Consultation – Issuer rules

FOR ISSUERS OF SHARES AND EQUITY CERTIFICATES ON OSLO BØRS AND OSLO EXPAND

FEBRUARY 2021

OSLO BØRS

1 INTRODUCTION

On 27 November 2020, the Government of Norway resolved that the bill to implement EU's regulation on market abuse (MAR) shall enter into force on 1 March 2021.

This will imply certain amendments to the rules for issuers on Oslo Børs and Euronext Expand, and the proposed amendments in Oslo Rule Book II are further described in this consultation paper.

Reference is also made to the information letter from Oslo Børs of 11 January 2021 regarding MAR.

2 INSIDE INFORMATION

2.1 DUTY TO DISCLOSURE INSIDE INFORMATION

Upon the implementation of MAR, Oslo Børs will continue to have delegated authority to supervise compliance with the issuer's duty to disclose inside information, including delayed disclosure of inside information.

The definition of inside information, which currently included in the Securities Trading Act section 3-2 will be repealed, but will mainly be continued through MAR article 7. This means that inside information will still be information of a precise nature relating to financial instruments, the issuer thereof or other circumstances which has not been made public and which is likely to have a significant effect on the price of those financial instruments or of related financial instruments.

In addition, the second and third paragraphs of MAR article 7 emphasize that information about any intermediate step in a protracted process may constitute precise information and that the relevant intermediate event shall be considered inside information if this intermediate event in itself satisfies the criteria of inside information. This is a codification of applicable law and does, in Oslo Børs' view, not constitute a change in the current legal situation.

The current rule on the issuer's duty to publish inside information without delay and on its own initiative pursuant to section 5-2 of the Securities Trading Act will be removed and follow from MAR article 17 no. 1. Oslo Børs considers that this does not entail any change in Norwegian law on this point although there are some changes in the wording.

Please note that Commission Regulation 2016/1055 article 2 no. 1 (b) sets out content requirements for stock exchange notices regarding inside information. Pursuant to this article, the stock exchange notice must, amongst other things, clearly state that the information constitutes inside information. Furthermore, it must state the identity of the person making the notification and its position within the issuer, see section (iii) of the said provision. Information about this will be included in the guidance to section 4.3.1.1.

Oslo Børs will pursuant to the above amend section 4.3.1.1 (1) of Oslo Rule Book II to read as follows:

"*The Issuer shall publish inside information pursuant to MAR article 17 cf. MAR article 7, and article 2 of the Commission Regulation 2016/1055*."

The current section 4.3.1.1 (2) will be repealed as the procedure for publication and storage also is set out in article 17 of the MAR and the said Commission Regulation.

2.2 DELAYED DISCLOSURE OF INSIDE INFORMATION

2.2.1 CONDITIONS FOR DELAYED DISCLOSURE OF INSIDE INFORMATION

The conditions for delayed disclosure of inside information that are currently set out in section 5-3 of the Securities Trading Act will be removed and follow directly from MAR article 17 no. 4. The conditions in which the issuer may decide on delayed disclosure of inside information in order not to prejudice his legitimate interests, provided that such omission does not mislead the public and provided that the issuer ensures the confidentiality of that information, will be continued with MAR.

Paragraph 50 of the MAR preamble provides a non-exhaustive list of circumstances that may constitute legitimate interests. Further, ESMA has published guidelines for the issuer's legitimate interests and situations where delayed disclosure is likely to mislead the public.

Oslo Børs will pursuant to the above change continuing obligations section 4.3.1.2 (1) to read as follows:

"*The Issuer may delay disclosure of inside informaton pursuant to MAR article 17 no. 4*."

MAR article 17 no. 5 and 6 contain new special rules for delayed disclosure for financial and credit institutions in exceptional circumstances. Oslo Børs will not include these in its rules, as financial and credit institutions in normal cases of delayed disclosure will decide this in accordance with MAR article 17 no. 4. Furthermore, it is the Financial Supervisory Authority of Norway, and not Oslo Børs, which will assess the right of delayed dislosure in accordance with the conditions set out in MAR article 17, no. 5 and 6. The ability to decide on delayed disclosure under the said provisions will thus only follow directly MAR and not be included in the rules of Oslo Børs.

2.2.2 REQUIREMENTS TO DOCUMENT CERTAIN INFORMATION ABOUT THE DECISION

Article 4 no. 1 of Commission Regulation 2016/1055 sets out a requirment that issuers shall use technical means that ensure the accessibility, readability, and maintenance in a durable medium of the following information in relation to decisions on delayed disclosure of inside information:

A) The dates and times when:
   i) the inside information first existed within the issuer;
   ii) the decision to delay the disclosure of inside information was made;
   iii) the issuer is likely to disclose the inside information;

B) The identity of the persons within the issuer responsible for:
   i) making the decision to delay disclosure and deciding on the start of the delay and its likely end;
   ii) ensuring the ongoing monitoring of the conditions for the delay;
   iii) making the decision to publicly disclose the inside information;
   iv) providing the requested information about the delay and the written explanation to the competent authority;

C) Evidence of the initial fulfilment of the conditions referred to in MAR article 17 (4), and of any change of this fulfilment during the delay period, including:

   i) the information barriers which have been put in place internally and with regard to third parties to prevent access to inside information by persons other than those who require it for the normal exercise of their employment, profession or duties within the issuer;
   ii) the arrangements put in place to disclose the relevant inside information as soon as possible where the confidentiality is no longer ensured.

Oslo Børs will pursuant to the above include a new section in Oslo Rule Book II section 4.3.1.2 (2):

"*When making decisions on delayed disclosure of inside information, the Issuer shall document specific information about the decision in accordance with article 4 no. 1 of the Commission Regulation 2016/1055*."

2.2.3 WRITTEN NOTIFICATION TO THE COMPETENT AUTHORITY UPON DISCLOSURE OF INSIDE INFORMATION

MAR article 17 no. 4 third paragraph and article 4 no. 2 of Commission Regulation 2016/1055 sets out a new rule stating that the issuer must send written notification to the supervisory authority when publishing inside information that has been subject to delayed disclosure immediately after the information is disclosed to the public.

The content requirements of such notification follow from article 4 no. 3 of the said Commission Regulation:

A) the identity of the issuer: full legal name;
B) the identity of the person making the notification: name, surname, position within the issuer or emission allowance market participant;
C) the contact details of the person making the notification: professional e-mail address and phone number;
D) identification of the publicly disclosed inside information that was subject to delayed disclosure: title of the disclosure statement; the reference number where the system used to disseminate the inside information assigns one; date and time of the public disclosure of the inside information;
E) date and time of the decision to delay the disclosure of inside information;
F) the identity of all persons responsible for the decision to delay the public disclosure of inside information.

As mentioned above, Oslo Børs has delegated authority to supervise the disclosure obligations on inside information, and a functionality for such notification procedures will be established in Oslo Børs' issuer portal, NewsPoint, by 1 March 2021. Please note that such notification must also be submitted in relation to delayed disclosure of financial information in annual and interim reports, in contrast to what is the case for the duty to notify Oslo Børs at the time of the decision, see section 2.2.4 below.

It is up to national law to decide whether the notification also shall contain a written explanation of how the conditions for delayed disclosure were met, or whether such explanation shall only be submitted upon request. The main rule according to MAR article 17 no. 4 (c) (3) is that such explanation shall be submitted at the same time as the notification, but Norway has decided that this shall only be submitted upon request, cf. the new section 3-2 in the Securities Trading Regulations. This will thus be similar as today, where issuers must submit such explanation at the request of Oslo Børs.

Pursuant to the above, Oslo Børs will include a new rule in section 4.3.1.4 of Oslo Rule Book II:

"*The Issuer shall, when publishing inside information that has been the subject to delayed disclosure, send a notification to Oslo Børs in accordance with article 4, no. 2 and 3 of Commission Regulation 2016/1055. The notifcaton shall be submitted through the functionality for this in NewsPoint*."

2.2.4 NOTIFICATION TO OSLO BØRS WHEN DECIDING DELAYED DISCLOSURE

Pursuant to the Securities Trading Regulation section 5-1 and Oslo Rule Book II section 4.3.1.2 (2), issuers shall, on its own initiative, promptly notify the regulated market of any delayed disclosure of inside information. There are few formal requirements to the notification and it is encouraged that this is given

orally by telephone to the market surveillance department at Oslo Børs. Section 5-1 of the Securities Trading Regulations will be repealed when MAR enters into force.

Oslo Børs wants to continue the current arrangement of notification of delayed disclosure through the stock exchange's own rules. In such case, this will not be a condition for delayed disclosure as it is today, but part of the issuer rules of Oslo Børs.

Such notification to Oslo Børs enables the market surveillance department to intensify monitoring of the relevant financial instrument and be able to use measures such as trading suspension if there is reason to believe that some market participants has access to the inside information. If a leakage occurs, this may be handled more quickly and thus cause less damage to both the issuer and other market participants if Oslo Børs is informed in advance of the relevant situation. In addition, Oslo Børs can continuously monitor trading for potential insider trading.

A notification obligation to Oslo Børs at the time of the decision will further ensure notoriety about the time of the decision of delayed disclosure. In cases where the issuer has not complied with the obligation to notify Oslo Børs in advance of such a decision, Oslo Børs experiences that there is more often doubt as to when the issuer actually made the decision on delayed disclosure.

Oslo Børs also experiences that the notification obligation provides an opportunity for issuers to discuss any questions regarding inside information with Oslo Børs and forms an important part of the exchange's communication with the issuers. Although Oslo Børs does not give prior approval in individual cases, Oslo Børs experiences that issuers find security in being able to discuss various issues related to the disclosure obligations with Oslo Børs.

Oslo Børs therefore proposes to continue this rule in its current form, so that there is still an exception to the notification obligation regarding delayed disclosure of financial information in annual reports, half-yearly reports and quarterly reports published in accordance with the issuer's financial calendar.

On this basis, Oslo Børs proposed to continue section 4.3.1.2 (2) of Oslo Rule Book II in a new paragraph (3):

"*The Issuer shall, on its own initiative, promptly notify Oslo Børs of any delay in disclosing inside information, including the background for the decision to delay disclosure. The duty to notify Oslo Børs does not apply to the delayed disclosure of financial information in annual reports and interim reports in accordance with the Issuer's financial calendar*."

2.2.5 MANAGEMENT OF INFORMATION PRIOR TO PUBLICATION

Pursuant to Oslo Rule Book II section 4.3.1.3 (1), an issuer must not disclose inside information to unauthorized persons, and shall have routines in place for secure handling of inside information. This rule is based on section 5-4 of the Securities Trading Act, which will be repealed when MAR enters into force.

Oslo Børs refers to the preparatory works where it has been assumed by both the Securities Law Committee and the Ministry of Finance[1] that general requirements for due care in handling inside information, presumably follow from article 10 of MAR in addition to specific requirements under other provisions in the regulation.

The definition of unlawful distribution of inside information follows from article 10 of the MAR, while the prohibition itself follows from article 14 (c). Pursuant to the first paragraph of article 10 (1), the

[1] Ot.prp. 96 LS s. 60 punkt 6.5.5

disclosure of inside information to others, except where the disclosure is made in the normal exercise of an employment, a profession or duties, shall be regarded as unlawful disclosure of inside information.

Oslo Børs proposes to repeal Oslo Rule Book II section 4.3.1.3 (1) so that the prohibition against unlawful disclosure of inside information only follows from MAR article 10, cf. article 14. For the sake of order, Oslo Børs points out that these provisions are not aimed at issuers as such, but any physical and legal person who possesses inside information.

2.2.6 INSIDER LISTS

The obligation to keep insider lists is regulated by law in section 3-5 of the Securities Trading Act and Oslo Børs has included a similar regulation in Oslo Rule Book II section 4.3.1.3 (2). Section 3-5 of the Securities Trading Act will be repealed when MAR enters into force and the rules on insider lists will follow from MAR article 18 and Commission Regulation 2016/347.

MAR narrows the scope of persons who must be entered on the insider list, but introduces more comprehensive requirements for the information that must be recorded in the list, including personal identity numbers, addresses and any previous surnames. Furthermore, issuers are required to obtain written confirmation from persons placed on the insider list that they are aware of the legal obligations which follow from the insider position and the sanctions that apply to insider trading and unlawful disclosure of inside information. There are several service providers who offer technical solutions for insider lists that ensure compliance with the requirements pursuant to MAR.

Oslo Børs will pursuant to this include a new rule in Oslo Rule Book II section 4.3.1.3 (2) which shall read as follows:

"The Issuer shall ensure that a list is drawn up of persons who are given access to inside information in accordance with MAR article 18 and Commission Regulation 2016/347."

As a result of the rule included in the current section 4.3.1.3 (1) being repealed, see section 2.2.5 above, this provision will thus be included in section 4.3.1.3 (1).

3 PRIMARY INSIDERS

3.1 SCOPE OF PRIMARY INSIDERS

The rules on primary insiders (specified in MAR as "*persons discharging managerial responsibilities*") are included in MAR article 19. The definitions of "*person discharging managerial responsibilities*" and "*person closely associated*" follows from MAR article 3. This is not regulated by Oslo Børs' regulations and it is the Financial Supervisory Authority of Norway that will be the competent authority on this matter.

MAR entails changes to the scope of persons that are primary insiders. For example, the auditor and senior executives of subsidiaries of the issuer fall outside the definition of primary insiders under MAR, as well as companies that own shares listed on a regulated market and which due to the ownership are represented on the board of the issuer. Furthermore, the issuer's obligation to disclose transactions in own shares will be removed with MAR, but there are specific rules for publication of the issuers' transactions when conducting a buy-back programme of own shares.

Members of the issuer's board and management will still be primary insiders. Furthermore, the scope of those who are close associates of a primary insider is changed to also include entities and other legal persons where the primary insider or a close associate of the primary insider discharges so-called managerial responsibilities. ESMA Q&A specifies that a legal entity will be considered a close associate in cases where the primary insider (or a close associate of the primary insider) participates in or

influences the legal entity's investment decisions regarding investments in the issuer's financial instruments.

Pursuant to MAR article 19 no. 1, primary insiders and close associates will themselves have a statutory obligation to send primary insider notifications to the issuer and the Financial Supervisory Authority of Norway promptly and no later than three business days after the date of the transaction. The issuer will be obliged to publish received primary insider notifications within the same deadline, cf. MAR article 19 no. 3, as well as submitting the notifications to the officially appointed mechanism for storage. NewsWeb is the officially appointed mechanism in Norway.

MAR also entails a number of changes related to the notification obligations, please refer to the information letter from Oslo Børs of 11 January 2021, section 2.3.

3.2 PRIMARY INSIDER REGISTER

Pursuant to section 3-6 of the Securities Trading Act, issuers shall send an overview of primary insiders to the Financial Supervisory Authority of Norway or whom the Financial Supervisory Authority of Norway appoints. The same applies to close associates who own shares issued by the issuer or a company within the same group. Oslo Børs is designated as the recipient of such lists thourogh Oslo Børs' issuer portal, NewsPoint.

This provision will be repealed upon the implementation of MAR and will be replaced with MAR article 19 no. 5 and the Securities Trading Regulations section 3-3. Accordingly, Oslo Børs will still be the recipient of overviews of primary insiders and close associates, and and this will continue to be carried out through the issuer registering these in NewsPoint. An important change is that all primary insiders and close associates must be registered in the primary insider register regardless of any holdings of financial instruments in the issuer, cf. MAR article 19 no. 5 and new section 3-3 in the Securities Trading Regulations.

Pursuant to the Securities Trading Regulations section 3-3 (2) the following information about primary insiders and their close associates shall be registered:

a) For physical persons: full name, personal identity number and address. In addition, for persons discharging managerial responsibilities, their position at the issuer shall be included.

b) For juridical persons: full name, including legal company form, organization number or similar identification number and address.

In addition, the e-mail address of these persons must be registered in order for Oslo Børs to be able to send out a notification to the persons in question that they have been entered into the register.

Issuers of shares and equity certificates on Oslo Børs and Euronext Expand must, by 1 March 2021, ensure that an overview of primary insiders and their close assiciates is established in NewsPoint, regardless of any holdings of financial instruments in the issuer. The issuer's administrator will be notified when it is opened for such registration in NewsPoint.

Names and positions of the issuer's primary insiders will be made publicly available on the websites of Oslo Børs. Information about close associates will not be made public.

Based on the above, Oslo Børs will include a new section 2.6 in Oslo Rule Book II which shall read as follows:

"*The issuer shall without undue delay send Oslo Børs an updated overview of the Issuer's primary insiders and their close associates in accordance with MAR article 3, cf. Section 3-3 of the Securities Trading Regulations section 3-3*."

4 SANCTIONS FOR VIOLATION OF THE DUTY TO DISCLOSE INSIDE INFORMATION

Sanctioning of violation of the provisions set out in MAR will follow from section 21-1 of the Securities Trading Act which implements the rules in MAR article 30. Oslo Børs may thereafter sanction violations of MAR article 17 in accordance with the Securities Trading Act § 21-1 (1), cf. (5). Section 21-1 (2) to (4) of the Securities Trading Act provides rules on the maximum fee that can be imposed and corresponds to the amounts stipulated in article 30 of MAR.

According to this, Oslo Børs will amend Oslo Rule Book II section 2.10.3 (4) to read as follows:

"*In case of violation of MAR article 17, as well as associated commission regulations, cf. items 4.3.1.1, 4.3.1.2 (1) and (2), 4.3.1.4, 6.2.1.1, 6.2.1.2 (1) and (2), 6.2.1.4, 8.2.1.1, 8.2.1.2 (1) and (2) and 8.2.1.4, Oslo Børs may decide to impose a violation fee in accordance with the Securities Trading Act section 21-1 (1) cf. 21-1 (5)*."

Oslo Rule Book II section 2.10.3 will also be amended so that the provisions referring to the Financial Supervisory Authority's authorizations for imposing violation fee for breaches of financial reporting refer to updated rules for this in accordance with the amendments to the Securities Trading Act that enter into force on 1 March 2021.

5 CONSULTATION PROCESS

Issuers and other stakeholders are invited to comment on the proposed changes by 15 February 2021 to consultation@oslobors.no.

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