

# FCA focus on misleading disclosure

18 November 2020

Two recent Financial Conduct Authority enforcement notices<sup>1</sup> focus on when and how disclosures by a listed company may be considered misleading - a basic disclosure requirement that is sometimes taken for granted.

The relevant regulatory requirements, which are included in both the Listing Rules (LR1.3.3R) and the Disclosure Guidance and Transparency Rules (DTR1A.3.2) is that an issuer of listed securities must take reasonable care to ensure that any information that it notifies to a regulatory information service (i.e. information disclosed in satisfaction of regulatory obligations) “is not misleading, false or deceptive and does not omit anything likely to affect the import of the information”.

In considering these requirements, the FCA appears to put emphasis on the following:

- The expected audience for an announcement and their likely reaction to the information contained in that announcement should be carefully considered, especially if there may be significant numbers of retail investors.
- The FCA will judge whether the relevant rules have been met with the benefit of hindsight and on the basis of market reaction.
- The FCA expects that the procedures, systems and controls that an issuer has in place to enable it to comply with its obligations under the Listing Rules should be sufficient to stop misleading information from being published.
- Compliance with LR1.3.3R is distinct from, and needs to be considered separately to, an issuer’s obligations under the Market Abuse Regulation to make timely disclosure of inside information, although there is overlap with the Market Abuse Regulation’s prohibition on market manipulation by the dissemination of false information. Neither of the two enforcement notices specifically refers to failure to disclose inside information.
- If an issuer obtains external advice on its disclosure obligations (for instance from its brokers or legal advisers) it should specifically ask for advice on LR1.3.3R and DTR1A.3.2 in respect of the contents of an announcement.

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<sup>1</sup> Final Notice dated 26 October 2020 and Warning Notice Statement 20/2

- Although the relevant rules refer specifically to information notified to a regulatory information service, the FCA will consider the impact of other public statements by issuers relating to that information (for instance at analysts briefings and press conferences) in assessing whether the standard required by the rules have been met. Therefore, it is important for an issuer to consider the totality, and consistency, of all information that it publicly discloses.

While these cases are very fact specific - the FCA is clearly intending to send a wider message to all issuers to consider the impact, as well as the content, of public disclosures.

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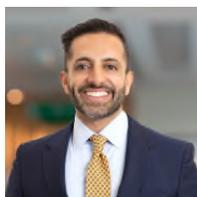
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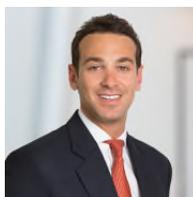
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