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**Autoriteit
Financiële Markten**

Netherlands Authority for the Financial Markets

Publication of Price-sensitive Information

Netherlands Authority for the Financial Markets

The Netherlands Authority for the Financial Markets (AFM) is the authority entrusted with the supervision of the conduct of all parties on the financial markets in the Netherlands, that is to say on the savings, lending, investment and insurance markets. The AFM's objective is 'to promote an orderly and transparent market process on the financial markets, the integrity of relations between market players and the protection of the consumer.'

The AFM ensures that all parties adhere to the relevant laws and regulations. The AFM also advises the Dutch Ministry of Finance in the development of new laws and regulations concerning the supervision of conduct on the financial markets. The AFM is also authorised to develop regulations of its own, within the limits laid down by the Ministry.

The operational objectives of the AFM are:

- to promote access to the financial markets;
- to promote the efficient, fair and orderly operation of the financial markets;
- to guarantee confidence in the financial markets.

These objectives serve to protect not only the interests of buyers of financial services and products, but also the economy as a whole. The public, the commercial sector and the government depend on the financial products offered on the markets for many of their respective activities. Confidence in the orderly and fair operation of those markets is crucial in this regard and is why proper supervision is so important.

In carrying out these objectives, the AFM is guided by such concepts as integrity, transparency, proper information provision and equality.

The financial world is large. As such, many of the AFM's developments are aimed at a transfer of standards, i.e. increasing the understanding among businesses and private citizens of the rules and therefore stimulating them to observe those rules. The AFM promotes the transfer of standards by providing information about new rules, interpretations and general observations. The AFM asks financial institutions themselves to assess whether their contributions to the supervisory objectives are sufficient. This allows the AFM to conduct systematic inspections where the risks are the greatest.

The AFM carries out its supervisory task based on four principles: knowing the facts, using those facts to make legally and economically accurate analyses, making careful and well-balanced decisions based on these facts and analyses, and responding swiftly and decisively when and where it matters.

The AFM is an autonomous administrative body. Its powers to supervise the financial markets were delegated to the AFM by the Dutch Ministry of Finance. As an autonomous administrative body, the AFM is independently responsible for the concrete performance of its supervision. Its Supervisory Board monitors the manner in which the Executive Board carries out its tasks. The Minister of Finance appoints the chair and the members of the Executive and Supervisory Boards, and approves amendments to the AFM's Articles of Association and its annual budget.

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Introduction

With this brochure, the AFM provides information about the regulations governing the obligation for listed companies to publish price-sensitive information without delay. These regulations stem directly from the European Market Abuse Directive^[1], and in the Netherlands have been incorporated into Article 47 of the Dutch Act on the Supervision of the Securities Trade 1995 (Wet toezicht effectenverkeer 1995) and in Articles 12 to 14 of the Dutch Market Abuse Decree (Besluit marktmisbruik), which has been in force since October 2005. The brochure also serves as a practical guide for anyone who wishes to know how the information is to be published.

The regulations consist of an obligation for every legal entity, company or institution that has issued securities that have been admitted with its approval to the trade on a Dutch regulated market, or for which admission of those securities to the trade on such a market has been requested, to immediately publish its price-sensitive information if that information relates directly to the legal entity, company or institution. The price-sensitive information must be disclosed in such a manner that it is immediately accessible to all parties, and that it is possible for investors to assess that information fully, correctly, and in time. Only in exceptional cases may the public disclosure be delayed.

Publishing the information quickly and honestly will increase the integrity of the market, while selective disclosure of information on the part of issuing institutions may harm the confidence of investors in the integrity of the financial markets. That is why it is important that investors are supplied with complete, accurate and accessible information, in which equality of information provision is an important element. Transparent information provision is a major factor in efficient pricing systems.

This brochure was compiled for the purpose of providing general information about the rules governing the publication of price-sensitive information. The brochure also refers to relevant legal sources and other sources of information. This brochure serves to provide information, and no rights can be derived from it. If the text of the brochure deviates from the text of and notes to the Act and the Decree, the Act and Decree shall have priority.

The complete text of the European Directive, the Act on the Supervision of the Securities Trade 1995 and the Market Abuse Decree can be found on the AFM's website (www.afm.nl) under the heading 'Market Abuse Act'.

[1] European Directive 2003/6/EC of the European Parliament and of the Council of the European Union of 28 January 2003 on insider dealing and market manipulation (OJEU L 96: Market Abuse Directive).

Price-sensitive information

Issuing institutions are required to publish any price-sensitive information concerning their business without delay. ‘Without delay’ is understood to mean as quickly as possible. The publication should be effected by way of a press release. It is the responsibility of the securities-issuing institution to publish price-sensitive information in such a manner that it is 1) available immediately and 2) available for everyone and 3) presented in such a manner that it is possible for investors to assess this information fully, correctly and in time.

Is this price-sensitive information?

Issuing institutions are obliged to publish price-sensitive information that is concrete and that directly concerns the legal entity, company or institution to which the securities pertain, which information has not been publicly disclosed and whose public disclosure might significantly affect the price of the securities or the price of derivative securities.

‘Concrete information’

Information that is concrete is understood to mean information that pertains to:

- a situation that exists or that may reasonably be assumed to come into existence; or
- an event that has taken place or may reasonably be assumed to take place in the future; and
- that is sufficiently specific to be able to draw a conclusion from as to the possible influence of that situation or event on the price of financial instruments or of derivative financial instruments.

‘Significant’

According to the Explanatory Memorandum, ‘significant’ is understood to mean ‘meaningful’. The general section of the notes to the Dutch Market Abuse Act (Wet marktmisbruik) states that ‘to significantly affect the price of a security’ is understood to mean that a reasonably acting investor will probably use this information as a partial basis for his or her investment decisions.

The potential direction of the price change is irrelevant in this connection. The element of ‘whose public disclosure might significantly affect the price of the securities or the price of derivative securities’ should be interpreted objectively. It has to be reasonable, by objective standards, to expect that the publication of the information will lead to a price reaction, regardless, it should be noted, of whether this indeed happens upon the actual publication.

It should be noted that price-sensitive information may comprise a range of circumstances that together result in the price-sensitive quality. The complex of circumstances together must significantly affect the price.

What information qualifies as price-sensitive differs from one business and sector to the next, and depends furthermore on market sentiments and recent developments. It also depends on such issues as:

- how current is the information?
- to what degree does this information add to prior information about the same subject?
- how new is the information?

The degree to which information qualifies as price-sensitive will also depend on the nature of the securities. Information that has a significant effect on the price of one particular type of security (such as shares) need not by definition have a significant effect on the price of other types of securities (for example bonds).

There is no hard and fast formula for determining whether particular information will significantly affect the price. A securities-issuing institution is itself responsible for considering whether a particular item constitutes price-sensitive information. The institution knows what is important for the business, and so for investors and potential investors in the business.

If there is any uncertainty as to whether information in the possession of the securities-issuing institution should be labelled as price-sensitive information in respect of the business, the AFM recommends publishing the information.

Examples of price-sensitive information

The Explanatory Memorandum accompanying the Market Abuse Act includes a number of examples of price-sensitive information. Price-sensitive information might concern:

- changes to the management board or supervisory board of an issuing institution;
- a takeover that is about to take place;
- a decision taken to repurchase shares in the institution.

The obligation to publish such information also means that any meaningful changes to previously disclosed price-sensitive information must immediately be published (regardless of the impact on the price).

Besides these examples, the AFM also labels the following non-exhaustive list of examples of information as being possibly price-sensitive:

Important facts with regard to the financial position and/or results:

- Disclosure of periodical financial results
- Significant deviations from prior projections
- Development of important new products
- Substantial changes to credit facilities and security granted under credit facilities, including breaking covenants
- Cancellation of important credit facilities by one or more banks
- Substantial changes to reporting systems
- Negative shareholders' equity
- Change in auditor (other than regular changes)
- Important law suits/claims/product liability/environmental damages/etc.

Important facts with regard to the business's strategy:

- Purchase or sale of important participations/divisions
- Conclusion/termination of important alliances
- Major reorganisations
- Strategic price changes; drastic changes to the business's activities
- Dissolution of the business
- Requests for suspension of payments or application for bankruptcy.

Important facts with regard to the capital/control:

- Splits and reverse splits of shares
- Changes to the rights attached to the various classes of shares
- Dividend announcements, including announcing or altering the ex dividend date and changes to the dividend policy
- Important changes to the spread of the share ownership and/or free float
- Any protection measures prepared or implemented.

When to delay publication?

Situations may arise in which an issuing institution may decide to delay the immediate publication of price-sensitive information. The issuing institution must make this decision for itself, and as such bears full responsibility for the delay.

Issuing institutions must take into account three cumulative conditions before deciding to delay publication:

1. the delay must serve a legitimate interest of the legal entity, company or institution; and
2. the delay will not cause possible deception of the public; and
3. the business is able to guarantee the confidentiality of the information.

During the delay on the business's part, it must immediately publish the price-sensitive information in question if circumstances change so that it no longer meets all three of the conditions listed above.

Decisions to delay publication need not be reported to the AFM. The AFM will be able to determine after the fact whether the business legitimately delayed the publication.

The three conditions for delaying publication are explained below.

Legitimate interest

In the first place, the delay must serve a legitimate interest of the business. A 'legitimate interest' is understood to mean at the least:

If publication might affect the outcome or normal proceeding of current negotiations.

Not thwarting negotiations to which the issuing institution is party, and whose publication may affect the outcome or the normal proceeding of those negotiations may be qualified as a legitimate interest. Examples include the circumstance that the financial viability of such a legal entity, company or institution is in serious and imminent danger.

A condition for this example, however, is that publication of the fact that negotiations are being conducted and the question of which parties are involved would seriously harm the interests of existing and potential shareholders by potentially compromising the completion of the negotiations to ensure the financial recovery of the issuing institution in the long term.

If decisions made by the board of a business have yet to be approved by its supervisory board or similar organ.

If, besides this, the other conditions for delaying publication have been met, the securities-issuing institution need not, or not yet, publish the information immediately. Once the decision is final, the business must immediately publish the price-sensitive information.

No risk of deception

The second condition is that the delay may not result in a risk of deception of the public. Deception may be involved if the business deliberately withholds information with the aim of misrepresenting the state of affairs, or if the business could or should reasonably have known that withholding information might misrepresent the state of affairs (by providing other information in its announcements that does not correspond to the delayed information).

Guaranteed confidentiality

The third condition for postponement comprises the ability to guarantee the confidentiality of the price-sensitive information. This guarantee consists of two elements:

- The securities-issuing institution must take sufficient measures to restrict access to the price-sensitive information to persons who, in connection with the performance of their work, profession or position, must be aware of that information; and
- The securities-issuing institution must also take measures allowing immediate publication of the price-sensitive information if the confidentiality of the price-sensitive information can no longer be guaranteed.

For example, the AFM recommends an emergency scenario, describing the steps to be taken and listing the persons to be involved (and their replacements). There should also be a list of the projects that at any time might generate price-sensitive information and the persons involved in those projects. The AFM advises businesses to emphasise the confidentiality continually and on every occasion.

Having reliable procedures in place may ensure that the amount of time between any leaks of the information and the publication of the press release remains as short as possible. In this fashion, the possible inequality in information can be kept to a minimum. The AFM recommends setting up a proper administrative organisation and reliable internal control procedures in this connection for dealing with price-sensitive information and the obligation to publicly disclose it.

Naturally, if the confidentiality can no longer be guaranteed and the price-sensitive information leaks, the issuing institution is obliged to publish that information without delay. Another possibility is that the group of persons possessing the price-sensitive information becomes so large that the institution can no longer guarantee its confidentiality. In such cases, too, the issuing institution must immediately publish the information, in order to prevent insider dealing.

Manner of public disclosure

The law stipulates an open standard with regard to the public disclosure of price-sensitive information. Securities-issuing institutions are themselves responsible for publishing their price-sensitive information, and so also for the manner in which it is published, as long as the following statutory requirements are met.

How to publish the information? Securities-issuing institutions must disclose price-sensitive information in such a fashion that it:

- is accessible immediately, and
- for everyone, and
- is presented in such a manner that it is possible for investors to assess the information fully, correctly, and in time.

This should be effected by publication of an official press release in a combination of general and specific financial media that is usual on the market. The Transparency Directive, which is expected to be implemented in Dutch law in 2007, provides more details regarding the publication of press releases.

The contents of the press release must be evident and may not be misleading. It is recommended that a specific headline be shown to which may be referred and that comprises a clear summary of the announcement.

The press release may not be combined in any potentially misleading fashion with advertisements for the business's activities.

Simultaneous publication The announcement must be effected by way of a press release that is published simultaneously in the Netherlands and (if applicable) in every other European Member State in which the securities of the issuing institution have been admitted to the trade on a regulated market.

Which language? The announcement must be made in either Dutch or English. Announcements that are also made in other Member States must also be made in the language accepted by the competent national supervisory authority or in a language that is commonly used in international financial circles.

Website The issuing institution must have a website and must place the announcement on that website immediately, where it must be accessible for at least twelve months (the AFM recommends keeping such announcements there longer). In order to meet the publication requirement, it is not sufficient to place the publication only on the business's own website: a press release must be sent in the manner described above ('manner of public disclosure').

It is advisable for the issuing institution to ensure that its information is protected on a properly secured website, to prevent premature access (i.e. before the moment of publication) to its price-sensitive information.

Copy of the press release to the AFM

If the securities-issuing institution decides to publish a press release, the AFM must receive a copy of that release at the same time as the market. Please note that since the issuing institution itself is responsible for the distribution of the press release, it is not sufficient to only send the press release to the AFM (see above).

The AFM has developed an electronic form for reporting price-sensitive information, which can be sent to the AFM using a secure connection. The form can be used with Acrobat Reader version 6.02 and higher, and offers the possibility of filling out fields and adding electronic attachments.

Any securities institution can access this form through the AFM portal. For accessing the AFM portal, the AFM provides the institutions with an account secured with a password.

Once the AFM has established that the press release submitted has been published, the press release will be included in the AFM's register (*www.afm.nl*), where it will remain accessible to all parties free of charge for five years.

Moment of publication

The AFM advises businesses to publish press releases for previously planned announcements outside exchange trading hours, if possible, with due observance of the conditions laid down in the law. This applies to public disclosure of annual, semi-annual and quarterly figures, for example.

Use of 'third parties'

As already mentioned above, the securities-issuing institution itself remains responsible for publishing its own price-sensitive information, even if that publication is in reality effected by third parties, such as a communications consultancy firm, a distributor of press releases or a curator/administrator.

Communication with third parties

It is of course possible that a business provides undisclosed information to third parties, such as analysts, journalists, investors, financiers, credit rating agencies and employees. This is permitted as long as the disclosure does not concern inside information. If it does, the business must comply with the statutory regulations, which read as follows:

“If the securities-issuing institution, or a person representing the securities-issuing institution, consciously discloses price-sensitive information to a third party, as part of the normal performance of work, profession or position, the securities-issuing institution shall simultaneously make that information available for all parties by way of a press release.

If the information was not disclosed to a third party consciously, the securities-issuing institution shall disclose that information without delay. This shall not apply if the person to whom the information is disclosed is bound by a non-disclosure duty with regard to that information”.

Information need not be disclosed if the person to whom the circumstance is disclosed is bound by a non-disclosure duty with regard to that information, whether statutory or contractual. If an issuing institution consults a lawyer or a civil-law notary, for example, that person will be bound by his or her statutory non-disclosure duty. In such an event, if this is necessary to protect the interests of the issuing institution, the circumstance constituting inside information may be disclosed. The civil-law notary or lawyer may, naturally, not trade in the securities of that issuing institution from that moment on.

Role of the AFM

The AFM will receive the press releases simultaneously with their publication. In that situation, everyone will possess the price-sensitive information in question at the same time. The AFM does not approve press releases prior to their publication.

Enforcement

For its supervision of compliance with the obligation to publish price-sensitive information without delay, the AFM can avail itself of a wide range of supervisory measures, such as requesting information, issuing warnings, imposing instructions or imposing orders for periodic penalty payments, as well as publishing the instructions or orders for periodic penalty payments, imposing an administrative fine or reporting the party in question to the judicial authorities.

For example, based on developments in prices or volumes, the AFM can request information from the issuing institution and other parties. If the AFM believe that the issuing institution possesses price-sensitive information that should have been disclosed immediately, the AFM may issue an instruction for that immediate disclosure and, if necessary, publish that instruction. This may be followed by an order for the issuing institution to publish the

information in question within a certain period of time, subject to periodic penalty payments. If the institution fails to comply, the AFM may publish this order if it deems necessary, without prejudice to its right to impose an administrative fine.

The AFM may also determine after the fact whether the securities-issuing institution disclosed its price-sensitive information correctly and without delay, or else was justified in postponing publication. Imposing an administrative fine or reporting the incident to the judicial authorities are among the enforcement measures in this connection.

Trading measures

With a view to the proper functioning of the securities markets or the position of the investors on those markets, the AFM may impose trading measures. This means that the AFM issues an instruction to the regulated market on which the securities of the issuing institution in question have been admitted to the trade. The AFM may use this power if its supervision on compliance by the issuing institutions with the immediate publication of their price-sensitive information gives it cause to do so.

Possible considerations for the AFM to issue an instruction to suspend trading may be to cancel out an inequality in information between investors, for example, or a request to that effect from the supervisory authority from another Member State.

The AFM decides on trading measures on a case-by-case basis. As is stated in the Explanatory Memorandum and the Dutch General Administrative Law Act (Algemene wet bestuursrecht), the AFM will use this power with reticence and with caution.

Euronext Amsterdam (and in the future this will also apply to any other trading platforms) is and remains responsible for trade-related measures, such as suspending trade in the event of a major price fluctuation, in which case the trade is automatically suspended for a short time if a threshold value is exceeded, or in the case of a technical malfunction in which a significant proportion of the exchange members are unable to place orders in the trading system.

Overlaps with other elements from the Act

- Market manipulation** Negligence with regard to the obligation to publish price-sensitive information might coincide with the prohibition on market manipulation. Withholding relevant facts in a press release by a listed institution might also constitute market manipulation within the meaning of Article 46b(d): “disseminate information that sends out an incorrect or misleading signal or that might do so, with regard to the supply of, demand for or price of the securities in question, while the party disseminating that information knows or should reasonably suspect that the information is incorrect or misleading”. For further information, please refer to www.afm.nl and to the brochure entitled ‘Prohibition on Market Manipulation’.
- Abuse of inside information** If any natural person or legal entity uses price-sensitive information by conducting or effecting a securities transaction, this may fall within the scope of the prohibition on insider dealing. Price-sensitive information may not be disclosed to third parties except as part of the normal performance of one’s work, profession or position. For further information, please refer to www.afm.nl and to the brochure entitled ‘Insider Dealing’.
- Insider regulations** The Act on the Supervision of the Securities Trade 1995 sets out requirements with regard to maintaining insiders lists and insider regulations and for reporting insider transactions. For further information, please refer to www.afm.nl and to the brochure entitled ‘Insider Dealing’.

Public takeover bids

An issuing institution that makes a public takeover bid must observe the requirements laid down in Chapter IIIA of the Decree on the Supervision of Securities Transactions 1995 (Besluit toezicht effectenverkeer 1995). It follows that the institution must make public announcements on a number of occasions. The Decree states that these announcements must be submitted to the AFM beforehand.

The Dutch Market Abuse Act does not require institutions to submit price-sensitive information to the AFM in advance. It is sufficient for the AFM to be informed of the price-sensitive information when it is published. The matters set out in press releases published by institutions are not examined by the AFM in advance: the securities-issuing institution’s own responsibility comes into play here. Similarly, decisions to postpone publication of price-sensitive information need also not be reported to the AFM. Naturally, after the fact, the AFM will verify whether the institution complied with the rules when publishing the information and deciding to postpone that publication.

Once the Market Abuse Act enters into force, any issuing institution that makes a public takeover bid must still comply with the requirements laid down in Chapter IIIA of the Decree on the Supervision of Securities Transactions 1995. The Market Abuse Act is not intended to change this.

For the remainder, the two sets of rules correspond to one another. For example, institutions are not violating their obligation to immediately publish price-sensitive information if they delay making announcements in connection with public takeover bids until those announcements have been submitted to the AFM for approval, in accordance with the rules for public takeover bids, since the publication of the price-sensitive information does take place as soon as possible.

Further questions?

The Securities Market Surveillance department of the AFM is the contact for questions regarding the necessity and timing of publication of price-sensitive information.

For more information, please visit www.afm.nl, under the heading 'Market Abuse Act'.

If you have any questions or wish advice, please send an E-mail to marketsupervision@afm.nl or contact the Securities Market Surveillance department at +31 (0)20 55 21 800.

Please be aware that telephone conversations with the Securities Market Surveillance department may be recorded for supervisory purposes.