



## Governance in brief

### Your summary of the latest corporate governance developments

#### Headlines

- FSA clarifies disclosure requirements for directors granting security over their shareholdings.
- Two more companies fined for failing to reveal price sensitive information to the market as soon as possible.

#### **FSA clarifies disclosure requirements for directors granting security over their shareholdings**

**In Brief:** Following the recent press commentary and a number of queries received by the FSA, the FSA has clarified the disclosure obligations in respect of transactions by directors, their connected persons and other persons discharging managerial responsibilities who grant security over their shareholdings.

The FSA has confirmed that grants of security over shares (for example by the creation of a security interest such as a pledge, mortgage or charge) are covered by the disclosure requirements contained in Disclosure and Transparency Rule 3 (DTR 3). DTR 3 refers to notification of "transactions" in shares and it has become clear that there are differing approaches in some other Member States, based in part on local practices and structures or procedures for granting security over shares. The FSA are seeking to reach a common understanding on the detail of the Market Abuse Directive requirements in this area with the European Commission and the other members of the Committee of European Securities Regulators.

In the meantime, the FSA has stated that those persons discharging managerial responsibilities who have granted security over their shares must disclose such transactions to the company, which in turn should make disclosure to the market. Further, where such security grants had not been disclosed to the market at the date of this FSA announcement, the company should have taken steps to rectify this before 23 January 2009. The FSA has also stated that, in the circumstances, it is not intending to take enforcement action in respect of prior failure to notify the market of grants of security.

**Date:** 9 January 2009

**Source:** Financial Services Authority

**Further info:** <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/005.shtml>

## Two more companies fined for failing to reveal price sensitive information to the market as soon as possible

**In Brief:** The FSA has taken action against another two companies, Wolfson Microelectronics plc (Wolfson) and Entertainment Rights plc, for failing to reveal price sensitive information to the market as soon as possible. This follows the £350,000 fine handed out to Woolworths in June 2008 for a similar reason. However, there are differences between these cases. Woolworths had failed to notify the market about a variation to the terms of a major supply contract to one of its subsidiaries (resulting in a drop in profits of approximately 12%). The FSA investigation found that whether this information constituted price sensitive information had not been considered during the contract re-negotiations and at the time of the final agreement. Woolworths did not inform their advisers of the contract re-negotiations.

In contrast, Wolfson did take advice from their investor relations advisors who wrongly recommended that there was no need to disclose the loss of a major customer on the grounds that this 'negative news' (resulting in an 8% loss in forecast revenue for 2008) was offset by other 'positive news'. When Wolfson subsequently raised this issue with corporate brokers and legal advisors it was agreed that the 'negative news' should be announced. This delay in announcement led to a false market in Wolfson shares for 16 days.

In announcing the fine levied on Wolfson the FSA stated:

"Listed companies must carefully consider what could be inside information and their obligations to disclose it. It is unacceptable for a company not to disclose negative news because it believes other matters are likely to offset it. Doing this hampers an investor's ability to make informed investment decisions and risks distorting the market value of a company's shares."

In relation to the advice received the FSA stated:

"Companies have the primary responsibility for meeting their disclosure obligations. While they may benefit from seeking advice from those in a position to comment on their regulatory requirements, they cannot rely, without due consideration, on such advice."

The fact that they had taken advice was, however, taken into consideration when determining the final penalty.

Entertainment Rights plc also believed that they would be able to reduce the impact of a contract variation through future opportunities and delayed making an announcement for 78 days. In announcing the fine the FSA stated:

"Putting off disclosure in the hope that future events may mitigate the impact is unacceptable. We will remain vigilant on this issue."

Directors should note that these cases bring the total to eight entities that the FSA has taken action against in the last four years for similar listing rule breaches. A body of case law is being developed in this area and directors should have a process to identify when a matter has become inside information, to take advice from brokers and legal advisors as necessary and, where appropriate, to convene a board meeting to approve an announcement to the market.

**Date:** 20 and 23 January 2009

**Source:** Financial Services Authority

**Further info:** <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/011.shtml> and <http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/015.shtml>

Deloitte Corporate Governance Update 'Inside out – the importance of identifying and disclosing price-sensitive information July 2008'

### Time to take action

- Require persons discharging managerial responsibilities to disclose any grants of security over shares that have been made, remain outstanding and have not previously been disclosed to the issuer.
- Review internal procedures to ensure that DTR 3 is complied with in respect of future grants of security over shares by persons discharging managerial responsibilities.
- Review current levels of awareness of the price sensitive information disclosure rules and ensure that internal procedures would escalate any potential issue to the appropriate level and on a very timely basis, with advice being taken as necessary from lawyers and/or brokers.

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