MARKET ABUSE DIRECTIVE (DISCLOSURE RULES) INSTRUMENT 2005

Powers exercised

A. The Financial Services Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 ("the Act"):

(1) section 73A (Part 6 rules);
(2) section 96A (Disclosure of information requirements);
(3) section 96C (Suspension of trading);
(4) section 101 (Listing rules: general provisions); and
(5) section 157(1) (Guidance).

Commencement

B. This instrument comes into force on 1 July 2005.

Amendments to the Handbook

C. (1) Annex B to this instrument inserts into the Handbook new chapters in the new Disclosure Rules sourcebook (DR).

(2) The Glossary of definitions is amended in accordance with Annex A.

Notes

D. In Annex B to this instrument, the "notes" (indicated by "**Note:**") are included for the convenience of readers but do not form part of the legislative text.

Citation

E. This instrument may be cited as the Market Abuse Directive (Disclosure Rules) Instrument 2005

By order of the Board
17 March 2005

Annex A

Amendments to the Glossary

In this Annex, underlining indicates new text and striking through indicates deleted text. Where new definitions are being inserted the text is not underlined.

Insert the following new definitions in the appropriate alphabetical position in the Glossary:

disclosure rules	(in accordance with section 73A(3) of the *Act*) *rules* relating to the disclosure of information in respect of *financial instruments* which have been *admitted to trading* on a *regulated market* or for which a request for *admission to trading* on such a market has been made.
DR	the Disclosure Rules sourcebook.
equity share	*shares* comprised in a *company's equity share capital*.
equity share capital	(for a *company*), its issued share capital excluding any part of that capital which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution.
insider list	a list, as required by *DR* 2.8.1R, of *persons* with access to *inside information*.
non-EEA State	a country or state that is not an *EEA State*.
OECD state guaranteed issuer	an *issuer* of *debt securities* whose obligations in relation to those *securities* have been guaranteed by a member state of the *OECD*.
overseas	outside the *United Kingdom*
preference share	a *share* conferring preference as to income or return of capital which is not convertible into an *equity share* and does not form part of the *equity share capital* of a *company*.
Prospectus Directive	the Directive of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (No 2003/71/EC).
public international body	the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the Council of Europe Resettlement Fund, the European Atomic Energy Community, the European Bank for Reconstruction and Development, the European Coal and Steel Community, the European Company for the Financing of Railroad Stock, the European Economic Community, the European Investment Bank, the Inter-American

	Development Bank, the International Bank for Reconstruction and Development, the International Finance Corporation, the International Monetary Fund and the Nordic Investment Bank.
public sector issuer	states and their regional and local authorities, *state monopolies, state finance organisations, public international bodies,* statutory bodies and *OECD state guaranteed issuers*.
state finance organisation	a legal person other than a *company:* (a) which is a national of an *EEA state*; (b) which is set up by or pursuant to a special law; (c) whose activities are governed by that law and consist solely of raising funds under state control through the issue of *debt securities*; (d) which is financed by means of the resources they have raised and resources provided by the *EEA state*; and (e) the *debt securities* issued by it are considered by the law of the relevant *EEA state* as securities issued or guaranteed by that state.
state monopoly	a *company* or other legal person which is a national of an *EEA state* and which: (a) in carrying on its business benefits from a monopoly right granted by an *EEA state*; and (b) is set up by or pursuant to a special law or whose borrowings are unconditionally and irrevocably guaranteed by an *EEA state* or one of the federated states of an *EEA state*.
treasury shares	qualifying shares to which sections 162A to 162G of the Companies Act 1985 apply.

Amend the following definitions as shown:

admission to trading	(1) (in *DR*) admission to trading on a *regulated market*; (2) (elsewhere in the Handbook) (in relation to an *investment* and an exchange) the process by which the exchange permits members of the exchange to enter into transactions in that *investment* under and subject to the rules of the exchange.

debt securities (in *DR*) debentures, debenture stock, loan stock, bonds, certificates of deposit or any other instrument creating or acknowledging indebtedness.

(elsewhere in the *Handbook*) any of the following:

(a) a *debenture*;

(b) a *government and public security*;

(c) a *warrant* which confers a right in respect of an investment in (a) or (b).

connected person (1) …

...

(4) (in *DR*, in relation to a *person discharging managerial responsibilities* within an *issuer*)(as defined in section 96B(2) of the *Act*):

(a) a "connected person" within the meaning of section 346 of the Companies Act 1985 (reading that section as if any reference to a director of a company were a reference to a *person discharging managerial responsibilities* within an *issuer*);

(b) a relative of a *person discharging managerial responsibilities* within an *issuer*, who, on the date of the transaction in question has shared the same household as that person for at least 12 months;

(c) a *body corporate* in which –

(i) a *person discharging managerial responsibilities* within an *issuer*, or

(ii) any *person* connected with him by virtue of subsection (a) or (b),

is a director or a senior executive who has the power to make management decisions affecting the future development and business prospects of that *body corporate*.

director (1) (except in *COLL*, *DR* and *CIS*) (in relation to any of the following …

…

(3) (in *DR*)(in accordance with section 417(1)(a) of the Act) a *person* occupying in relation to it the position of a director (by whatever name called) and, in relation to an *issuer* which is not a *body corporate*, a *person* with corresponding powers and duties.

inside information

(1) (except in DR)(as defined in section 118C of the *Act*): …

(2) (in *DR*) *inside information* in (1) but replacing references to *qualifying investments* with references to *financial instruments*.

issuer

(except in *CIS* and *DR*)

(1) (in relation to any *security*) (other than a *unit* in a *collective investment scheme*) the *person* by whom …

…

(in *DR*)

(5) any *company* or other legal person or undertaking (including a *public sector issuer*), any class of whose *financial instruments*:

(a) have been *admitted to trading* on a *regulated market*; or

(b) are the subject of an application for *admission to trading* on a *regulated market*;

other than *issuers* who have not requested or approved admission of their *financial instruments* to trading on a *regulated market*.

share

(1) (except in *CIS* and *DR*) the *investment* …

(2) …

(3) (in *DR*)(in accordance with section 744 of the Companies Act 1985) a share in the share capital of a *company*, and includes:

(a) stock (except where a distinction between shares and stock is express or implied); and

(b) *preference shares*.

Annex B

Disclosure Rules sourcebook

In this Annex, chapters of the new Disclosure Rules sourcebook are being inserted and the text is not underlined.

1 Introduction

1.1 Application and purpose

1.1.1 R The *disclosure rules* apply as follows:

(1) *DR* 1 and *DR* 2 apply to an *issuer* whose *financial instruments* are *admitted to trading* on a *regulated market* in the *United Kingdom* or for which a request for *admission to trading* on a *regulated market* in the *United Kingdom* has been made;

(2) *DR* 3 applies to an *issuer* that is incorporated in the *United Kingdom*:

(a) whose *financial instruments* are *admitted to trading* on a *regulated market*; or

(b) for whose *financial instruments* a request for *admission to trading* on a *regulated market* in the *United Kingdom* has been made;

(3) the following apply to *persons discharging managerial responsibilities*, including *directors*, and *connected persons*:

(a) *DR* 1.1. and DR 1.2;

(b) *DR* 1.3.1R – *DR* 1.3.2G and *DR* 1.3.8R;

(c) *DR* 1.4;

(d) *DR* 1.5.3G; and

(e) *DR* 3; and

(4) *DR* 3 applies to a *non-EEA state issuer* which is required to file, with the *FSA*, annual information in relation to shares in accordance with Article 10 of the *Prospectus Directive*.

Purpose

1.1.2 G The purpose of the *disclosure rules* is to implement:

(1) Article 6 of the *Market Abuse Directive*;

(2) Articles 2 and 3 of Commission Directive 2003/124/EC; and

(3) Articles 5 and 6 of Commission Directive 2004/72/EC.

FSA performing functions as competent authority

1.1.3 G In relation to the *disclosure rules*, the *FSA* is exercising its functions as the competent authority under Part VI of the *Act* (see section 72(1) of the *Act*).

Other relevant parts of Handbook

Note: Other parts of the *Handbook* that may also be relevant to *persons* to whom the *disclosure rules* apply include *DEC* (the Decision making manual), Chapter 9 of *SUP* (the Supervision manual) and Chapter 21 of *ENF* (the Enforcement manual).

Note: A list of *regulated markets* can be found on the *FSA* website at the following address: http://www.fsa.gov.uk/register-res/html/prof_exchanges_fram.html

1.2 Modifying rules and consulting the FSA

Modifying or dispensing with rules

1.2.1 R (1) The *FSA* may dispense with, or modify, the *disclosure rules* in such cases and by reference to such circumstances as it considers appropriate (subject to the terms of directives and the *Act*).

(2) A dispensation or modification may be either unconditional or subject to specified conditions.

(3) If an *issuer*, *person discharging managerial responsibilities* or a *connected person* has applied for, or been granted, a dispensation or modification, it must notify the *FSA* immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.

(4) The *FSA* may revoke or modify a dispensation or modification.

1.2.2 R (1) An application to the *FSA* to dispense with or modify, a *disclosure rule* must be in writing.

(2) The application must:

(a) contain a clear explanation of why the dispensation or modification is requested;

(b) include details of any special requirements, for example, the date by which the dispensation or modification is required;

(c) contain all relevant information that should reasonably be brought to the *FSA's* attention;

(d) contain any statement or information that is required by the *disclosure rules* to be included for a specific type of dispensation or modification; and

(e) include copies of all documents relevant to the application.

1.2.3 G An application to dispense with or modify a *disclosure rule* should ordinarily be made at least five *business days* before the proposed dispensation or modification is to take effect.

Early consultation with FSA

1.2.4 G An *issuer*, *person discharging managerial responsibilities* or *connected person* should consult with the *FSA* at the earliest possible stage if they:

(1) are in doubt about how the *disclosure rules* apply in a particular situation; or

(2) consider that it may be necessary for the *FSA* to dispense with or modify a *disclosure rule*.

Address for correspondence

Note: The *FSA's* address for correspondence in relation to the *disclosure rules* is:

Company Monitoring Team
Markets Division
The Financial Services Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Fax: 020 7066 8368

1.3 Information gathering and publication

Information gathering

1.3.1 R An *issuer*, *person discharging managerial responsibilities* or *connected person* must provide to the *FSA* as soon as possible following a request:

(1) any information that the *FSA* considers appropriate to protect investors or ensure the smooth operation of the market; and

(2) any other information or explanation that the *FSA* may require to verify whether the *disclosure rules* are being and have been complied with.

1.3.2 G In gathering information under *DR* 1.3.1R, the *FSA* may contact the *issuer*, *person discharging managerial responsibilities*, *connected person* or their adviser directly. Telephone calls to and from the *FSA* may be recorded for regulatory purposes. The *FSA* may also require the *issuer*, *person discharging managerial responsibilities*, *connected person* or their advisers to provide information in writing.

FSA may require the publication of information

1.3.3 R (1) The *FSA* may, at any time, require an *issuer* to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market.

(2) If an *issuer* fails to comply with a requirement under paragraph (1) the *FSA* may itself publish the information (after giving the *issuer* an opportunity to make representations as to why it should not be published).

Misleading information not to be published

1.3.4 R An *issuer* must take all reasonable care to ensure that any information it notifies to a *RIS* is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

1.3.5 R An *issuer* must not combine, in a manner likely to be misleading, a *RIS* announcement with the marketing of its activities. [**Note:** Article 2(1) 2003/124/EC]

Notification when a RIS is not open for business

1.3.6 R If an *issuer* is required to notify information to a *RIS* at a time when a *RIS* is not open for business, it must distribute the information as soon as possible to:

(1) not less than two national newspapers in the *United Kingdom*;

(2) two newswire services operating in the *United Kingdom*; and

(3) a *RIS* for release as soon as it opens.

1.3.7 G The fact that a *RIS* is not open for business is not, in itself, sufficient grounds for delaying the disclosure or distribution of *inside information*.

English language

1.3.8 R A notification to a *RIS* that is required under the *disclosure rules* must be in English.

1.4 Suspension of trading

1.4.1 R The *FSA* may require the suspension of trading of a *financial instrument* with effect from such time as it may determine if there are reasonable grounds to suspect non-compliance with the *disclosure rules*.

1.4.2 R If trading of an *issuer's financial instruments* is suspended, the *issuer*, any *persons discharging managerial responsibilities* and any *connected person* must continue to comply with all applicable *disclosure rules*.

1.4.3 R If the *FSA* has required the suspension of trading of any *financial instruments*, it may impose such conditions on the procedure for lifting the suspension as it considers appropriate.

1.4.4 G Examples of when the *FSA* may require the suspension of trading of a *financial instrument* include:

(1) if an issuer fails to make a *RIS* announcement as required by the *disclosure rules* within the applicable time-limits which the FSA considers could affect the interests of investors or affect the smooth operation of the market; or

(2) if there is or there may be a leak of *inside information* and the *issuer* is unwilling or unable to issue an appropriate *RIS* announcement within a reasonable period of time.

1.4.5 G The decision-making procedures to be followed by the *FSA* when it:

(1) requires the suspension of trading of a *financial instrument*; or

(2) refuses an application by an *issuer* to lift a suspension made under section 96C;

are set out in *DEC*.

1.5 Fees, market abuse safe harbours and sanctions

Fees

1.5.1 R An i*ssuer* must pay the fees set out in *DR* App 2R to the *FSA* when they are due.

Market abuse safe harbours

1.5.2 R Pursuant to section 118A(5) of the *Act*, behaviour conforming with the *disclosure rules* specified below does not amount to market abuse under section 118(1) of the *Act*:

(1) *DR* 1.3.4R (Misleading information not to be published);

(2) *DR* 1.3.6R (Notification when a *RIS* is not open for business);

(3) *DR* 2.2.1R (Requirement to disclose *inside information*); and

(4) *DR* 2.5.1R (Delaying disclosure).

Sanctions

1.5.3 G (1) If the *FSA* considers that an *issuer*, a *person discharging managerial responsibilities* or a *connected person* has breached any of the *disclosure rules* it may, subject to the provisions of the *Act*, impose on that *person* a financial penalty or publish a statement censuring that *person*.

(2) If the *FSA* considers that a former *director* was knowingly concerned in a breach by an *issuer* it may, subject to the provisions of the *Act*, impose on that *person* a financial penalty.

2 Disclosure and control of inside information by issuers

2.1 Introduction and purpose

Introduction

2.1.1 G *An issuer* should be aware that matters that fall within the scope of this chapter may also fall within the scope of:

(1) the market abuse regime set out in section 118 of the *Act*;

(2) section 397 of the *Act* relating to misleading statements and practices;

(3) Part V of the Criminal Justice Act 1993 relating to insider dealing; and

(4) the *Takeover Code*.

2.1.2 R If an *issuer* is involved in a matter which also falls within the scope of the *Takeover Code* it must nevertheless comply with its obligations under this chapter.

Purpose

2.1.3 G The purpose of this chapter is to:

(1) promote prompt and fair disclosure of relevant information to the market; and [**Note:** Recital 24 *Market Abuse Directive*]

(2) set out specific circumstances when an *issuer* can delay public disclosure of *inside information* and requirements to ensure that such information is kept confidential in order to protect investors and prevent insider dealing. [**Note:** Recital 5 2003/124/EC]

2.2 Disclosure of inside information

Requirement to disclose inside information

2.2.1 R An *issuer* must notify a *RIS* as soon as possible of any *inside information* which directly concerns the *issuer* unless *DR* 2.5.1R applies. [**Note:** Article 6(1) *Market Abuse Directive*]

2.2.2 R An *issuer* will be deemed to have complied with *DR* 2.2.1R where, upon the coming into existence of a set of circumstances or the occurrence of an event, albeit not yet formalised, the *issuer* notified a *RIS* as soon as was possible. [**Note:** Article 2(2) 2003/124/EC]

Identifying inside information

2.2.3 G Information is *inside information* if each of the criteria in the definition of *inside information* is met.

2.2.4 G (1) In determining the likely price significance of the information an *issuer* should assess whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions and would therefore be likely to have a significant effect on the price of the *issuer's financial instruments* (the "reasonable investor test"). [**Note:** Article 1(2) 2003/124/EC]

(2) In determining whether information would be likely to have a significant effect on the price of *financial instruments*, an *issuer* should be mindful that there is no figure (percentage change or otherwise) that can be set for any *issuer* when determining what constitutes a "significant effect on the price of the *financial instruments*" as this will vary from *issuer* to *issuer*.

2.2.5 G The reasonable investor test requires an *issuer*:

(1) to take into account that the significance of the information in question will vary widely from *issuer* to *issuer*, depending on a variety of factors such as the *issuer's* size, recent developments and the market sentiment about the *issuer* and the sector in which it operates; and

(2) to assume that a reasonable investor will make investment decisions relating to the relevant *financial instrument* to maximise his economic self interest.

2.2.6 G It is not possible to prescribe how the reasonable investor test will apply in all possible situations. Any assessment should take into consideration the anticipated impact of the information in light of the totality of the *issuer's* activities, the reliability of the source of the information and other market variables likely to affect the relevant *financial instrument* in the given circumstances. However, information which is likely to be considered relevant to a reasonable investor's decision includes information which affects:

(1) the assets and liabilities of the *issuer*;

(2) the performance, or the expectation of the performance, of the *issuer's* business;

(3) the financial condition of the *issuer*;

(4) the course of the *issuer's* business;

(5) major new developments in the business of the *issuer*; or

(6) information previously disclosed to the market. [**Note:** Recital 1 2003/124/EC]

2.2.7 G An *issuer* and its advisers are best placed to make an initial assessment of whether particular information amounts to *inside information*. The decision as to whether a piece of information is *inside information* may be finely balanced and the *issuer* (with the help of its advisers) will need to exercise its judgement.

Note: *DR* 2.7 provides additional guidance on dealing with market rumour.

2.2.8 G The *directors* of the *issuer* should carefully and continuously monitor whether changes in the circumstances of the *issuer* are such that an announcement obligation has arisen under this chapter.

When to disclose inside information

2.2.9 G (1) Subject to the limited ability to delay release of *inside information* to the public provided by *DR* 2.5.1R, an *issuer* is required to notify, via a *RIS*, all *inside information* in its possession as soon as possible.

(2) If an *issuer* is faced with an unexpected and significant event, a short delay may be acceptable if it is necessary to clarify the situation. In such situations a holding announcement should be used where an *issuer* believes that there is a danger of *inside information* leaking before the facts and their impact can be confirmed. The holding

announcement should:

(a) detail as much of the subject matter as possible;

(b) set out the reasons why a fuller announcement cannot be made; and

(c) include an undertaking to announce further details as soon as possible.

(3) If an *issuer* is unable, or unwilling to make a holding announcement it may be appropriate for the trading of its *financial instruments* to be suspended until the *issuer* is in a position to make an announcement.

(4) An *issuer* that is in any doubt as to the timing of announcements required by this chapter should consult the *FSA* at the earliest opportunity.

Communication with third parties

2.2.10 G The *FSA* is aware that many *issuers* provide unpublished information to third parties such as analysts, employees, credit rating agencies, finance providers and major shareholders, often in response to queries from such parties. The fact that information is unpublished does not in itself make it *inside information*. However, unpublished information which amounts to *inside information* is only permitted to be disclosed in accordance with the *disclosure rules* and an *issuer* must ensure that at all times it acts in compliance with this chapter.

2.3 Publication of information on internet site

2.3.1 R *DR* 2.3.2R – *DR* 2.3.5R apply to an *issuer* that has an internet site.

2.3.2 R *Inside information* announced via a *RIS* must be available on the *issuer's* internet site by the close of the *business day* following the day of the *RIS* announcement.

2.3.3 R An *issuer* must ensure that *inside information* is notified to a *RIS* before, or simultaneously with, publication of such *inside information* on its internet site.

2.3.4 G To ensure fast access and correct and timely assessment of the information by the public, an *issuer* should not publish *inside information* on its internet site as an alternative to its disclosure via a *RIS*.

2.3.5 R An *issuer* must, for a period of one year following publication, post on its internet sites all *inside information* that it is required to disclose via a *RIS*. [**Note:** Article 6(1) *Market Abuse Directive*]

2.4 Equivalent information

2.4.1 R Without prejudice to its obligations under *DR* 2.2.1R, an *issuer* must take reasonable care to ensure that the disclosure of *inside information* to the public is synchronised as closely as possible in all jurisdictions in which it has:

(1) *financial instruments admitted to trading* on a *regulated market*;

(2) requested *admission to trading* of its *financial instruments* on a *regulated market*; or

(3) *financial instruments* listed on any other *overseas* stock exchange. [**Note:** Article 2(4) 2003/124/EC]

2.4.2 R If the rules of another *regulated market* or *overseas* stock exchange require an *issuer* to disclose *inside information* at a time when a *RIS* is not open for business it should disclose the information in accordance with *DR* 1.3.6R at the same time as it is released to the public in the other jurisdiction.

2.5 Delaying disclosure of inside information

Delaying disclosure

2.5.1 R An *issuer* may, under its own responsibility, delay the public disclosure of *inside information*, such as not to prejudice its legitimate interests provided that:

(1) such omission would not be likely to mislead the public;

(2) any *person* receiving the information owes the *issuer* a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and

(3) the *issuer* is able to ensure the confidentiality of that information. [**Note:** Article 6(2) and (3) *Market Abuse Directive*]

Legitimate interests and when delay will not mislead the public

2.5.2 G (1) Delaying disclosure of *inside information* will not always mislead the public, although a developing situation should be monitored so that if circumstances change an immediate disclosure can be made.

(2) Investors understand that some information must be kept confidential until developments are at a stage when an announcement can be made without prejudicing the legitimate interests of the *issuer*.

2.5.3 R For the purposes of applying *DR* 2.5.1R, legitimate interests may, in particular, relate to the following non-exhaustive circumstances:

(1) negotiations in course, or related elements where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the *issuer* is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long term financial recovery of the *issuer*; or

(2) decisions taken or contracts made by the management body of an *issuer* which need the approval of another body of the *issuer* in order to become effective, where the organisation of such an *issuer* requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public. [**Note:** Article 3(1) 2003/124/EC]

2.5.4 G (1) *DR* 2.5.3R(1) does not allow an *issuer* to delay public disclosure of the fact that it is in financial difficulty or of its worsening financial condition and is limited to the fact or substance of the negotiations to deal with such a situation. An *issuer* cannot delay disclosure of *inside information* on the basis that its position in subsequent negotiations to deal with the situation will be jeopardised by the disclosure of its financial condition.

(2) The legitimate interest described in *DR* 2.5.3R(2) refers to an *issuer* with a dual board structure (e.g. a management board and supervisory board if and to the extent that decisions of the management board require ratification by the supervisory board). An *issuer* with a unitary board structure would be unable to take advantage of *DR* 2.5.3R(2) and, therefore, *DR* 2.5.3R(2) should only be available to a very limited number of *issuers* in the *United Kingdom*.

2.5.5 G An *issuer* should not be obliged to disclose impending developments that could be jeopardised by premature disclosure. Whether or not an *issuer* has a legitimate interest which would be prejudiced by the disclosure of certain *inside information* is an assessment which must be made by the *issuer* in the first instance. However, the *FSA* considers that, other than in relation to impending developments or matters described in *DR* 2.5.3G, there are unlikely to be other circumstances where delay would be justified.

Selective disclosure

2.5.6 R Whenever an *issuer* or a person acting on his behalf or for his account discloses any *inside information* to any third party in the normal exercise of his employment, profession or duties, the *issuer* must make complete and effective public disclosure of that information via a *RIS*, simultaneously in the case of an intentional disclosure and as soon as possible in the case of a non-intentional disclosure, unless *DR* 2.5.1R applies. [**Note:** Article 6(3) *Market Abuse Directive*]

2.5.7 G (1) When an *issuer* is permitted to delay public disclosure of *inside information* in accordance with *DR* 2.5.1R, it may selectively disclose that information to *person*s owing it a duty of confidentiality.

(2) Such selective disclosure may be made to another *person* if it is in the normal course of the exercise of his employment, profession or duties. However, selective disclosure cannot be made to any *person* simply because they owe the *issuer* a duty of confidentiality. For example, an *issuer* contemplating a major transaction which requires shareholder support or which could significantly impact its lending arrangements or credit-rating may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency as long as the recipients are bound by a duty of confidentiality. An *issuer* may, depending on the circumstances, be justified in disclosing *inside information* to certain categories of recipient in addition to those employees of the *issuer* who require the information to perform their functions. The categories of recipient include, but are not limited to, the following:

(a) the *issuer's* advisers and advisers of any other *persons* involved in the matter in question;

(b) *person*s with whom the *issuer* is negotiating, or intends to negotiate, any commercial financial or investment transaction (including prospective underwriters or placees of the *financial instruments* of the *issuer*);

(c) employee representatives or trade unions acting on their behalf;

(d) any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority;

(e) major shareholders of the *issuer*;

(f) the *issuer's* lenders; and

(g) credit-rating agencies.

2.5.8 G Selective disclosure to any or all of the *persons* referred to in *DR* 2.5.7G may not be justified in every circumstance where an *issuer* delays disclosure in accordance with *DR* 2.5.1R.

2.5.9 G An *issuer* should bear in mind that the wider the group of recipients of *inside information* the greater the likelihood of a leak which will trigger full public disclosure of the information via a *RIS* under *DR* 2.6.2R.

2.6 Control of inside information

Denying access to inside information

2.6.1 R An *issuer* must establish effective arrangements to deny access to *inside information* to *person*s other than those who require it for the exercise of their functions within the *issuer*. [**Note:** Article 3(2) 2003/124/EC]

Breach of confidentiality

2.6.2 R An *issuer* must have in place measures which enable public disclosure to be made via a *RIS* as soon as possible in case the *issuer* is not able to ensure the confidentiality of the relevant *inside information*. [**Note:** Article 3(2) 2003/124/EC]

2.6.3 G If an *issuer* is relying on *DR* 2.5.1R to delay the disclosure of *inside information* it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence. Such a holding announcement should include the details set out in *DR* 2.2.9G(2).

2.6.4 G We recognise that an *issuer* may not be responsible for breach of *DR* 2.5.1R if a recipient of *inside information* under *DR* 2.5.1R breaches his duty of confidentiality.

2.7 Dealing with rumours

2.7.1 G Where there is press speculation or market rumour regarding an *issuer*, the *issuer* should assess whether a disclosure obligation arises under *DR* 2.2.1R. To do this an *issuer* will need to carefully assess whether the speculation or rumour has given rise to a situation where the *issuer* has *inside information.*

2.7.2 G (1) Where press speculation or a market rumour is largely accurate and the information underlying the rumour is *inside information* then it is likely that the *issuer* can no longer delay disclosure in accordance with *DR* 2.5.1R as it is no longer able to ensure the confidentiality of the *inside information*.

(2) An *issuer* that finds itself in the circumstances described in paragraph (1) should disclose the *inside information* in accordance

with *DR* 2.6.2R as soon as possible.

2.7.3 G The knowledge that press speculation or market rumour is false is not likely to amount to *inside information*. Even if it does amount to *inside information*, the *FSA* expects that in most of those cases an *issuer* would be able to delay disclosure (often indefinitely) in accordance with *DR* 2.5.1R.

2.8 Insider lists

Requirement to draw up insider lists

2.8.1 R An *issuer* must ensure that it and *person*s acting on its behalf or on its account draw up a list of those *person*s working for them, under a contract of employment or otherwise, who have access to *inside information* relating directly or indirectly to the *issuer*, whether on a regular or occasional basis. [**Note:** Article 6(3) *Market Abuse Directive*]

Providing insider lists to the FSA on request

2.8.2 R If so requested, an *issuer* must provide to the *FSA* as soon as possible an *insider list* that has been drawn up in accordance with *DR* 2.8.1R. [**Note:** Article 6(3) *Market Abuse Directive*]

Contents of insider lists

2.8.3 R Every *insider list* must contain the following information:

(1) the identity of each *person* having access to *inside information*;

(2) the reason why such *person* is on the *insider list*; and

(3) the date on which the *insider list* was created and updated. [**Note:** Article 5(2) 2004/72/EC]

Maintenance of insider lists

2.8.4 R An *insider list* must be promptly updated:

(1) when there is a change in the reason why a *person* is already on the list;

(2) when any *person* who is not already on the list is provided with access to *inside information*; and

(3) to indicate the date on which a *person* already on the list no longer has access to *inside information*. [**Note:** Article 5(3) 2004/72/EC]

2.8.5 R An *issuer* must ensure that every *insider list* prepared by it or by *person*s acting on its account or on its behalf is kept for at least five years from the date on which it is drawn up or updated, whichever is the latest. [**Note:** Article 5(4) 2004/72/EC]

2.8.6 G An *issuer* and not its advisers or agents is ultimately responsible for the maintenance of *insider lists*.

2.8.7 G For the purposes of *DR* 2.8.1R an *issuer* should maintain a list of:

(1) its own employees that have access to *inside information*;

(2) its principal contacts at any other firm or *company* acting on its behalf or on its account with whom it has had direct contact and who also have access to *inside information* about it.

2.8.8 G For the purposes of *DR* 2.8.1R it is not necessary for an *issuer* to maintain a list of all the individuals working for another firm or *company* acting on its behalf or its account where it has:

(1) recorded the name of the principal contact(s) at that firm or *company*;

(2) made effective arrangements, which are likely to be based in contract, for that firm or *company* to maintain (as set out in *DR* 2.8.1R, *DR* 2.8.3R – *DR* 2.8.5R and *DR* 2.8.10R) its own list of *persons* both acting on behalf of the *issuer* and with access to *inside information* on the *issuer*; and

(3) made effective arrangements for that firm or *company* to provide a copy of its list to the *issuer* as soon as possible upon request.

Acknowledgement of legal and regulatory duties

2.8.9 R An *issuer* must take the necessary measures to ensure that its employees with access to *inside information* acknowledge the legal and regulatory duties entailed (including dealing restrictions in relation to the *issuer's financial instruments*) and are aware of the sanctions attaching to the misuse or improper circulation of such information. [**Note:** Article 5(5) 2004/72/EC and Article 3(2) 2003/124/EC]

2.8.10 R An *issuer* must ensure that any *person* that:

(1) is acting on its behalf or on its account; and

(2) has drawn up an *insider list* in accordance with *DR* 2.8.1R;

has taken the necessary measures to ensure that every *person* whose name is on the *insider list* acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of

such information. [**Note:** Article 5(5) 2004/72/EC]

3 Transactions by persons discharging managerial responsibilities and their connected persons

Purpose

3.1.1 G This chapter sets out the notification obligations of *issuers*, *persons discharging managerial responsibilities* and their *connected persons* in respect of transactions conducted on their own account in *share*s of the *issuer*, or derivatives or any other *financial instrument* relating to those *shares*.

Notification of transactions by persons discharging managerial responsibilities

3.1.2 R *Persons discharging managerial responsibilities* and their *connected persons*, must notify the *issuer* in writing of the occurrence of all transactions conducted on their own account in the *share*s of the *issuer*, or derivatives or any other *financial instruments* relating to those *share*s within four *business days* of the day on which the transaction occurred. [**Note:** Article 6(4) *Market Abuse Directive* and Article 6(1) 2004/72/EC]

3.1.3 R The notification required by *DR* 3.1.2R must contain the following information:

(1) the name of the *person discharging managerial responsibilities* within the *issuer*, or, where applicable, the name of the *person connected* with such a *person*;

(2) the reason for responsibility to notify;

(3) the name of the relevant *issuer*;

(4) a description of the *financial instrument*;

(5) the nature of the transaction (e.g. acquisition or disposal);

(6) the date and place of the transaction; and

(7) the price and volume of the transaction. [**Note:** Article 6(3) 2004/72/EC]

Notification of transactions by issuers to a RIS

3.1.4 R (1) An *issuer* must notify a *RIS* of any information notified to it in accordance with:

(a) *DR* 3.1.2R; and

(b) section 324 as extended by section 328 of the Companies Act 1985 or entered into the *issuer's* register in accordance with

section 325(3) or (4) of the Companies Act 1985.

(2) The notification to a *RIS* described in paragraph (1) must be made as soon as possible, and in any event by no later than the end of the *business day* following the receipt of the information by the *issuer*.

3.1.5 R The notification required by *DR* 3.1.4R must include the information required by *DR* 3.1.3R together with the date on which the notification was made to the *issuer*.

3.1.6 R If an *issuer* receives notification of the same dealing under both *DR* 3.1.2R and section 324 or section 328 of the Companies Act 1985, it must make clear in its notification to the *RIS* that a single transaction in respect of the same *financial instrument* has taken place.

3.1.7 G An *issuer* may use the form entitled Notification of Transactions of Directors, Persons Discharging Managerial Responsibility or Connected Persons to make the notification required by *DR* 3.1.4R.

3.1.8 R An *issuer* with *financial instruments admitted to trading* on a *regulated market* in the *United Kingdom* that does not fall within *DR* 1.1.1R(2) or (4), must notify equivalent information to that required by *DR* 3.1.4R and *DR* 3.1.5R to a *RIS* as soon as possible after the *issuer* becomes aware of the information.