

## FAQ on insider lists pursuant to Article 18 of the Market Abuse Regulation (EU) No 596/2014

**Version 5 (updated: 5 June 2020)**

No.	Topic
<b>I.</b>	<b>Legal basis</b>
1.	<p><u>Question:</u></p> <p>Are there any other regulations or provisions aside from Article 18 of the Market Abuse Regulation (<u>Regulation (EU) No 596/2014 – MAR</u>) that govern insider lists?</p> <p><u>Answer:</u></p> <p>Yes. <u>Commission Implementing Regulation (EU) 2016/347</u> includes an annex with a template for insider lists.</p>
2.	<p><u>Question:</u></p> <p>What subsequent changes to the legal bases are to be taken into consideration?</p> <p><u>Answer:</u></p> <p>As a result of the corrigendum to the MAR of 21 October 2016 (<u>OJ L EU 287/320 of 21 October 2016</u>), various linguistic changes were made.</p>
<b>II.</b>	<b>Persons required to prepare insider lists</b>
1.	<p><u>Question:</u></p> <p>Who is required to prepare an insider list?</p> <p><u>Answer:</u></p>

	<p>Issuers whose financial instruments are traded on a regulated market, a multilateral trading facility (MTF) or – with effect from 3 January 2018 – on an organised trading facility (OTF, cf. Article 3(1)(8) of the MAR in conjunction with Article 4(1)(23) of Directive 2014/65/EU) are required to prepare an insider list. The latter cases were heretofore not subject to the notification obligation. However, a notification obligation only exists if the issuer has requested or approved admission to trading of the financial instruments on an MTF or OTF. The issuer must have been actively involved in the listing of its financial instruments on a multilateral trading facility.</p> <p>With regard to the necessary request for/approval of trading on an MTF, the following constellations are possible:</p> <ul style="list-style-type: none"> <li>a) issuers who themselves have made a request for admission/inclusion to trading on an MTF;</li> <li>b) issuers who have commissioned a third party to make a request for admission/inclusion to trading;</li> <li>c) issuers who have approved admission/inclusion to trading of their securities by a third party.</li> </ul> <p>In addition – and unlike heretofore – with effect from 3 January 2018, emission allowance market participants, auction platforms, auctioneers and auction monitors are also required to prepare an insider list.</p>
2.	<p><u>Question:</u></p> <p>Issuers or any person "acting on their behalf or on their account" (hereinafter also referred to as a "service provider") are also required to draw up</p>

	<p>insider lists. Does this mean that the issuer or any person acting on their behalf or on their account are released from their obligation if and to the extent that the respective other party maintains a list?</p> <p><u>Answer:</u></p> <p>No. A distinction must be drawn between</p> <ul style="list-style-type: none"><li>(1) the own obligation of the issuer or any person acting on their behalf or on their account to keep an insider list, and</li><li>(2) the option provided under Article 18(2) subparagraph 2 of the MAR allowing the party obliged to keep a list to delegate its duties to a third party. In this case, the party obliged to keep an insider list shall remain responsible for maintaining the list if it entrusts a third party with carrying out this task.</li></ul>
3.	<p><u>Question:</u></p> <p>What information must issuers include in the insider list about persons acting on their behalf or on their account ("service providers" such as attorneys, business consultants, tax advisors, investor relations agencies, external accountants, auditors)?</p> <p><u>Answer:</u></p> <p>In its insider list the issuer shall note that such a service provider has been engaged or that insider information has been disclosed to such a service provider and shall note the date/time of engagement or disclosure. It shall be sufficient to provide the identity of a contact person for the service provider. All of the information prescribed by Annex I of <u>Commission Implementing Regulation (EU) 2016/347</u></p>

	<p>must be provided for such contact person in the insider list.</p>
4.	<p><u>Question:</u></p> <p>When are credit institutions considered "service providers"?</p> <p><u>Answer:</u></p> <p>Only if they provide other services in addition to general banking services, thus acting for or in the interest of the issuer. These include advisory services related to IPOs, capital measures or acquisitions, for example (involvement of the Corporate Finance or Mergers &amp; Acquisitions departments). See also questions II.2 and II.3.</p>
<b>III.</b>	<p><b>Additional obligations in connection with the preparation of insider lists</b></p>
1.	<p><u>Question:</u></p> <p>Who is responsible for informing the employees of the service provider of their duties (see Article 18(2) subparagraph 1 of the MAR)?</p> <p><u>Answer:</u></p> <p>The service provider.</p>
2.	<p><u>Question:</u></p> <p>Can the confirmation that the persons on the insider list have been informed of their duties and been made aware of the sanctions (see Article 18(2) subparagraph 1 of the MAR) be submitted using an electronic format?</p>

	<p><u>Answer:</u></p> <p>Yes, provided it is possible at a later date to confirm that the persons had indeed been informed of their duties and been made aware of the sanctions.</p>
3.	<p><u>Question:</u></p> <p>Do persons need to be informed (see Article 18(2) subparagraph 1 of the MAR) each time they are included in the insider list?</p> <p><u>Answer:</u></p> <p>No. Once is enough.</p>
4.	<p><u>Question:</u></p> <p>Does a sample text exist for the notification?</p> <p><u>Answer:</u></p> <p>Yes, a sample text in English as well as in German is available on the BaFin website.</p> <ul style="list-style-type: none"> <li>• <a href="#">German version</a></li> <li>• <a href="#">English version</a></li> </ul>
<b>IV.</b>	<b>Date when and period for which an insider list must be prepared</b>
1.	<p><u>Question:</u></p> <p>What is the procedure for projects where an insider list has been prepared pursuant to section 15b of the German Securities Trading Act (<i>Wertpapierhandelsgesetz – WpHG</i>) and which extend beyond the effective date of the MAR (3 July 2016).</p>

	<p><u>Answer:</u></p> <p>In this case, an insider list must be prepared pursuant to Article 18 of the MAR; this must contain all of the information prescribed in Annex I of <u>Commission Implementing Regulation (EU) 2016/347</u>. The insider list prepared pursuant to section 15b WpHG must be retained but not updated. In particular, there is no requirement to retrospectively update this insider list to include the time at which access to inside information was obtained.</p>
2.	<p><u>Question:</u></p> <p>Can an insider list be prepared in advance, before inside information arises? I.e., at a point in time when the information is not yet sufficiently specific to warrant classification as inside information?</p> <p><u>Answer:</u></p> <p>Yes. However, this does not mean that the issuer required to maintain an insider list would have assumed the existence of inside information at this time.</p>
3.	<p><u>Question:</u></p> <p>In the case described in question 9, does the date and time at which a person obtained access to inside information (see Annex I, Template 1 to <u>Commission Implementing Regulation (EU) 2016/347</u>) have to be the date/time at which the person concerned is included in the insider list or just the date/time at which the inside information arises?</p> <p><u>Answer:</u></p>

	The date/time at which the inside information arises must be reported.
4.	<p><u>Question:</u></p> <p>How long are entities required to keep/update an insider list?</p> <p><u>Answer:</u></p> <p>The obligation to update the insider list ceases to apply when there is no further inside information. This is the case when the information has been published or the inside information or the project has been concluded early. For individual employees, the obligation to update the insider list ceases to apply when these employees leave the company. The date on which they leave the company must be recorded in the list.</p>
<b>V.</b>	<b>Who must be included in the insider list?</b>
1.	<p><u>Question:</u></p> <p>Do IT employees have to be included in the insider list simply because their administrator rights give them access to internal e-mail traffic or to the databases of the party obliged to keep the insider list?</p> <p><u>Answer:</u></p> <p>No. Persons who obtain access to inside information based on their duly assigned professional tasks must be included in the insider list. Persons who gain knowledge of inside information by chance (i.e., when carrying out a task) or unlawfully do not have to be included in the insider list unless the party obliged to keep the insider list has become aware that these</p>

	<p>persons have gained knowledge of inside information.</p> <p>As a consequence, IT employees must be included in the insider list if they obtain access to inside information due to a specific project.</p>
2.	<p><u>Question:</u></p> <p>When must employees of parent companies or subsidiaries of the issuer be included in the insider list?</p> <p><u>Answer:</u></p> <p>When they perform tasks on behalf of the party obliged to keep the insider list that give them access to inside information. This requires a contractual relationship with the party obliged to keep the insider list.</p>
3.	<p><u>Question:</u></p> <p>Article 2 of <u>Commission Implementing Regulation (EU) 2016/347</u> defines "permanent insiders" as individuals who have access at all times to all inside information. Is this group of persons smaller than the current group of persons classified as insiders by virtue of their function?</p> <p><u>Answer:</u></p> <p>Yes. <u>Only</u> persons whose function or position means that they have access at all times to all inside information are included in the "permanent insider" list (recital 4 to Commission Implementing Regulation (EU) 2016/347).</p>



<b>VI.</b>	<b>Content of the insider list</b>
1.	<p><u>Question:</u></p> <p>In the case of a group of affected persons, can the existence of inside information be assumed uniformly or does this need to be recorded on a person-by-person basis within the group?</p> <p><u>Answer:</u></p> <p>It is possible for a group of affected persons to be included on a uniform basis with reference to the date/time at which the inside information arises, e.g., the decision of the competent body. Irrespective of this, reference can also be made to whether and when the individual persons gained specific access to or knowledge of the inside information. This also applies when recording absence due to illness or annual leave. If the issuer is aware that specific employees gained access to/knowledge of the inside information at a date/time that is later than that applicable to the group, this individual date/time can be noted from the outset.</p>
2.	<p><u>Question:</u></p> <p>When including permanent insiders in the insider list, is it the date/time at which they are included in the list or at which they obtain access to inside information that needs to be provided?</p> <p><u>Answer:</u></p> <p>The date/time at which the person was included in the list must be given, as results from Annex I</p>

	<p>Template 2 to <u>Commission Implementing Regulation (EU) 2016/347</u>.</p>
3.	<p><u>Question:</u></p> <p>The annexes to <u>Commission Implementing Regulation (EU) 2016/347</u> require information on a national identification number (if applicable). In Germany, can the person's tax identification number be provided in this column?</p> <p><u>Answer:</u></p> <p>For "German" insiders, this field can be left blank. In particular, the tax identification number should not be entered.</p> <p>If available, the national identification number of a "foreign" insider should be included in the insider list.</p>
4.	<p><u>Question:</u></p> <p>With reference to data protection legislation in countries outside the EU, is it permissible to include a minimum of information in the insider list?</p> <p><u>Answer:</u></p> <p>No. Article 2(3) of <u>Commission Implementing Regulation (EU) 2016/347</u> specifies that the templates set out in Annex I must be used in preparing the insider list.</p>
5.	<p><u>Question:</u></p> <p>Is it possible to substitute the information that must be included in the insider list with reference to another database such as the HR management system?</p>

	<p><u>Answer:</u></p> <p>No. Unlike section 14 of the German Securities Trading Reporting and Insider List Regulation (<i>Wertpapierhandelsanzeige- und Insiderverzeichnisverordnung – WpAIV</i>), neither Article 18 of the MAR nor <u>Commission Implementing Regulation (EU) 2016/347</u> provide for this possibility. However, nor do they contain guidance on the means of managing and storing the data that must be included in the insider list. Provided that, when requested, the insider list contains all of the information prescribed by law, it is of no importance where the data were potentially stored and managed beforehand. It must be ensured that the insider list is complete and up-to-date each and every time it is accessed.</p>
6.	<p><u>Question:</u></p> <p>Pursuant to Annexes I and II of <u>Commission Implementing Regulation (EU) No 2016/347</u> the complete personal address should be included. How should this be interpreted?</p> <p><u>Answer:</u></p> <p>In order to ensure full and uninterrupted supervision, in addition to the principal place of residence, the secondary place of residence must also be included, if applicable.</p>
7.	<p><u>Question:</u></p> <p>How must the date and time be indicated in the insider lists in Annexes I and II of <u>Commission Implementing Regulation (EU) No 2016/347</u>?</p> <p><u>Answer:</u></p>

	<p>The date must be indicated in accordance with ISO 8601. This means the date format YYYY-MM-DD and the time format hh:mm are to be used.</p> <p><i>Example:</i></p> <p><i>3 July 2016 at 2:20 p.m.</i></p> <p><i>Date format according to ISO 8601: 2016-07-03</i></p> <p><i>Time format according to ISO 8601: 14:20</i></p> <p>The time must be indicated by stating the difference to coordinated universal time (UTC) in the form +01:00. By adding one hour to the coordinated universal time (UTC), one gets Central European Time (CET), the time zone that applies to Germany; by adding two hours one gets Central European Summer Time (CEST).</p> <p><i>Example:</i></p> <p><i>a) 3 January 2016 at 2:20 p.m.</i></p> <p><i>Frankfurt trading venue: 2016-01-03T13:20+01:00 (CET)</i></p> <p><i>b) 3 July 2016 at 2:20 p.m.</i></p> <p><i>Frankfurt trading venue: 2016-07-03T12:20 +02:00 (CEST)</i></p>
<b>VII.</b>	<b>Forwarding the insider list</b>
<p>1.</p>	<p><u>Question:</u></p> <p>How must the insider list be forwarded to BaFin when requested?</p> <p><u>Answer:</u></p>

	When BaFin requests the insider list, this must be sent by SecureMail (electronically encrypted e-mail). For this purpose, please contact the person named in the request for submission of documentation to complete the necessary first-time registration.
<b>VIII.</b>	<b>Further information</b>
1.	Further information on insider lists can be found in BaFin's revised <u>Issuer Guidelines (Module C), version dated 25 March 2020</u> .