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Upcoming Ad-hoc Disclosure Rules:

What You Need to
Know About
Proposed Changes in
Protracted Processes

CAPITAL MARKETS SERIES

The new regulation under the EU Listing Act's Reform excludes intermediate steps in a protracted process—such as M&A transactions, takeovers or mergers—from the ad-hoc disclosure obligation. Instead, issuers will be required to disclose only information related to the final event, promptly after the event has occurred.

01. New Art 17 of MAR at a glance



Simplified Disclosure for Protracted Processes

There may be inside information at a very early stage of a protracted process, however the obligation to disclose that inside information will not apply until finalisation of that process.

Examples: No ad-hoc announcements of mere intentions, ongoing negotiations or, depending on the circumstances, the progress of negotiations, such as a meeting between company representatives.



Focus on Final Event

In the future, only the final event or final circumstance of a protracted process must be disclosed as soon as possible after the occurrence of such event or circumstance, without prejudice to the issuer's assessment of whether or not a protracted process involves inside information. Consequently, whenever the information relating to the final event or circumstance listed

in the Delegated Act (see below) does not qualify as inside information pursuant to Article 7 of MAR, the relevant final event or circumstance is not subject to the disclosure obligations pursuant to Article 17(1) of MAR. This is intended to avoid confusion among investors by publishing premature information at a very early stage.



No More Delay of Intermediate Steps

Since intermediate steps are no longer subject to disclosure, the need to delay their disclosure is also eliminated. In other words, Article 17(4) of MAR provides for a statutory delay of that future publication.



Confidentiality Remains Key

While the obligation to disclose intermediate steps is gone, issuers still need to ensure the confidentiality of inside information related to those steps. If an intermediate step relates to inside information the issuer's duty to ensure confidentiality will continue to apply in the future.

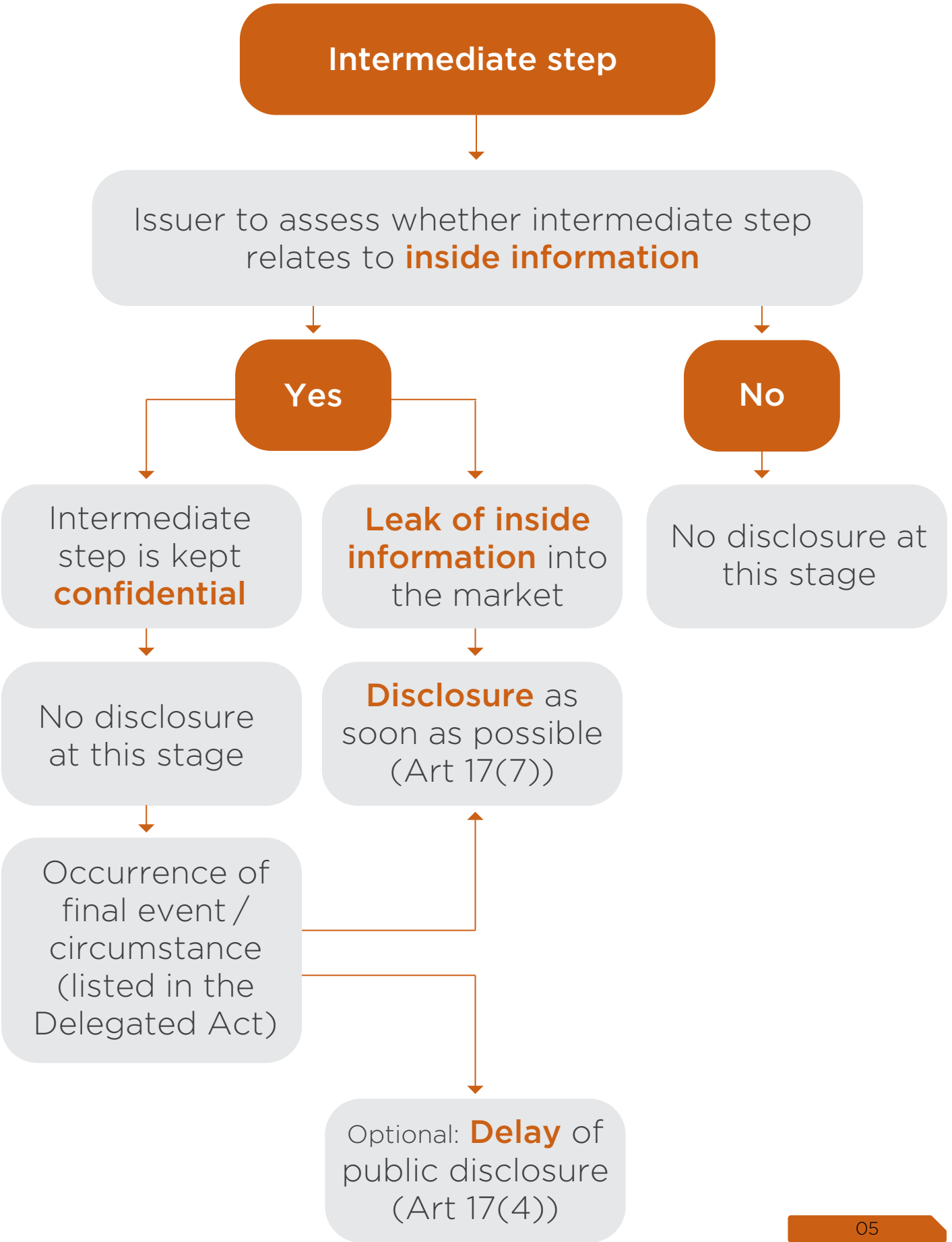
- Issuers must continue to treat the inside information confidential and maintain insider lists for persons with access to the inside information.
- Insider dealing prohibitions will still have to be observed.



Immediate Disclosure if Confidentiality Fails

If confidentiality cannot be maintained the inside information related to the intermediate step must be disclosed immediately. This is particularly the case if a sufficiently precise rumour expressly refers to undisclosed inside information or if undisclosed inside information leaks to the market. In such cases, it is assumed that confidentiality is no longer ensured and the inside information must be disclosed to the public as soon as possible (Art 17(7) of MAR).

The following illustration outlines the structure of the new scheme which applies to each single intermediate step:



02. ESMA Proposal: Guiding principles and categories of processes

To help issuers determine when to disclose inside information, the European Commission has been empowered to adopt a delegated act establishing a non-exhaustive list of final events or final circumstances in protracted processes and, for each event or circumstance, the moment when it is deemed to have occurred and is to be disclosed pursuant to Article 17(1) of MAR (“**Delegated Act**”). The list should facilitate the issuer’s identification of the moment when disclosure of the inside information is required in case of protracted processes.

The European Securities and Markets Authority (“**ESMA**”) has been asked to provide technical advice for this purpose:

- EMSA proposes to the Commission to adopt a non-exhaustive list of final events or final circumstances in protracted processes.



Protracted process means a series of actions, steps, or decisions spread in time which need to be performed, at least in part by the issuer, in order to achieve an intended objective or result (e.g. M&A transactions, takeovers, mergers).



One-off events must be distinguished from protracted processes. Examples of such one-off events include, inter alia, the unexpected resignation of a CEO (absent prior negotiations), the issuance of profit warnings, or earnings surprises. These events do not form part of the list of protracted processes and instead may constitute standalone instances of inside information. As such, they are subject to immediate public disclosure as soon as they are available to the issuer.

1. The Delegated Act is expected to get into force by July 2026.

- ESMA further distinguishes between processes which depend entirely or in part on the issuer and such where parties other than the issuer (e.g. an authority or private counterparty) play a role in the process.

Set out below are examples of scenarios in each category and the moment when ESMA generally considers disclosure of inside information to be required in each category.

01.

Protracted process which is **entirely internal to the issuer**

EMSA proposal: disclosure obligation to arise as soon as possible when the **issuer has taken the relevant decision**

👉 Where a company has a **two-tier board structure**, wherever the law, bylaws or statutes require the supervisory board involvement, the management board’s decision should mean the moment when the supervisory board has adopted the decision.

The issuers’ internal decision-making processes, therefore, will have to ensure in the future that the supervisory board’s decision is taken without undue delay after the management board’s decision.

Protracted Process	Final Event or Final Circumstance	Moment of Disclosure
Capital increase (issuance of additional shares)	Decision of the issuer’s governing body	After passing of the decision on (i) issuance of new shares and (ii) the relevant core conditions
Distribution of dividends	Decision of the issuer’s governing body	After passing of the decision to propose a dividend distribution or a change in the dividend policy to the shareholders
Change of management	Decision of the issuer’s governing body	After passing of the decision to appoint/remove a member of the management or a manager holding a key role for which the governing body’s decision is needed

02.

Protracted process **involving the issuer and another private party**

EMSA proposal: disclosure obligation to arise as soon as possible after **entering into the relevant binding agreement**

👉 Where the governing body's approval follows negotiations, disclosure shall take place after the governing bodies of all companies involved have taken the decision to sign off the agreement. This will require the coordination of the parties' decision-making process to avoid any conflicting or non-synchronised communications to the public.

👉 Where shareholders' approval is required prior to signing, disclosure shall take place after the parties' governing bodies have taken the decision (i) of submitting the agreement to their respective shareholders for approval and (ii) agreement on the core conditions.

Protracted Process	Final Event or Final Circumstance	Moment of Disclosure
Agreement (e.g. SPA, agreement on disposal of relevant assets)	Signing of the agreement	After signing of the final agreement or any other act binding the parties according to the applicable law
Merger	Approval of draft terms of the merger	After the governing bodies of the merging companies have approved the draft terms of merger

03.

Protracted process which is **driven by a public authority** with the involvement of the issuer

EMSA proposal: disclosure obligation to arise as soon as possible after the formal decision of the authority is notified to the issuer (even if the decision is subject to appeal)

Protracted Process	Final Event or Final Circumstance	Moment of Disclosure
Judicial proceedings	Decision of competent authority or court	After issuer has received the notification of the formal decision
Administrative proceedings	Decision of competent authority	After issuer is formally informed by the competent authority of its final decision following the investigation

04.

Protracted process which is **triggered by the issuer but whose final outcome is decided by a public authority**

EMSA proposal: disclosure obligations to arise as soon as possible after both (i) when the request is submitted to the public authority and (ii) when the issuer has received the final decision from the authority

Protracted Process	Final Event or Final Circumstance	Moment of Disclosure
Application for a licence or authorisation	Application for a licence or authorisation	After issuer submitted the application to the relevant public authority
Granting or withdrawal of licence or authorisation	Granting or withdrawal of licence or authorisation	After issuer has received the formal notification granting or withdrawing a licence or an authorisation

Finally, ESMA removed **takeover scenarios** from the list of protracted processes. Disclosure obligations in friendly and hostile takeovers will continue to apply—on a case-by-case basis—in accordance with the Takeover Directive and any act adopted by Member States to ensure that a bid is made public in a way to ensure market integrity and prevent the publication or dissemination of false or misleading information.

- For final events or circumstances of protracted processes not included in the Delegated Act, issuers remain responsible for assessing on a case-by-case basis whether inside information exists. In such cases, the issuer must determine both the relevant final event or circumstance and the moment when it is deemed to have occurred and thus must be disclosed. The issuer is expected to be able to provide a justification regarding the identification of the final event or the final circumstance and the relevant moment of disclosure upon the request of the competent national authority to demonstrate compliance with Art 17(1) of MAR.

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