



Handling inside information by listed companies – Best Practices (update April 2019)

The Netherlands Authority for the Financial Markets (AFM) considers it important that companies which have issued financial instruments which are listed on an exchange continuously pay attention to the correct handling of inside information. At the end of 2015, the AFM began a market-wide review of the process of drafting, disclosure and dissemination of inside information by listed companies. The purpose of this review was to get a better idea of how press releases are drafted, how they are disseminated and how confidentiality of inside information is ensured until the moment of disclosure. Particular focus lay on the role of external organisations, such as service providers, in this process. This review resulted in the publication of best practices.

At the end of 2018, the AFM started a second review with listed companies regarding the risks of cybercrime in relation to keeping inside information confidential, both internally and by the external organisations inside information is shared with. The second review resulted in these updated best practices.

Drafting a press release with inside information

- **Appoint a ‘disclosure committee’:** a fixed small group of employees who meet regularly to discuss the contents of press releases with inside information, to determine the moment of publication and to document potential delayed disclosure of inside information. A ‘disclosure committee’ meets both regularly and ad-hoc and is composed of employees (e.g. a member of the Board, legal counsel, Investor Relations, Communication department) who are each placed on the insider list of your organisation.

Disclosure and dissemination of a press release with inside information

- **You must disclose inside information as soon as possible.** You can do so during exchange trading hours, as well as before or after. The obligation to disclose inside information as

soon as possible should prevail over the benefits of publishing press releases before or after exchange trading hours. If you have a legitimate interest in postponing the disclosure of inside information, make sure that the reason for delay and the timelines are carefully documented. The AFM may request this information from you.

- **It is your responsibility to disclose and disseminate inside information as quickly as possible by the external organisation that you have hired.** The time between transmission of inside information to the third party which takes care of the dissemination of your press releases and the actual disclosure to press agencies or media must be kept as short as possible. You must therefore make clear arrangements with the external organisation about this. Make sure that you can get in touch with the relevant contact person and keep in mind that they must also be available after hours.
- **Only hire specialised agencies.** In case you select a third party to handle the publication and dissemination of your press releases, be sure that this organisation is specialised in the process and that it can offer you a secure platform where you can upload your press releases and which can distribute them simultaneously to various media at the time that you have specified.
- **It is your responsibility to keep inside information confidential, including when you share the information with an external organisation.** Remember that inside information may only be shared with external organisations if it is really necessary. If so, do not only rely on the name or reputation of the external organisation, but discuss, and stipulate in a contract, how confidentiality and due diligence in the handling of inside information is safeguarded by the external organisation. Communicate about inside information only in a secure way, preferably with two factor authentication or in an encrypted environment. Keep inside information encrypted until it is published. Make arrangements about the communication of inside information within the external organisations. The group of persons within the external organisation with access to any inside information should be as small as possible. This group must also be placed on the insider list.
- **Be careful with setting up a press release.** Use codes (such as 'XXX') for sensitive information such as material numbers or company names when communicating with an external organisation about a press release and do not fill in the numbers and names until the press release is ready for publication. Do not place a press release on your website in advance of its publication. Upload the press release on your website and in the distribution system only at the very last moment. Furthermore, you may only deposit your press release into the AFM's register after it is published.

Confidentiality of inside information

- **Always ensure your inside information is secure.** For example, this can be achieved by drafting and storing a press release in a restricted digital environment, by encrypting the content or by protecting the document with a solid password.
- **Avoid unprotected distribution** of inside information by email, both internally and externally. This also applies to draft versions.
- **Keep procedures and training up to date.** Make use of written procedures and hold regular training sessions with your employees about the handling of inside information within your organisation.
- **Make adequate arrangements in order to safeguard the confidentiality of inside information and test the effectiveness of these arrangements** (e.g. with pen tests, audits, etc.). Make sufficient procedural, technical and organisational arrangements in order to safeguard the confidentiality of inside information. Let your cyber resiliency be tested regularly by cyber specialists. Make sure that you assess the effectiveness of such arrangements with external organisations. Consider whether the external organisation has made the sufficient arrangements to be allowed to process your inside information.
- **Awareness over a longer period.** In some cases, inside information may build up over a longer period or develop further (e.g. during ongoing takeover talks). Make sure that, in those situations, awareness with regard to the handling of inside information remains front-of-mind during the entire period and not only at the start or the end of the period. You may appoint a person in your organisation (e.g. your compliance officer) to monitor the confidential handling of inside information throughout the entire process. The main point is that one person is given responsibility for central coordination and for bringing the issue of inside information to the attention of team members by, for example, sending reminders, but also by addressing the issue during meetings. Awareness can also be maintained through presentations or trainings.
- **The importance of a complete and up to date insider list.** Provide for a complete and up to date insider list by using the template which is included in the annexes of the implementing regulation (EU) 2016/347. Do not forget to register all persons who come into contact with inside information including support staff (e.g. secretary and post room employees). It is required to update the insider list continuously. The AFM may request this insider list from you. In case many external parties, such as consultants, are informed of the inside information, it is important to emphasize to these external parties that they must establish and maintain a complete picture of the total group of insiders (also when these people are not involved anymore with the inside information). This is regarded as

an important part of ensuring the confidentiality of inside information by listed companies.

- **Confidentiality agreement.** Let your employees sign a confidentiality agreement and a code of conduct. If you select an external organisation to draft or review a press release (e.g. a translator or legal counsel), record confidentiality in a contract.
- **Media monitoring.** In case you have postponed disclosure of inside information, do not only monitor trading of your financial instruments on stock exchanges but also monitor news and social media reports for signals about inside information that might have leaked. Make sure that an emergency press release is always ready for disclosure.
- **Contact with the AFM.** In case of incidents, e.g. if you suspect that inside information has been leaked, immediately contact the AFM monitoring team by dialling +31 20 797 3777.

Disclaimer: these best practices are for informational purposes only. No rights can be derived from the above information. In case the wording of these best practices differs from the wording and explanation of the Regulation, the Regulation prevails.