

CRITERIA AND REQUIREMENTS TO BE TAKEN INTO ACCOUNT IN THE EVENT OF DISSEMINATING INSIDE INFORMATION VIA SOCIAL NETWORKS

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This public communication contains a series of criteria and requirements which, in the opinion of the CNMV, listed companies and other issuers of securities and financial instruments traded on Spanish regulated markets must bear in mind in the event that they use social networks to disseminate inside information, simultaneously to its dissemination via the CNMV, which is mandatory in accordance with the provisions of Article 226 of the Spanish Securities Market Act (SMA). These criteria must also be borne in mind by companies with securities admitted to trading exclusively on multilateral trading facilities (MTFs), to which said Article 226 is not applicable.

Social networks are an instrument which are increasingly being used to disseminate information but there are limitations that must be analysed when the information to be disseminated is regulated information, and in particular, inside information.

The dissemination of inside information is regulated under Regulation EU 596/2014 on market abuse (MAR) and the implementing regulations thereof (Commission Implementing Regulation (EU) 2016/1055).

These regulations require the public disclosure of inside information to enable fast, complete, correct and full access to the inside information. Furthermore, they establish some specific requirements:

1. The issuer shall not combine the disclosure of inside information with the promotion or marketing of its activities.
2. The technical means used must ensure that the disclosure is made: (i) to an audience as extensive as possible, (ii) free of charge; and (iii) simultaneously throughout the European Union.
3. Furthermore, the inside information must be forwarded to the media that may reasonably be relied upon, to ensure its effective dissemination.
4. The inside information must be specifically identified as such (literally using the words “Inside Information”), and containing: (i) the identity of the issuer (full corporate name); (ii) the identity of the person making the communication; (iii) the matter concerned; and (iv) the date and time the communication is made to the media.

The issue raised is whether social networks (Facebook, Twitter, etc.) can be used by an issuer to disclose inside information, and if so, under what conditions.

As mentioned above, Article 266 of the Spanish Securities Market Act (SMA) stipulates that inside information of issuers with securities traded on regulated markets must be reported to the CNMV. Therefore, in Spain, the issue must focus on whether, in addition to reporting via the CNMV, social networks can or cannot be used to simultaneously disclose the same inside information.

It is clear that the use of social networks should enable complying with each and every one of the points mentioned above, which are applicable, in general, to the

disclosure of inside information, as social networks existed a long time before the regulation was drafted (2014) and the legislator did not wish to make distinctions between the different media by establishing requirements to be fulfilled by all of them to ensure investor protection and the orderly functioning of the market. That is to say, the approach under the relevant regulations is technologically neutral; what is important is that all the aforementioned requirements are always fulfilled. The key issues related to disseminating inside information via social networks are analysed below.

Clear and complete information

The first issue that arises when analysing the use of social networks in this area is related to the completeness of the information.

Some networks limit the number of characters that can be used in a message or the size of the documents disclosed. It is obvious that not many pieces of information can be reduced to a small number of characters without losing informational content. Therefore, in the event of using these types of social networks, the inside information to be disclosed would necessarily have to be very brief and immediately understandable.

In any event, even though it is not the general case, there are some types of information which, given their nature, can be disseminated in a short and concise message. For example, information that is very straightforward or which refers to events confirming complete information previously disseminated, such as prospectuses or takeover bids (% of acceptance of a takeover bid or the price set for an IPO).

The second issue is the clarity of the information required by the regulation. A social network message containing inside information must be objective and precise and should avoid the use of colloquial language, descriptive adjectives or superlatives that are often used in some networks for other types of communications. It should, therefore, pass the test of clarity and objectivity which is required for all disclosures of inside information.

Access to information and integrity

The third issue is the non-discriminatory access to the public throughout the European Union, and free of charge, which should be considered applicable to each and every channel which can be used to simultaneously disseminate inside information.

Determining whether this requirement is met depends on the type of social network selected, the level of access to it by the target population, and whether the platform is widespread and accessible. To comply with the requirement, only widely accepted social networks with numerous members or users, and with millions or hundreds of followers throughout the European Union, should be used. Accordingly, incipient social networks or those with limited dissemination or that charge access fees, meaning that the channel is not free, should not be relied upon. An account on a social network with 200,000 followers to which hundreds of media are connected (making the immediate re-dissemination likely) is not the same as an account on a network with fewer users and using an account with few followers. This aspect must be analysed on a case-by-case basis.

The fourth issue is guaranteeing the integrity and confidentiality of the information during the dissemination process. In this regard, social networks, as a communication channel, may even have an advantage in the sense that, if they are used correctly and

the necessary measures are taken to avoid impersonation, disclosures via social networks usually allow:

- the message disseminated that reaches its addressees to coincide in full (100%) with what its author intended to transmit, without being re-interpreted, summarised or limited by third parties;
- the dissemination of the message to be immediate, not enabling third parties to know its content prior to its dissemination, which would breach the confidentiality of the channel.

Combination of channels and interactivity

Another issue that should be analysed is the exclusivity or the possibility of combining the dissemination channels, or in other words, whether the social networks could be used in the case of issuers of securities listed on Spanish trading venues other than regulated markets (such as Stock Exchanges and the Spanish Market in Fixed-Income Securities (AIAF)), not in addition to but as a substitute for other channels. We refer, specifically, in the case of issuers of securities listed exclusively on multilateral trading facilities (MTFs) such as BME Growth or the Alternative Fixed-Income Market (MARF). The response, from a legal perspective, should be positive, if all the requirements are met, providing that the provisions of Article 226 of SMA are not applicable in these cases, without prejudice to the dissemination made through the website of the multilateral trading facility.

Furthermore, it should be remembered that inside information is also regulated information that must be subject to accessibility and storage requirements. Thus, issuers are required to have a website containing the inside information disseminated. Hence, under no circumstances may the social networks be the only communication channel (theoretically, they may be used as a dissemination mechanism, but not as a storage mechanism).

Finally, another issue to be analysed is the interactivity of social networks. Unlike official communications, when information is disseminated on a social network, many users often re-disseminate or comment on the information posted or the issuer or the disseminating party may respond to such comments or questions. It is essential to ensure that in the event of using social networks as an additional channel to disclose inside information, the original information cannot be extended or highlighted to change its meaning or scope as part of the responses of the disseminating party/issuer.

Likewise, the issuer cannot rely upon the information or the interpretation given to subsequent responses or comments to assess whether the information has been misinterpreted: the official dissemination and the information identified as “Inside information” are the only forms of disclosures permitted.

Conclusion

In conclusion, social networks can be used to disseminate inside information (simultaneously, as an additional or supplementary channel to the CNMV in the case of issuers that have securities listed on Spanish regulated markets), but only if the following requirements are met:

1. The information disseminated must be complete, objective and clear, without it being necessary to resort to sources other than the original message for its full comprehension.

2. The information must clearly indicate that it is “Inside information” and it must not be included in any promotional or marketing communication.
3. It must clearly identify the issuer (full corporate name) to which it is related, as well as the disseminating party.
4. It must be disseminated via a widespread social network and from accounts with numerous followers.
5. It must be clearly and officially disclosed without adding or highlighting any additional information in the responses or comments, which is essential for understanding the information.