person concerned that, by agreeing to receive the information, he/she is obliged to keep the information confidential.

7.3.4 Documentation

The investment firm must prepare and update a record of all the information disclosed to persons that receive information during the market sounding. This must also include the identity of the potential investors who have received information, including persons acting on behalf of the potential investor, as well as the date and time of each individual disclosure of information. Finanstilsynet has issued a statement that, in connection with a market sounding, it is not enough to only state the "gatekeeper" on the market-sounding record if the investment firm conducting the market sounding discloses the relevant information to other persons in the company that is the subject of the market sounding; such as a manager. If the investment firm on the other hand discloses the information *solely* to this person, it will be sufficient to state this person's name in the record in accordance with article 4 no. 1 a) of Commission Delegated Regulation (EU) 2016/960.

7.3.5 Ceases to be inside information

When the information that has been disclosed to investors during the market sounding ceases to be inside information, the investment firm shall inform the recipient of information during the market sounding of this as soon as possible.

This communication must include:

1. The identity of the investment firm that has disclosed the information in connection with the market sounding.

2. A statement of the transaction that was the subject of the market sounding.
3. The date and time of the market sounding.
4. A declaration stating that the information has ceased to be inside information.
5. The date when the information ceased to be inside information.

A record must be kept of the information given in accordance with this provision.

7.3.6 Examples

Acquisitions

Assume that an investor gives an investment firm the task of making an identical offer to all the shareholders of a company to buy their shares at a specific price. In such situations, it may be necessary for the broker to contact some large shareholders to "sound out their views" regarding their willingness to sell and the possible offer price. Often, the acquisition of a controlling interest in a company will take place at a price that is higher than the relevant market price because the bidder is willing to pay a control premium. The shareholders will therefore usually become insiders due to such communication with the broker, even though no specific information on the intended offer price is given. Before the offer is known in the market, no others that know about the forthcoming offer will be able to buy the shares either. However, it is acceptable to sell if the shareholder knows there will in future be a takeover bid at a higher price than the market price on the sales date. Refer to MAR Article 11 no. 2.

Bidding (Book-building)

The sale of large shareholdings[31] in a company may take place in an open or closed bidding process.

In an **open** bidding process, the general public is invited to submit offers to buy some of the shareholding offered, often within a pre-defined price range. The party managing the bidding process will know the accumulated demand for shares at different price levels. If the shares are listed and the demand indicates a level which deviates from the market price, this information may be "likely to have a significant effect on the price" and must thus be regarded as inside information. Investors that receive or in some other way obtain such information from the order book may thus become insiders. This will be quite obvious if the demand within the publicly known price range is so low that the seller has to reduce the price below the minimum price in the price range. The Norwegian authorities seem

[31] When the effect of an investment firm disclosing information from its own order book to clients is questioned, this is because information on individual orders over a certain size or accumulated orders in a company may, in certain cases, be information that might have a "significant" effect on the price of the financial instrument, refer to the fact that this is information a sensible investor is assumed to wish to use as part of his/her basis for deciding how to act. Refer also to MAR Article 11 no. 1 (b).
However, it would be wrong to assume that information on large orders may always have a "significant" effect on the price. Using various strategies, the broker will try to prevent the execution of large orders from affecting the market price. This is one of the characteristics of good brokerage – that the market price must not be affected by the execution of large buy or sell orders. A guideline here may be that if one cannot buy or sell without affecting the market price, then one must be cautious and therefore handle the order as inside information.
"A large order" cannot be defined exactly. The market conditions, among other things, must be taken into consideration. Information on the purchase/sale of a large shareholding will more easily be covered by the prohibition against insider dealing if the shareholding is in a company where there is normally little turnover than if it is in a company where there is a large turnover. The sale of a large shareholding in a falling market will probably be more likely to affect the share price than if the sale takes place in a rising market. Who the investor is may also affect the assessment, and information on the purchase/sale of a large shareholding by a primary insider or key investor will have a greater effect on the share price than purchases/sales by others.

to believe that either the demand must be made fully public and simultaneously to the entire market (stock-exchange notice) or nothing must be said.

In some other countries, the above statement seems so far to have been interpreted as if publication has taken place when the main lead manager has notified the other lead managers of the demand so that they can/must forward this information to their clients. However, the key issue according to Norwegian law is whether the information can be regarded as having been "made public or generally known", and there is reason to assume that "publication" to a limited number of co-lead managers will not be enough to say that the information has been "made public or generally known". It is underlined that such appraisals will have to depend on specific discretionary assessments and that for this reason caution must be shown.

In a **closed** bidding process, a broker will contact a limited circle of potential buyers of a shareholding in a company. For example, a shareholder may want to sell a 10 per cent shareholding in a company. The broker will request bids from a limited circle of bidders that he/she believes will be interested in the entire shareholding or parts of it. It can in such case be asked if the fact that such a process is taking place is in itself inside information for persons in the circle of potential bidders. This must be assumed to be the case provided the broker or seller has not announced publicly that such bidding is taking place. Persons outside the circle of potential bidders may also become insiders if they receive information that bidding is taking place. The reason for this is that there are reasonable grounds to expect that the shareholding will be sold at a price that differs from the market price and that the sale will thus affect the market price. Such a sale can also be perceived as a possible shift in the company's operations/strategy, etc.

One question that is often discussed is whether bidding processes should take place outside stock-exchange trading hours. It is underlined that this issue is of no importance in relation to the insider dealing provisions as such. This issue arises because many clients (especially managers) do not accept being made insiders during stock-exchange trading hours as this may lead to them being unable to carry out transactions that are planned to be carried out during the day. After stock-exchange trading hours, more will agree to being made insiders, and this is the only consequence. The insider dealing provisions apply just the same, even though the stock exchange is closed.

It is important to remember that the insider dealing rules apply "round the clock and all over the world" – which is important if you start a transaction outside the stock-exchange trading hours but are not finished by the time the stock exchange opens the next day. If you have not made the clients insiders, you are in a difficult position when the stock exchange opens. If the clients have not formally been made insiders but have received inside information, they may well plead a certain ignorance of legal factors and facts that is only likely to put the investment firm in a bad light. This can be avoided by making everyone an insider when the process starts.

Finanstilsynet has in a guide[32] discussed the handling of information in connection with book building. For example, Finanstilsynet assumes that, in certain circumstances, the name of the company alone may also comprise inside information. Finanstilsynet therefore advises investment firms to show caution in identifying the company to which the assignment relates before the investors have been made "insiders". It will often be the situation that a sensible investor may conclude that the inquiry probably relates to the placement of a large shareholding that is likely to have a negative effect on the share price.

[32] Some updated comments on chapters 3 and 4 of the Securities Trading Act

In the above guide, Finanstilsynet requires the investment firm to have a well-thought-through and critical system for forwarding inside information in connection with book-building processes so that the risk of leaks and misuse is reduced to a minimum.

Share issues that are not subject to prospectus checks pursuant to the provisions of chapter 7 of the Securities Trading Act may also be carried out through book-building. That stated above will naturally also apply to such situations. When establishing underwriting syndicates for private placements, (potential) participants that are contacted must more or less always be regarded as insiders provided the information on the share issue and issue price has not been published. The same may be true for planned public share issues. In such case, a person is considered to be an insider when he/she is contacted, and the broker must make the person aware of this.

8. Sharing of inside information outside the market sounding regime – types of cases

8.1 Introduction

There is a certain opportunity to share inside information (and price-sensitive information) outside the market sounding regime too[33]. For example, one is outside the market sounding regime in those cases where there is no announcement of a transaction following the sounding. The primary restriction on sharing such information in such cases is the duty of non-disclosure provision in MAR Article 10, which allows the sharing of inside information "*in the normal exercise of an employment, a profession or duties*". The assessment must thus be based on the provider's – in our case the broker's – occupational needs, and not the potential investor's desire to receive price-sensitive information. For a broker, the matter to be assessed must be whether the sharing of the inside information can be said to comprise the expedient and justifiable carrying out of the role of an intermediary, taking into account the clients' overall interests and the market's integrity. If, in negotiations with potential investors, the broker needs to share information about the principal and the background to the principal's interest in buying or selling in order to execute the order, for example because the information rules out that the broker is working on an acquisition of the company or a reduction in a major shareholding, there may be an opportunity to share this information with selected potential investors. Such a sharing of inside information normally requires the principal's consent to the information being shared. The clients that the broker gives such information to will in such case be put in an insider position, but that does not prevent them from selling to/buying from the broker that makes them an offer to buy or sell.

It must also be noted that if sharing inside information that is not subject to a special duty of non-disclosure puts a client in an insider position, then the investment firm broker or employee in question must expressly make this client aware that, after receiving the information, he/she is to be regarded as an insider. The client must also be informed of the consequences this has for him/her, including *the statutory duty of non-disclosure and reduced opportunity to trade in the financial instrument in question*[34]. This means that even though it will not normally be a breach of the duty of non-disclosure to disclose such order-related information when this is done as part of the normal exercise of a broker's

[33] In Proposition to Storting 96 LS (2018-2019), item 6.5.5, the Ministry states that MAR Art. 10 "*mainly entails a material continuation of the prevailing rules in section 3-4 (1) of the Securities Trading Act...*" The Ministry also comments that "*..Article 11 of the Market Abuse Regulation provides a so-called 'safe harbour' for market soundings.*" In addition, item 35 of the foreword to MAR states that *"There should be no presumption that market participants that do not comply with this Regulation when conducting a market sounding have unlawfully disclosed inside information…"*

[34] As well as in financial instruments whose price or value depends on, or affects the price or value of, the financial instrument to which the information refers.

work, it may put the recipient (client) in an insider position with a resulting duty of non-disclosure and reduced opportunity to trade. It is important to be aware of the broker's/investment firm's duty to make the matter universally known, ie, it must be possible to document later on that the recipient has received inside information, and that the recipient has understood this and thus the consequences. This is normally done by the conversation being recorded or by a written declaration being obtained.

It will often be difficult to decide whether there is actually inside information in a specific case, including because the answer may depend on the recipient's subjective circumstances. That which can often be determined, on the other hand, is that there is a risk that the information in question may be regarded as inside information, and that the recipients should always treat information provided about transactions as confidential and demonstrate caution before possibly trading after having received the information.

Brokers/investment firms cannot put a client in an insider position against the client's will. That means the order in which questions are put to clients is important. Normally, a broker may not state the name of the issuer **before** the client has agreed to be made an insider. This will apply to those cases where information about the name of the issuer alone will be information that enables the client to draw a conclusion about what the case concerns and the price-driving effect that the information may have. He/she must thus be able to draw the conclusion that the price will rise or fall "significantly". The choice of opening question, for example ((i) "Do you want to be made an insider in a listed company?" or ((ii) "Do you want to be made an insider in COMPANY XX?") must thus be given careful consideration. If you choose the wrong initial question, the consequences may be serious for either the broker/investment firm or the client, or for both. If the information that this is about COMPANY XX is in itself inside information and the client refuses to be made into an insider, then the broker/investment has contravened the provision about good business practice by putting the client in an involuntary insider position. If the client says no and then carries out trades, he/she may risk being convicted of misusing inside information.

It follows from the above that the initial question must be given careful consideration. It must therefore be recommended that decisions on the content of the initial question are not made alone. The best thing is to establish a fixed group/procedure that can make this type of decision. It must also be possible to document the basis for the decision later on.

Below are some types of cases. Please note that ***one must oneself always*** conduct a ***specific assessment*** in each individual case.

8.2 Companies trading in their own shares[35]

Assume that a company gives a broker an assignment to buy back or sell its own shares. There may be many circumstances that motivate the company to make such a buy-back or sale. The disclosure to selected potential investors that it is the company itself that is buying (or selling) its own shares in order to be able to execute the order may comprise the "*normal exercise of an employment, a profession or duties*" and thus be lawful.

It is underlined that if a company has informed the market about its right to buy its own shares, typically in buy-back programmes, it will always be a potential buyer. In order to be regarded as inside information, information on a specific buy-back must therefore in itself be regarded as price-sensitive. In this context, it will be important to look at the company in question and its previous practice and

[35] For further details refer to MAR Article 5 and Commission Delegated Regulation (EU) 2016/1052

whether the specific case will entail a deviation from previous practice, for example with regard to the nature of the assignment or the size of the buy-back.

Assume that it is the broker who initiates a possible buy-back. The broker contacts one or more clients in order to gather a large shareholding that he/she intends to offer to a company whose general meeting has authorised it to buy back shares. Even though the broker communicates to the client(s) that his/her intention is to offer the shares to the company, the client(s) will not normally become insiders because there is no order and thus, in normal cases, also no information of such a nature that it is affected by the insider provision. The same will apply to any other "gathering" without an order, ie, own-account trading.

It is underlined that this type of case may be assessed differently if it appears to the client/broker that it can reasonably be expected 1) that the broker will manage to gather the shareholding and 2) that the company will buy the shareholding and 3) that the client(s) who have been given the information can "draw a conclusion" on the direction that the share price will take once the buy-back has been announced and 4) that the share price will move "significantly". In such cases, the client(s) may not trade in the opposite direction to the broker's offer. If this is the situation, the client(s) must be made insiders.

8.3 Strategic shareholdings

Assume that an investor gives a broker an assignment to buy or sell a large shareholding in a company. For a buyer, the objective may be to achieve influence over the company. The goal may be a place on the board, or cooperation with another company that the investor has influence over, etc. In such cases, the information will consist of two components: 1) size and 2) the investor's objective. The combination of these two components may easily be information that is "likely to have a significant effect on the price". Sharing this information with selected potential investors in order to carry out the transaction may comprise "*the normal exercise of an employment, a profession or duties*", and thus be lawful.

Any clients that the broker gives such information to will in such case be put in an insider position, but this does not prevent them from selling to/buying from the broker that makes the offer to buy or sell.

8.4 A buy or sell order from a primary insider (person discharging managerial responsibilities)

Assume that one or more primary insiders (person discharging managerial responsibilities) give a broker an assignment to buy or sell shares. Primary insiders have an obligation to report purchases or sales to the issuer and to the competent authority[36] immediately and at the latest within three business days[37]. This reporting obligation is based on the presumption that primary insiders' transactions are information that affect the share price. A client who obtains information that one or more primary insiders are buyers or sellers will often be in an insider position, even with regard to small orders. However, this does not apply to completely insignificant orders. There is no longer any duty to inform clients that a bidder is a primary insider, but it seems to be quite common for brokers to give information to clients if such information can be disclosed without the primary insider(s) being identified. Clients that receive such information from a broker may accept the offer to buy or sell. However, if the client rejects the offer and provided the information is inside information and the

[36] MAR Article 19

[37] In Proposition to the Storting 96 LS 2018-2019, the Ministry states that "the starting point [must] be that the deadline according to the regulation is 'immediately', and that the deadline of three business days is to be regarded as an absolute deadline irrespective of special circumstances."

client trades in the same direction as the primary insider, the prohibition against insider dealing may be contravened.

If the orders are of such a size that they can easily be carried out as ordinary transactions on the stock exchange, this solution should naturally be chosen. This avoids the problems that can arise when clients are contacted directly regarding purchases from or sales to primary insiders.

8.5 Other types of large orders

a) Orders without special conditions

Assume that a broker is given an assignment to buy/sell 150,000 Equinor shares at the best possible price. Such an order comprises around 5 per cent of the average daily trading volume in this share (2025).

Assume that a broker is given an assignment to buy/sell 100,000 Mowi shares at the best possible price. Such an order comprises around 10 per cent of the average daily trading volume in this share (2025).

There are several methods that a broker can use when executing such orders. If he does not want to show the volume on the stock exchange but instead wishes to contact investors that have the capacity to do (all or part of) such a transaction, the communication with potential clients may, for example, start off with:

"Are you doing anything in …?"

"Today, we're buying/selling....."

"I want to buy 150,000 shares in/I have 150,000 shares in .... for sale"

The first two introductions are of such a nature that the client will not be put in an insider position. The last introduction in the examples above may put the client in an insider position because it is likely that executing the orders will affect the market price. In order to be able to share the last-mentioned information with selected potential investors, the broker must be able to prove that sharing it is necessary for carrying out the transaction.

b) Orders subject to special conditions

An investor will often link conditions to the execution of large assignments, for example "carefully during the day", which in itself indicates that the order must not be likely to have a "significant" effect on the share price. Such orders will usually be executed by the broker not buying or selling more than one-third of the current trading volume. This technique is used so that executing the order does not affect the market price and thus that clients who become aware of such orders are not put in an insider position.

c) Trading without an order or instruction

In many situations, the investment firm will not have received any specific assignment from a buyer or seller. Instead, the situation will be that the investment firm thinks a potential client might want to buy a large shareholding if the investment firm can "demonstrate" there are enough sellers at an attractive price, and vice versa (sell). Information that an investment firm is itself trying to put together a group of buyers or sellers is not normally to be considered inside information if there is no mandate, although refer to the last paragraph of this item.

Contacting a number of clients to, if possible, reveal any possible interest in buying or selling is a natural part of a broker's activities and thus cannot in itself be said to be inside information. The point is that the information in question is not of such a precise nature that a normally sensible investor would take this information into consideration when making an investment decision, although it may be that being contacted by certain investment firms might have an effect on the share price.

It is nonetheless important to be prepared for this situation changing during the project, so that the total interest that is revealed and possibly indirectly communicated further when attempts are made to confirm or specify the interest may be regarded as inside information. This means that the investment firms should have a strategy for handling this transition. They must make sure that, if they have to "make clients insiders" later on in the process, they can do so more or less automatically and that the clients in question in such case do not have any choice which allows them to say no while at the same time possessing inside information.

Chapter 6 on ‘Handling of orders that may constitute inside information’ applies to ‘trading without order or instruction’ as applicable.

9. Neutralisation of unequal access to information

When a client has been put in an insider position by an investment firm as a result of having been given order book information, the question will arise of when the client leaves the insider position and can start to trade in the share.

If this concerns knowledge that the buyer or seller is a primary insider (person discharging managerial responsibilities), the client leaves the insider position once a stock-exchange notice has been published.

If this concerns the purchase or sale of a large shareholding, the client will leave the insider position when the transaction is reported to the stock-exchange system (provided the transaction is made public).

The investment firm may fail in its assignment to buy or sell a large shareholding. Clients who have been put in an insider position by the investment firm in connection with the attempt to execute the order may in such case know that an investor is a potential buyer or seller of a large shareholding at a price that deviates from the stock-exchange price. We assume that the client is no longer in an insider position once the assignment has lapsed (or been put on hold). For clients that were originally put in an insider position because a specific event was to take place, it will be very unreasonable to remain in an insider position on the basis that the planned event did not take place. It will also be impossible in practice to determine another date for when the client has left the insider position because an investment firm's failed assignments are not normally made public. The fact that the clients (who were in an insider position) may hazard a guess that the investor will try again is also not enough for there to be a prohibition against trading, refer to the fact that the information must be "precise" for the prohibition against trading to enter into force.

Vedlegg 1 – Annex 1

MARKET SOUNDINGS SCRIPT INVOLVING INSIDE INFORMATION

Note: items on the script below in bold should not be read to the recipient, and act as guidance notes for when conducting a market sounding only.

No.	Item to be disclosed to, or requested from, the recipient
1	***Ensure that the market sounding is being conducted on a recorded line***
2	We would like to discuss with you a market sounding case regarding a potential directed share issue of new shares in a Nordic small cap company within the [ ] sector.[38] The company [has /does not have] other listed financial instruments. The case involves confidential and inside information
3	This call is being recorded - please confirm your consent to being recorded
4	Please also confirm that you are authorised to receive this sounding
5	You will receive information that we consider to be inside information within the meaning of Regulation (EU) 596/2014 or "MAR". In particular, the receipt of this information may affect your firm's ability to conduct certain research, sales or trading activities. While many firms employ information barriers, you should seek legal advice on whether your firm can continue these activities if you agree to receive this information from us
6	You must, however, assess for yourself whether or not you are in possession of inside information and at which point you cease to be in possession of such inside information
7	You will remain an insider until the transaction is publicly announced or we tell you that the contemplated transaction is not proceeding. We estimate that the information will cease to be inside information no later than [TIME AND DATE] It is expected that the inside information will be "cleansed" either by (i) publicly announcing the launch of the transaction or (ii) the abandonment of the transaction. Should it be decided not to proceed with the transaction, we will inform you, but the abandonment will not be publicly announced
8	Factors which may alter this estimation include market conditions and other factors
9	We will inform you of any change in our estimation by phone or email
10	You must assess for yourself when you cease to hold inside information
11	You are prohibited use this information, or attempt to use this information, to acquire or dispose of (directly or indirectly) financial instruments relating to this information either on your own account or on behalf of someone else
12	You are prohibited to use this information, or attempt to use this information, by cancelling or amending any order which you have already placed concerning a financial instrument to which this information relates
13	You must keep this information strictly confidential (other than on a need to know basis or in response to a request by any regulatory authority, court or tribunal, or as required under any law or regulation) and your firm must act in accordance with all relevant securities laws and your firm's internal policies If you wallcross further persons within your entity we expect that you maintain your own list of insiders and don't have to notify us about any further wallcrossing
14	Do you consent to receive this information and for me to proceed with the market sounding? Please confirm that you either have spoken, or have declined the opportunity to speak, to a member of your legal or compliance department concerning this request. ***Await a response before proceeding***
15	***Where consent is given, proceed to conduct market sounding; disclose the information which is the subject of the market sounding, identifying (if applicable) and making clear to the recipient which parts of the information you consider to be inside***
16	***Complete Soundings List***

[38] The teaser cannot contain information which, overall, enables the investor to identify which company the information is about or what the inside information consists of.

Vedlegg 2 – Annex 2

MARKET SOUNDINGS SCRIPT NOT INVOLVING INSIDE INFORMATION

Note: items on the script below in bold should not be read to the recipient, and act as guidance notes for when conducting a market sounding only.

No.	Item to be disclosed to, or requested from, the recipient
1	***Ensure that the market sounding is being conducted on a recorded line***
2	We would like to discuss with you a market sounding case regarding a potential directed share issue of new shares in a Nordic small cap company within the [ ] sector.
3	This call is being recorded - please confirm your consent to being recorded
4	Please also confirm that you are authorised to receive this sounding
5	You will receive information that we do not consider to be inside information within the meaning of Regulation (EU) 596/2014 or "MAR".
6	You must, however, assess for yourself whether or not you are in possession of inside information and at which point you cease to be in possession of such inside information.
7	Do you consent to receive this information and for me to proceed with the market sounding? Please confirm that you either have spoken, or have declined the opportunity to speak, to a member of your legal or compliance department concerning this request. ***Await a response before proceeding***
8	***Where consent is given, proceed to conduct market sounding; disclose the information which is the subject of the market sounding.***
9	***Complete Soundings List***

Vedlegg 3 – Annex 3

Market sounding e-mail templates

Market sounding which includes the disclosure of insider information

Subject: Strictly confidential

Dear investor,

The purpose of this Email is for a forthcoming market sounding which includes inside information and requires your acceptance to conduct a market sounding.

We would like to engage in market sounding activities with you in a **[Swedish/Danish/Norwegian/Other company within the [•] sector]**[39].

This communication will be recorded through e-email and/or a recorded telephone.

You will receive information that [INVESTMENT FIRM] considers to be inside information within the meaning of Regulation (EU) 596/2014, Market Abuse Regulation ("MAR"). According to Article 11(7) of Regulation (EU) No 596/2014 you need to make your own assessment as to whether you are in possession of inside information and at which point you cease to be in possession of such inside information.

We estimate that the information will cease to be inside information by [**TIME and DATE**]. The factors that may alter the estimation are [**market movements, [•],** [•]]. You will be informed of any change in this estimation by recorded telephone/e-mail as soon as possible.

We also need to inform you about the obligations imposed on insiders. You are prohibited to use or attempt to use the information, by acquiring or disposing of, for your own account or for the account of a third party, directly or indirectly, financial instruments relating to the information, or by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates. You are also obliged to keep the information confidential (other than on a need to know basis or in response to a request by any regulatory authority, court or tribunal, or as required under any law or regulation).

If you wallcross further persons within your entity we expect that you maintain your own list of insiders and don't have to notify us about any further Wallcrossing.

Please confirm that you understand these restrictions and agree to be bound by them and consent to proceed with the market sounding process including inside information. Please, also confirm that you are the person entrusted by [FIRM] to receive the market sounding.

Please confirm that you have read and understood this information **by replying to this e-mail**.

[39] The teaser cannot contain information which, overall, enables the investor to identify which company the information is about or what the inside information consists of.

Cleansing e-mail

Subject: Strictly confidential

(Name of investment firm), through **[name**] herby declares that the information disclosed regarding **[company name/transaction]** that was considered to be inside information and regarded as market sounding, now has ceased to be considered inside information.

The market sounding took place **[date + time]**

The insider information was made public on **[date]**

Keep in mind that you are responsible for assessing whether you are in the possession of inside information or not. And if you are you shall immediately have the inside information registered.

Vedlegg 4 – Annex 4

Market sounding which does not include the disclosure of insider information

Subject: Strictly confidential

Dear investor,

The purpose of this Email is for a forthcoming market sounding and requires your acceptance to conduct a market sounding.

We would like to engage in market sounding activities with you in a [**Swedish/Danish/Norwegian, Finnish company within the [•] sector**].

This communication will be recorded through e-mail and/or a recorded telephone.

You will receive a market sounding, which means that you will receive information that [INVESTMENT FIRM] considers **not to** be inside information.

You need to make your own assessment as to whether you are in possession of inside information and at which point you cease to be in possession of such inside information.

Please confirm that you are the person entrusted by **[FIRM]** to receive the market sounding.

Please confirm that you consent to proceed with the market sounding and that you have read and understood this information by **replying to this email**.