



# Markets Brief

## Insider Lists for Reporting Entities

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### Introduction

In this edition, we discuss the DFSA's expectations regarding insider lists that may be drawn up and maintained by Reporting Entities as part of their systems and controls relating to Inside Information.

An insider list is a document, usually maintained in electronic format, keeping a record of the persons who have or may reasonably be likely to have access to Inside Information, so called insiders.

The DFSA Markets Rules in MKT 4.2.7 (MKT 6.5.7 for Listed Funds) mandate that Reporting Entities establish and maintain adequate systems and controls to enable it to identify at all times any Person working for it under a contract of employment or otherwise, who has or may reasonably be likely to have access to Inside Information relating to the Reporting Entity or, where applicable, the Listed Fund, whether on a regular or occasional basis.

The DFSA anticipates that such systems and controls are likely to include the Reporting Entity drawing up and maintaining an insider list.

There are circumstances where it may be necessary for a Reporting Entity to identify to the DFSA any Person who had, or may reasonably be likely to have had, access to Inside Information relating to the Reporting Entity at a given time. We have included in this brief the details that the DFSA considers would typically be necessary to identify such a Person and would expect a Reporting Entity to be

capable of providing promptly upon request. This should assist Reporting Entities in determining whether their insider lists (or any other systems and controls intended to perform a similar function) capture adequate details for this purpose.

This brief discusses who insiders are, what is meant by an insider list, what Inside Information is, the types of insider, the purpose of an insider list, who is or are usually responsible for drawing up and maintaining insider lists, the content of the list, as well as the duties of insiders.

We also take the opportunity to remind Reporting Entities to highlight the confidentiality of information when discussing sensitive matters with external or internal individuals. Individuals subject to Inside Information should be made aware of the associated regulatory and legal duties, as required by MKT 4.2.3 and MKT 4.2.8 (MKT 6.5.3 and MKT 6.5.8 for Listed Funds). As discussed in the Guidance to MKT 4.2.3 (MKT 6.5.3 for Listed Funds), we further remind Reporting Entities that they should put in place procedures to ensure that employees do not disclose Inside Information, even inadvertently, and that employees are adequately trained in the identification and handling of Inside Information.

Please refer to the Markets Brief on Disclosure of Inside Information by Reporting Entities.

### Guidance

Please note that the contents of this communication are not intended to be Guidance as contemplated by

the Regulatory Law 2004 and the contents should neither be interpreted, nor relied upon, as Guidance. You should refer to the DFSA Rules for Guidance or contact the DFSA if you require individual guidance.

Technical explanations given in this brief are for illustrative purposes only and should not be considered or relied upon as a legal advice. We recommend that independent legal advice is obtained if you are unsure about any aspect of the DFSA markets regime which may apply to you.

Defined terms are identified in this brief by the capitalisation of the initial letter of a word or each word in a phrase and are defined in the Glossary Module of the DFSA Rulebook.

## What is an insider list?

An insider list is a list which contains the details of individuals who have access to Inside Information, or are performing tasks which could give them access to Inside Information.

## Who is an insider?

Article 63(1)(b) of the Markets Law, sets out that an insider means a person who has Inside Information:

- (i) as a result of his membership of the board of Directors, or the Governing Body of the relevant Reporting Entity;
- (ii) as a result of his holding in the capital of the relevant Reporting Entity;
- (iii) as a result of having access to the information through the exercise of his employment, profession or duties;
- (iv) as a result of his criminal activities; or
- (v) which he has obtained by other means and which he knows, or could reasonably be expected to know, is Inside Information.

## What is Inside Information?

According to Article 63(1)(a) of the Markets Law, Inside Information means any information which:

- (i) is of a precise nature;

- (ii) is not generally available;
- (iii) relates, directly or indirectly, to one or more Reporting Entities or the Reporting Entity of the Investments concerned or to one or more of the Investments; and
- (iv) would, if generally available, be likely to have a significant effect on the price of the Investments or on the price of related investments.

## Types of insider

A permanent insider is an individual who, due to their position or role within the Reporting Entity, is deemed to always be reasonably likely to have access to Inside Information. Those individuals are usually in senior positions, such as members of the Board of Directors.

A deal specific or event-based insider is an individual who obtained access to Inside Information due to their role in that particular event, project or transaction. These individuals could for example be part of an internal deal team or external parties such as auditors, lawyers, accountants and consultants.

The content of an insider list is discussed later on in this brief.

## What is the purpose of the list?

The purpose of an insider list is typically to manage and keep track of who has access to Inside Information and when. The list is beneficial from a regulatory perspective as it ensures that people who have or are likely to have access to Inside Information are on record and can be held accountable if found in breach. An insider list would also be used as a starting point in case of an investigation into market abuse or suspicions of insider trading.

Reporting Entities must take reasonable measures to ensure that insiders continue to be aware of their legal and regulatory duties towards handling Inside Information, acting on the information and the implications of a leakage of the information. An insider list can be used as a useful reminder and checklist in this regard. Moreover, an insider list can serve as a tool for Reporting Entities to manage the

flow of confidential information internally and externally.

A Reporting Entity should also consider whether its systems and controls around managing Inside Information should include providing periodic updates and training on handling Inside Information to those staff members and/or contracted external parties who are likely to come into contact with Inside Information, regardless of whether they are included on an insider list.

## Who is responsible for an insider list?

MKT 4.2.7 (MKT 6.5.7 for Listed Funds) specify that a Reporting Entity is responsible for establishing and maintaining adequate systems and controls to enable it to identify at all times any Person working for it under a contract of employment or otherwise who has or may reasonably be likely to have access to Inside Information relating to the Reporting Entity. The DFSA would expect such systems and controls to enable the Reporting Entity to be able to identify at all times each of its individual employees who has or may be likely to have access to Inside Information.

However, the DFSA recognises that Reporting Entities employ service providers as a matter of due course (e.g. lawyers, auditors, consultants) and the Reporting Entity will not typically have control over the internal systems, controls and processes at these service providers.

Therefore, the DFSA anticipates that a Reporting Entity's systems and controls may, where appropriate, place reliance upon a service provider or other persons acting on its behalf or account to maintain their own insider list, or otherwise be able to identify individuals working for the Reporting Entity outside of its direct control who have or may be likely to have access to its Inside Information.

Where a Reporting Entity does place reliance upon a service provider or other third party in this way, the DFSA would expect the Reporting Entity to have satisfied itself that it is appropriate to do so in all the circumstances. The DFSA would expect that process to include ensuring that adequate contractual or other measures are in place to require the third party to provide the details necessary to identify a relevant Person promptly at the request of the Reporting Entity or the DFSA.

## What should the list include?

An effective insider list would normally include, in any case:

- The personal details of the insider and details of the company for which the insider works;
- the reason (deal, event, position within company) and start date of access to Inside Information;
- the date on which access to Inside Information was revoked or, for permanent insiders, their position ended; and
- The date on which the list was first drawn up and, thereafter, the dates on which it was updated.

Those details would be necessary to identify relevant individuals in case of an enquiry or investigation by the DFSA.

We created a template of an insider list (see below) which includes these details and which Reporting Entities may wish to consider adopting or incorporating into their own insider lists.

## What is the format of the list?

An insider list should be maintained in a format that allows the person responsible for it to ensure completeness, confidentiality and integrity of the data. Where the DFSA requests details identifying the Person(s) who had, or may have had, access to Inside Information at a given time, it will generally request that such details be submitted in electronic format, using the [DFSA template](#) provided.

## When to file the list?

The DFSA may, in the future, consider mandating that Reporting Entities maintain insider lists in a specified format and file them with the DFSA at regular intervals.

In the meantime, Reporting Entities are welcome to file the most up to date versions of their insider list with the DFSA Markets Division on a voluntary basis, using the email address [markets@dfsa.ae](mailto:markets@dfsa.ae).

Where Reporting Entities choose to file their insider lists on a voluntary basis, we ask that they ensure the DFSA's records of it are kept up to date. They can do so by filing a copy of the insider list at least once every three months, or in the interim should a specific deal or event occur or become likely. In due course, we will add a functionality to our website to upload insider lists on the DFSA E-Portal online forms page of the Reporting Entity.

## What deals and events might require an insider list?

Reporting Entities and persons acting on their behalf or account should consider whether it is appropriate to maintain a deal specific/event-based insider list for the following:

- share buybacks;
- stock splits;
- any other corporate action;
- mergers and acquisitions,
- issuance of new shares;
- issuance of Debentures / Sukuk;
- issuance of derivatives;
- issuance of any other financial instrument; and
- any other event which would give rise to inside information.

## How should the list be maintained?

An effective insider list would typically need to be promptly updated if:

- the reason why a person has access to the information changes;
- a new person is added to the list;
- or a person already on the list no longer has access to the information.

Under MKT 8.1.2, a Reporting Entity must have appropriate systems and controls in place to

demonstrate compliance with its obligations relating to the control of Inside Information and must retain any required records for a period of at least six years. A record of any insider list forming part of a Reporting Entity's systems and controls should therefore be kept for at least six years after it is drawn up or updated.

## Will insider lists become mandatory?

The DFSA Listing Authority has not yet made proposals to require insider lists to be maintained or filed on a mandatory basis, but encourages firms to adopt the practice of drawing up and maintaining insider lists to ensure a smooth transition as and when this becomes mandated.

## Further information

Visit the DFSA website [www.dfsa.ae](http://www.dfsa.ae) for:

- other editions of the Markets Brief;
- access to DFSA-administered legislation and the DFSA Rulebook, including a full text of the Markets Law and Markets Rules; and
- the Code of Market Conduct (in the Sourcebook Modules part of the DFSA website).

## Contact us

- Telephone +971 4 362 1500
- Email [markets@dfsa.ae](mailto:markets@dfsa.ae)

The DFSA will not advise a particular course of action or provide (legal) advice, but it is prudent to keep the DFSA informed of ongoing developments in relation to the Reporting Entity.

## Feedback

We appreciate your feedback and welcome any suggestions that you may have. Please email us at [markets@dfsa.ae](mailto:markets@dfsa.ae)