OFFSHORE NORGE

139 – Offshore Norge Recommended guidelines for handling inside information

Translated version

PREFACE

These guidelines were prepared by a work group appointed by the Legal Committee of Offshore Norge. They were submitted for consultation to the Offshore Norge Licensing Policy Committee and have been recommended by the Offshore Norge Legal Committee.
Furthermore, they have been approved by the director general and were established on 13 February 2014.

The work group which drew up the original guidelines comprised:

- Aksel Luhr, Eni Norge AS
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Aksel Luhr headed work in the group.

The guidelines were based on a detailed legal report prepared by a broad-based work group chaired by Anniken Maurseth from Det Norske. See appendix 1.

Regulation (EU) No 596/2014 on market abuse (MAR) contains key rules about market behaviour in the securities market and was incorporated into Norwegian law on 1 March 2021. These guidelines were subsequently reviewed in the autumn of 2021 to ensure that the rules pursuant to the MAR regulation are adequately covered, and that references in the guidelines to the applicable regulations have been updated. The updating work was carried out by:

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These guidelines have been prepared with broad participation by interested parties in the Norwegian petroleum industry, and are owned by the Norwegian petroleum industry, represented by the Offshore Norge. Offshore Norge is responsible for the administration of these guidelines.
The responsible manager in Offshore Norge is the legal affairs manager, who can be contacted via the Offshore Norge switchboard at +47 51 84 65 00.

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1 INTRODUCTION

1.1 Purpose

The background for the guidelines is fines imposed by the National Authority for Investigation and Prosecution of Economic and Environmental Crime in Norway (Økokrim) on some member companies for alleged violation of the Securities Trading Act (VPHL). Their purpose is to provide the oil companies with guidance on the most appropriate way to comply with the VPHL's rules on handling inside information.

The guidelines present proposed guidance on how the oil companies should handle sensitive information, including in relation to exploration wells.

Regulation (EU) No 596/2014 on market abuse (MAR) contains key rules about market behaviour in the securities market and came into force in Norwegian law on 1 March 2021. MAR has been incorporated into Norwegian law through section 3-1 of the VPHL. In addition come commission directives and regulations which clarify and supplement the framework provisions in MAR. These have been incorporated into Norwegian law through section 3-1 of the regulations pursuant to the VPHL.

When MAR entered into force, key provisions of the VPHL and the regulations pursuant to the VPHL were amended. That included the definition of inside information. Article 7 of MAR provides a general definition of inside information. Generally speaking, the definition of inside information is retained but with slightly different wording, and the new definition involves no big changes to the assessment of whether information is to be regarded as inside information.

MAR applies to companies whose financial instruments are listed for trading on markets in the European Economic Area (markets licensed pursuant to MiFID II).

2 GUIDELINES – HANDLING OF INSIDE INFORMATION IN CONNECTION WITH EXPLORATION AND APPRAISAL WELLS

2.1 Introduction

Put briefly, inside information is non-public information of significance for the valuation of the shares of a company (issuing company). Infringement of the VPHL rules concerning the handling of inside information is a criminal offence and may result in fines, infringement penalties and imprisonment. Sanctions can be imposed on both companies and individuals, such as employees, directors and consultants.

Please note that each licensee is individually responsible for the obligations which follow from MAR and the VPHL and must assess how to implement the statutory requirements in their company. These guidelines can be useful for such implementation but must not be regarded as an exhaustive list which indicates that all aspects of the statutory requirements have been fulfilled.

2.2 Inside information – requirements for handling

The restrictions and obligations related to the handling of inside information apply regardless of whether the company has satisfied its obligation to inform the person in question of these obligations. All employees should be made aware of the fact that they are unequivocally prohibited from trading if they have access to inside information, regardless of how this was acquired. The trading prohibition also applies to attempted insider trading and to exploiting inside information by cancelling or amending an order placed before the inside information was received.

If inside information is generated in an issuing company, the company is obliged to disclose the information immediately in a stock exchange announcement unless the conditions for delayed disclosure are met. If the conditions for delayed disclosure are met, a certain amount of time may pass between generation of the inside information and its disclosure. During this period, from generation of the inside information until its disclosure, the issuing company is obliged to maintain an insider list.

The names of all people working for or engaged by the issuing company and who are given access to inside information must be recorded on this insider list, and they must also be made aware of the restrictions and obligations which accompany being given access to the inside information. Advisers (or others acting on behalf of the issuing company or for its account) are subject to an independent obligation to maintain their own insider list and submit this to the regulatory authorities on request.

The most important consideration for the recipient of this information is the obligation to refrain from abusing the inside information, including placing an order and amending/cancelling an existing order on the basis of this information, to keep it confidential and to refrain from passing it on to unauthorised persons – in other words, anyone without a legitimate need for the information (need-to-know basis). In the event of delayed disclosure pursuant to article 17 of the MAR, the issuing company must immediately and on its own initiative report the matter to the regulated market in question, including an explanation of the reasons for the delay. The content of insider lists is standardised in that forms for these are specified in the commission regulation on MAR.[1]

A typical example of inside information for an oil company might be that an exploration or appraisal well has resulted in an oil or gas discovery or is dry. Where smaller companies are concerned, the result of such a well may have an impact on their share price regardless of whether a discovery is made. Other companies will only see their share price affected if oil or gas is proven. Where larger companies are concerned, information on the size (volume) of a discovery will often be the only factor which might affect the share price, potentially together with other information. Only information on particularly large discoveries will have the potential to affect the share price of the major companies. It must be emphasised, though, that a specific assessment must always be conducted about whether the information in question represents or has the potential to represent inside information about the company.

[1] https://www.finanstilsynet.no/rapportering/fellesrapporteringer/mar-innsending-av-innsidelister-pa-foresporsel-fra-finanstilsynet/.

It is important to note that information may be inside information even if it is incomplete, conditional or preliminary. In projects and processes where new information is generated and processed continuously, such as during a drilling operation, the companies concerned need to take a conscious approach to handling inside information from an early stage so that the necessary preparations can be made to be able to meet obligations related to information handling, through either immediate or delayed disclosure and through keeping insider lists.

As a licensee in a production licence, certain companies with no duty to disclose information (either because they are not listed on a stock exchange or because they are so large that the information concerned does not qualify as inside information) may be de facto in possession of inside information concerning one or more other companies in the licence. Companies which do not have a duty to disclose information must nevertheless comply with the VPHL's provisions on the duty of confidentiality and due care in handling information.

Based on the above and on the Norwegian Oil & Gas report from the work group on inside information, the following recommendations are provided for handling inside information by the companies in connection with drilling exploration and appraisal wells.

2.3 Recommendations

1. Listed companies and other companies which are regularly in possession of inside information must have routines in place for secure handling of inside information. Security measures may include restrictions on access in IT systems, offices, printers and so forth. This also affects License2Share (L2S), the official communication channel for exchanging information between parties in a production licence.

2. Licensees which believe that information from an exploration or appraisal well has the potential to constitute inside information for the licensee (hereinafter called the issuer) should notify the other licensees of this in writing, preferably before the drilling operation starts. The other licensees should also be informed as soon as possible if the potential for inside information related to the result of a well changes. Which employees at the licensees are to serve as contacts for such notifications should also be clarified.

3. Before the drilling operation, the issuer should take the initiative to hold a partner meeting where matters relating to communication during and after the drilling operation are discussed and clarified.

4. If inside information is generated in an issuer company, the company is obliged to disclose the information immediately through a stock exchange announcement unless the conditions for delayed disclosure have been met. If the issuer believes the terms for delayed disclosure have been met for a specific drilling operation, the following measures are recommended.

a. The issuer can ask the operator to publish a message on L2S specifying which routines will apply for handling information during the drilling operation.

b. The issuer should secure an overview of all people authorised to read the relevant areas on L2S.

c. The issuer can ask the operator to establish a work group area on L2S with access for readers on a need-to-know basis.

d. The issuer should clarify with the operator whether suppliers associated with the drilling operation should be informed about procedures for handling sensitive information.

e. The issuer should clarify with the operator whether more stringent restricted-access routines are required in offices and areas where sensitive information or materials (such as cores and samples) is available. This may apply on the rig, on vessels, at bases and in onshore offices.

f. Should an issuer choose to delay disclosure, it is obliged to maintain insider lists. People included on the insider list must be informed by the issuer of this and of the obligations, including criminal liability, which follow from having access to inside information. The issuer must be able to document that its duty to disclose information has been fulfilled.

5. Regardless of whether disclosure is delayed, a draft stock exchange announcement should be sent to the other licensees as soon as practicable, including details on when the announcement is due for submission, along with a request for possible comments to be provided as soon as possible.

6. The content of a stock exchange announcement should be coordinated in production licences where information from an exploration or appraisal well may constitute inside information for multiple licensees. The same applies to the timing of the announcement's submission. However, it must be emphasised that each licensee is individually responsible for the obligations which follow from MAR and the VPHL and that the above-mentioned coordination must therefore occur within the framework of the individual licensee's obligations pursuant to MAR and the VPHL.

7. Information provided in the stock exchange announcement must be assessed in relation to the duty of confidentiality in the joint operating agreement, the duty to disclose information pursuant to MAR and the VPHL, and the duty not to mislead the market. The content of the stock exchange announcement should be limited and provide only factual information and can refer where appropriate to the fact that a final report from the Norwegian Petroleum Directorate will be available following completion of the drilling operation. An example of such an announcement is provided in appendix 2.

8. Licensees which regularly receive or communicate inside information should make their employees aware of the regulations through courses, guidelines or other measures.

9. As a precautionary principle, the issuer may consider introducing precautionary rules for employees when trading shares in their own company during drilling operations where a potential for generating inside information is believed to exist. In the event, such rules should be adopted in good time before drilling penetrates the first expected reservoir and should remain in place until after the drilling result has been disclosed.

APPENDIX 1

Appendix 1 The legal report on inside information is published in a separate document.

APPENDIX 2

Sample reports

1. Hydrocarbons proven

Update on appraisal well XX

Oil Company AS has as a partner in PL YY (20 per cent) proven oil through coring in appraisal well XX (fault margin). Drilling operations in the reservoir section are in their initial phase. Final results are therefore not yet available.

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2. Dry well

Dry well in the Barents Sea

Oil Company AS has as partner completed the operation in exploration well XX on the <name:> prospect in the Barents Sea.

The primary target was reservoirs in the Palaeocene and Upper Cretaceous. Traces of gas were found in the Palaeocene. The Cretaceous showed no sign of hydrocarbons. The well is characterised as dry and will now be plugged and abandoned.

The well was drilled about 230 kilometres north-east of Hammerfest and some 80 kilometres south-west of the Skrugard discovery in the western part of the Barents Sea. The well was drilled to a total depth of 2 542 metres. The water depth is 325 metres.

This is the first exploration well in licence YY. The licence was awarded in the 20th licensing round in 2009.

Oil Company AS is a partner in the licence with an ownership interest of 10 per cent.
