

Contact with analysts and information leaks

This advice is based on the experience of the Exchange and is not a part of the Exchange's Information rules. (Revised version 2008)

1 Introduction

Analysts play a central role in the stock market and it is important that they have the opportunity to contact the company and gain access to information that will provide them with a better understanding of the facts surrounding the company's operation. At the same time, it is important that these contacts are handled appropriately. Otherwise the company may violate the prohibition against releasing selective information that is stated in the Exchange's Information rules. In this advice some views are expressed concerning the manner in which different problems may be handled in connection with contact with analysts and the media. In addition, different measures are discussed to minimize the risk of information leaks of price-sensitive information prior to publication.

2 Selective information

The fundamental idea of the information rules is expressed in the General provision below (The Exchange's Information rule 3.1.1)

“The company shall, as soon as possible, disclose information about decisions or other facts and circumstances that are “price sensitive”. For the purpose of these rules, “price sensitive” information means information which is reasonably expected to affect the price of the company's listed securities, in accordance with the applicable national legislation.”

The purpose behind this rule is that all market participants shall have simultaneous access to any price sensitive information about the company. The guidance to this paragraph explains that a listed company is also required to ensure that the information is treated with confidentiality and that no unauthorised party is given access to such information before it has been released to the market. As a consequence of the abovementioned, price sensitive information may not be disclosed to analysts, journalists, or any other parties, either individually or in groups, unless such information is simultaneously made public to the market.

What information can then be regarded as being “price sensitive”? Swedish Law states that an issuer shall disclose “such information regarding its operations and securities which is of significance for an assessment of the price of the securities”. The determination of what constitutes price sensitive information must be based on the facts and circumstances in each case and, where doubts persist, the company may contact the Exchange for advice. The Exchange's employees are subject to a duty of confidentiality. However, the company is always ultimately responsible for fulfilling its duty of disclosure.

The evaluation concerning whether or not the information is to be classified as being price sensitive shall be made in regards to the whole combined group of companies. It shall account for all those factors that are of a significant importance for the valuation of the listed company. This requires extensive knowledge regarding the company's business and the underlying factors that can influence the valuation. An additional basis for the evaluation is whether similar information in the past have had a price sensitive effect or if the company itself has previously treated similar circumstances as price sensitive. Of course this does not

prevent companies from making changes to their disclosure policies, but inconsistent treatment of similar information should be avoided.

“Likely to” affect is also a central formulation. It means that it is not necessary that the price was subsequently affected for a breach of the rules to occur. It is sufficient that it is probable that the information will have such an effect. Certainly, the price may have been subsequently affected by other events as well. As a result, it may be difficult to relate the effect on price to the relevant information.

Drawing the line requires good judgment and experience. In borderline cases, the information should be published. A borderline situation exists for instance when the company’s management group or board of directors have disparate views.

3 Contacts with Analysts

It is important that analysts have the possibility to contact the company in order to obtain information that supplements published information, to obtain a better understanding of the conditions of the company’s operations.

However, this does not justify the disclosure by the company of price-sensitive information in a selective way. This would not only be a breach of the Exchange’s Information rules, but the company would also risk placing the analyst in a difficult situation in which he or she risks becoming liable for a violation of the Swedish Act (SFS 2005:377) on Market Abuse. This Act prohibits anyone from engaging in share transactions or advising anyone to engage in share transactions where he or she has access to non-public information which “is likely to materially influence” the share price.

Information that is not of a price-sensitive nature may thus be disclosed selectively, although the company must not feel that it is obliged to disclose such information in order to satisfy the analyst, but, rather, it is obviously possible to refer, politely but firmly to the company’s usual published information.

The following may be deemed to be permissible in contacts with analysts, for example:

- to give in-dept information regarding previously published information;
- give reminders in respect of previously submitted information;
- correct misunderstandings, calculation errors, and obvious misconceptions; and
- provide industry statistics.

If the company concurrently issues a press release it is permissible, of course, to disclose price-sensitive information at an analysts’ meeting, whether this is a normal meeting or a telephone conference.

In the event that price-sensitive information is accidentally disclosed at such a meeting, e.g. as an answer to an unexpected question, a press release shall be issued immediately.

Obviously, a clever analyst who obtains bits of information here and there – each not price-sensitive – may piece together these bits with other available information so that, in combination, they affect his or her assessment of the company’s future prospects and the share price justified thereby. This is a consequence of the contacts with analysts and this is of course unavoidable. It is basically what the analysts do.

The following should be kept in mind in contacts with analysts and the media:

- Where an analyst obtains certain information, the company cannot withhold the same information from another analyst or journalist. Accordingly, this should be considered in the determination of whether information may be disclosed. The company shall be prepared to provide the same information to the media.
- It is absolutely prohibited to provide advance information to analysts and journalists regarding upcoming news, even where they promise not to publish it prior to publication.
- There is no such thing as “off the record.” All information disclosed to a journalist must be treated as public.
- Consider inviting the media to conferences with analysts. This may decrease the risk that suspicion is cast on the meeting. When media is allowed to ask questions prior to the conference, they may be invited to attend the meeting only as listeners since their questions often have a different character from those asked by analysts.
- Analysts shall be treated properly and have access to the same information whether they represent a small or major owner, or firm of analysts.
- Companies sometimes distribute analytical reports. However, there is a great risk that this will be interpreted as the company’s sanctioning of the content of the report and thereby a selective release of information. It is better to make reference instead to the respective analysts’ firms. For example, do not hesitate to refer to them in the company’s annual report and on the company’s website, stating the name of the analyst in charge (naturally, only after obtaining permission).

4 Comments Regarding Profit Forecasts by Analysts

Pursuant to the Exchange’s Information rules, where the company has published a financial results forecast, it has assumed an obligation to correct the forecast when corporate management anticipates that the forecast will not be reached. Such corrections to forecasts must, naturally, take place in the form of a press release (see also the Exchange’s Information rules paragraph 3.3.1)

Companies sometimes call analysts to obtain information regarding the profit forecasts made by them. This is not prohibited, but the company should be cautious to avoid expressing, directly or indirectly, an opinion regarding an individual analyst’s forecast. When an analyst wishes to obtain information from the company regarding “consensus” forecasts, the company may refer to an external source of information, i.e. SME, etc.

Companies sometimes believe that the market’s forecasts are unrealistic. The primary alternative is, naturally, for the company to release a new profit forecast or statement regarding an “unexpected significant change in financial results” (see the Exchange’s Information rules paragraph 3.3.2). Where the company’s policy is not to release forecasts, it should attempt to determine why the market’s forecasts are off the mark, e.g. to study reports made by analysts. Where this is explained by the fact that the market has misinterpreted

information regarding the company, an immediate correction should be made if the deviation can be considered as being price sensitive, by issuing a press release or, in less serious cases, the correction can wait until the next report. On the other hand, a company may not contact individual analysts who deviate from the market's assessment since this may be regarded as the disclosure of selective information.

5 How to Avoid Information Leaks

Information leaks are generally a result of carelessness and poor discipline. Set forth below are some suggestions to minimize the risk of leaks.

- Not less than once a year, make clear to all employees who have access to non-public, price-sensitive information the importance of not revealing this information. Emphasize that carelessness in this respect may not only entail liability for a violation of the Market Abuse Act, but also may damage the company.
- Publish reports of unaudited annual earnings figures and interim reports as soon as possible. This reduces the amount of time during which figures might be leaked.
- Where the scale of operations significantly exceeds or falls below the levels of the preceding period, and such may be realized by a large member of employees, the local population, or other outsiders, the company should consider publishing such information. This may also be required pursuant to the Exchange's Information rules paragraph 3.3.2.
- In conjunction with negotiations regarding corporate acquisitions/sales, information shall not be disclosed to more persons than is absolutely necessary. These persons should execute a confidentiality undertaking to the extent such is not addressed in their employment agreements (For more information see the Exchange's Advise regarding logbook).
- In conjunction with major transactions, however, it may unavoidable that many persons become involved, especially during the latter part of the process. The company should then consider gradually releasing information or informing the Exchange so that trading may be suspended before share trading has been affected by an information leak (see further, guidance to the Exchange's Information rules paragraph 3.3.4).
- Maintain a documented information policy (see below, section 7).

6 Handling of rumors and information leaks

It is often difficult to determine how a company shall react to rumors and information leaks. Here are some guidelines:

- Never lie.
- The company has to obey to the Exchange's Information rules paragraph 3.1.4 regarding information leaks. From that paragraph it is clear that a company immediately has to publish price sensitive information that has leaked prior to a planned publication.
- The company may respond: "We have a policy not to comment on rumors." In such cases, this policy should be applied consistently. It is inappropriate to say in some cases that the information is untrue and in others "no comment." The latter is then interpreted as a confirmation.
- Obviously, it is inappropriate to maintain the "no comment" attitude in all situations. Where the rumor undermines the stock market's confidence in the company's provision of information or significantly affects the price, the company shall provide a clarification in a press release (see the guidance to 3.1.4).

- The company should be prepared to provide information, e.g. by preparing a draft press release in conjunction with important decisions where there is a risk of an information leak.

7 Information policy

Pursuant to the listing requirements (see Chapter 2), listed companies shall have a written information policy that shall assist the company in maintaining good external and internal information quality. In addition, the policy shall be formulated such that compliance therewith is not dependent upon a specific individual.

The listing requirements provide that the information policy shall describe whether, and in what manner, the following activities shall be conducted:

- Guidelines for the drafting of press releases, interim reports, reports of unaudited annual earnings figures, and annual reports;
- Holding of capital market days, press and analysts' meetings;
- Holding of what is commonly referred to as "one-to-one meetings," together with documentation;
- Adaptation, updating, and publication of information on the company's website.
- Planning and holding of shareholders' meetings;
- Procedures governing information disclosure in the event of information leaks;
- The company's policy in respect of analysts' meetings, including participation by the media.

Other information that an information policy should address includes:

- The identity of persons who may speak on behalf of the company – possibly with a delineation of the area. These persons must be well-informed in order to avoid providing inaccurate information regarding, e.g. pending negotiations;
- That other personnel will refer questions posed by analysts to such persons.
- Which opinions, in respect of reports by analysts, the company's spokespersons may release in draft form (e.g. only to correct obvious mistakes of fact);
- The manner in which the company reacts to rumors and information leaks in various circumstances;
- When the company will release forecast adjustments or statements regarding an "unexpected significant change in financial results";
- Which events and decisions that will result in a press release;
- The forms in which information will be released by the company, e.g. what will be sent to shareholders, who will receive faxed press releases, and the manner in which the company's website will be used;
- The company's policy in respect of analysts' meetings and participation of the media; and
- Who may be contacted at the company with questions regarding published information and that such person shall then be available at the company.