

# **Review of Delayed Disclosure of Inside Information**

November 2020

We have recently reviewed the Delayed Disclosure of Inside Information (DDII) notifications we receive under Article 17.4 of MAR. The review has given rise to a number of matters to highlight for issuers and their advisors.

The FCA and its predecessors have had a long history of monitoring markets to ensure that the disclosure of inside information is not unreasonably delayed. However, since the implementation of MAR in July 2016, we have been asked on several occasions what we propose to do with the DDII notifications. Given the novelty of the requirement for the UK market, we would first like to understand its adoption and use by issuers before assessing whether any more formal interventions are required.

As a result of this review, the FCA has identified a number of areas where it will be increasing its oversight. These activities will be aimed primarily at raising awareness of the DDII notification requirements (and indeed MAR in general). At the same time, issuers may wish to consider whether:

- they are seeking and getting adequate advice regarding disclosure of inside information and any delays to this
- they have given sufficient training and guidance to staff involved in the process and in decision making
- appropriate information provision and governance arrangements are in place and
- where the disclosure of inside information is being delayed, they are able to consider whether the conditions to delay continue to be met on an ongoing basis and ensure its confidentiality until that point

We would also note that as part of its recent MAR review, ESMA questioned whether the low number of DDII notifications received across the EU indicated 'a need for issuers to invest in appropriate procedures, systems and controls in order to comply with Article 17(1) and 17(4) of MAR.'

It is important to stress that, where issuers do not have adequate arrangements in place for the identification, handling and disclosure of inside information this may place them at risk of unreasonably delaying their disclosure or indeed of failing to prevent unlawful disclosure of the information - potentially leading to regulatory investigation and action.

However, while raising awareness of our findings will be our main focus in the coming months, ultimately as we move forward serious or repeated failures to comply may result in action by us.

Our main findings are summarised below:

### [Periodic financial information](#)

We would like to [remind](#) issuers that, when preparing Periodic Financial Information, they should begin from the assumption that information relating to financial results could constitute inside information. If issuers wish, on their own responsibility, to delay disclosure of inside information, they must disclose that information to the public as soon as any of the conditions for delay are no longer met and provide us with a DDII notification.

### [Unscheduled financial information](#)

We identified from the review that DDII notifications relating to Unscheduled Financial Information on average demonstrate a longer delay than those relating to Periodic Financial Information.

This was surprising as we had expected to see the opposite. For Unscheduled Financial Information, while the guidance in DTR2.2.9G that a short delay may be acceptable where an issuer encounters an unexpected event, we would not expect a long average delay. By contrast, an issuer may benefit from the legitimate interest noted in TN506.2 in delaying disclosure of inside information in connection with its Periodic Financial Information and we had expected to see rather longer delays in this category as a result.

We noted that only 18 constituents of the Official List submitted DDII notifications regarding Unscheduled Financial Information during the period under review. In the same time frame, a total of 3132 Trading Statements were disseminated by UK issuers – out of those, DDII notifications were submitted in only 49 instances.

The disparity between the number of DDII notifications received and the number of trading statements issued may result from very timely dissemination of inside information across the market. But it may also arise from issuers either failing to recognise the information as being inside information early enough or failing to comply with the notification requirements of MAR where disclosure is delayed. As a result, we will be focusing our monitoring work on this to a greater extent in the future.

### Director / Board changes

Even though the average delay for disclosing the Director / Board changes, relative to the rest of the categories of regulatory announcements is rather small, we were surprised by the number of notifications in this category given it is not a specified legitimate interest in the ESMA guidelines. As a result, this is also an area where we will be focusing further monitoring efforts in future.

### Overall volumes of DDII notifications

Only a quarter of issuers have submitted a DDII notification during the period under review, and as a result, we are concerned that issuers may not be aware of the requirement to submit a DDII notification.

While the lack of a notification will not always equate to an inability to identify and disseminate inside information without delay and to delay its disclosure only where appropriate (which is after all the intent of MAR in this area), we are concerned there may be a lack of awareness of the obligation to submit DDII notifications.

### Background

Under Article 17(1) of MAR, an issuer of financial instruments to which MAR applies (an Issuer) must publicly disclose inside information which directly concerns it as soon as possible. Where appropriate, such an issuer may, on its own responsibility, delay disclosure to the public of inside information, in accordance with Article 17(4) of MAR.

Where an issuer has delayed the disclosure of inside information, it must inform its home competent authority of such delay immediately after disclosing such information to the market/public. The FCA is the competent authority in the UK and DDII notification should be submitted through our [Electronic Submission System](#). After public [consultation](#), we decided that issuers should provide a written explanation of the delayed disclosure only upon our request.

These arrangements will continue during the transition period ending 31 December 2020 post the UK's exit from the EU on 31 January 2020. Under the EU Withdrawal Act, after the end of the transition period MAR will be onshored into UK law and these provisions will continue to apply, broadly, in relation to issuers with financial instruments traded in the UK.

Our Market Integrity Unit has assessed all the DDII notifications we have received since the implementation of MAR in the UK in July 2016.

We received a total of 1,610 DDII notifications in the period from 4 July 2016 to 12 November 2018. Out of these, 1,308 notifications were allocated into 8 unique categories, based on the content of the notification, with the rest of notifications falling into a Miscellaneous category with no defined criteria. Details of these categories are set out below:

Category:	Volume of notifications:	Description of announcement
Director / Board Changes	86	Appointment of Directors and other board changes
Business Updates	137	Announcements relating to contract wins, tenders or negotiations
Disposals	134	Announcements arising from sales or disposals of assets or subsidiaries
Periodic Financial Information	159	Announcements relating to scheduled financial reporting such as annual or interim financial information
Unscheduled Financial Information	49	Trading Updates, Trading Statements or other ad hoc announcements regarding the issuer's financial performance in-between the periodic financial reports
Mergers & Acquisitions	433	Announcements regarding proposed mergers, acquisitions or offers for assets or for businesses, etc.
Placings / Other Corporate Finance	281	Announcements regarding further capital raisings such as rights issues and offers for subscription undertaken by issuer
Speculation	29	Instances of issuers responding to rumours or press speculation
Miscellaneous	302	N/A

In total, 718 unique issuers submitted DDII notifications during the period. Out of those issuers, 300 entities were listed (i.e. admitted to the Official List as at 16 October 2019) with the vast majority being Premium-listed Issuers (239).

In addition to the allocation above, we obtained the price movement that occurred on the day that the announcement was made for a total of 1,550 notifications out of the total 1,610 notifications received<sup>1</sup>.

## **Delaying disclosure of inside information**

### ***Regulatory framework***

Article 7 of MAR defines inside information as information which:

- a. relates, directly or indirectly, to financial instruments or issuers;
- b. is of a precise nature; and
- c. has not been made public; and if it were made public would be likely to have a significant effect on the price of those instruments

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<sup>1</sup> A small number of the DDII's submitted could not be mapped to a security with available price data

The scope of MAR is set out in Article 2. It applies to: (a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made; (b) financial instruments traded on a multilateral trading facility (MTF), admitted to trading on an MTF, or for which a request for admission to trading on an MTF has been made; (c) financial instruments traded on an organised trading facility (OTF); (d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

Additionally, Listing Rules 9.2.5 (Premium-listed Equity), 17.3.9 (Debt), 18.4.3 (Certificates representing Securities), 19.4.11 (Derivatives), 20.4.5 (Miscellaneous Securities) and 21.8.15 (Sovereign Controlled Premium-listed Equity) require issuers who are not already required to do so to comply with Articles 17, 18 and 22 of MAR. Section 2.5 of the Disclosure Guidance and Transparency Rules (DTR) provides additional guidance on the process of delaying disclosure of inside information.

If an issuer is required to comply with the relevant provisions in MAR, it should consider its obligations regarding the disclosure of inside information under Articles 17(1), 17(4), and 17(7). As a part of those obligations, an issuer or an emission allowance market participant, may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

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

### ***Relevant guidance***

ESMA has provided non-exhaustive lists of [legitimate interests](#) and instances where delay of disclosure is likely to be misleading.

The FCA has provided [Technical Note 506.2](#) on inside information in the context of the preparation and dissemination of periodic financial information.

### **Analysis of results - FCA baseline expectations**

Prior to analysing the output and based on the applicable regulatory framework, the FCA had a number of expectations for the results, the most significant of which are set out below:

### ***Periodic financial information***

If in the process of preparation of Periodic Financial Information (or monitoring of financial performance), information that would be subject to an announcement of Unscheduled Financial Information arises it might be challenging for an issuer to establish a rationale to delay its disclosure. Primarily as a result of this assumption we expected to see:

- A longer period of delay for Periodic Financial Information when compared to Unscheduled Financial Information, as we expected that issuers were likely to treat results as inside information regardless of how they compare to market expectations and such information is potentially available to the company for a longer period between production and scheduled publication date.

- A period for this longer delay that may last several weeks, in line with issuers' year end processes.
- Few significant share price movements given that a larger price impact might indicate the presence of information that should have been subject to an earlier (separate) announcement, as noted above
- A significant volume, given that all issuers produce Periodic Financial Information.

### ***Unscheduled financial information***

We expected to see:

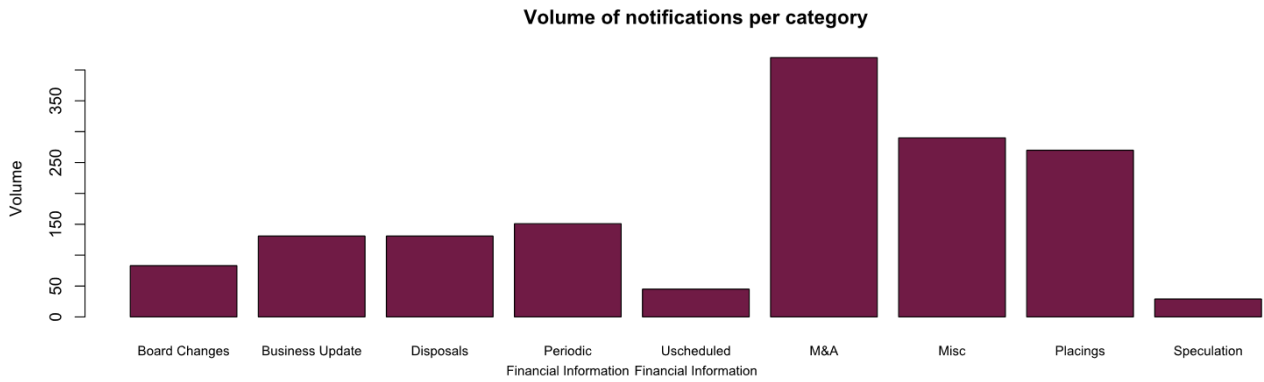
- A lower volume when compared to announcements of Periodic Financial Information primarily as, due to the nature of the information within the announcement, issuers would have little grounds to delay disclosure.
- Given the above, any announcements of Unscheduled Financial Information which are delayed would be expected to have a much shorter delay and a higher likelihood of significant share price movements, as it is challenging to establish circumstances in which it might be legitimately delayed.
- A relatively low volume of notifications in relation to this category, on the assumption that such announcements would normally be disseminated without delay.
- A mean share price movement that is higher than that of other announcement categories.

### ***Director/Board changes***

We expected to see:

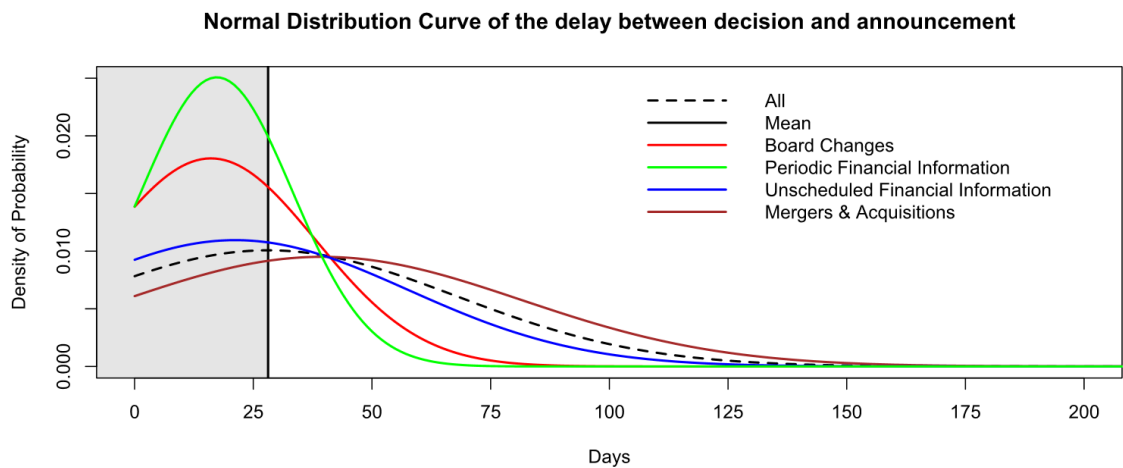
- A relatively short delay in this category, based on the assumption that once the company establishes inside information has arisen within the process of departure/recruitment of a director, it might be challenging for the company to establish grounds to delay.
- A varied range of share price movements, but overall, a lower mean movement, when compared to the other categories.

### **Volume of notifications**



The results show that Unscheduled Financial Information represented a small proportion of the overall total (3%), as we had expected. However, the total volume of DDII notifications relating to Periodic Financial Information represents 10% of all notifications received and, while this is a significant percentage, we received a lower volume than we had expected.

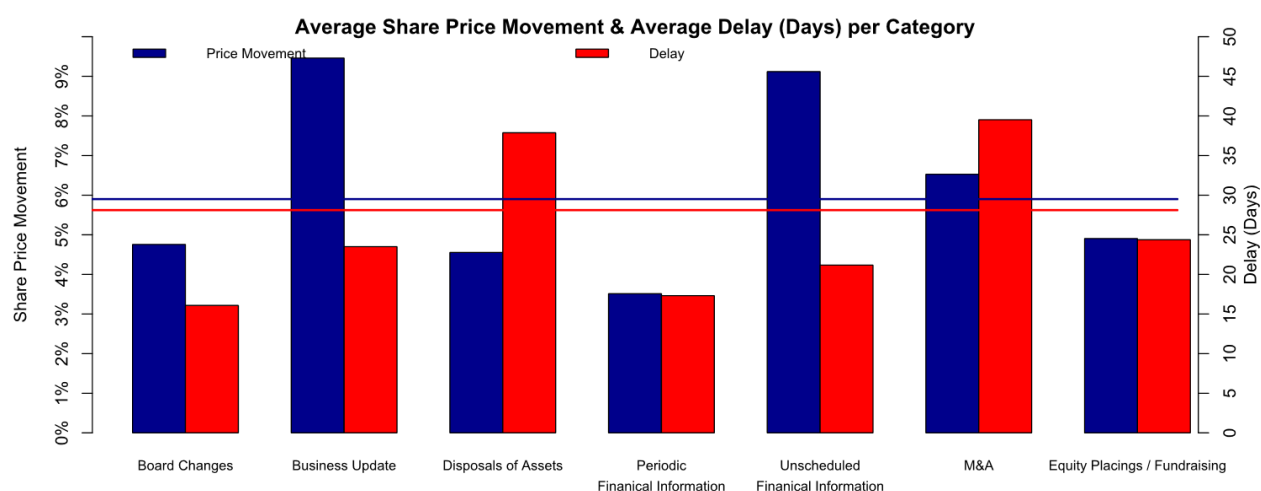
### Length of delay



The distribution curve above clearly shows a reasonably large spread for each of the categories – the sharper the peak, the higher the degree of uniformity of the length of the delay. Where delays inside the same category vary greatly, it indicates a lack of consistent behaviour within it, resulting in a more flattened line.

When comparing Periodic Financial Information with Unscheduled Financial Information, we observed that the latter has a higher average delay (21 days) against the lower average value of 17 days for Periodic Financials. This result was surprising, suggesting that profit warnings and other trading updates were on average, delayed longer than disclosures of Periodic Financial Information.

## Price movement



Consistent with our expectations, Unscheduled Financial Information announcements are generally much more price sensitive than those for Periodic Financial Information. Additionally, Periodic Financial Information announcements are very densely distributed illustrating a very narrow distribution of price movement, manifesting in the lowest standard deviation out of all the categories reviewed (0.042). Horizontal red and blue lines demonstrate overall averages, while vertical bars – average values for each specific category.

We also observe that the Director / Board Changes category exhibits one of the densest distributions of price movements and the 3rd lowest absolute mean value of 480 basis points – suggesting that most such announcements have muted price impacts.

### Recommendations for Issuers – Periodic Financial Information

We received fewer notifications relating to a delay of disclosure of inside information relating to periodic financial information than we had expected. This expectation was based on:

- a. Our general market observations that Periodic Financial Information frequently gives rise to reasonably significant price movements.
- b. The applicable regulatory framework, in particular noting [Technical Note 506.2](#) regarding periodic financial information and inside information clarifying the legitimate interest that an issuer may have in delaying disclosure of inside information in connection with its Periodic Financial Information.

As a result, we are concerned that some issuers may not be adequately identifying (and notifying the FCA of) instances where periodic financial information is itself or otherwise contains inside information. However, we acknowledge there may be an alternative explanation – that this small volume could arise from issuers having a very strict discipline of identifying inside information within their periodic financial information and expediting the disclosure of that information.

This explanation might also be expected to lead to a greater volume of notifications of Unscheduled Financial Information. Our data suggests that this is not the case though. Of course, it may be that such inside information is identified and disclosed intraday and that no DDII notification is therefore required, but this is probably unlikely.



In the period covered by our review, over 10,000 announcements of Periodic Financial Information were made by the UK issuers – out of those, a DDII notification has been submitted in only 159 instances. Illustrating this low volume another way, during the period under review, only 48 constituents of the Official List (from a population of around 2,000 issuers of securities) submitted DDII notifications regarding their Periodic Financial Information.

This analysis suggests that many issuers may be unaware of the current notification requirements under MAR and potentially how to identify and handle inside information arising from Periodic Financial Information.

We would like to remind issuers that, when preparing Periodic Financial Information, they should begin from the assumption that information relating to financial results could constitute inside information. If issuers wish, on their own responsibility, to delay disclose of inside information, they must disclose that information to the public as soon as any of the conditions for delay are no longer met and notify us following that disclosure.

### **Focus of future FCA monitoring**

#### ***Unscheduled financial information***

As a result of the review, we have identified that DDII notifications relating to Unscheduled Financial Information on average demonstrate a longer delay than those relating to Periodic Financial Information. This type of observed behaviour raises concerns given that, while Periodic Financial Information may benefit from the legitimate interest noted in [Technical Note 506.2](#), no specific legitimate interest exists for Unscheduled Financial Information. While we note the guidance in DTR2.2.9G that a short delay may be acceptable where an issuer encounters an unexpected event, we were not expecting such a large average delay.

However, at the same time we noted that only 18 constituents of the Official List submitted DDII notifications regarding Unscheduled Financial Information during the period under review. In the same time frame (starting from 04/07/2016 and ending on 12/11/2018), there were a total of 3,132 Trading Statements disseminated by UK issuers – out of those, DDII notifications have been submitted only in 49 instances.

While it may be that this large disparity between the number of DDII notifications received and the number of trading statements issued results from very timely dissemination of inside information across the market, it may also arise from issuers either failing to recognise the information as being inside information early enough or failing to comply with the notification requirements of MAR where disclosure is delayed. As a result, we will be focussing on this to a greater extent as a part of our monitoring work in the future.

#### ***Director / Board changes***

Even though the average delay for disclosing the Director / Board Changes, relative to rest of the categories of regulatory announcements is rather small (16 days) – we were surprised by the number of notifications in this category, given it is not a specified legitimate interest in the ESMA guidelines. As a result, this is also an area where we will be focussing further monitoring efforts in future.

#### ***Overall volumes of DDII notifications***

The overall number of issuers that submitted a DDII notification in the period was 718.

As at 15 November 2019, there were 2,055 unique issuers with securities admitted to the Official List, a further 868 unique issuers with securities admitted to AIM and 62 admitted to the NEX Growth market.

While the UK will not have been the home Competent Authority for all of these issuers, it will have been for the large majority. Therefore, overall only a quarter of these issuers have submitted a DDII notification during the period under review, and as a result, we are concerned that not all issuers may be aware of the requirement to submit a DDII notification.

While the lack of a notification will not always equate to an inability to identify and disseminate inside information without delay and to delay its disclosure only where appropriate (which is after all the intent of MAR in this area), we are concerned these statistics indicate a lack of awareness of the obligation to submit DDII notifications. As a result, we will be stepping up our monitoring activities in this area.

### **Future reviews**

We will continue to refine our algorithms and methodology for analysing the announcements by issuers and intend to revisit, refine and replicate this review in the future.