

# Disclosure of inside information

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Market practice in the UK

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## Topics for discussion

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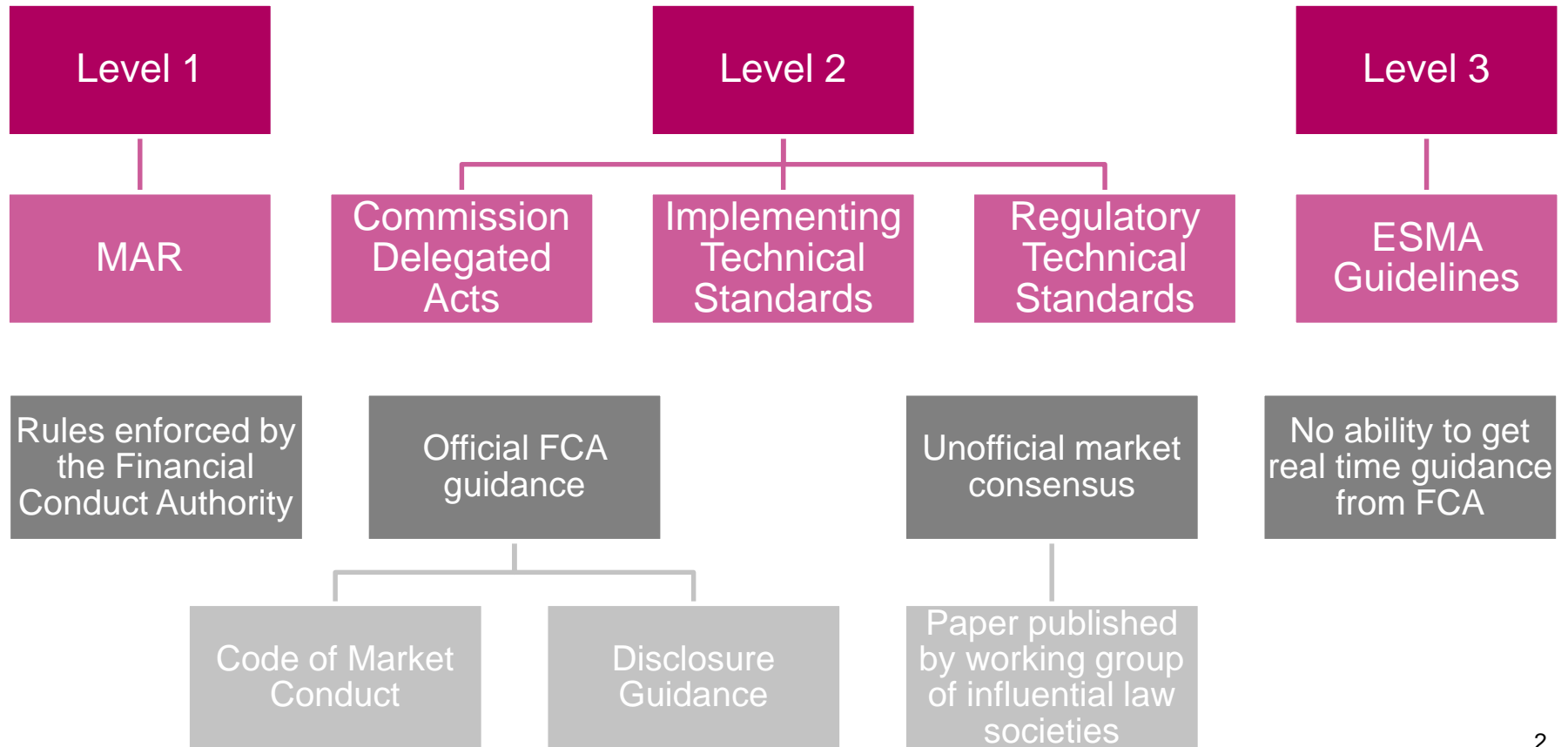
> To discuss  
Article 17 MAR

To look at  
practical issues  
and UK market  
practice

To answer your  
questions

# What does the framework look like in the UK?

All to be reflected in UK law after Brexit



### What our regulator says

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“The **decisions** you are required to make and questions you are required to answer, are often **not easy**, but they are **critical** to the integrity and health of our financial markets.”

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“Defining inside information cannot be just a set of rules...it must be **a state of mind**, a vigilance to identify the potential for such information and the skill to have the capacity to make the assessment as to whether the conditions are met and then, simply put, the awareness of what to do next.”

What is inside information?

## Inside Information

Of a precise nature

Has not been made public

Inside information

Relating directly or indirectly to one or more issuers or financial instruments

Would be likely to have a significant effect on price of those financial instruments or related derivatives if made public

### What is precise? (Art 7(2))

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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

Specific enough to enable a conclusion to be drawn as to possible effect of those circumstances or that event on the prices of the financial instruments or related derivatives

# What is precise – status of existing precedents?

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Information **does not have to be wholly accurate** to be precise  
(*Hannam v FCA*)

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A transaction **does not have to be certain** (*Einhorn*)

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To be precise there must be a **realistic prospect** that the events or circumstances will come into existence or occur (*Geltl v Daimler*). This does not mean there must be a more than even chance (*Hannam*)

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“Specific enough to enable a conclusion to be drawn on price” – no need to indicate the direction of price movement (*Lafonta*)



## The Daimler test

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### Article 7(2)

In the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information

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### Article 7(3)

An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information

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## Likely to have a significant effect on price

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Article  
7(4)  
MAR

Information which, if it were made public, would be likely to have a significant effect on price shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions

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FCA  
guidance

There is no set percentage change for what is a significant effect on price

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A reasonable investor will make investment decisions to maximise his economic self interest

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## Tips for determining inside information

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Consider the four limbs of the definition separately



Consider overall context of information



Remember that the FCA/market will judge with the benefit of hindsight



Consult brokers and lawyers



Err on the side of caution

# Disclosure and delay

# Why do we need these rules?

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The public disclosure of inside information by an issuer is essential **to avoid insider dealing and ensure that investors are not misled**. Issuers should therefore be required to inform the public as soon as possible of inside information.

Recital 49  
MAR

## Obligation to announce inside information

An issuer shall inform the public as soon as possible of inside information which directly concerns that issuer

Disclosure may be delayed if:

- Disclosure is likely to prejudice the company's legitimate interests (ESMA guidance)
- Delaying disclosure is not likely to mislead the public (ESMA guidance) and
- The issuer can ensure the confidentiality of the information.

If confidentiality is compromised, must disclose as soon as possible

## UK market practice

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Delay usually only for M&A deals or other ongoing negotiations

Sometimes consider the ability to delay for grave and imminent financial danger

You can't delay disclosing the fact of financial difficulty, only the details of the ongoing negotiations for recovery

Leak announcements always prepared and ready to go

Most listed companies now have disclosure committees

## Steps to be taken by the issuer

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Record prescribed details including time and date inside information arose and who made decision to delay

When announcement is finally made, notify the FCA of the delay

Set up insider list (grey insider list may already exist)



# Delay to preserve the stability of the financial system (Art 17(5))

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An issuer that is a credit institution or financial institution may delay public disclosure of inside information (including information about temporary liquidity problems) if

Disclosure entails a risk of undermining the financial stability of the issuer **and** of the financial system.

It is in the public interest to delay.

The confidentiality of the information can be ensured.

The FCA has consented in advance (having consulted with the Bank of England or other supervisory authority).

## Inside information: key questions

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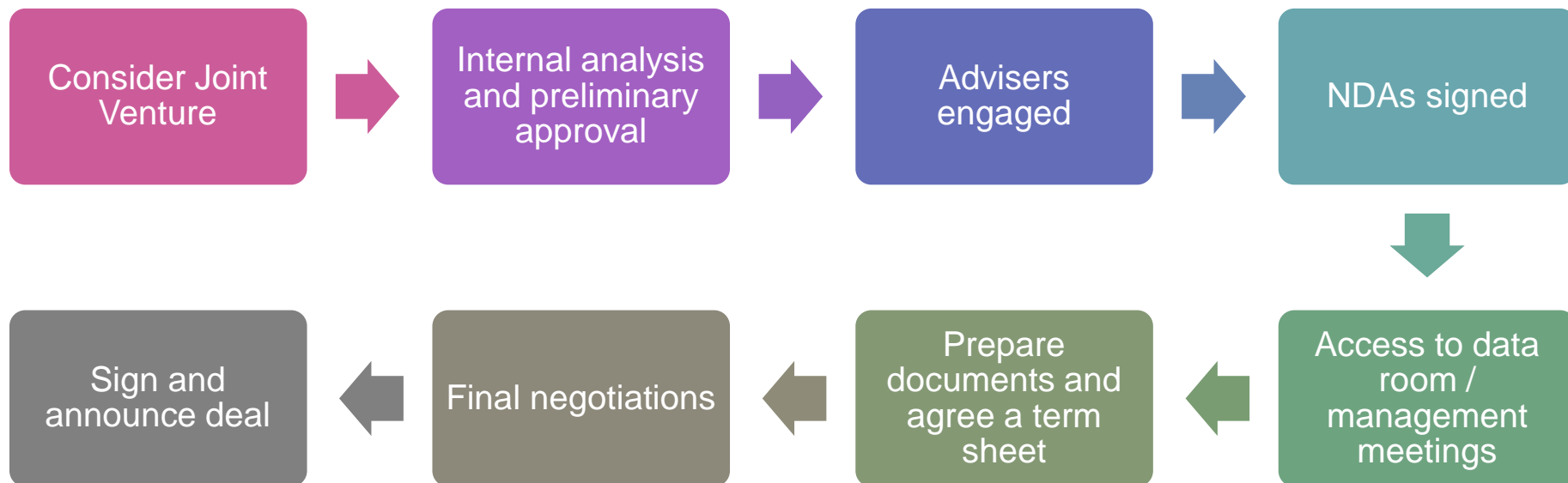
Do we have inside information when we are preparing the financial results?

Can we delay announcement of the CEO's resignation?

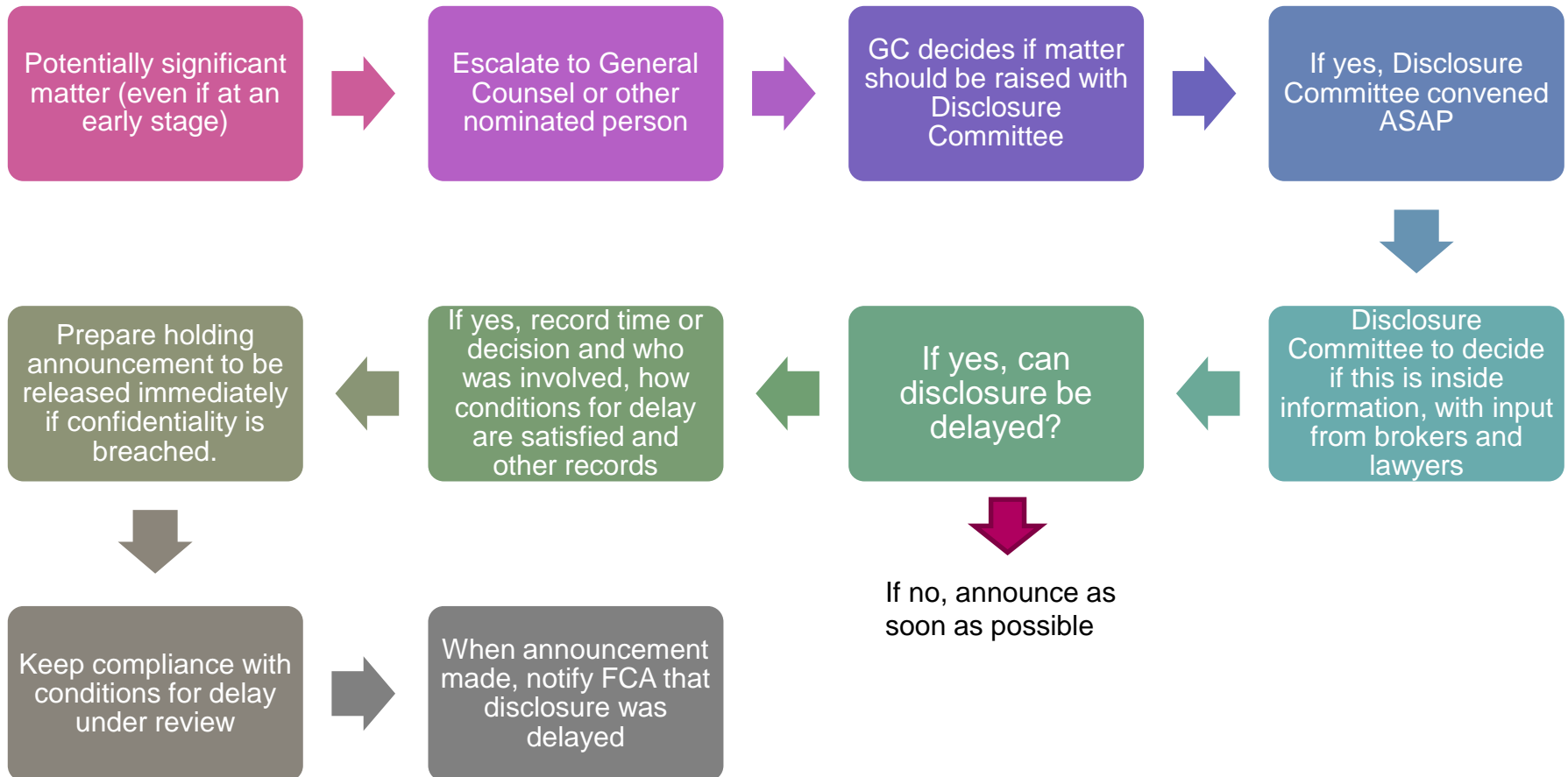
When do we have inside information on an M&A deal?

# When does inside information arise on a transaction?

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# Inside information decision tree



# Questions?

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## Your Linklaters contacts

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