



## NEWS FROM THE DANISH FSA ON THE MARKET ABUSE REGULATION

2 February 2021

### Introduction

19 January 2021, the Danish Financial Supervisory Authority (the “Danish FSA”) issued a newsletter regarding disclosure obligations under MAR when non-disclosure agreements have been entered into, and the issuer’s obligation to draw up a list of persons discharging managerial responsibilities and persons closely associated with them.

### **Non-Disclosure Agreements and the Issuer's Disclosure Obligation**

Pursuant to Article 17 (4) of MAR, issuers are entitled to delay disclosure of inside information to the public if the following three conditions are all met:

1. Immediate disclosure is likely to prejudice the legitimate interest of the issuer;
2. Delay of disclosure is not likely to mislead the public, and;
3. The issuer is able to ensure the confidentiality of that information.

The Danish FSA has recognized that disclosure of negotiations in connection with M&A transactions, buying and selling football players, investment agreements, etc. may prejudice the above legitimate interests, thus allowing for disclosure to be delayed if the other two conditions are met. Once the parties have reached a conclusion on all material terms of the transaction, the legitimate interest in delaying disclosure is usually deemed to have ceased, and disclosure must thus be made.

Subsequently, the Danish FSA has been asked whether it is a legitimate reason to delay the disclosure of inside information to the public that an issuer enters into a non-disclosure agreement after the issuer has entered into a final contract.

In the newsletter, the Danish FSA has clarified that it is only where immediate disclosure of inside information regarding negotiations is concerned that the issuer has a legitimate interest in delaying disclosure of inside information to the public. Consequently, the fact that the issuer enters into a non-disclosure agreement does not in itself constitute a legitimate interest entitling the issuer to delay the disclosure of inside information to the public. Accordingly, if all material terms have been agreed, the fact that a non-disclosure agreement is entered into cannot in general extend the period of time during which the disclosure may be delayed.

### **List of Persons Discharging Managerial Responsibilities**

According to Article 19 (5) of MAR, issuers are obliged to draw up a list of persons discharging managerial responsibilities and persons closely associated with such persons. The purpose of the list is to ensure that the issuer informs the market when persons discharging managerial responsibilities make transactions with financial instruments issued by the issuer. Further, the list is a tool of the issuer to ascertain that persons discharging managerial responsibilities are informed about procedures when they do transactions with financial instruments issued by the issuer.

The list must contain information about the persons discharging managerial information or anyone are related to such persons, the role of the persons in the issuer and the time when the persons discharged managerial responsibilities or when the relation to such person commenced.

It is important to note that this list is in addition to the insider lists, which must also be prepared under MAR, and which relate to persons with access to inside information, either in general or on a case-by-case basis. While the insider list must be prepared in a specific format, no such requirements apply to the list of persons discharging managerial responsibilities.

**If you have any questions or require further information regarding any of the above, please do not hesitate to contact us:**



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