



Health Department

28th February 2000

Dear Colleague

PRICE SENSITIVE ANNOUNCEMENTS BY DEPARTMENTS

REVISION OF THRESHOLDS FOR THE WORLD TRADE ORGANISATION (WTO) AGREEMENT ON GOVERNMENT PROCUREMENT (EC DIRECTIVE 80/67), EC SUPPLIES DIRECTIVE (93/36), AND EC WORKS DIRECTIVE (93/50)

Summary

1. This letter is to inform Health Boards, NHS Trusts and other bodies of the information and guidance agreed between HM Treasury and the London Stock Exchange (LSE), on the control and release of price sensitive information concerning companies listed on the LSE and the revised thresholds for the advertising of contracts as required by the EC Supplies, Works and Services Directives and the WTO Agreement on Government Procurement. The revised thresholds supersede those listed in NHS MEL (1998)5.
2. The guidance sets out the standards against which public bodies, listed companies and their advisors should manage and approach the handling of price sensitive information resulting from the procurement process, and also covers the need for commercial confidentiality in the handling of information about a successful tender is announced publicly.
3. Although the guidance focuses on contract award, it should be noted that the loss of a contract could raise similar considerations. It should also be noted that these are only guidelines.

Action

4. Attached at Annex A is a copy of the information and guidance on the control and release of price sensitive information concerning companies listed on the LSE. General Managers and Chief Executives are asked to draw this to the attention of those responsible for procurement.

Addresses

For action
Chief Executives,
NHS Trusts

General Managers,
Health Boards

General Manager,
Common Services Agency

General Manager,
State Hospital Board for Scotland

For information
General Manager,
Health Education Board for Scotland

Executive Director,
SCPMDE

Enquiries to:

On supplies

Mrs S Falconer
Health Care Policy Division
St Andrew's House
EDINBURGH EH1 3DG

Tel: 0131-244 2434
Fax: 0131-244 2051

On Services

Mrs S Thomas
Health Finance Division
(Address as above)
Tel: 0131 244 2076
Fax: 0131 244 2371

On Works

Mr R McCallum
Building and Estates Adviser
Room 351
(Address as above)

Tel: 0131 244 2079
Fax: 0131 244 2323

SCOTTISH EXECUTIVE
COMMON SERVICES AGENCY
HEALTHY PARK HOUSE
GLASGOW
G3 7NF
Tel: 0131 244 2000
Fax: 0131 244 2001
Price

107923

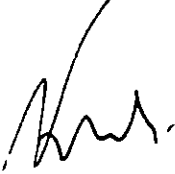
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5. Attached at Annex B is a table of the revised thresholds, which took effect from 1 January 2000. Health bodies, including NHS Trusts, must abide by the requirements of the EC Directives and the WTO agreement. Chief Executives and General Managers will wish to inform their staff accordingly.

Yours sincerely



KEVIN WOODS
Director of Strategy and Performance Management

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INTRODUCTION

Aim of Guidelines

The aim of these Guidelines is to provide guidance to HM Government Departments (“HMGDs”) on the control and release of information concerning companies listed on the London Stock Exchange (“the Exchange”).

Whilst the Exchange has no authority to impose its rules on HMGDs, in many cases information available to HMGDs and decisions taken by HMGDs in relation to these listed companies may constitute price sensitive information. As a result, these Guidelines have been produced following discussions between the Exchange and representatives of HM Treasury and carry the full support of the parties involved.

These Guidelines, which represent a voluntary agreement between the parties, set out the standards against which HMGDs, listed companies and their advisors should manage and approach issues of confidentiality in relation to potentially price sensitive information held by HMGDs. However, it is recognised that the parties may not always be able to adhere to the letter of these Guidelines and that there may be circumstances where a different approach to the one set out in this document is required. In cases where the Guidelines are not directly applicable or appropriate, the parties involved should endeavour to operate as fully as possible in accordance with their spirit. In such situations, HMGDs may wish to liaise with one of the following Exchange personnel:

Paul Geradine	Head of Listing	0171 797 3884
Maria Clohessy	Group Manager Company Monitoring & Enquiries	0171 797 4469
Stephen Caplen	Monitoring Team Leader	0171 797 4468

Context of Guidelines

Stock markets need a flow of relevant and timely information to function efficiently. The Exchange, as the UK Listing Authority, requires listed companies to comply with a set of rules known as the Listing Rules, which seek to secure as fair and widespread a distribution of information about listed companies (or matters affecting listed companies) as is practicable.

Under the Listing Rules, companies listed on the Exchange have a general obligation to disclose certain information which is not public knowledge and which may lead to a substantial movement in the price of its securities (“price sensitive information”). Such information must be provided by the company to the market as a whole, and without delay, by issuing an announcement via the Exchange’s Regulatory News Service (“RNS”). Companies are free to use additional media, but selective disclosure of price sensitive information, without or prior to the submission of an RNS announcement, is a breach of the Listing Rules.

Issues Relating to Unpublished Price Sensitive Information

It is not feasible to define any theoretical percentage movement in a share price which would define a piece of information price sensitive. Similarly, other attempts at a precise definition of "price sensitive" are not possible, since it is generally necessary to take into account a number of factors specific to a particular case, in addition to the information itself, which cannot be captured in a mechanistic formula. These factors include the price and volatility of a share and prevailing market conditions. However, the more certain or specific a piece of information, the more likely it is to be price sensitive. Information which should be announced via RNS will include (but not be limited to) major new developments (such as the award of a contract), changes in the company's financial condition or business performance or changes in the company's expectation of its performance.

The dissemination of price sensitive information regarding a listed company (whether by the company or a third party, such as an HMGD), prior to its publication via RNS, may jeopardise the smooth operation of the markets in the shares of the affected companies. A lack of information may lead to investors buying and selling shares in a company without having full information, and thereby create a disorderly market. It is essential that certain key actions are taken at an early stage to guard against the occurrence of such situations.

GUIDELINES FOR HM GOVERNMENT DEPARTMENTS ON THE CONTROL OF PRICE SENSITIVE INFORMATION

From time to time, HMGDs may be in possession of potentially price sensitive information regarding a listed company prior to the market being informed via the Regulatory News Service ("RNS"), for example, during a tendering process or when a contract is to be awarded to a listed company. It is essential that due consideration is given to the sensitivity and the potential effect of any dissemination of such information.

In all instances where HMGDs may be in possession of potentially price sensitive information, every effort should be made to avoid jeopardising the smooth operation of the market by:

- i) establishing and maintaining internal controls during a tendering process to limit access to information to those HMGD personnel who have a genuine 'need to know'. In addition, personnel who receive potentially price sensitive information concerning a listed company should be advised at the time of receipt of its price sensitive and, therefore, confidential nature;
- ii) advising other parties (for example expert advisers or consultees in determining the successful candidate in a tender process) of the potentially price sensitive, and therefore, confidential nature of any information concerning the listed company. In addition, consideration should be given to the benefits of using some or all of the following measures (the Exchange acknowledges that the additional benefit of such measures will need to be balanced against the extra burden placed on the recipients);
 - a) HMGDs requiring the recipients of the information to sign an undertaking which acknowledges that they have been advised of the confidential and potentially price sensitive nature of the information which they have received;
 - b) HMGDs maintaining an up-to-date list of those people to whom they have passed the information;
 - c) requiring third parties to obtain similar undertakings from, and maintain a similar list of those to whom they pass such information, such lists to be made available to HMGDs; and
 - d) HMGDs providing copies of the lists referred to in (b) and (c) to the Exchange on request.
- iii) ensuring, where possible, that the listed company is given sufficient time (for example 24 hours), prior to any official release of the information by the HMGD (for example via a Press Release), to consider whether it is obliged to make an RNS announcement about the information under the Listing Rules and to co-ordinate, if relevant, the release of such information by the Company and the HMGD;
- iv) ensuring the official public release of the information through RNS either before the opening of the market in the relevant security on the Exchange, or after that market has closed (unless another arrangement is more appropriate). This would allow the

market time to assimilate the content of the announcement, thereby preventing a disorderly market; and

- v) ensuring, in cases where circumstances prevent the HMGD from informing the listed company of the potential price sensitive information, that the HMGD contacts the Exchange for further guidance.

In situations where an HMGD wishes to consult the Exchange, the HMGD should give the Exchange at least 24 hours notice so that the Exchange can provide adequate guidance.

In the event of a leak, or suspicion of a leak of potentially price sensitive information, HMGDs or the Exchange (as appropriate) shall inform each other without delay. Following any subsequent consultation, the company concerned or the HMGD will, if appropriate, arrange for the immediate publication of that information.

The HMGDs should nominate appropriate contact personnel on their staff and inform the Exchange of their identity.

REVISION OF EC AND WTO PUBLIC PROCUREMENT THRESHOLDS

The national currency equivalents of the Supplies, Services and Works Directives and the WTO Agreement on Government Procurement have been revised with effect from 1 January 2000. The revised rates which will run until 31 December 2001 are as follows:

<u>Supplies Contracts</u>	<u>To 31.12.99</u>	<u>From 1.1.00</u>
	£	£
Contracts	104,435	93,896
Indicative Notices	584,901	505,500
<u>Works Contracts</u>	<u>To 31.12.99</u>	<u>From 1.1.00</u>
All Contracting Authorities	4,016,744	3,611,395*
Small Lots Provision	779,867	674,000
<u>Services Contracts</u>	<u>To 31.12.99</u>	<u>From 1.1.00</u>
Part A services other than R & D	104,435	93,896#
Part B services and R & D	155,973	134,800#
Small Lots Provision	62,389	53,920
Indicative Notices	584,901	505,000

(Note: Health Boards, NHS Trusts, CSA Divisions and other NHS bodies are all WTO entities).

* With the exception of subsidised works contracts under regulation 23 of the Public Works Contracts Regulations 1991 which have a threshold of £3,370,000.

The categories of the services which fall within Part A and Part B are detailed in Schedule 1 to the Public Services Contracts Regulations 1993.