Appendix 1 to Norwegian Oil and gas guidelines for handling inside information

Legal report – inside information

Translated version

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INTRODUCTION

This document contains a thorough legal account of the Securities Trading Act's rules regarding the handling of inside information and a few general recommendations for the companies, as well as more practical guidelines geared toward personnel without legal expertise, particularly for the handling of information in connection with exploration and appraisal wells.

The work group has comprised representatives from the following companies:

- Det Norske Oljeselskap ASA
- Eni Norge AS
- RWE Dea Norge AS
- A/S Norske Shell
- Total E&P Norge AS
- GDF Suez E&P Norge AS
- Dong E&P Norge AS
- Centrica Resources (Norge) AS
- Statoil ASA
- Lundin Norway AS

The report was submitted for discussion in the Legal Committee in a meeting on 13 June 2013. On this basis, the Legal Committee decided to appoint a work group to prepare guidelines for how the oil companies should handle sensitive information, particularly in connection with exploration and appraisal wells.

1. BACKGROUND

At the request of Det Norske Oljeselskap ASA, the Legal Committee in Norwegian Oil and Gas was summoned to a meeting on 20 August 2012. The background was that Det norske oljeselskap ASA had received a fine from the Norwegian Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim) for violation of the Act on securities trading (2007-06-29-75) ("the Securities Trading Act" or "VPHL"), Section 17 -3, second subsection, No. 1, cf. Section 3-5, first and second subsection of the Act, reading as follows:

"after which issuers of financial instruments shall continuously ensure that a list is kept of persons who are given access to inside information, including the date and time the persons were given access to the inside information."
The Legal Committee discussed fundamental issues relating to inside information and principles for publishing sensitive well information.
On this basis, the Committee decided during the meeting to appoint a work group with the following mandate:

"Reference is made to the meeting in the Legal Committee where a decision was made to appoint a work group to assess appropriate principles for handling sensitive information and compliance with the rules for inside information, e.g. in connection with exploration wells.

In accordance with its mandate, the work group for this report has taken a basis in certain overarching industry-specific factors that form a background for the issues regarding handling of inside information (cf. Item 2 below). This is followed by a brief account of the course of an exploration drilling operation and the information that could typically emerge in this connection (Item 3). The work group will then discuss relevant provisions in VPHL (Item 4), and will finally address the relationship between the licensees in a production licence (Item 5).

2. RELEVANT ISSUES – BACKGROUND AND CHALLENGES

Recently, there has been considerable attention regarding listed oil companies' handling of inside information in connection with exploration drilling.[1]

In somewhat simplified terms, one could say that inside information is privileged information that is significant for the value of a company's shares[2].

VPHL contains a number of provisions relating to the handling of inside information. The listed company in question (the issuing company) shall, as a main rule, *immediately disclose* inside information that arises (notification requirement), thus eliminating the potential for *improper use*. If certain conditions are fulfilled, however, the issuing company can choose to *delay disclosure*. This e.g. requires that the issuing company facilitates and ensures that inside information can be kept confidential in the period up to disclosure. Key obligations for the issuing company during this period are keeping an *inside list*, as well as that all persons *given access* to the inside information are made aware of the restrictions and obligations that are entailed by having access to inside information. The most crucial factor is the obligation to not misuse the inside information, as well as to keep it confidential and not disclose it to unauthorised parties. Chapter 4 below will provide a more detailed account of the rules in VPHL.

A typical example of inside information for an oil company could be information regarding whether an exploration drilling operation resulted in discovery of oil and gas, or whether the well is dry. Whether hydrocarbons were encountered will be significant for the share value in a company that is a licensee in the production licence. For smaller companies, the result of an exploration drilling operation could be price sensitive information, regardless of whether a discovery is made or the well is dry. For other companies, only proven oil and gas discoveries could be significant for the share price. For larger companies, usually only information on the size of a discovery (volume), potentially together with other information, is significant for the share price. For the largest companies, usually only information on particularly large discoveries has the potential to impact the share price. However, it is emphasised that there will always be a concrete assessment of whether the information in question constitutes, or has the potential to constitute, inside information for the relevant company.

Subsequent interpretation and analysis of a discovery, such as calculation of the estimated volume of the discovery, possibility for development of the field and production properties, have the potential to constitute price sensitive information,

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[1] Inside information could also occur in other situations, such as in connection with transactions, preparation of financial information or contract awards. However, the work group believes that the special factors associated with exploration drilling make this particularly challenging, at the same time as handling of inside information in other situations is more ingrained and deviates from other industries to a lesser extent. This report will therefore focus on exploration drilling.

[2] For the sake of simplicity, we will only discuss shares in this report. However, the rules apply to several types of negotiable securities, cf. VPHL.

also for companies where information on whether a discovery was made impacts the share price. Interpretation and analysis work is carried out by the operator, and often by other licensees. The work is carried out at the licensee's offices and the information will therefore be limited to those directly involved in the work. It is therefore considerably easier to ensure confidentiality with regard to the work. Since this is interpretation work, it follows that different licensees could have different assessments of the potential of an oil/gas discovery.

Some development trends have resulted in increased awareness surrounding these issues in recent years:

i. Up to 2009, the Norwegian Petroleum Directorate (NPD) was responsible for publishing reports on discoveries on the Norwegian shelf, regardless of whether the information constituted inside information for one or more involved companies.
   After 2009, the practice changed so that it is now up to each company to report discoveries that constitute inside information to the market.

ii. Several smaller players listed on the Oslo Stock Exchange are active in exploration activity on the Norwegian shelf. Information on a single exploration well can more often be price sensitive for such small companies than for larger companies.

iii. The authorities have stated that, on a general basis, they have increased their focus on handling of inside information.

iv. Several important discoveries have been made on the Norwegian shelf in the last two-three years, and this alone has contributed to highlighting the issues.

Furthermore, there are certain industry-specific factors that could potentially pose special challenges as regards assessment of what is inside information and how such information should be handled:

i. The great majority of production licences on the Norwegian shelf are owned by joint ventures consisting of multiple licensees. The activity is carried out by the operator on behalf of all licensees, with a basis in the Agreement concerning petroleum activities with appendices (hereinafter called the joint operating agreement)[3]. This model and the content of the joint operating agreement pose some special challenges:

    a. The duty to comply with the rules in VPHL rests with each licensee, and not the joint venture as such. This means that the joint venture cannot determine with binding effect whether something, for example, does or does not constitute inside information in relation

[3] The licensees in the respective production licences are required to enter into Agreements concerning petroleum activities with Appendix A Joint Operating Agreement and Appendix B Accounting Agreement. The Agreement concerning petroleum activities, with appendices, is a standardised agreement.

to each licensee. However, in complying with the rules, each licensee should consider, to the extent possible, the fact that the company is part of a joint venture and that the information is generated from the joint venture's activities.

b. The joint operating agreement contains a duty of confidentiality (Art. 27.2). In practice, this duty e.g. includes privileged information on the results from an exploration drilling operation. The provision is interpreted such that the legal obligation to provide information has precedence over the duty of confidentiality to the degree necessary to fulfil the legal obligation. Licensees in a production licence thus cannot, without consent from the other licensees, disclose more information on the results from an exploration drilling operation than what is necessary according to VPHL without being in violation of the joint operating agreement.

c. Certain companies which are not subject to the notification requirement (are either not listed on a stock exchange or are so large that the information does not qualify as inside information) may, through being a licensee in a production licence, de facto have inside information on one or more companies in the production licence. The companies that are not subject to the notification requirement must relate to VPHL's provisions relating to *due care in handling inside information*.

d. The joint operating agreement contains voting rules that entail that the utilisation of a potentially valuable resource is contingent upon a majority in the production licence voting for development. It is thus not sufficient for one licensee in a production licence to believe that a discovery is commercial, the licensee depends on the other licensees having the same perception and that the majority agrees on how the resources can and will be produced.

ii. Offshore exploration drilling operations are extensive and involve a large number of companies and people; the licensees in the production licence, sub-suppliers, authorities and employees in these companies and organisations. Both operational and safety-related considerations associated with the drilling operation require a considerable degree of openness when it comes to preparations and implementation of the drilling operation. There will therefore regularly be a large number of people that have knowledge or information from an exploration drilling operation, for example about the preliminary or final results from an exploration well (or actual factors that could indicate the result). Independent of confidentiality obligations, it will be very challenging in practice to keep significant information confidential for short or longer periods of time. These conditions will e.g. be significant when assessing the option of using *delayed disclosure* (cf. Item 4.9).

iii. In addition to there being many people involved in an offshore exploration drilling operation, there is also the fact that, unlike many other inside situations, information from the drilling operation is normally first available to the personnel on board the rig and is then communicated to the employees in the companies who follow up the drilling operation from land. The company's management is often the final step in the information chain. In such a process it will be challenging for the company to centrally control the flow of information. In many other cases, inside information will typically be generated from the company's management, which will then have a greater possibility of influencing and controlling the flow of information.

iv. The flow of information in connection with an exploration drilling operation can be roughly split into two phases. The first phase will normally be up to such point that there potentially is information on the presence of hydrocarbons. Information from this stage of a drilling operation is generated from the actual drilling and will be available to all licensees and those working on the drilling rig in question, with the implications this may have for handling of the information. In the second phase, the licensees will interpret and analyse a discovery, including calculating a volume estimate, possibility for developing the field, production properties, etc. The conclusions from such interpretation and analysis could also have the potential to constitute inside information, even for companies where information from "Phase 1" (whether a discovery was made) was not considered inside information. Such interpretation and analysis work is carried out by the operator, and often also by one or more of the other licensees. This means that the companies will have a greater possibility to control the flow of information and it will be considerably easier to ensure confidentiality during this phase. Furthermore, it follows that different licensees could have different interpretations and conclusions as regards the potential of an oil/gas discovery, which could lead to challenges when eventually communicating the information to the market.

v. Exploration drilling operations last for a relatively long time and have uncertain outcomes. There will be a continuous flow of information throughout a drilling operation which could be interpreted positively or negatively, while there could also be a few isolated incidents that provide clearer positive or negative signals on what the result may be. The actual assessment of when inside information potentially arises in such an operation is complicated and uncertain, and depends on a number of factors. Different licensees could have a different perception and interpretation of the information in question, and potential internal disagreement in a production licence on how to interpret information can contribute to further complicating assessments related to VPHL.

3. EXPLORATION DRILLING AND INFORMATION FROM EXPLORATION DRILLING

The objective of exploration drilling is acquisition of information which aims to provide licensees with information on the presence of hydrocarbons in the subsurface. Such information is a necessary, but not sufficient, part of a decision basis for assessing whether the petroleum deposit is commercial or not – i.e. whether it has a commercial value for the involved companies.
Other important elements that are part of the decision basis include volume, reservoir quality, the composition of hydrocarbons (for example oil or gas), commercial and technical preconditions (price conditions, development solution, transportation/infrastructure), the company's strategy, technical and financial capacity, etc.

The assessment of the value of a petroleum deposit is thus a very complicated assessment. In addition, as mentioned before, there must be a decision by majority vote in a production licence in order for development to take place, so it is not just one licensees' isolated assessment of the relevant elements that is decisive.

For the assessment of whether information from an exploration drilling operation can constitute inside information, however, it is not necessary to have final conclusions and decisions in a production licence. As will be explained in Item 4 below, it is enough that the information is sufficiently specific in order to make a conclusion regarding the possible price-impacting effect. There is therefore no requirement that the information be final, unconditional or complete in order for it, following a concrete assessment, to be defined as inside information.

Preliminary information, such as after having encountered hydrocarbons, potentially seen in context with other information such as results from core samples, etc. can therefore, following concrete assessment, constitute inside information, even if the exploration drilling operation is not completed, and/or analysis work remains to determine the content and volume of the deposit, and/or there is no decision in the production licence regarding exploitation of the resource.

From starting exploration drilling until completing drilling and analysis of the information acquired, all licensees in a production licence will continuously receive information[4] that could indicate that the likelihood of making a commercial discovery is changed. Given that exploration drilling by definition is an activity with an uncertain outcome – the probability of making a discovery is typically between 20 and 30% - it follows that listed companies that participate in exploration drilling where the results can potentially constitute inside information must continuously evaluate the flow of information coming from the drilling operation.

[4] All registered data are made available immediately not just to the operator, but to all participants via the "License2share" information system. How many and who in each company is given access to this information will depend on the size of the company, the well's significance for the company, the risk associated with implementation of the drilling operation, etc.

In order for inside information to occur during a drilling operation, information must emerge which increases the probability of a positive outcome (commercial discovery) so that, for the company in question, you reach the threshold for what constitutes inside information. Confirmation of a “dry well” could also, depending on the circumstances, be inside information for a company, but one will not normally face the same challenges with regard to the flow of information along the way in the drilling operation. It thus follows that it is also important for the company to interpret any new information in light of information that is already public or expected in the market.

In principle, any type of information could be relevant in an assessment. However, there will normally be typical isolated incidents/conditions at various stages of an exploration drilling operation that have the potential to provide clearer (and more significant) indications of a possible discovery, and which could therefore be particularly relevant in an assessment of the duty to provide information. Such conditions include:

1. Before reaching the reservoir: Heavy gas components in the drilling fluid.
2. “Drill break” (sudden increase in speed) at the top of the reservoir.
3. Indication of discovery: Gamma log goes down, resistivity log goes up.
4. Drilling stops, work on determining whether or not there is a discovery is started.
5. Drilling fluid from the bottom of the well is pumped to the surface and analysed for gas content, presence of reservoir rocks and observation of oil shows.
6. Further core sampling and logging. If hydrocarbons are proven, the number of core samples taken will vary as well as whether or not a decision is made to test the discovery.
7. Final confirmation of discovery from pressure readings and logs.

Information on results or indications of results from drilling of exploration wells (including above-mentioned incidents/factors) will partially be available through observations by the personnel on board the rig, and partially be obtained through analysis and interpretation work. In some cases, others will also have the possibility to deduce that hydrocarbons have been proven, for example because test equipment is ordered and the drilling operation is taking longer than planned. A company’s possibility to assert delayed disclosure in a situation where inside information has occurred, could, as mentioned, be impacted by the group of people that receive information and whether the company is able to control this.

Below is a more detailed explanation of the most relevant provisions in VPHL regarding handling of inside information.

4. SECURITIES TRADING ACT'S RULES FOR HANDLING INSIDE INFORMATION

4.1 Overview

The purpose of the Securities Trading Act is to facilitate *"secure, orderly and efficient"* trading in financial instruments, cf. the purpose provision in Section 1-1.

Equal access to information that could impact share prices[5] for all players in the market is considered a vital element to promote this purpose. The Securities Trading Act therefore contains rules that will ensure equal information to the players in the market and that attempt to prevent misuse of information that is not publicly available or generally known.

Chapter 3 of the Securities Trading Act contains further provisions on what should be considered price-sensitive information (inside information), as well as what obligations arise for issuers and companies/individuals for their handling of inside information.

In short, inside information is *precise information* that is *privileged* and *could impact the share price significantly*. For individuals, knowledge of inside information e.g. entails a duty of confidentiality, requirement for due care in handling inside information, prohibition on trading and advising. For the issuing company, knowledge of inside information also entails a requirement to keep detailed lists of people with knowledge of inside information, *inside lists*.

As mentioned above, knowledge of inside information will trigger independent duties for the party(ies) who have such knowledge. It is the work group's perception that a licensee (an issuing company) who knows that inside information may arise during exploration drilling, should inform the other licensees about this prior to starting the drilling operation. This is discussed further under Item 5.

Chapter 5 of VPHL furthermore regulates the issuing company's duty to *disclose inside information*, either *immediately* or following *delayed disclosure*. Delayed disclosure is discussed further under Item 4.8.

The following paragraphs will provide an account of the mentioned parts of Chapters 3 and 5 in VPHL. Based on the work group's mandate and the emphasis on *information handling* in the cases that led to the establishment of the work group, the focus will lie mainly with (i) the definition of inside information, and (ii) information handling, including duty of confidentiality and list-keeping. Misuse of inside information (trading and advising) will generally not be discussed.

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[5] Below paragraphs will, for simplicity's sake, refer to share prices, but it is emphasised that also other financial instruments, such as bonds, are subject to the same regulation.

The explanation is not intended to be exhaustive. Special rules and exemptions that are assumed to be less significant for the work group's mandate will also not be discussed.[6]

The basis for this review is the VPHL. It should be mentioned that the relevant parts of VPHL are based on EU law, and furthermore that, in relation to individual provisions, including the definition of *inside information*, there have been serious debates regarding whether VPHL complies with such law. However, the Supreme Court has now determined in a judgement on 23 April 2012[7] that the definition of inside information complies with the EU law in the area, and the relationship with the EU law will not be discussed in the following paragraphs.

4.2 scope of the rules

The discussed provisions in Chapter 3 of VPHL relate to shares and other financial instruments which are listed, or for which listing has been requested, on a Norwegian regulated market, cf. Section 3-1. For shares this will relate to the Oslo Stock Exchange and Oslo Axess. It is not relevant whether a transaction actually takes place in the Norwegian market. Furthermore, the provisions apply regardless of the issuer's nationality or place of business.

Certain provisions, including the duty of confidentiality and requirement for due care in handling inside information (Section 3-4) also apply to trading carried out in Norway in connection with companies that are listed, or for which listing has been requested on a regulated market in another EEA state.

[6] A more in-depth review of Chapter 3 of VPHL is e.g. provided in the Financial Supervisory Authority of Norway's circular letter 28/2011.

[7] Rt-2012-629

4.3 Definition of inside information

The Securities Trading Act's definition of inside information follows from Section 3-2:

> "(1) Inside information means any information of a precise nature relating to financial
> instruments, the issuers thereof or other circumstances which has not been made public and is
> not commonly known in the market and which is likely to have a significant effect on the
> price of those financial instruments or of related financial instruments.
> (2) Information of a precise nature means information which indicates circumstances that
> exist or may reasonably be expected to come into existence or an event that has occurred or
> may reasonably be expected to occur and which is specific enough to enable a conclusion to
> be drawn as to the possible effect of those circumstances or that event on the price of the
> financial instruments or related financial instruments.
> (3) Information likely to have a significant effect on the price of financial instruments or of
> related financial instruments means information of the kind which a reasonable investor
> would be likely to use as part of the basis of his investment decisions.
> …"

Inside information can thus be information about (i) the issuer, (ii) the financial instruments (shares), or (iii) other conditions, so long as such information fulfils the other requirements for being *of a precise nature* and *likely to have a significant effect on the price*. Based on this, one can assume that nearly all conditions/all information could potentially constitute inside information assuming the other terms are fulfilled. Examples of conditions/information that could constitute inside information:

- Information on the results of an exploration drilling operation
- Contract awards
- Information on new framework conditions for the company's activities
- Financial information
- Information on mergers, acquisitions, sales or other transactions
- Knowledge about share transactions

Furthermore, it is a requirement that the condition/the information that could constitute inside information must be sufficiently *precise*. The Securities Trading Act provides its own definition of information of a precise nature, referenced in (2) above.

It will usually be most relevant to assess what constitutes precise information when talking about information that is preliminary or incomplete. However, there is no requirement for information to be complete, accurate or unconditional, so long as it is sufficiently specific to draw a conclusion regarding the possible price impact. It is normal to express it such that precise information is only limited in relation to "rumours and speculations".

Finally, there is a requirement that the precise information must be capable of affecting the share price *significantly*. It follows from (3) above that this requirement is fulfilled if a reasonable investor is likely to use the information as part of the basis for its investment decision, the so-called reasonable investor test. In the judgment of 23 April 2012, the Supreme Court ruled that, assuming this test is fulfilled, a special requirement for a quantifiable price effect cannot be interpreted into the Act. This means that if the reasonable investor test is fulfilled, one does not have to pass through yet another minimum threshold for price effect to satisfy the requirement for *significant* price effect.

Briefly summarised, one can assume that (i) nearly all information can be inside information, (ii) the threshold for what is "precise information" is very low, and (iiI) there is no requirement for a specific price effect potential, provided that a reasonable investor would be likely to use the information as part of the basis for its investment decision. The terms are independent. This means that, for example, one cannot "compensate" for imprecise information with a significant price effect potential[8].

The assessment of whether and when inside information arises for an issuing company is often complicated and based on concrete assessments. Beyond the obvious examples, it will be difficult to generalise. One and the same factor, such as indications of the presence of hydrocarbons or a discovery from drilling an exploration well, could be inside information for a licensee in the production licence, but not inside information for another licensee. Each company/licensee will be independently responsible for their obligations in relation to VPHL, and must make their own assessments. Key assessment criteria include the significance of the information for the issuing company and the market's expectations.

[8] The so-called "probability vs. magnitude" test has no application.

4.4 Duty of confidentiality and due care in handling inside information

As regards the duty of confidentiality and information handling, the following emerges from Section 3-4 of VPHL:

> ”(1) Persons possessing inside information must not disclose such information to unauthorised
> persons.
>
> (2) Persons possessing inside information shall handle such information with due care so that
> the inside information does not come into the possession of unauthorised persons or is misused. Issuers of financial instruments and other legal entities who are regularly in possession of inside information shall have routines for secure handling of inside
> information.”

The provision stipulates that everyone has a duty of confidentiality regarding inside information. This means that if something is inside information for one of the licensees, all licensees have a duty of confidentiality for that which constitutes inside information for the issuing company. The duty of confidentiality also applies should one receive such information randomly.

The duty of confidentiality applies vis-à-vis *unauthorised persons*. Vphl does not define “unauthorised persons”, but the legislative history of the Act states that the duty of confidentiality should not pose a hindrance to exchange of information internally in an enterprise and externally, assuming there is a proven need for this for case processing and normal operation. However, inside information should not be communicated to a greater extent than what the recipient has an “objective and natural need for”. Who has an objective and proven need for the relevant information must be assessed concretely based on the issuing company’s needs.

In addition to the duty of confidentiality, it is also a requirement that everyone exercise due care in handling inside information. For an issuing company, this typically entails maintaining an overview of which internal and external parties have inside information, as well as prudent storage of inside information. The provision furthermore requires issuers to have routines for safe processing of inside information. Routines could include storage and filing of inside information, access control to databases, access control, dispatch or communication of such information, etc.

4.5 Requirement for keeping inside lists

Section 3-5 of VPHL requires the issuing company to ensure lists are drawn up over people with access to inside information[9]. The provision will primarily be used for inside information that is not disclosed immediately, but is subject to delayed disclosure, see Item 4.9 below. However, there is also a requirement to keep lists during the necessary period from when inside information arises up to disclosure. This means the period the company needs to prepare the stock exchange notification. This period should be as short as possible, cf. Item 4.8.

It is important to note that the obligation to keep lists only rests with the issuing company and for information that directly relates to the company. The provision in Section 3-4 of VPHL relating to due care in handling inside information, however, can require that the recipient have routines in place for safe processing of such information that relates to other issuers.

The obligation to keep lists applies to people internally with the issuer (own employees and representatives), as well as externally (consultants, employees in other companies that are given access, etc.). If a person who is given access to inside information is a legal entity, the list shall include those of the entity's employees, elected officers, and assistants etc., who are given access to the information.

As regards the actual list-keeping, the most vital aspect is keeping lists over those who are "given access". It is thus not a requirement that the people have actually seen or received the inside information, as long as they are given access. As mentioned in Items 2 and 3 above, the licensees, in their capacity as partners and with a basis in the joint operating agreement, will receive access to information from an exploration well continuously. Even in the event such information were to represent inside information in relation to the operator, who is the licensee that organises the activities and facilitates distribution of the information, the operator does not *give access* to inside information to the other licensees. They have independent access to the information through their participation in the production licence. The information belongs to the joint venture as such (and thus each of the licensees), and is not information which the operator chooses to give to the other licensees.[10]

[9] The issuer is responsible for keeping an inside list, but there is nothing to prevent another party, for example an attorney or a securities company, being responsible for the practical list-keeping. However, this does not exempt the issuer from the responsibility to keep lists. The lists must be kept for at least 5 years and must be sent to the Financial Supervisory Authority of Norway upon request. The Act does not specify a particular format for the lists, which, in practice, means that it could be "physical" (paper-based" or electronic.

[10] The corresponding will apply if the information constitutes inside information for a participant (not operator) in the production licence – the other participants will receive the same information but are not "given access" to this from another participant.

Inside lists must be updated continuously and contain information on the identity of persons with access to the inside information, the date and time[11] the persons were given access to such information, the
functions of the persons, the reasons why the persons are on the list and the date of entries and changes to the list. Furthermore, the provision stipulates that the list should be kept up-to-date at all times. Changes must be noted in the list so that it identifies everyone who has had inside information at some point.

Issuers must furthermore familiarise the people given access to inside information with the duties and responsibilities this entails, including the criminal liability. The extent to which the issuer needs to provide information depends on the recipient's degree of professionalism and knowledge of the regulations. Normally, it will be sufficient to send an e-mail to the people in question and inform them that they are on the inside list, with the responsibilities and obligations this entails.

4.6 Misuse of inside information, Section 3-3 of the VPHL

Even though it is not the primary issue for the work group's mandate, it is mentioned for the sake of completeness that, for the party possessing *inside information*, it is illegal to misuse the inside information through purchase, sale, subscription or exchange of financial instruments. This rule also relates to inciting others to carry out such transactions, and applies to direct and indirect trading for own or third party accounts.

The prohibition relates to the party with inside information. In an enterprise there could therefore be individuals with inside information that therefore cannot trade shares, while others in the enterprise without inside information, will be able to trade shares. It is therefore important that the enterprises have good routines for handling inside information, cf. Section 3-4 of VPHL relating to due care in handling information. Furthermore, Section 3-7 of VPHL prohibits providing advice on trading in shares for the party with inside information.

4.7 Issuer's information requirement, Chapter 5 of VPHL

Section 5-2 of VPHL stipulates that the issuer must "without delay and on his own initiative" disclose inside information which directly concerns the company. Section 5-3 of VPHL discusses so-called delayed disclosure. This is addressed in more detail in Item 4.9 below.

Information that "directly concerns the company" will normally be information that, to a greater or lesser extent, is generated by the company itself. However, there could also be other factors "directly concerning the company", for example information on competitors with the potential to directly concern the issuer. In any case, there

[11] It is noted that the requirement to note the time is unique to Norway and is not required in accordance with EU law.

should be a limit on factors with implications for an entire industry, for example oil price and exchange rates.

In general, the requirement for disclosure without delay and on own initiative entails that no delays are permitted from when inside information occurs until it is published. This naturally assumes the issuing company has sufficiently sound routines and procedures for handling such information, and in practice, the Oslo Stock Exchange expects companies to be "one step ahead" and to prepare a stock exchange notification as early as possible when there is an expectation that inside information will occur. This could typically be the case when drilling an exploration well, when it can be calculated with great certainty when, for example, one will drill into the assumed reservoir.

Should there unforeseen circumstances arise, the stock exchange will require the issuer to send a "minimum notification" immediately and then potentially add further details when one has had time to assess the situation.

4.8 Delayed disclosure, Section 5-3 of VPHL

The following emerges regarding delayed disclosure from Section 5-3, first and second subsections of VPHL:

"(1) An issuer may delay the public disclosure of information as mentioned in Section 5-2 subsection (1) such as not to prejudice his legitimate interests, provided that such omission does not mislead the public and provided that the issuer ensures the confidentiality of that information, cf. section 3-4.
(2) Legitimate interests as mentioned in subsection (1) may typically relate to:

1. Negotiations in course, or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, public disclosure of information may be delayed for a limited period where such a public disclosure would seriously jeopardise the interest of existing and potential shareholders by undermining the conclusion of specific negotiations designed to ensure the long-term financial recovery of the issuer.

2. Decisions taken or contracts made which need the approval of another body of the issuer in order to become effective due to the organisation of the issuer, provided that public disclosure of the pending decision or contract together with the simultaneous announcement that final approval is still pending would jeopardise the correct assessment of the information by the public. "

Section 5-3 of VPHL thus gives the issuer the possibility to delay disclosure of inside information. The provision relating to delayed disclosure constitutes an exception from the main rule to immediately disclose inside information. It assumes that the following three cumulative conditions are fulfilled:

1. Disclosure would damage the company's legitimate interests
2. The public would not be misled through the delayed disclosure
3. It must be possible to treat the information confidentially

It is up to each issuer to assess whether the conditions for delayed disclosure are fulfilled, and delayed disclosure will only be permitted if all three conditions are fulfilled. If an issuer decides to exercise delayed disclosure, the issuer is required to keep inside lists of the people given access to the information. The issuer is also required to inform the stock exchange's market monitoring department that there is inside information and that disclosure is delayed.

As regards the condition relating to disclosure damaging the company's legitimate interests, this is an assessment which the company must carry out itself, and which is most logical that the company does itself. The work group assumes that legitimate interests for a licensee in a drilling operation could e.g. be analysis and verification of preliminary and uncertain information, as well as the consideration for information handling and distribution internally in a production licence.

The second condition is that the public must not be misled as a result of the delay. This condition is not considered particularly relevant for the issues addressed in this report. The work group assumes that the condition e.g. could entail a restriction in the access to delay disclosure of only parts of the exploration results if such partial disclosure will entail that the notification going to the public, overall, is misleading.

The final condition stipulates that the inside information must be kept confidential in order to delay disclosure. This term is related to Section 2-4 of VPHL, which stipulates a duty of confidentiality for anyone who has inside information. The term entails that delayed disclosure will not be permitted when there is a concrete risk of a leak. Relevant factors when assessing whether there is a concrete risk of the inside information leaking is the number of people that know about the factor and how long the delayed disclosure is assumed to last.

As regards results from drilling exploration wells, the question regarding whether delayed disclosure of inside information can be used will depend on the stage of the drilling operation/mapping of a discovery and the type of information. Information about or indications that hydrocarbons have been encountered in an assumed reservoir will often be available to a large number of people, as the personnel on board the drilling rig will gain access to it, and such information could potentially be deduced by, for example sub-suppliers delivering coring equipment. The ability to keep this type of information confidential is therefore an important assessment topic for the option of delayed disclosure and the risk of leaks in such cases could be significant.

When conducting the in-depth assessment of the value of an oil or gas discovery for a company, the size of the discovery will be crucial. After hydrocarbons have been proven, further work and analysis will be carried out with the aim of determining the size of the discovery, by assessing parameters such as depth conversion, sand percentage, quality and oil saturation, and these parameters are compared in the process of preparing a volume estimate for the discovery. The volume estimate is the result of interpretation of available data. A conclusion must be made in the assessment and it must be processed by the company's relevant bodies. Each licensee will have greater control over the flow of information during this phase, and the risk of leaks is smaller. Assuming the condition that the information is treated confidentially, the conditions for delayed disclosure will normally be fulfilled in these situations. Each licensee will also normally inform the other licensees about and, if necessary, verify the conclusion. As mentioned earlier, the different licensees on a field could also arrive at different conclusions concerning the size of a discovery.

In the assessment of whether VPHL's terms for delayed disclosure are fulfilled, the issuer's interest in keeping the information confidential must be weighed against the market's need for information. Withholding information could lead to an incorrect value of the company's shares, and investors could thus risk acting on the wrong basis.

As discussed, a licensee that is initially required to provide information must also relate to the agreed (and required by law) duty of confidentiality in the joint operating agreement. The simple basis that appears to be accepted is that the duty to

provide information has precedence over the duty of confidentiality. Furthermore, it appears to be accepted that one should in such cases only provide information on what is necessary in relation to the duty to provide information. If the licensee discloses more information than what is necessary based on the duty to provide information, this will be a breach of the duty of confidentiality in the joint operating agreement.

It can be questioned whether the other licensees in a production licence, on the basis of the joint operating agreement, should be able to require a licensee otherwise subject to the duty to provide information to assess the option of using delayed disclosure, in order to act in accordance with the joint operating agreement to the extent possible. This can be founded both concretely in the duty of confidentiality and in general professional loyalty duties in contracts – the other licensees should be able to demand that a licensee subject to the information duty, to a reasonable extent, implements the measures and uses the legal options available to fulfil agreed obligations.

The work group assumes that all involved companies have a legitimate interest – e.g. expressed through the duty of confidentiality in the joint operating agreement – in how the information on activity they are involved in is communicated. This applies in relation to the securities market and investors (independent of obligations in the Securities Trading Act), employees, authorities, lenders and other stakeholders. It is the work group's assessment that a licensee otherwise subject to a duty to provide information should therefore always assess the possibility of delayed disclosure.

A potential decision to not use delayed disclosure in such a case must furthermore be founded directly in Section 5-3 of VPHL and that the terms for delayed disclosure are not or cannot be fulfilled in the concrete case. The work group assumes that all licensees, through their internal routines and resource allocation, have normal preparedness and resources available to handle and administer a situation involving delayed disclosure, so that it is not internal company factors which lie behind the decision not to exercise this option. The work group further assumes that other licensees not subject to the duty to provide information in such a situation should specifically assess the necessity for confidentiality and the consequence of potential disclosure.

5. RELATIONSHIP BETWEEN THE LICENSEES IN A PRODUCTION LICENCE

5.1 Inside information, duty to provide information and the relationship to the duty of confidentiality under the joint operating agreement

It follows from Article 27 of the Joint Operating Agreement "Obligation to inform and confidentiality" that "No Party shall without the consent of the other Parties inform a third party about, or in other ways make public plans, programs, maps, archive data, reports, technical or scientific data or any other information concerning technical, financial or commercial activities pursuant to this Agreement." Information from an exploration well will thus be covered under the duty of confidentiality. At the same time, an issuer must, without delay and on his own initiative, disclose inside information that directly concerns the issuer, in cases where there is no basis for delayed disclosure, cf. above.

As mentioned, it must be assumed that disclosure as a result of duties decreed by law will not represent a violation of the joint operating agreement. However, the joint operating agreement does not contain any provisions that regulate how a licensee that is obligated in relation to law to disclose information should act in relation to the other licensees. The work group provides its recommendation in Item 5.2 below.

5.2 Notification of the potential for inside information and disclosure of inside information

As mentioned in Item 4, independent duties arise for the party which has inside information. In this connection, reference is made to the prohibition against misuse of inside information, the duty of confidentiality and the duty to exercise due care in processing such information.

It is acknowledged that it will be difficult for a licensee to know whether and potentially when information from an exploration well constitutes inside information in relation to one of the other licensees. To simplify compliance with the provisions in VPHL, the work group recommends that the licensee that believes information from an exploration well has the potential to constitute inside information, reports this to the other licensees via License2Share ("L2S") before starting the drilling operation or as soon as possible after the drilling operation has started.

To the extent possible, a draft report with a deadline for potential comments should be submitted to the other licensees, while also informing that inside information could potentially arise. The licensees will then be able to make any clarifications in the partnership before the inside information arises, and the licensee in question will then be ready to immediately publish the information when it comes. Reports prepared before it can be determined whether a well has resulted in a discovery, have to be general in nature and with limited content. If a report is not prepared until after discovery of hydrocarbons has been concluded, or that a well is dry, it should be a top

priority to get the report out as soon as possible, in order for the licensee to satisfy the duty of immediate disclosure of the information. The time available for clarifications with other licensees indicates that the content of the report should also be brief in such cases.

One should aim for a deadline which provides the other licensees with a fair opportunity to assess the content of the report.

When it is not possible to clarify the content of the report in advance and when the operator is not obligated to disclose information, it is recommended that the press contact with the licensee in question – in parallel with communicating a draft via L2S – call the operating company's press contact, so it is made aware of what information will be disclosed. The operating company's press contact will then have the opportunity to be better prepared for any inquiries directed at the operator after disclosing inside information from an exploration drilling operation. If a company does not have a designated press contact, a dialogue should be established between the people responsible for communication with the press and investors.

In situations where a licensee has exercised delayed disclosure, there will be inside lists. Inside lists must be maintained until necessary clarifications have been made internally, as well as externally in the licensee group.

As regards the content of the report, this must be considered specifically. However, only information that is inside information in relation to the licensee in question according to VPHL must be disclosed. The report must thus not have a content which exceeds what is required pursuant to VPHL, and also cannot discuss other licensees, including the operator, cf. the basis in Article 27 of the joint operating agreement on confidentiality. In Appendix 1, the work group has prepared a report template which can be used in cases where ascertainment of hydrocarbons upon entering the reservoir will constitute inside information.

If multiple licensees are obligated to disclose inside information in accordance with VPHL, the licensees in question must, to the extent possible, attempt to coordinate the content of the reports and the time of disclosure.

If changed circumstances result in there being no inside information or there is a basis for delayed disclosure, and this entails that the licensee in question will not disclose information from the joint venture's activities, the work group recommends that the licensee in question immediately notify the other licensees of this via L2S.

6. GENERAL RECOMMENDATIONS

- Licensees that believe information from an exploration well has the potential to constitute inside information should notify the other licensees of this, including whether this only applies if a discovery is made or if it also applies if the well is dry.

  Information provided in the report must be assessed against the duty of confidentiality in the joint operating agreement, the duty to provide information in VPHL and the duty to not mislead the market. The content of the report should be limited and should only provide information on facts. An sample report is provided in Appendix 1 to this report.

Notice should be given as soon as possible, preferably before the drilling operation starts. The other licensees should also be informed as early as possible if the potential for inside information with regard to the result from an exploration well should change.

- A draft discovery report should be sent to the licensees in the group before drilling into the prognosticated reservoir with a deadline for them to submit comments to the report.

  Information should be provided on when the report will be submitted. A notice of publication should also be provided before the report is published.

- In production licences where information from an exploration well can constitute inside information for multiple licensees, the content of the report should be coordinated. The same applies to the time the report is published.

- If a licensee chooses to use the option of delayed disclosure, the licensee in question must keep inside lists. An sample inside list is provided in Appendix 2 to this report.