

Insider Trading Regulation Amended: May Day 2019

September 2018

Russian Law on Countering the Unlawful Use of Insider Information and Market Manipulation was recently amended with the relevant changes coming into effect on 1 May 2019 (the "**Amendments**").¹

The amendments (which were more than 3 years in the making) introduce a number of key changes to the insider trading regime the most important of which are discussed below.

The Amendments – Salient Points:

1. Expansion of the definition of inside information;
2. Bifurcation of the procedure of disclosure of inside information;
3. Clarification of the procedure of transfer of inside information to third parties – conditions precedent;
4. Easing of operational burden of notifications of executed transactions and insider lists;
5. Mandatory adoption of internal control policies or bylaws aimed at the identification and prevention of illegal use of inside information and market manipulation; and
6. Clarification and expansion of powers of the Central Bank when monitoring compliance with insider trading legislation.

1. The list of insider information approved by the Bank of Russia will no longer be exhaustive

One of the key changes to the insider trading regime is that the types of information that could constitute inside information (that is, precise and specific information that has not been publicly disclosed and which may have a material impact on the price of financial instruments, foreign currencies or commodities) for named insiders would no longer be limited to those included in the list of inside information approved by the Central Bank of the Russian Federation (the "**Bank of Russia List**").

Instead, it will be up to those insiders themselves to (i) determine what information they consider to be of an inside nature in light of the nature of their business (which may well extend beyond the Bank of Russia List); and (ii) compose their lists of insiders accordingly.

This change heralds the regulator's move away from the "one size fits all" approach and brings the Russian regulations closer to those adopted in North America and Western Europe.

It is worth noting that issuers and their officers and employees shall not be liable for the non-extension of their inside information lists beyond the Bank of Russia List; it is unclear, however, whether the same dispensation would apply to other types of insiders.

¹ Save for certain provisions that took effect on 3 August 2018.

2. How inside information is disclosed and provided will vary depending on the nature of the information

As of 1 May 2019, the regime of disclosure of inside information will depend on whether it is covered by the Bank of Russia List. In particular:

- the procedure and timeframe for disclosing inside information that is covered by the Bank of Russia List will continue to be determined by Bank of Russia regulations;
- whereby the procedure and timeframe for issuers to disclose insider information that is not covered by the Bank of Russia List shall be determined by the issuer's competent governing body² (i.e., the Bank of Russia procedure and timeframe do not apply to such information).

The Amendments also vest the Russian Federation Government with the authority to determine cases in which inside information does not need to be disclosed or provided at all or on a limited basis.

3. The transfer of inside information is subject to certain conditions precedent

The Amendments re-confirm the existing practice and establish the following requirements for transferring inside information to a contractual counterparty:

- the relevant counterparty must be made aware of: (i) the statutory requirements with respect to the unlawful use of inside information and market manipulation (the "**insider trading regulations**"), the statutory liability for the violation thereof and (ii) of the counterparty's inclusion in the relevant list of insiders; and
- the actual addition of the counterparty to the list of insiders.

4. Supply of lists of insiders to stock exchanges and notification of executed transactions to be made on request

The Amendments provide for a number of measures aimed at easing the operational burden on market participants. In particular, with effect from 1 May 2019, the obligation of certain insiders to report executed transactions involving financial instruments, foreign currency and/or commodities will be replaced with the issuer's or managing company's right to request such information from insiders. Upon receipt of the relevant

request, insiders are required to provide the relevant information according to the procedure and within the timeframe set out in the Central Bank regulations.

Further, the insider's obligation to supply the stock exchanges with, and regularly update, lists of insiders is replaced with the requirement to supply those lists upon demand of the relevant stock exchange.

5. Insiders-bodies corporate are required to adopt a number of internal control policies or bylaws

The Amendments contain a new requirement for insiders that are bodies corporate to develop, and ensure compliance with, internal control policies aimed at the identification and prevention of illegal use of inside information and market manipulation. These policies may cover the procedure of obtaining access to the inside information, its safe-keeping as well as monitoring of compliance with the anti-insider trading and market manipulation legislation and regulations. Alternatively, the procedure of accessing and safe-keeping of the relevant information may be formalised in a separate set of bylaws.

The Amendments further require the competent management body of insiders that are bodies corporate to determine the conditions and requirements for trading in financial instruments³ by the following insiders and their related parties:

- members of the board of directors (supervisory board);
- members of the collegiate management body;
- person executing the functions of the sole management body (including management organisation, manager or interim/acting chief executive officer);
- members of the audit committee; and
- individuals having access to insider information on the basis of employment and/or contracts concluded with those entities.

Failure to comply with the above requirements may result in civil, administrative and, possibly, criminal liability for the relevant insiders.

² While the wording of the above provision only applies to issuers, it would be logical to extend its application to all insiders that can expand their inside information lists.

³ Although the Amendments do not appear to limit the range of the relevant financial instruments, one could logically argue that the financial instruments in question should be limited to those issued, by, or linked to, the relevant body corporate.

6. Clarification and expansion of the powers of the Central Bank to monitor compliance with insider trading regulations

The Amendments clarify and expand the provisions related to the powers of the Central Bank to monitor compliance with insider trading regulations.

In particular the Amendments:

- introduce the procedure of inspection of entities that are not credit institutions or non-bank financial institutions;
- limit the timeframe for conducting inspections to 22 months (including any possible suspension and/or extension periods);
- authorise the regulator to inspect grounds, premises and documentation of inspectees as part of their monitoring activity; and
- outline the rights of the entity being inspected and persons that are reasonably thought to be in possession of the information that may be relevant in the context of the audit.

7. Conclusion

The Amendment herald the most substantial overhaul of the insider trading legislation in Russia, are intended to improve the current regime of insider trading regulation, formalise the established market practices and, overall, achieve closer harmonisation with the respective G20 regulations, including the EU Market Abuse Regulation.

To-do list – by 1 May 2019

1. Review of the existing inside information lists in light of the nature of the entity's business and consideration of the possible expansion of the relevant lists;
2. Determination of the procedure and timeframe for disclosure of inside information not covered by the Bank of Russia List; and
3. Adoption of internal control policies and/or bylaws aimed at the identification and prevention of illegal use of inside information and market manipulation.

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