**Listed company disclosure: mechanics and liability**

This element addresses the method by which companies listed companies make disclosures and the liability which may attach to such disclosures.

**Process for making disclosures**

Disclosures are made by way of announcements to the market. An issuer (or person that discloses ‘regulated information’) should disseminate the information via a regulatory information service (‘**RIS’**) in accordance with DTR 6.3. RIS is defined as a primary information provider (‘**PIP**’) and a PIP is defined as a person approved by the FCA under s. 89P FSMA.

At present, it is common to hear reference to disclosure via an RIS, but in future this may change to references to disclosure via a PIP.

‘Regulated information’ is all information required to be released pursuant to:

• Arts. 17 to 19 of MAR;

• the DTRs; and

• the UKLRs.

All the disclosures referred to in this element fall into the definition of regulated information which must be disclosed under DTR 6.3.

MAR itself states that an issuer must ensure that inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public; the FCA regards publication in accordance with DTR 6.3 as fulfilling this requirement.

The main PIP is the Regulatory News Service (or ‘**RNS’**) run by the London Stock Exchange. PIPs circulate announcements to secondary information providers (‘**SIPs**’), for example Reuters and Bloomberg. The information then gets ‘passed down the wire’ and becomes available to market users. Newspapers pick up the announcements which may become headlines in various business pages.

**Diagram:** there are four boxes and between each box there is an arrow pointing to the next box. The boxes appear in the following order:

* Listed company
* PIP
* SIPs
* Public

There is the word ‘Announcement’ under the arrow between ‘Listed company’ and ‘PIP’. **End of diagram.**

The DTRs give guidance on how the issuer should release the information to a PIP. For example, DTR 6.3.7 states that regulated information must be communicated in a way which:

• makes clear that the information is regulated information; and

• identifies clearly the issuer concerned, the subject matter of the regulated information and the time and date of the communication of the regulated information by the issuer.

If a PIP is not open for business, the company will generally disseminate the information by releasing it to at least two national newspapers and at least two newswire services, and to a PIP for release as soon as it opens. This is an approach which must be adopted in relation to the transparency rules (DTR 1A.3.3) and the UK Listing Rules (UKLR 1.3.4) and ‘may’ be adopted in relation to the disclosure obligations (DTR 1.3.6).

General disclosures of inside information which an issuer is required to disclose publicly pursuant to Art. 17(1) MAR must also be placed on the issuer’s website for at least five years.

Annual financial reports and half-yearly reports must be placed on a website for ten years (DTR 4.1.4 and DTR 4.2.2(3).

Under DTR 6.2.2, all regulated information disclosed by a listed company must also be filed with the FCA at the same time.

The National Storage Mechanism (‘**NSM’**) is the FCA’s means of storing this regulated information. This system is the officially appointed mechanism for this purpose, as referred to in Art. 17(1) MAR. Companies can email or upload documents directly to the NSM.

**Liability in relation to disclosures**

An issuer that breaches the disclosure obligations in MAR will be liable for a breach of MAR. The consequences of such breach for an issuer include the possibility of fines, public censure and disgorgement of profits.

In addition, under s.90A and Schedule 10A FSMA, an investor who acquires, continues to hold or disposes of securities in reliance on information published by a company via a PIP may bring action against that company for compensation for loss suffered as a result of an untrue or misleading statement in, or dishonest omission from, such information. A company will only be liable in respect of an untrue or misleading statement if a person discharging managerial responsibilities within the company knew the statement to be untrue or misleading or was reckless as to that fact.

Among other things, information published via a PIP would include disclosures of inside information, announcements required by the UK Listing Rules, annual accounts and takeover offer documents. Although prospectuses also potentially fall within the regime, an issuer will not be liable to pay compensation under s. 90A if it is liable to pay compensation under s.90 FSMA (see paragraph 4, Schedule 10A). Therefore, s. 90A FSMA will generally not be relevant if you are considering liability for a prospectus.

Under paragraph 5 of Schedule 10A, potential liability also includes liability where the issuer acts dishonestly in delaying publication of information. Liability will arise where a person acquires, continues to hold or disposes of the securities and suffers loss in respect of the securities as a result of the delay by the issuer in publishing information. Under paragraph 6 of Schedule 10A, conduct is dishonest only if it is regarded as dishonest by persons who trade on the market in question and the person was aware or must be taken to have been aware that it was so regarded.

Paragraph 7 of Schedule 10A sets out the exclusion for the issuer from certain other liabilities. This is subject to paragraph 7(3) which states that civil liability will remain under s.90 FSMA; under rules made under s.954 CA 2006 (compensation ordered by the Panel); in relation to breach of contract; in relation to the Misrepresentation Act 1967; in relation to civil penalties; and in relation to criminal liability.

An issuer also has obligations under the UK Listing Rules and Transparency Rules requiring it to make sure that its disclosures are not misleading. UKLR 1.3.3 sets out that an issuer must take reasonable care to ensure that any information it notifies to a regulatory information service or makes available through the FCA is not misleading, false or deceptive and does not omit anything likely to affect the import of the information. DTR 1A.3.2 sets out a similar requirement. Under ss.91(1), 91(1A), 91(1B) and s.91(2) FSMA, the FCA can impose penalties for breaches of the LPDT Rules, including these disclosure requirements.

Both Part 7 FS Act and the market manipulation provisions of MAR could also be to the dissemination of information in a disclosure.

**Summary**

* Disclosures must be made via a RIS (primary information provider)
* The principal liability in this area is breach of MAR for which an issuer may face consequences including fines, public censure and disgorgement of profits.
* Liability may also arise under FSMA and the LPDT Rules.