OFFICIAL INFORMATION

OF THE CZECH NATIONAL BANK

of 27 January 2012

on the protection against market abuse and on transparency

I. Applicability and Purpose

1. The Official Information applies to:
   a) the issuer specified in Article 118 (1) of Act No. 256/2004 Coll., on capital market undertakings, as amended (hereinafter the "Act on Capital Market Undertakings");
   b) the issuer specified in Article 121a of the Act on Capital Market Undertakings;
   c) the financial instrument's issuer specified in Article 124 (1) of the Act on Capital Market Undertakings;
   d) any other person who has applied for the admittance of an investment security to trading on a regulated market without the issuer's approval, or the operator of a regulated market who has itself admitted an investment security to trading without the issuer's approval pursuant to Article 127 (1) of the Act on Capital Market Undertakings (hereinafter "other obliged person");
   e) the person notifying of a holding of a proportion of voting rights pursuant to Article 122 (1) of the Act on Capital Market Undertakings;
   f) the person notifying of a suspicion of the use of inside information pursuant to Article 124 (5) of the Act on Capital Market Undertakings;
   g) the person notifying of a managers' transaction pursuant to Article 125 (5) of the Act on Capital Market Undertakings;
   h) the person notifying of market manipulation pursuant to Article 126 (5) of the Act on Capital Market Undertakings; and
   i) any other persons on whom the Act on Capital Market Undertakings imposes duties in the field of protection against market abuse and in the field of transparency.

2. Through this Official Information, the Czech National Bank provides a closer explanation of some of the thematic areas of protection against market abuse and of transparency for the purposes of Part Nine, Chapters Two to Five of the Act on Capital Market Undertakings and of Decree No. 234/2009 Coll., on the protection against market abuse and on transparency, as amended by Decree No. 191/2011 Coll. (hereinafter the "Implementing Decree"). The said regulations transpose to the Czech legislation Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation, as amended by Directives 2008/26/EC and 2010/78/EU of the European Parliament and of the Council (hereinafter the "Market Abuse Directive"), its two implementing directives[1)], Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency

[1)] Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC as regards the definition and public disclosure of inside information and the definition of market manipulation, and Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions. The points at issue are marginally also touched by Commission Regulation 2273/2003/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilization of financial instruments.

requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, and amending Directive 2001/34/EC, as amended by Directives 2008/22/EC, 2010/73/EU and 2010/78/EU of the European Parliament and of the Council (hereinafter the "Transparency Directive"), and its implementing directive[2)].

3. Pursuant to Article 196 (1) of the Act on Capital Market Undertakings, the Official Information also stipulates the language in which documents may be submitted to the Czech National Bank for the purposes of Article 127c of the Act on Capital Market Undertakings. Pursuant to Article 196 (1) (third sentence) of the Act on Capital Market Undertakings, the Czech National Bank regards the English language and the Slovak language as the languages in which documents may be submitted to the Czech National Bank for the purposes of Article 127c of the Act on Capital Market Undertakings.

4. Among other things, the Official Information is based on a set of methodologies (guidelines)[3)] issued by the Committee of European Securities Regulators (hereinafter the "CESR") in relation to the Market Abuse Directive, and on materials connected with the implementation of the Transparency Directive[4)].

5. The information of the Czech National Bank (being the supervisory authority over the financial market) on the protection against market abuse and on transparency is given in the Annex to this Official Information. The Czech National Bank expects the persons to whom this Official Information applies to take the recommendations provided herein into account when observing the rules on the protection against market abuse and the rules on transparency.

II. Final Provisions

1. This Official information captures the legal status existing as at 1 January 2012. In view of constant developments and innovations taking place in the financial market, this Official Information cannot always be regarded as complete and corresponding to the latest standards of protection against market abuse and of transparency. Therefore, the current status of the financial market needs to be taken into account when applying this Official Information.

2. On the day on which this Official Information is published in CNB Bulletin, the Official Information of the Czech National Bank of 18 December 2009 on the protection against market abuse and on transparency (published in CNB Bulletin under number 25/2009) shall become invalid.

Vice-Governor
Prof. PhDr. Ing. Vladimír Tomšík, Ph.D., signed

Annex: Information on the protection against market abuse and on transparency

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[2)] Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

[3)] First set of CESR guidance on the Market Abuse Directive of 11 May 2005 (CESR 04-505b), Second set of CESR guidance on the Market Abuse Directive of 12 July 2007 (CESR 06-562b) and Third set of CESR guidance on the Market Abuse Directive of 15 May 2009 (CESR 09-219).

[4)] Cf. http://www.esma.europa.eu/.

Financial Market Regulation and International Co-Operation Department
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Annex

Information on the protection against market abuse and on transparency

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I. Inside information

1. Definition of inside information

In line with the regulations of the European Union, the Czech legislation imposes a duty on the financial instrument's issuer[1)] to publicly disclose what is known as "inside information"[2)] that can have a significant effect on the exchange rate, on some other price of or on the yield on such a financial instrument, or on an instrument derived from it.

Inside information must accomplish the following features, all of which must be present at the same time:

a) it relates to a fact significant to the development of the exchange rate or of some other price of a financial instrument, or of the yield thereon;

b) it is not publicly known;

c) it is precise; and

d) it could, after becoming publicly known, have a significant effect on the exchange rate, on some other price of or on the yield on a financial instrument, or on some other instrument the value of which is derived from such a financial instrument.

a) A fact significant to the development of the exchange rate or of some other price of a financial instrument, or of the yield thereon

Pursuant to the Act on Capital Market Undertakings, "inside information" shall mean any fact directly or indirectly relating i) to a financial instrument, ii) to some other instrument that has not been admitted to trading in a European regulated market[3] and the value of which is derived from a financial instrument, iii) to the issuer of such financial instruments, or iv) to some other fact significant to the development of the exchange rate or of some other price of a financial instrument, or of the yield thereon.

In particular, this refers to information that directly affects the financial instrument's issuer, its economic situation and future prospects or, as the case may be, that relates to the rights arising from a financial instrument.

In addition to that, this refers to a considerable quantity of information that indirectly affects the financial instrument's issuer, exchange rate, etc. – e.g. on the growing price of oil, changing interest rates, entering into an agreement by and between a regulated market and the market creator on the ensurance of liquidity for the shares of the financial instrument's issuer, etc. An absolute majority of such information is disseminated independently of the financial instrument's issuer. However, should the financial instrument's issuer or anyone else learn any precise information that is not publicly known, that might have a significant effect on the management of the financial instrument's issuer and on the yield on the participation therein and that is exchange rate fixing, the financial instrument's issuer or such other person shall be obliged to handle such information as inside information. Unlike in the case of direct inside information, however, the financial instrument's issuer shall not be obliged to publicly

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[1)] Pursuant to Article 124 (1) of the Act on Capital Market Undertakings, "financial instrument" is defined as an investment instrument or some other instrument admitted to trading in a European regulated market, or the admission of which to trading in a European regulated has been applied for.

[2)] In the official Czech wording, the Market Abuse Directive uses the term "confidential information", like the previous Czech regulation. The content of this term is identical with the content of the term "inside information" pursuant to the Act on Capital Market Undertakings.

[3] A European regulated market is a regulated market listed among regulated markets of a member state of the European Economic Area (Article 55(2) of the Capital Market Undertakings Act)

disclose indirect information. The financial instrument's issuer as well as any other persons to whom inside information is available shall be obliged to abide by the rules on the handling of inside information (see below).

Inside information may also include orders to trading that are typically being submitted to an investment firm or to an investment intermediary. It is obvious that a person who disposes of inside information about an order with a potential effect on the exchange rate of a financial instrument could use such information for its own benefit.

Examples of such facts are given in the conclusion of this section.

Whereas the current or closing exchange rate of a financial instrument is publicly disclosed by market organizers, the reference to "some other price" shall be understood, for instance, as a reference to the price of instruments that are only being admitted to the market, or of derived instruments, where we cannot speak of what is traditionally understood as an "exchange rate".

b) Publicly known information

Such information shall be deemed publicly known which is available at least to that group of investors who are actively engaged in gathering information of this type[4)]. However, it does not suffice for such information to be made known to some investors only (such as, for instance, shareholders attending a general meeting). Even if the general meeting was attended by all shareholders, such information would not become known to any potential investors. In general, information shall be regarded as publicly known, if it has been publicly disclosed to a broad group of public investors of an indefinite count. It is irrelevant whether such information has been publicly disclosed by the financial instrument's issuer or whether it has become known from some other sources. Such information shall also be deemed publicly known which is available to both current and potential investors, even if it was not publicly disclosed timely and duly, following the procedure described in this Official Information. Public disclosure of information shall be understood as making such information available to a practically unlimited group of entities; simultaneously, it holds true that any information disseminated with the assistance of Internet portals or agencies pursuant to Article 20 (2) of the Implementing Decree[5)] shall be deemed publicly available.

c) Precise information

Pursuant to Article 124 (1) of the Act on Capital Market Undertakings, solely information of a precise nature may be regarded as inside information. It must contain **a fact that has come into existence, or a fact that may reasonably be expected to come into existence in the future, and that is sufficiently specific to allow a conclusion to be arrived at on its basis as to the effect on the exchange rate or on some other price of a financial instrument, or on the yield thereon.** Information shall be deemed precise, if it is specific and reliable to such an extent that an investor may decide on its basis.

Thus, information regarding the fact that a listed company is negotiating about an acquisition of some other company may be regarded as precise, even if the final decision has not been made yet and the acquisition might in the end not take place at all. Similarly, information about the fact that a group of the parties interested in strategic partnership has been narrowed may be regarded as precise, even if the final winner is not known yet. Precise information does not necessarily have to mean ultimate information.

[4)] Cf. decision "On the ongoing information duty of an issuer of listed securities" (KCP/3/2003) and "On the ongoing information duty" (KCP/19/2004) published on the website of the Czech National Bank.

[5)] The Internet portals and agencies are maintained by the Czech National Bank on its website in the "List of Internet portals and agencies through which the obligatory published information is publicly disclosed".

As regards future facts, an *ex ante* consideration (i.e., an antecedent perspective) shall form the basis, which is particularly relevant to the moment of public disclosure – it is impossible to wait until a fact occurs, but it is enough if the fact is sufficiently likely to occur in future (some fact has occurred from which one can infer that some other fact is likely to occur in future). As regards the probability of occurrence in future, a mere possibility is not sufficient on the one hand, but a probability bordering on certainty is not required on the other hand[6)].

On the contrary, no assumptions, rumours and groundless speculations shall be deemed to be precise information. Information must relate to a fact that has occurred, is occurring or is likely to occur. The financial instrument's issuer should respond only if it has delayed the public disclosure of inside information and if parts of such information are obviously leaking to the public, or if the whole of such information has leaked to the public already. If assumptions are being formed to a rather extensive degree and rumours are spreading in the market, it will usually be a consequence of lack of grounded information. In such case, it is recommended that the financial instrument's issuer should clarify the situation by publicly disclosing precise information (e.g. that it has not entered into a specific contract, or that the management of the company is not being replaced).

d) A significant effect on the exchange rate, on some other price or on the yield

Any item of information may constitute inside information only if it has **an exchange rate fixing potential**. The statutory requirement for the potential to cause a significant change in the exchange rate, in some other price or in the yield is further specified in Article 2 (2) of the Implementing Decree as a premise that **a reasonable investor would take such information into account when making investment-related decisions**.

A reasonable investor represents an average of both professional and small unprofessional investors, and is not expected to possess deep specialized knowledge in the fields of financial market, law, accounting, mathematics, etc.; on the other hand, a reasonable investor shall act in a prudent manner, taking into account the pros and cons of every investment[7)].

It is impossible to stipulate in advance how big a movement of the exchange rate or of some other price (expressed as a percentage) should be regarded as a "significant" movement – it depends on the volatility of the exchange rate or of some other price of a financial instrument, on the trend in the market and on other circumstances. Moreover, this is always a potential movement (seen from an *ex ante* perspective), and thus immeasurable; neither the later actual change nor the fact that the expected change did not occur at all shall have an impact on the classification of such information as inside information[8)].

The impact of one item of information may be compensated by another item of information affecting the exchange rate, some other price of or the yield on a financial instrument (e.g. resignation of the chairman of the board of directors of the issuer and a concurrent award of a significant contract). In such case, however, both the items of information must be publicly disclosed, irrespective of the fact that the exchange rate or some other price of or the yield on the financial instrument will not change as a result of mutual compensation of these two items of information. A certain item of information does not necessarily have to cause any increase or decrease of the exchange rate or of some other price of a financial instrument also due to the fact that certain speculations are contained in the exchange rate or in some other price

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6) Cf. decision "On the ongoing information duty" (KCP/19/2004) published on the website of the Czech National Bank.

7) Congruently, see decision "On the ongoing information duty of an issuer of listed securities" (KCP/3/2003) published on the website of the Czech National Bank.

8) Cf. decision "On the ongoing information duty" (KCP/19/2004) published on the website of the Czech National Bank.

already, and their actual confirmation will thus not lead to any additional increase or decrease thereof. An example of that can be information "on the result of the proceedings conducted before the Office for the Protection of Competition regarding an approval of a merger". If the merger is generally expected to be approved, a public disclosure of the information about the actual approval does not have to have any potential effect on the exchange rate or on some other price. On the contrary, an opposite case (an actual non-approval of the merger) will have a potential effect on the exchange rate or on some other price and such information must be publicly disclosed. However, public disclosure is recommendable in the first instance, too – taking into account the uncertain nature of speculations, the positive information might not have been incorporated into the exchange rate or into some other price to the full extent (in case of doubts about the exchange rate fixing nature of certain information, public disclosure thereof is recommended).

In order to assess the condition of "a significant effect on the exchange rate, on some other price or on the yield", it is necessary to take into account the following criteria, in particular:

- the estimated effect of a particular fact on the activities or on the result of management of the financial instrument's issuer, etc.;
- the relevance of the information itself being one of the criteria affecting the exchange rate, some other price of or the yield on a financial instrument;
- the reliability of the information; and
- the market quantities affecting the significance of a particular item of information to the exchange rate, to some other price or to the yield of a financial instrument (such as, for instance, the existing exchange rate, some other price of or the yield on a financial instrument, their usual volatility, the liquidity of a financial instrument, exchange rate relationships with other related financial instruments, the volume of traded financial instruments, the supply of and demand for a given financial instrument, etc.).

The following circumstances may serve as useful indicators of relevance of a particular item of information:

- the same type of information affected the exchange rate or some other price in the past;
- the comments of analysts describe the information as significant in terms of affecting the exchange rate or some other price; and
- the financial instrument's issuer itself treated a comparable item of information as inside information in the past.

The exchange rate, some other price of or the yield on shares may be affected by a larger group of facts than it is the case in respect of bonds. **In the event of bonds, the information duty in respect of information about the financial instrument's issuer itself shall apply in such cases, in particular, where the ability of the financial instrument's issuer to fulfil its obligations arising from bonds changes** or, as the case may be, where the issuing terms are changed with significance for the owners of bonds, where the rating changes, etc.

Examples of the facts that are directly capable of bringing about a significant change in the exchange rate, in some other price or in the yield (i.e., facts that occur in the sphere of the financial instrument's issuer) – these facts **are subject to the public disclosure duty** of the financial instrument's issuer:

- annual, half-yearly, interim and preliminary results of management, as well as significant changes in the predictions of these quantities, and potential significant changes in the data associated with the subsequent audit;

- information about any facts indicating unexpected significant impacts on the results of management of the financial instrument's issuer (in particular, an unexpected increase or decrease of the costs or revenues);
- replacement of an auditor (e.g. due to existence of significant discrepancies between the opinion of the financial instrument's issuer and the opinion of the auditor, which might result in rejection of the auditor's opinion in the financial statement);
- significant increase/decrease of the business assets or of the net business assets of the financial instrument's issuer (e.g. significant changes in the valuation of the property of the financial instrument's issuer);
- information about the formation/cancellation of a right of pledge in respect of a significant part of the assets of the financial instrument's issuer;
- changes to the business, production or sales terms and conditions, including changes to the business activities, significantly affecting the performance of the financial instrument's issuer. For instance, these include an alteration of the focus of the activities performed by the financial instrument's issuer, diversification of its activities, expansion to new markets or loss of position in the markets where the financial instrument's issuer operates, launch of a significant new product, implementation of a new or innovated production process, acquisition or loss of significant business partners, making or termination of significant contracts, production lay-offs;
- information on accidents and natural disasters, providing they might significantly affect the business activities of the financial instrument's issuer;
- information about the commencement of insolvency proceedings or about entering into liquidation in relation to significant partners or debtors of the financial instrument's issuer;
- information relating to the acquisition of patents and licences or to their cessation to exist (cancellation, withdrawal), providing they might significantly affect the business activities of the financial instrument's issuer;
- other facts that might significantly affect the activities of the financial instrument's issuer such as, for instance, the granting or withdrawal of any authorizations significant to the business activities of the financial instrument's issuer; the acquisition or loss of a significant investment incentive, contract, guarantee or subsidy provided by a public entity; the discussion and approval of a draft decision on significant investment projects; the acquisition, provision or loss of a significant loan or credit; information about the discovery or acquisition of new deposits of mineral resources (e.g. a financial instrument's issuer engaged in mining business); information about any significant corrections to the estimate of the utilization percentage of the existing deposits, etc.;
- the discussion and approval of a restructuring plan of the financial instrument's issuer; the discussion and approval of a draft decision to sell or lease the enterprise or a part thereof, providing this would have a significant effect on the business activities of the financial instrument's issuer; the discussion and approval of an intention to transform the financial instrument's issuer; the commencement of insolvency proceedings or the entering of the financial instrument's issuer into liquidation; the suspension of activities of the financial instrument's issuer by means of an official decision[9)];

[9)] Cf. decision "On the ongoing information duty of an issuer of listed securities" (KCP/3/2003) published on the website of the Czech National Bank.

- the discussion and approval of a draft decision to enter into, amend or cancel a controlling agreement, an agreement on the transfer of profit or other holding agreements;
- significant changes to the ownership interests of the financial instrument's issuer or to its holdings of a proportion of voting rights (e.g. acquisition/transfer of an ownership interest (holding) or of a part thereof), including the discussion and approval of an intention to acquire/sell the same;
- information about the fact that the financial instrument's issuer will become the target of a takeover bid[10)], or that the main shareholder has requested the board of directors to effect a squeeze-out of minority shareholders, or just that the main shareholder's holding of a proportion of voting rights of the financial instrument's issuer has reached the limit of 90 %;
- the approval or non-approval of a merger or of a sale of the enterprise of the financial instrument's issuer by the competent administrative authority, and other administrative decisions in the field of competition with respect to the financial instrument's issuer[11)];
- information about the commencement or termination of legal, administrative or arbitration proceedings that have or might have a significant effect on the financial situation or on the profitability of the financial instrument's issuer (e.g. the imposition of a significant fine or of a duty to pay damages of a significant extent), including proceedings with a significant effect on the reputation of the financial instrument's issuer, etc.;
- the discussion and decision to implement significant changes to the statutory, supervisory and management bodies of the financial instrument's issuer[12)];
- a proposal and subsequent decision on the manner of distribution of profit;
- a proposal and subsequent decision to decrease or increase the registered capital, on a new issue of investment instruments to be issued by the financial instrument's issuer that will significantly affect its financial situation or activities[13)];
- changes in relation to the rights arising from the financial instruments issued by the financial instrument's issuer;
- the discussion and decision regarding the acquisition of own financial instruments (buy-back programmes) or regarding extensive transactions with other financial instruments; and
- a proposal and subsequent decision to exclude financial instruments from trading in the regulated market; the discussion and approval of a draft decision to transform the form of shares; information about the delivery of a decision of the regulated market organizer to exclude financial instruments from trading in the regulated market.

[10)] If the financial instrument's issuer (target company) has learned this information directly from the proposer, the public disclosure duty does not rest with the financial instrument's issuer, but with the proposer itself under the terms and conditions set out in Article 8 (2) of Act No. 104/2008 Coll., on takeover bids. However, the financial instrument's issuer (target company) shall be subject to all of its other duties in the field of protection against market abuse (e.g. to ensure that a list of persons who have access to inside information is maintained and sent to the Czech National Bank without delay).

[11)] Cf. decision "On the ongoing information duty" (KCP/19/2004) published on the website of the Czech National Bank.

[12)] Cf. decision "On the ongoing information duty of an issuer of listed securities" (KCP/3/2003) published on the website of the Czech National Bank.

[13)] Cf. decision "On the ongoing information duty of an issuer of listed securities" (KCP/3/2003) published on the website of the Czech National Bank.

Examples of the facts that are indirectly capable of bringing about a significant change in the exchange rate, in some other price or in the yield (i.e., facts that occur outside of the sphere of the financial instrument's issuer) – these facts **are not subject to the public disclosure duty** of the financial instrument's issuer:

- information about the data and about the statistical data published by official statistical institutions;
- information on the content of the approaching publication of reports of rating agencies;
- information on the content of the approaching publication of investment recommendations and proposals in relation to the exchange rate, some other price of or the yield on financial instruments;
- decisions of the central bank regarding interest rates;
- decisions of the government regarding taxation, industrial policy, state debt handling, etc.;
- decisions of the government regarding an amendment to the government's rules for the calculation of different market indicators, primarily as regards their composition;
- information about planned legal regulations regarding the financial instrument's issuers;
- information about changes to the manner of trading in financial instruments (changes to market segments, switching from auction trading to continuous trading and vice versa, changes to market creators, settlement conditions, etc.);
- information about a purchase or sale of a significant volume of financial instruments by third parties; and
- significant information about the competitors of the financial instrument's issuer.

In relation to the aforementioned examples, we would like to point out that they represent exemplary lists only. On the other hand, inclusion in the list does not automatically mean that a particular item of information is inside information – it is always necessary to examine the potential effect of a specific item of information on the exchange rate, on some other price of or on the yield on a financial instrument in respect of every financial instrument's issuer on an individual basis.

In the case of processes where an item of information becomes specific on a gradual basis (an idea, intention, discussion, proposal, decision), **the moment** will usually **be relevant in terms of the moment of origination of such information on which it will be possible to conclude that the information is specific to such an extent and decided at the given moment that certain probable consequences for the financial instrument's issuer** or for the relevant instrument **can be inferred from it** (e.g. incorporation of a matter into the agenda of a general meeting, discussion of a matter by the board of directors, etc.).

Related to the aforesaid are what is known as "multiple-phase decisions". Such decisions are usually adopted in a manner that a basic decision is supplemented with other decisions that are closely connected with the basic one. An example can be a decision of the financial instrument's issuer to make a voluntary bid to take over subscriber securities of some other company, but the financial instrument's issuer has not decided yet what price it is willing to offer to the owners of the subscriber securities. Its decision to make a takeover bid is precise, but would be impracticable without the determination of the price to be offered to the owners of the subscriber securities. The classification of the said decision as inside information is not prevented even by the fact that the financial instrument's issuer, taking into account the determined consideration and its financial possibilities, may finally decide otherwise and not

make the takeover bid at all. Therefore, it is necessary to examine at every stage of the decision-making process whether a particular item of information is precise already so that it can be classified as inside information.

As regards investment recommendations ("buy shares A, the target price of shares A is CZK 300, selling shares A is currently disadvantageous", etc.), which may also have a considerable effect on the exchange rate or on some other price of the relevant financial instruments, they represent a special category that is subject to additional requirements imposed by Article 125 (6) of the Act on Capital Market Undertakings and by Decree No. 114/2006 Coll., on the fair presentation of investment recommendations. Investment recommendations created on the basis of public information, even though they may be exchange rate fixing, are not subject to the inside information regime (with the exception of information about the content of an investment recommendation being prepared, which might significantly affect the exchange rate, some other price of or the yield on a financial instrument).

2. Immediate public disclosure of inside information and the conditions for its delaying

The financial instrument's issuer is obliged to immediately publicly disclose every item of inside information that directly relates to it (see below). Any information that relates to the financial instrument's issuer indirectly shall remain inside information until it becomes publicly available, but the financial instrument's issuer is not obliged to publicly disclose it.

In accordance with the established judicature, the term "immediately" shall be interpreted as a reasonable period of time within which the financial instrument's issuer is able to publicly disclose inside information in the given circumstances and during its ordinary operation[14)]. However, the financial instrument's issuer should set up its mechanisms in advance so as to ensure timely public disclosure. If the financial instrument's issuer communicates a certain item of information to journalists, at a general meeting and in some other analogous manner, the financial instrument's issuer must ensure that this item of information is publicly disclosed not later than concurrently with its communication.

Public disclosure of information may be delayed only if serious reasons exist for doing so, if the public will not be misled by no public disclosure of such information[15)] and if the financial instrument's issuer is able to ensure confidentiality of such information. The responsibility for a decision to delay the public disclosure of inside information rests with the financial instrument's issuer. In particular, this includes information about negotiations in progress, where the outcome or due course of such negotiations would be jeopardized by the public disclosure of inside information (however, not all confidential negotiations authorize the financial instrument's issuer to delay the public disclosure of inside information); or information about the outcomes of research in progress, where their public disclosure would jeopardize the entire process; or information about a decision or about a pre-agreed contract the effectiveness of which requires additional approval by some other body of the financial instrument's issuer (i.e., this does not mean approval by a state authority, for instance), if the public disclosure of inside information would jeopardize its correct assessment by public

[14)] Cf. judgment of the Constitutional Court file no. IV. ÚS 314/05 of 15 August 2005 and judgment of the Supreme Administrative Court file no. 3 As 2/2008-152 of 2 April 2008, for instance.

[15)] In relation to the misleading of the public, the CESR stated in its methodical material that there may be situations where investors are not misled by delaying public disclosure of inside information, as the whole of this institute would otherwise lack purpose. Misleading would occur if no public disclosure of inside information created/supported a false expectation of the market. Nevertheless, taking into account the lack of the related decision-making practice in the Czech Republic as well as in other countries making up the European Economic Area, a precise delimitation thereof is difficult.

investors, even if the information about the necessity of additional approval was mentioned. However, such serious reasons themselves are not sufficient to delay the public disclosure of inside information; **in order to delay the public disclosure of inside information, it is always required** that **the public must not be misled by doing so** and that **the financial instrument's issuer must ensure confidentiality of such information** (i.e., prevent any uncontrolled dissemination thereof).

The financial instrument's issuer must immediately[16] notify the Czech National Bank of such delaying, including the reasons for the delaying of the delayed inside information. The requirements for the delaying are set out in Article 125 (2) of the Act on Capital Market Undertakings and in Article 3 of the Implementing Decree. The related duties are set out in Article 125 (3) and (4) of the Act on Capital Market Undertakings and in Articles 4 and 5 of the Implementing Decree.

For the entire period of the delayed public disclosure of inside information, the financial instrument's issuer must ensure confidentiality of such information, that is:

a) limit the number of persons who know the inside information to the necessary minimum (inside information should be known only to the persons who need the inside information for proper performance of their activities with the financial instrument's issuer);

b) implement organizational and technical measures to prevent leakage of the information (it is recommended that such measures should be prepared in advance, see below);

c) advise everyone to whom the information is transmitted about the duties arising out of the applicable legal regulations in relation to the inside information, including any penalties for breaching these regulations (see below); and

d) maintain **a list of persons who have access to the inside information** (see below).

The following can be mentioned to illustrate **an appropriate standard of the organizational and technical measures** pursuant to subparagraph b) above:

- implementation of information barriers such as, for instance, "Chinese Walls" (separation of persons who have access to inside information and to any materials related to inside information, formation of sections with physically limited access, thorough securing of rooms where information is stored, prohibition to leave information on desks or on shared hard disks, prohibition to discuss any issues related to inside information in open space offices where other employees may overhear them);

- ensuring of security for the information systems, e.g. by granting access rights to selected persons only, by incorporating information system administrators into the system aimed to ensure the protection of inside information, by creating rules to be followed in the event of information system failures, by regular testing of information systems; and

- creation of rules to be followed when communicating inside information to parties outside of the financial instrument's issuer, e.g. by creating formal procedures to be followed when communicating information, by ensuring secrecy of mutual communication, by setting rules that third parties are obliged to follow, by ensuring control of third parties by the financial instrument's issuer (in particular, measures to ensure the protection of inside information).

[16] The word "immediately" means "without undue delay", "promptly", "„instantly", "without waiting" etc. In the Czech National Bank's opinion, this may cover a time limit of not more than several hours in the case of delayed public disclosure of inside information, with regard to the circumstances of a specific case. For an interpretation of the term of "immediately", see also the judgment of the Supreme Administrative Court File No. 8 As 28/2010 of 6 January 2011.

If the financial instrument's issuer learns that inside information has leaked and is now available to any person who is not bound by an obligation to maintain confidentiality, the public disclosure thereof cannot be delayed. In such case, it shall be irrelevant that the information might have leaked in its imprecise or incomplete form. The duty to immediately publicly disclose inside information shall also come into existence when the reasons cease to exist for which the public disclosure of inside information has been delayed.

The duty to immediately publicly disclose inside information as well as the duty to adopt precautionary measures aimed to prevent any leakage of information rests solely with the financial instrument's issuer. However, if inside information is available to anyone else (e.g. to an auditor or lawyer), all of the duties imposed on insiders apply to such persons (see below).

The duty to immediately publicly disclose inside information cannot be shaken by referring to the fact that an analogous duty in respect of the same information rests with a third party pursuant to other legal regulations[17)].

Other obliged persons shall fulfil the public disclosure duty only. If such a person learns that the financial instrument's issuer who is not subject itself to the information duty in the Czech Republic has publicly disclosed information which is regarded as inside information in the Czech Republic, it shall publicly disclose such information in the Czech Republic itself (cf. Article 121b of the Act on Capital Market Undertakings). The duty of "immediate public disclosure" provides other obliged persons with a chance to process the inside information publicly disclosed by the financial instrument's issuer in a reasonable period of time so that it can be publicly disclosed in the Czech Republic pursuant to the Czech legal regulations. However, the duty of "immediate public disclosure" requires such other obliged persons to have appropriate mechanisms in place to promptly find out that the financial instrument's issuer has publicly disclosed inside information (e.g. by means of an automated application to monitor the website of the financial instrument's issuer) and to enable this information to be promptly publicly disclosed in the Czech Republic pursuant to the Czech legal regulations (e.g. by means of a person to ensure the public disclosure of such information pursuant to the Czech legal regulations).

3. Undiscriminating dissemination of inside information

Any inside information publicly disclosed by the financial instrument's issuer, or another obligated person, should be disseminated in a manner to ensure non-preferential, easy and gratuitous access to it. It means that the same information should be concurrently sent (in electronic form) to the Czech National Bank or, as the case may be, to the organizers of those regulated markets where the financial instruments of the issuer have been admitted to trading, and concurrently publicly disclosed in the usual format[18)] (see below).

An example of the aforesaid can be a situation where the financial instrument's issuer sends information about its preliminary economic results to the regulated market organizer. In accordance with the aforementioned, the results shall be treated as inside information and simultaneously publicly disclosed in an appropriate manner. **When inside information is being publicly disclosed, it is necessary to ensure that all of the investors are provided**

[17)] Cf. decision "On the ongoing information duty" (KCP/19/2004) published on the website of the Czech National Bank.

[18)] Cf. decision "On the ongoing information duty of an issuer of listed securities" (KCP/3/2003) published on the website of the Czech National Bank.

with information of identical content and at the same time (Article 127 (2) of the Act on Capital Market Undertakings).

For instance, it is unacceptable for an issuer whose bearer shares are listed and who, at the same time, issued unlisted registered shares to prefer the owners of registered shares when publicly disclosing information (e.g. by providing them with information elaborated in more detail or commented, whereas the other investors would be just notified that information is available). Likewise, it is impossible to make any distinctions between individual investors (e.g. by providing key information preferentially or exclusively to the majority shareholder, and only then to the other participants in the market). Likewise, it is impossible to permit a situation where inside information would be sent to the regulated market organizer in the first instance, its members would acquaint themselves with it preferentially, and only then would the information be disclosed publicly.

Likewise, it is impossible for shareholders to be in any manner whatsoever favoured against the other potential investors. For instance, if selected data from the financial statement are given in an invitation to a general meeting which is to approve the financial statement of the financial instrument's issuer, with a specification of the time and place where the financial statement is available to shareholders for inspection, it is necessary for the financial statement to be publicly disclosed (whether as part of an annual report or in a manner in which inside information is to be publicly disclosed) not later than at the moment at which it is made available to shareholders.

No parties interested in the acquisition of a holding in the financial instrument's issuer may be given preferential treatment either. Taking into account the due diligence process that often precedes the acquisition of a holding, it is impossible to exclude that any yet unknown and publicly undisclosed inside information might come to light in the course of it. Until the information has been publicly disclosed, the person who has learned inside information within the scope of due diligence (and has thus become an insider) must follow the rules set out in Article 124 (4) of the Act on Capital Market Undertakings (see below).

4. Duties of persons who have access to inside information

Even though the Act on Capital Market Undertakings, by means of its requirement to publicly disclose all direct inside information immediately, considerably reduces the risk of its abuse, a delay can occur between the origination of particular information and its public disclosure (cf. the passage on information restriction (embargo) below). From the point of view of inside information handling, it is irrelevant why the delay has occurred – e.g. whether it is because the financial instrument's issuer has delayed the public disclosure pursuant to the Act on Capital Market Undertakings, or due to an omission on the part of the financial instrument's issuer or of some other obliged person, or due to technical problems, or as a result of the fact that the information originated independently of the financial instrument's issuer or of some other obliged person (at a counterparty, etc.) and the financial instrument's issuer or some other obliged person do not have this information in the precise form at their disposal yet.

The legislation refers to persons who know inside information prior to its public disclosure as **insiders** (Article 124 (3) of the Act on Capital Market Undertakings). **Insiders are all of the persons who dispose of inside information and are aware (or should be aware) that such information is inside information.** Awareness of the fact that it is inside information shall be expected in respect of certain persons (these are the persons who obtain inside information in connection with the performance of their employment, profession or position, in connection with their share in the registered capital or with their holding of a proportion of voting rights

of the financial instrument's issuer, in connection with the performance of their obligations or in connection with a crime).

Three duties are imposed on insiders in respect of inside information:

a) **a prohibition to alienate or acquire, or to attempt to acquire or alienate, the financial instrument** (irrespective of whether directly or indirectly, whether on their own account or on the account of a third party)[19] – exceptions are set out in Article 124 (6) of the Act on Capital Market Undertakings;

b) **a prohibition to make direct or indirect investment recommendations in respect of the financial instruments which the inside information relates to;**

c) **a duty to maintain confidentiality and to prevent any other person from accessing the inside information** (including preventing them from accessing the inside information in a manner other than through direct disclosure).

In this respect, the legislation does not differentiate between legal entities and natural persons. Thus, the duty falls on any person who obtains inside information (e.g. on the financial instrument's issuer and its employees, consulting bureau and individual persons working for it, etc.).

In addition to negotiations relating to the buy-back of own investment instruments or to the price stabilization of an investment instrument under the terms and conditions laid down in Commission Regulation 2273/2003/EC[20)], the most important exception to the ban imposed on insiders in Article 124 (6) (c) of the Act on Capital Market Undertakings is the fulfilment of the obligation arising out of a contract entered into before the inside information has been obtained. This is an arrangement the terms and conditions of which an insider may not affect after the inside information has been obtained.

Whereas the prohibition to make recommendations is absolute, the confidentiality duty shall not be breached in cases where the provision of information is part of the ordinary activities of a given person, of its obligation or employment (e.g. disclosure of such information to colleagues or to external consultants involved in the accomplishment of the same task or, as the case may be, its disclosure to the management of the financial instrument's issuer or to persons who are subsequently to ensure the proper public disclosure of such information)[21]. A person who intends to make a takeover bid may inform of its intention a solicitor's office that is to prepare the bid for it.

A legitimate reason for disclosure of inside information is required not only for legal entities, but also for the specific natural person to whom the information is to be disclosed. If the duty to maintain confidentiality is being breached, it is necessary to act in a particularly prudent manner and, in particular, to expressly point out to the person to whom the information is being disclosed that inside information is being disclosed to it.

If a person who customarily has access to inside information trades without being aware of specific non-public information, such transactions may raise doubts on the part of the public.

[19] For assumptions regarding infringement of this prohibition, see the European Court of Justice judgment C-45/08 (Spector Photo).

[20)] Commission Regulation 2273/2003/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilization of financial instruments.

[21] However, this authorisation must be interpreted very restrictively. See the European Court of Justice judgment C-384/02 (Grøngaard/Bang).

Recommendations on how to minimize the room for such doubts are given in the conclusion of this section.

5. List of persons who have access to inside information

In connection with the protection of inside information, the financial instrument's issuer is obliged to ensure that a list is maintained of those persons who have access to inside information. Details on how to maintain such a list are set out in Article 4 and Article 5 of the Implementing Decree. The list shall contain persons to whom the financial instrument's issuer itself makes inside information accessible: its management, employees[22)] and persons who perform activities for the financial instrument's issuer pursuant to a contract, including persons working for them or persons to whom any activities involving the access to inside information have been delegated[23)]. On the other hand, the employees of related entities and the majority or significant shareholders do not have to be kept in the list, unless they are simultaneously persons referred to in Article 4 of the Implementing Decree (however, such persons are expected not to have access to inside information).

The type of contract entered into between a person who has access to inside information and the financial instrument's issuer is irrelevant (included are both labour-law and commercial-law relations, for instance).

Persons who perform activities "for the issuer" may perform such activities on the basis of any contractual relation (i.e., not only under a contract of mandate and under a commission contract); these words shall be interpreted according to their customary meaning. On the other hand, persons who perform activities "for the issuer" must never be deemed to include, for instance, officers of public authorities, courts of law and officers of prosecuting attorney's offices.

Pursuant to the text of the Act on Capital Market Undertakings, **the financial instrument's issuer is obliged to ensure that a list of persons who have access to inside information is maintained (Article 125 (4) of the Act on Capital Market Undertakings). Thus, the list does not have to be maintained by the financial instrument's issuer itself, but a third party may be authorized to do so.** For instance, in a contract of mandate, the financial instrument's issuer may lay down an obligation of a solicitor's office to produce a list of persons who have access to inside information and thus comply with the duty imposed on it by the Act on Capital Market Undertakings. Any person who maintains the aforesaid list on behalf of the financial instrument's issuer shall itself become a person who has access to inside information. However, the responsibility for the proper maintenance of the aforesaid list shall always remain on the part of the financial instrument's issuer.

Pursuant to the wording of Article 125 (4) of the Act on Capital Market Undertakings and of Article 5 (1) of the Implementing Decree, it is necessary **to maintain a list of persons who have access to inside information in respect of every single item of inside information separately.** Thus, the diction of the Act on Capital Market Undertakings makes it possible for potential investigation of abuse of inside information not to affect persons who have access to some inside information, but not to the item which the investigation relates to.

[22)] According to the CESR, persons who typically have access to inside information include members of the statutory body of the financial instrument's issuer, its CEO, other persons with managing powers, secretaries and personal assistants to such persons, internal auditors, employees who have access to databases in the field of management control and IT specialists who have regular access to inside information.

[23)] According to the CESR, such persons typically include auditors, lawyers, accounting and tax advisors, issue managers, public-relations and investor-relations employees, IT employees and rating agencies.

The list must be sent to the Czech National Bank with a specification of all persons who have access to such information (i.e., it does not suffice just to refer to a legal entity that performs some activities for the financial instrument's issuer, for instance).

In respect of one specific item of inside information, the financial instrument's issuer shall always send to the Czech National Bank just one list of persons who have access to this specific inside information. However, such requirement does not prevent the financial instrument's issuer from producing partial lists for its own purposes and for practical reasons (e.g. for individual external entities).

In terms of efficient control of the information flow, it is necessary that the list shall be updated so as to always contain up-to-date data on the group of persons who have access to inside information. In particular, it is appropriate to update the aforesaid list when the public disclosure of inside information has been delayed. The list that was sent to the Czech National Bank should be promptly updated without undue delay, i.e. as soon as possible after a change has occurred (e.g. a new person has obtained access to an item of delayed inside information prior to its public disclosure, which shall always be regarded as a significant change to the list). Every update is associated with a duty to send the updated list to the Czech National Bank again. On the other hand, it holds good that, if a whole group of persons become aware of a particular item of inside information (albeit gradually over a short period of time), the updated list shall be sent only once (i.e., not several times after adding every individual person).

The financial instrument's issuer must ensure that the persons kept in the list are acquainted with the duties that the applicable legal regulations impose on the handling of inside information and with the penalties that the applicable legal regulations associate with abuse or unauthorized dissemination of inside information (such activities may be delegated to some other party, e.g. to a training entity).

Pursuant to Article 5 (4) of the Implementing Decree, the financial instrument's issuer shall maintain the list in electronic form and store it for a period of at least 5 years from its preparation (if updated, for a period of at least 5 years from its last update). The financial instrument's issuer shall also ensure storage of information relating to the maintenance of the list (e.g. the manner and time of providing persons with inside information) for the same period of time. The issuer may delegate this activity to another person. The manner of storing information is not prescribed but should make the information easy to search and should not give rise to doubts regarding the authenticity of such information.

The rules for the maintenance of the list and for the ensurance of fulfilment of the other duties should be specified by the financial instrument's issuer through an internal regulation in which the specific obligations of its employees would be defined, simultaneously with their responsibility for their fulfilment.

6. Recommendations on the communication of the financial instrument's issuer with investors

Public disclosure of inside information, being one of the elements of the communication with investors, should be carefully planned and have clear objectives and procedures. The financial instrument's issuer should abide by the following recommendations:

- The tasks of individual departments, employees and other persons when communicating with analysts, investors and with the press should be clearly defined by the financial instrument's issuer. From the point of view of a timely and transparent public disclosure of inside information, it is appropriate for the financial instrument's issuer to determine

the persons whose job duties will include the public disclosure and sending of inside information to the Czech National Bank, who are acquainted with the policy of the financial instrument's issuer and know the regulatory requirements in relation to public disclosure (e.g. a member of the management of the financial instrument's issuer, a spokesperson or – taking into account the technical nature of the public disclosure of information by the financial instrument's issuer – a separately authorized employee). In this respect, substitutability of such persons is necessary, since sickness or holiday of the employee in charge does not constitute a reason for the delaying of public disclosure. In relation to that, it is also necessary for the financial instrument's issuers to inform the Czech National Bank of the names of the persons in charge (contact persons pursuant to Article 18 of the Implementing Decree).

- In order to accelerate the process of public disclosure of inside information, it can be recommended that the financial instrument's issuer should have in place a previously defined standardized process for the public disclosure of information (from the origination of information, through the decision on whether inside information is concerned, the manner of its processing after the determination of the channels through which it will be disseminated, e.g. by defining an Internet portal that the financial instrument's issuer will be using).
- The employees must not disclose inside information to anyone, unless they have been designated to do so within the framework of the prudent handling of inside information (e.g. in order to publicly disclose inside information).
- It is appropriate for the financial instrument's issuer to have a transparent communication policy (e.g. through publication of a calendar of publicly disclosed facts; however, such calendar must not contradict the time limits for public disclosure set out by the applicable legal regulations).
- At meetings with shareholders, analysts or at press conferences, the financial instrument's issuer should answer any questions in a prudent manner and being aware of the fact that inside information may not be provided on such occasions. Similarly, if a general meeting presents an opportunity to discuss problems relating to the financial instrument's issuer with members of the board of directors, the financial instrument's issuer must ensure in organizational terms that any inside information which is to be discussed at the general meeting is publicly disclosed not later than concurrently with the beginning of the general meeting.
- An issuer whose financial instruments are listed in regulated markets in more countries than one must coordinate the public disclosure of information in all of such countries so that investors in each of the countries have access to the same information at the same time (see below).

In relation to forecasts of future development:

- If the financial instrument's issuer decides to publicly disclose a forecast of the results of its management or of some other relevant facts relating to its future orientation, it should draw the attention of the public to every alteration of such a forecast.
- When making forecasts, the financial instrument's issuer must act in a prudent manner. The financial instrument's issuer should, in advance, draw the attention of the public to the fact that the figures (or some other facts) given are mere expectations, and clearly and comprehensibly present the reasons that have led it to make such a forecast. The financial instrument's issuer should state the conditions and prerequisites for the achievement of the

anticipated figures and inform about the main risks that might prevent the forecast from coming true.

- In general terms, the financial instrument's issuer is not obliged to comment on or correct any investment recommendations of analysts. Nevertheless, should such recommendations lead to extensive and serious misunderstandings in the market, the financial instrument's issuer should correct serious mistakes.

7. Recommendations on the dealing of potential insiders

The provisions of Article 124 (4) of the Act on Capital Market Undertakings contain rules aimed to protect inside information from being abused by an insider or by some other person acting in accordance with an insider's recommendation. Therefore, insiders are prohibited to undertake transactions with financial instruments, to recommend such transactions, and a duty to maintain confidentiality is imposed on them. **Insiders may undertake transactions with financial instruments by means of a representative acting on their account, on condition that the representative acts in accordance with a previously approved transparent transaction plan** (see below)**; or by means of a portfolio manager, on condition that the portfolio manager acts exclusively at his/her discretion.** Of course, the representative or the portfolio manager may not obtain investment recommendations (orders) from the insider; during the period of time between the origination and public disclosure of inside information, such persons and the insider are prohibited to communicate with each other. Since every transaction undertaken on the account of an insider may raise suspicion of the use of inside information, insiders can be recommended to take the following steps:

- From the moment they begin to discharge a position associated with access to inside information, it is appropriate to use transparent action plans (see below) on the one hand, and to avoid any unplanned transactions with financial instruments on the other hand.
    - The transaction plan is a written document arranged between an insider and his/her representative acting on the insider's account under predefined detailed conditions of the estimated transactions – in particular, as regards the volume of such transactions, estimated transaction prices, time of execution of such transactions and the reasons for execution of such transactions. It must be noted that it is too late to issue a transaction plan after the access to inside information has been obtained. However, this does not apply, if the transaction plan relates to future inside information.
    - The transaction plan must not raise suspicion that it has been retrospectively modified (for instance, it is appropriate to record it in the minutes of a meeting of the relevant body of the financial instrument's issuer, to publish it on the website of the financial instrument's issuer, etc.). If the representative acts consistently pursuant to a previous transaction plan (whether it is advantageous for the insider or not), there is no risk of any ungrounded suspicion being raised about the use of inside information.
- If portfolio management is being performed for an insider or for some other person related to him/her, it is appropriate to exclude from this management the financial instruments of the financial instrument's issuer or the financial instruments derived from them in order to prevent any suspicion from being raised about the use of inside information. No suspicion shall be raised, if the portfolio manager acts exclusively at his/her discretion.
- It is appropriate for an insider not to undertake transactions with the financial instruments that particular inside information relates to immediately after the public disclosure of such inside information. The persons who are not insiders should be provided with some time to evaluate the publicly disclosed information.

It is appropriate for the financial instrument's issuer to ensure that the aforementioned and analogous principles are incorporated into an internal regulation (the code of ethics, etc.) and affect thus the conduct of insiders from among its employees and members of the bodies. Such internal regulation should contain a system of prohibitions and instructions to eliminate the risk of abuse of inside information; on its basis, individual transaction plans and contracts for the management of financial instruments should be prepared.

II. Managers' transactions

1. Personal applicability

The notification duty in respect of managers' transactions applies to the natural persons and legal entities involved in the decision-making process of the financial instrument's issuer and persons related to them. Thus, the obliged persons include not only members of the bodies of the financial instrument's issuer, but also any other persons who might have access to inside information and act on behalf of the financial instrument's issuer or who are involved in its decision-making process (particularly as regards the future development and strategy of the financial instrument's issuer). Thus, in addition to members of the bodies, the obliged persons shall also include (depending on the specific organizational structure of the financial instrument's issuer) the top managers (CEO, CFO, etc.), in particular.

The customary approach of foreign issuers of financial instruments, wherein any managers' transactions are notified directly by the financial instrument's issuer (pursuant to a power of attorney), is permissible. However, it must be emphasized that the manager himself/herself remains the obliged person.

2. Subject-matter applicability

The notification duty applies to transactions with shares, interim certificates and with investment instruments the value of which relates to such shares or interim certificates (none of the said instruments needs to be listed – what matters is that their issuer is the financial instrument's issuer pursuant to Article 124(1) of the Act on Capital Market Undertakings). If the investment instruments the value of which relates to shares or interim certificates are also derived from other instruments that are not subject to the notification duty, any transactions with them shall be notified, if the shares or interim certificates in the underlying basket considerably affect the price of such derived instrument.

All transactions shall be notified. An exception to this rule are processes the legal ground of which is a person's death (inheritance) or transformation of the financial instrument's issuer. Transactions in connection with such processes are not transactions pursuant to Article 125 (5) of the Act on Capital Market Undertakings, no market abuse can occur during them and their notification would mean an unnecessary burden for otherwise obliged persons.

Pursuant to Article 6 (1) of the Implementing Decree, any transactions shall be notified, if the sum total of their values in a calendar year reaches or exceeds an amount corresponding to EUR 5,000 (to be understood as all transactions undertaken in the given calendar year – to be calculated retrospectively, but the time limit of 5 days to notify the transaction shall be computed from the last transaction that has exceeded the limit). The total value of transactions shall be calculated by adding up the transactions undertaken on the account of persons with management powers and on the account of any persons related to such persons. Any set-off of mutual receivables of the obliged person and some other person after the transactions have been executed shall not be taken into account.

The value of a transaction shall be understood as the market value of the subject of the transaction as at the day of execution of the transaction. In the case of investment instruments

the value of which relates to shares or interim certificates (e.g. options), the value shall be understood as the market value of such shares or interim certificates. The day of execution of a transaction, for the purposes of **calculating their value**, shall be understood as the day of their conclusion. In the case of a transaction that involves an exchange, the value shall be given of the instrument which represents the consideration, according to its exchange rate in a regulated market (in the case of a liquid listed investment instrument) or, as the case may be, its value shall be properly justified (in all other cases). The information that an exchange has occurred involving valuation of the instrument using the exchange rate of a regulated market or, as the case may be, the aforesaid material justification, shall be given in the notification as supplementary information.

The execution of a transaction, for the purposes of **commencement of the notification duty**, shall be understood as the moment of acquisition or alienation of the instrument. The physical settlement of a transaction is no longer relevant to the commencement of the notification duty.

In the event of acquisition of any shares or interim certificates pursuant to option plans, the notifier shall fulfil its duty in two phases. Firstly, the acquisition of an option by means of entering into an option contract shall be notified (in such case, the moment of signing of the option contract shall be regarded as the moment of execution of a transaction). If the right arising out of the said option contract is subsequently asserted, it shall suffice to notify the acquisition of shares or interim certificates, where the notifier shall state that it is a transaction executed pursuant to an option contract – i.e., the notifier no longer notifies that a purchase option has been used (a purchase option has been forfeited). In such case, the moment of the use of the purchase option shall be regarded as the moment of execution of a transaction.

The acquisition of a priority right by operation of law[24)] when increasing the registered capital of a joint-stock company shall not be notified, except for any trading with it (in the form of a severed, independently transferrable right the value of which relates to shares) or its exercise (acquisition of shares).

Any transactions undertaken on the account of the obliged person by its portfolio manager are also subject to the notification duty. This also applies if the obliged person is not actively involved in the management of its portfolio. It is necessary for the obliged person to agree with the portfolio manager to inform the obliged person in time about any transaction undertaken[25)].

If a manager who is simultaneously a shareholder of the financial instrument's issuer has a right to choose between a dividend and the acquisition of an additional share, or if s/he is the owner of an exchangeable or priority bond, the manager shall be subject to the notification duty only if s/he decides to acquire the share. The acquisition or alienation of an exchangeable or priority bond itself shall also be subject to the notification duty.

The subscription to a new share when increasing the registered capital shall also be subject to the notification duty. In this case, the execution of a transaction is understood as the entry in the subscribers' deed.

In the case of contingent transactions, it is necessary to determine the moment as at which the notification duty must be fulfilled. Any condition subsequent (resolutory condition) must be notified in the same manner as a non-contingent transaction; on compliance therewith, it must be notified again. Any transaction tied to a condition precedent (suspensory condition) which may be asserted solely by the obliged person shall be notified in the same manner as a non-

[24)] Cf. Article 204a (1) of Act No. 513/1991 Coll., the Commercial Code, as amended.

[25)] Cf. reply to the query "Notification of managers' transactions under portfolio management" of 26 August 2009 published on the website of the Czech National Bank.

contingent transaction. A potential decision on its non-assertion must be notified again. Any transaction tied to a condition precedent (suspensory condition) which may also be asserted by a person other than the obliged person shall be notified only at the moment of assertion of the said condition. The information that it was a contingent transaction shall be given in the notification as supplementary information.

In the event of borrowing of an instrument, the acquisition of the investment instrument shall be notified. The return of the investment instrument does not have to be notified, if it is clear from the original notification when this will happen. A description of the transaction must be given in the notification as supplementary information.

Collateral transactions (e.g. shares lodged as collateral) shall also be subject to the notification duty, if the creditor is not authorized to exercise the rights associated with the instrument. On the sale or on the transfer of the instrument to the property of the creditor, the notification duty must be fulfilled again.

III. Market manipulation

1. General rules on market manipulation

The prohibition of market manipulation serves to strengthen the integrity and trustworthiness of the financial market and to increase the trust on the part of investors. **Pursuant to the provisions of Article 126 (1) of the Act on Capital Market Undertakings, the reference to "market manipulation" shall be understood as a reference to such conduct by a person that might:**

a) **distort the idea of capital market participants about the value, supply of or demand for a financial instrument;** or

b) **otherwise distort the exchange rate of a financial instrument**[26)].

The manners of market manipulation include:

- creation of false signals to the market (e.g. by undertaking a transaction without actually changing the owner of a financial instrument);
- creation of artificial price levels (e.g. by giving illogical, excessive or inconsistent orders);
- fraudulent and deceitful conduct (e.g. by publicly disclosing an undertaken transaction, which is immediately thereafter reversed without public disclosure); and
- dissemination of incorrect or incomplete information (see below).

Exceptions thereto (i.e., the forms of conduct that do not constitute market manipulation) are defined in Article 126 (2) of the Act on Capital Market Undertakings.

The prohibition of market manipulation pursuant to the provisions of Article 126 (4) of the Act on Capital Market Undertakings applies to everyone. A manipulating person shall also be a person who does not manipulate the market itself, but who induces someone else to become its instrument to manipulate the market. A manipulating person shall also be a person who knowingly creates various incorrect estimates, evaluations, opinions and forecasts or who fails to apply the professional care adequate to his/her position to reveal their incorrectness. A manipulating person shall also be a person who did not create manipulating information itself, but who knowingly or carelessly disseminates it further or, as the case may be, knowingly or carelessly acts on its basis. Any persons assisting in manipulation shall also be regarded as

[26)] In relation to this issue, cf. decision "On the manipulation of the exchange rate of a security" (KCP/13/2003) published on the website of the Czech National Bank.

manipulating persons. Specific terms and conditions of such persons' responsibility are laid down by the rules of criminal law, transgression law or administrative punishment law. A person who conceals any exchange rate fixing information may be penalized solely if s/he is subject to the information or notification duty (a special regulation on this rule is a regulation on the public disclosure of inside information).

Article 7 of the Implementing Decree sets out what facts and circumstances relating to a specific conduct of a person in the capital market must be taken into account when assessing whether such conduct constitutes market manipulation. The provisions are not exhaustive and, if necessary, some other factors need to be taken into account, too. However, those given in the provisions of Article 7 of the Implementing Decree are the most frequent indicators of potential market manipulation. It is necessary to emphasize that, even if one or more of the facts or circumstances given in the said provision occur, it does not mean itself that market manipulation has occurred. It is just an indication that needs to be taken into account.

In the field of market manipulation, the Implementing Decree contains several vague terms. "**The beneficial owner of a financial instrument**" pursuant to Article 7 (c) of the Implementing Decree shall be understood as the person for the benefit of whom the financial instrument is being held. The beneficial owner is a person different from the legal owner, while the legal owner is obliged (under any relationship whatsoever) to behave in a certain manner with respect to the beneficial owner and such behaviour affects the trading with the financial instrument. The phrasal term "**significant change in the exchange rate or some other price**" in Article 7 (g) of the Implementing Decree must be assessed in connection with the historical development of the exchange rate or of some other price of the financial instrument.

Market manipulation does not include some manners of conduct, on the understanding that the requirements laid down in Commission Regulation 2273/2003/EC for buy-back programmes and stabilization of financial instruments are complied with. If the trader complies with the requirements laid down in the said Regulation, it shall not commit market manipulation. Further exceptions of this type are given in Article 126 (2) of the Act on Capital Market Undertakings.

2. Incorrect or incomplete information

The idea of market participants can be distorted by incorrect or incomplete information, for instance. **Information shall be deemed incorrect or incomplete, if it contains incorrect data or conceals any facts that a reasonable investor would take into account in making an investment decision.** Also any facts that will occur in the future may be regarded as such information, if they are sufficiently likely to occur.

Data shall be understood both as various facts and as estimates, evaluations, opinions and forecasts. Such data shall be deemed incorrect that do not correspond to the reality. Estimates, evaluations, opinions or forecasts will be incorrect, if they are based on incorrect facts or if they interpret such facts in an incorrect manner. Such data shall be deemed incomplete that conceal any of the facts, as a result of which the tone of the entire information is incorrect.

Also false information shall be regarded as incorrect information. Such information shall be deemed false the components of which are correct, but are interconnected in such a manner that the overall tone is incorrect. Information may also be incorrect, if only a part of it (data) is incorrect, as a result of which its tone is incorrect.

In order to accomplish the facts of a delictual "conduct", incorrect or incomplete information does not need to be disseminated in the public, but it suffices if some other person learns

about it. It is irrelevant whether it is being disseminated within the scope of the mandatory information or notification duty or in a voluntary manner, or what form such dissemination might take. The dissemination of various rumours, evaluations, opinions, recommendations and warnings without any material ground may also accomplish the features of market manipulation (cf. Article 126 (1) and (2) (b) of the Act on Capital Market Undertakings).

If a person who is providing incorrect or incomplete information by mistake learns about this fact, s/he should rectify the information and disseminate it as rectified information at least in the same manner as s/he disseminated the original information.

A fact may be concealed not only with respect to everyone, but also with respect to some persons only. Also a belated dissemination of information (e.g. by belated public disclosure of inside information) may be regarded as market manipulation by concealment.

3. Distortion of the exchange rate of a financial instrument

Market manipulation has a lower threshold for the distortion of the exchange rate of a financial instrument than inside information. Whereas, in respect of inside information, a significant effect on the exchange rate, price or yield is required, a mere distortion of the exchange rate of a financial instrument suffices in respect of market manipulation. In order to indicate a certain item of information as distorting the exchange rate, it shall be sufficient if the information (with regard to specific circumstances and market conditions in general) is capable of affecting the exchange rate. However, this does not mean that market manipulation must also be associated with an inducement to buy or sell a financial instrument.

When assessing whether market manipulation has occurred, the Czech National Bank shall proceed from an *ex post* analysis carried out from the point of view of a reasonable investor, and a mere possibility of distortion of the exchange rate shall suffice. An actual distortion of the exchange rate is not required; in particular it is not necessary for the exchange rate to have been distorted for a specific period of time.[27)] Since it is quite easy to (simply) distort the exchange rate of a financial instrument, particularly when information is being disseminated or concealed by the financial instrument's issuer, it is necessary to ascribe the due importance to every item of (even undisclosed) information.

IV. Suspicion of market abuse

Article 124 (5) and Article 126 (5) of the Act on Capital Market Undertakings **impose the notification duty on certain persons[28)] who reasonably suspect that inside information has been used in the conclusion of a transaction or that a certain transaction might constitute market manipulation.** The notification shall be sent to the Czech National Bank without undue delay.

Also persons other than those referred to in Article 124 (5) and Article 126 (5) of the Act on Capital Market Undertakings may notify reasonable suspicion. However, such persons are not obliged to do so. The content, form and manner of such notification are not prescribed; on the other hand, it is recommended to provide the data required from mandatory notifiers.

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27) Cf. the judgement of the European Court of Justice C-445/09 (IMC Securities).

28) An investment firm, a foreign entity having an authorization issued by a supervisory authority of another Member State of the European Economic Area to provide investment services and providing investment services in the Czech Republic, a bank, a foreign bank performing its activities in the territory of the Czech Republic through a branch, an electronic money institution, a credit union, and an institutional investor. For market manipulation, this group also includes an entity having its registered office in a non-member state of the European Economic Area and providing investment services in the Czech Republic, and a foreign bank carrying on its activities in the Czech Republic without establishing a branch.

Closer instructions on how to assess a specific transaction in order to establish whether a suspicion is truly "reasonable" are given in Article 8 of the Implementing Decree. The person on whom the Act on Capital Market Undertakings imposes the notification duty shall evaluate whether such suspicion is reasonably justified by the specific circumstances of a transaction; in the case of suspicion of market manipulation, the assessment shall proceed primarily from an evaluation of the factors described in Article 7 of the Implementing Decree, pursuant to which market manipulation shall be assessed.

A typical example of a notification of a suspicion of market abuse is a notification of a suspicious order that an investment firm received and refused to execute due to suspicion of abuse of inside information, or due to suspicion of market manipulation[29)].

V. Regular information duty

1. General rules on the regular information duty

The regular information duty of **issuers pursuant to Article 118 (1) of the Act on Capital Market Undertakings, issuers pursuant to Article 121a of the Act on Capital Market Undertakings and of other obliged persons include the sending and public disclosure of:**

- **the annual report and the consolidated annual report** pursuant to Article 118 (1) of the Act on Capital Market Undertakings;
- **the half-yearly report and the consolidated half-yearly report** pursuant to Article 119 (1) of the Act on Capital Market Undertakings; and
- **the report of the issuer's statutory body** pursuant to Article 119a (1) of the Act on Capital Market Undertakings..

An overview of the fulfilment of the regular information duty is shown in the following table:

	issuers referred to in Article 118 (1) (a) of the Act on Capital Market Undertakings (shares, in particular)	issuers referred to in Article 118 (1) (b) of the Act on Capital Market Undertakings (bonds, in particular)	issuers referred to in Article 118 (1) (c) of the Act on Capital Market Undertakings (other securities)	issuers referred to in Article 121a of the Act on Capital Market Undertakings (shares and bonds replaced by other securities, in particular)
the annual report and the consolidated annual report pursuant to Article 118 (1) of the Act on Capital Market Undertakings	**X**	**X**	**X**	**X**
the half-yearly report and the consolidated half-yearly report pursuant to Article 119 (1) of the Act on Capital Market Undertakings	**X**	**X**		
the report of the issuer's statutory body pursuant to Article 119a (1) of the Act on Capital Market Undertakings	**X**			

Other obliged persons shall fulfil those regular information duties that an issuer would fulfil, if it has applied itself for its investment security to be admitted to trading in a regulated market. If the requirements for the manner and language of public disclosure are complied with, other obliged persons may (pursuant to Article 121b of the Act on Capital Market

[29)] In relation to this issue, cf. decisions "On the manipulation of the exchange rate of a security" (KCP/13/2003) and "On the duty of an investment firm not to make any acts aimed to manipulate the prices of securities" (KCP/18/2003) published on the website of the Czech National Bank.

Undertakings) also fulfil their duty just by publicly disclosing a reference to a place where the information publicly disclosed by the issuer is available.

The primary duty to send to the Czech National Bank and to publicly disclose reports under the regular information duty pursuant to the Act on Capital Market Undertakings shall come into existence only after an investment instrument has been admitted to the regulated market, and not already after the application for admittance has been filed (unlike in relation to inside information).

The duty to publicly disclose the report of the issuer's statutory body as an interim report falls away in respect of those issuers referred to in Article 118 (1) (a) of the Act on Capital Market Undertakings or in respect of other obliged persons, who shall publicly disclose an equivalent quarterly report (Article 119a (4) of the Act on Capital Market Undertakings).

Instructions on how to structure the financial reports that are to be sent as part of the regular information duty are published by the Czech National Bank every year on its website.

If, pursuant to the Act on Capital Market Undertakings, an auditor's report must be enclosed with the report, it shall not suffice to enclose the auditor's opinion only, but the unabridged text of the auditor's report must be enclosed.

If an issuer referred to in Article 118 (1) of the Act on Capital Market Undertakings prepares the annual report as well as the consolidated annual report, the consolidated annual report shall contain information on the consolidated group, but it is not necessary to provide the financial statements of the consolidated companies. If an issuer referred to in Article 118 (1) of the Act on Capital Market Undertakings prepares the financial statement as well as the consolidated financial statement, but in accordance with Article 22b (2) of Act No. 563/1991 Coll., on accounting, as amended, publicly discloses only one annual report (the consolidated one), such consolidated annual report should contain enough information both about the issuer itself and about the consolidated group, always taking into account the specific situation (the consolidated annual report shall contain the financial statement of the issuer as well as the consolidated financial statement of the consolidated group). The quantity of information about subsidiary companies should always correspond to their significance and contribution to the group as a whole.

At a regular general meeting, the statutory body of an issuer referred to in Article 118 (1) (a) of the Act on Capital Market Undertakings must (pursuant to Article 118 (8) of the Act on Capital Market Undertakings) submit a summary explanatory report on the issues pursuant to Article 118 (5) (a) to (k) of the Act on Capital Market Undertakings.

Any exceptions to the fulfilment of the regular information duty are defined in Article 119c of the Act on Capital Market Undertakings. There are exceptions both in personal terms (e.g. some public institutions) and in material terms (e.g. issuers of debt instruments on condition they comply with certain requirements).

Some of the facts may be subject both to the regular and to the ongoing information duty (e.g. the annual economic results). In such case, it is necessary to comply with the rules set out for every information duty that a given fact is subject to (see below).

2. Selection of the state for the purposes of fulfilling the information duty under Part Nine, Chapters Two and Five of the Act on Capital Market Undertakings

Issuers referred to in Article 118 (1) of the Act on Capital Market Undertakings, issuers referred to in Article 121a of the Act on Capital Market Undertakings and other obliged persons shall fulfil their information duty in the Czech Republic on the basis of their registered office, approval of their prospectus in the Czech Republic or on the basis of their

admittance to the regulated market in the Czech Republic. Issuers referred to in Article 118 (1) (b) (2) and (3) and in Article 118 (1) (c) (2) to (4) of the Act on Capital Market Undertakings, and under analogous conditions also issuers referred to in Article 121a of the Act on Capital Market Undertakings, may (pursuant to Article 123 of the Capital Market Undertakings) select the Czech Republic as the state in which they will fulfil their information duty, providing their registered office is situated in the Czech Republic or their securities have been admitted to the Czech regulated market.

An example thereof can be an issuer having its registered office in the Netherlands, whose bonds in the nominal value of EUR 2,000 have been admitted to trading in a regulated market in the Czech Republic and in Poland. Such an issuer may select the Netherlands or Poland or the Czech Republic as the state in which it will fulfil its information duty.

Information about the selection of the member state of the European Union (covering all member states of the European Economic Area pursuant to Article 195 of the Act on Capital Market Undertakings) is mandatorily published information pursuant to Article 127(1) of the Act on Capital Market Undertakings. Associated with this is the duty to send to the Czech National Bank and the duty to disclose in a prescribed manner as described below. A change of the said selection shall be made in an analogous manner. The duration of the binding effect of the said selection is laid down in Article 123 (1) of the Act on Capital Market Undertakings (3 years).

VI. Ongoing information duty[30)]

In addition to the duty to publicly disclose and send inside information, duty to notify of the delaying of public disclosure of inside information, duty to send a list of persons who have access to inside information, and information about the selection of the member state of the European Union, the Act on Capital Market Undertakings imposes many other ongoing information duties on issuers. These include:

- **information on a change to the rights** pursuant to Article 119b (1) of the Act on Capital Market Undertakings;
- **information on a change to the rights** pursuant to Article 119b (2) of the Act on Capital Market Undertakings;
- **information on a new issue of investment securities, on a loan or credit accepted or on an analogous obligation undertaken, as well as on a potential obligation** pursuant to Article 119b (3) of the Act on Capital Market Undertakings;
- **information relating to a general meeting or to an analogous gathering of owners of securities that represent a holding in the issuer** pursuant to Article 120a (2) and (3) of the Act on Capital Market Undertakings;
- **information relating to holding a general meeting or an analogous gathering of owners of securities that represent a holding in the issuer or an invitation to a general meeting or an analogous gathering of owners of securities that represent a holding in the issuer** pursuant to Article 120b (1) (a) of the Act on Capital Market Undertakings;
- **information relating to holding a meeting of owners of bonds or to an analogous gathering of owners of securities that represent a right to repayment of the**

[30)] In Part Nine, Chapter Two, Article 120 et seq., the Act on Capital Market Undertakings defines other information duties of the issuer that do not fall under the obligatory published information. However, such information duties are not further dealt with in this Official Information.

outstanding amount pursuant to Article 120c (1) of the Act on Capital Market Undertakings;

- **information relating to a meeting of owners of bonds or to an analogous gathering of owners of securities that represent a right to repayment of the outstanding amount** pursuant to Article 120c (1) of the Act on Capital Market Undertakings[31)];
- **information on the acquisition or loss of the issuer's own shares** pursuant to Article 122 (15) of the Act on Capital Market Undertakings; and
- **information on the total number of voting rights and on the amount of the registered capital** pursuant to Article 122 (16) of the Act on Capital Market Undertakings.

These information duties also apply to other obliged persons, except for the information on the acquisition or loss of the issuer's own shares pursuant to Article 122 (15) of the Act on Capital Market Undertakings and the information on the total number of voting rights and on the amount of the registered capital pursuant to Article 122 (16) of the Act on Capital Market Undertakings, which only apply to those issuers referred to in Article 118 (1) (a) of the Act on Capital Market Undertakings. If the requirements for the manner and language of public disclosure are complied with, other obliged persons may (pursuant to Article 121b of the Act on Capital Market Undertakings) also fulfil their duty just by publicly disclosing a reference to a place where the information publicly disclosed by the issuer is available.

The ongoing information duties also include:

- **a notification of a holding of a proportion of voting rights** pursuant to Article 122 (1) of the Act on Capital Market Undertakings;
- **a notification of a transaction** (managers' transactions) pursuant to Article 125 (5) of the Act on Capital Market Undertakings; and
- **a notification of a suspicion of the use of inside information** pursuant to Article 124 (5) of the Act on Capital Market Undertakings or **of a suspicion of market manipulation** pursuant to Article 126 (5) of the Act on Capital Market Undertakings.

However, a special category of obliged persons (notifiers) are subject to these information duties.

[31)] This obligatory published information includes information about the exercise of the right arising out of the ownership of bonds or analogous securities that represent a right to repayment of the outstanding amount, to payment of the yield, to subscription, to cancellation or repayment of such a security.

An overview of the fulfilment of the ongoing information duty is shown in the table below:

	issuers referred to in Article 118 (1) (a) of the Act on Capital Market Undertakings (shares, in particular)	issuers referred to in Article 118 (1) (b) of the Act on Capital Market Undertakings (bonds, in particular)	issuers referred to in Article 118 (1) (c) of the Act on Capital Market Undertakings (other securities)	issuers referred to in Article 121a of the Act on Capital Market Undertakings (shares and bonds replaced by other securities, in particular)	financial instrument's issuers	notifiers (shareholders, managers, selected persons)
information on a change to the rights pursuant to Article 119b (1) of the Act on Capital Market Undertakings	**X**					
information on a change to the rights pursuant to Article 119b (2) of the Act on Capital Market Undertakings		**X**	**X**	**X**		
information on a new issue of investment securities, on a loan or credit accepted or on an analogous obligation undertaken, as well as on a potential obligation pursuant to Article 119b (3) of the Act on Capital Market Undertakings	**X**	**X**	**X**			
information relating to a general meeting or to an analogous gathering of owners of securities that represent a holding in the issuer pursuant to Article 120a (2) and (3) of the Act on Capital Market Undertakings	**X**					
information relating to holding a general meeting or an analogous gathering of owners of securities that represent a holding in the issuer or an invitation to a general meeting or an analogous gathering of owners of securities that represent a holding in the issuer pursuant to Article 120b (1) (a) of the Act on Capital Market Undertakings	**x**					
information relating to holding a meeting of owners of bonds or to an analogous gathering of owners of securities that represent a right to repayment of the outstanding amount pursuant to Article 120c (1) of the Act on Capital Market Undertakings		**x**				
information relating to a meeting of owners of bonds or to an analogous gathering of owners of securities that represent a right to repayment of the outstanding amount pursuant to Article 120c (1) of the Act on Capital Market Undertakings		**X**				
notification of a holding of a proportion of voting rights pursuant to Article 122 (1) of the Act on Capital Market Undertakings						**X**
information on the acquisition or loss of the issuer's own shares pursuant to Article 122 (15) of the Act on Capital Market Undertakings	**X**					

information on the total number of voting rights and on the amount of the registered capital pursuant to Article 122 (16) of the Act on Capital Market Undertakings	**X**					
information about the selection of the Member State of the European Union by the issuer pursuant to Article 123 (1) of the Act on Capital Market Undertakings		**X**	**X**	**X**		
inside information pursuant to Article 125 (1) of the Act on Capital Market Undertakings					**X**	
notification of the delaying of public disclosure of inside information pursuant to Article 125 (2) of the Act on Capital Market Undertakings					**X**	
list of persons who have access to inside information, pursuant to Article 125 (4) of the Act on Capital Market Undertakings					**X**	
notification of a managers' transaction pursuant to Article 125 (5) of the Act on Capital Market Undertakings						**X**
notification of a suspicion of the use of inside information pursuant to Article 124 (5) of the Act on Capital Market Undertakings						**X**
notification of a suspicion of market manipulation pursuant to Article 126 (5) of the Act on Capital Market Undertakings						**X**

Interpretation difficulties may arise when interpreting the information duty pursuant to Article 119b (3) of the Act on Capital Market Undertakings, pursuant to which issuers referred to in Article 118 (1) of the Act on Capital Market Undertakings shall, without undue delay, publicly disclose all information on a new issue of investment securities, on a loan or credit accepted or on an analogous obligation undertaken, as well as on a potential obligation. The purpose of the said provision is to inform the public investors about the issuer's obligations that may affect its financial stability or, as the case may be, ability to fulfil its obligations. Therefore, it is not required, for instance, to publicly disclose information on short-term loans for operations or on negligible issues, loans, credits or analogous obligations that do not affect the issuer's financial stability.

The issuers' information can simultaneously be inside information, and this will often be the case. In such special cases, the applicable legal regulations overlap, and the issuers must comply with both of them. Therefore, it shall be impossible, for instance, to delay the public disclosure of inside information, if doing so should cause a time limit defined for some other information duty to be exceeded. Any information that accomplishes the features of inside information, but that is simultaneously mentioned in other provisions of the Act on Capital Market Undertakings, must always be publicly disclosed by the issuer within the time limit set out for the particular information duty, unless the issuer is obliged to publicly disclose such information earlier as inside information.

VII. Notification of a holding of a proportion of voting rights

All persons who reach, exceed or reduce their holding of a proportion of voting rights of the issuers referred to in Article 118 (1) (a) of the Act on Capital Market Undertakings

above or below the defined percentage thresholds shall be obliged to notify the issuer and the Czech National Bank of such fact. The Czech National Bank shall publicly disclose such notification.

The notification duty under the Czech law applies to holdings in those issuers who have their registered office in the Czech Republic and whose shares or analogous securities have been admitted to trading in a European regulated market. However, the notification duty under the Czech law also applies to those issuers who have their registered office in a third country, providing the prospectus of their shares or analogous securities admitted to trading in a European regulated market has been approved in the Czech Republic.

As regards the group of obliged persons who are subject to the notification duty under the Czech law, it is not limited in any manner whatsoever. **Every legal entity or natural person shall be an obliged person, irrespective of their citizenship.**

The notification duty is associated with the reaching of, exceeding or falling under certain percentage thresholds. The value of the first threshold depends on the amount of the issuer's registered capital and equals either to 3 % in the case of issuers whose registered capital amount exceeds CZK 100 million, or to 5 % in the case of issuers whose registered capital amount is lower than or equal to CZK 100 million. The values of the other thresholds are 10 %, 15 %, 20 %, 25 %, 30 %, 40 %, 50 % and 75 %.

The individual percentage thresholds apply to voting rights, and not to the shares of the issuer. A holding of a proportion of voting rights usually means capital interest in the issuer, but it does not always have to be the case. For instance, a Czech joint-stock company can also issue priority shares without voting rights. Such priority shares then do not affect the holding of a proportion of voting rights, unless a temporary "revival" of voting rights arising from priority shares would be effected under statutory terms and conditions.

In terms of existence of the notification duty, it is irrelevant that the voting rights might not be exercised at all, whether under own decision of the obliged person who deliberately remains passive in respect of the exercise of voting rights pursuant to the issuer's statutes (limitation on the maximum number of votes per shareholder) or as a result of application of a statutory prohibition to exercise voting rights (e.g. should the notification duty not be fulfilled duly and timely – Article 122 (5) of the Act on Capital Market Undertakings).

On the "first" admittance of an issuer to a regulated market, the notification duty comes into existence in respect of all persons who hold an appropriate proportion of voting rights, namely at the moment of admittance of shares or analogous securities to trading, since the notification duty applies to issuers whose shares have been admitted to trading in a regulated market.

An acquisition or loss of a voting right is typically associated with acquisition or loss of the shares which the voting right is connected with. Relevant to the coming into existence of the notification duty is the moment when the transfer of the title to such shares is executed. In the case of a registered share in documentary form, this shall mean a transfer by endorsement and handover; in the case of a bearer share in documentary form, this shall mean a handover; in the case of a dematerialized share, this shall mean a registration on the account.

However, relevant to the coming into existence of the notification duty may also be an act of omission on the part of a shareholder who touched the appropriate threshold as a consequence of some other fact (e.g. due to a decrease or increase of the issuer's registered capital, or as a result of a temporary "revival" of voting rights in respect of priority shares). In such instances, the notification duty shall come into existence at the moment when the total number of voting rights changes (i.e., in the case of changes to the registered capital amount as at the day of

registration in the commercial register, and in the case of priority shares analogously as at the day of "revival" of voting rights).

The total number of all voting rights can be ascertained from the issuer's information duty (Article 122 (16) of the Act on Capital Market Undertakings and Article 11 of the Implementing Decree). Also the issuer's own shares shall be included in the total number of voting rights.

Analogous securities that represent a holding in the issuer mean, in the first instance, listed subscriber securities of issuers from third countries (also interim certificates of Czech joint-stock companies would fall under this category, if they were listed). In relation to depositary receipts, the notification duty lies with the owner of the receipt, and not with its issuer.

For the coming into existence of the notification duty, it is irrelevant whether the obliged person holds the voting rights directly (Article 122 (1) of the Act on Capital Market Undertakings) or indirectly (Article 122 (2) of the Act on Capital Market Undertakings[32)]).

VIII. Sending and public disclosure of information

1. Language regime

Information shall be sent to the Czech National Bank in the same language(s) in which it is publicly disclosed. Information in the field of protection against market abuse and in the field of transparency that is not subject to public disclosure (such as a notification of the delaying of public disclosure of inside information, a list of persons who have access to inside information, and a notification of a suspicion of the use of inside information or of a suspicion of market manipulation), **may be sent to the Czech National Bank in the Czech language, in the English language or in the Slovak language.**

Information that is publicly disclosed in connection with fulfilling the duties in the field of protection against market abuse (information duties referred to in Part Nine, Chapter Four of the Act on Capital Market Undertakings) and in the field of transparency (information duties referred to in Part Eight, Chapters Two and Three of the Act on Capital Market Undertakings) are subject to different language regimes. From the point of view of language regime, public disclosure of inside information falls under public disclosure of information in the field of transparency.

a) Information in the field of market abuse

Pursuant to Article 196 (1) (first sentence) of the Act on Capital Market Undertakings, information in the field of protection against market abuse (managers' transactions) must be publicly disclosed **in the Czech language**, with the exception referred to in Article 196 (1) (second sentence) of the Act on Capital Market Undertakings. Pursuant to the said provision, the Czech National Bank generally permits to be notified of managers' transactions **in the English language** only, in which language the Czech National Bank also publicly discloses them.

b) Information in the field of transparency

The language regime in the field of transparency is defined in Article 127c of the Act on Capital Market Undertakings.

Issuers referred to in Article 118 (1) of the Act on Capital Market Undertakings and issuers referred to in Article 121a of the Act on Capital Market Undertakings:

[32)] Cf. decision "On the notification duty, addition of voting rights" (KCP 15/2005) published on the website of the Czech National Bank.

- whose investment security has been admitted to trading **in the Czech regulated market only** (Article 127c (1) of the Act on Capital Market Undertakings) **shall publish such information in the Czech language, in the English language or in the Slovak language;**
- **in all other cases** (Article 127c (2) to (4) of the Act on Capital Market Undertakings)**, they shall publish such information:**
  - **in the English language only;**
  - **in the Czech language or in the Slovak language and also in the English language;**
  - **in the Czech language or in the Slovak language and also in a language in which documents may be submitted to the competent supervisory authorities of other member states of the European Economic Area where the investment security has been admitted to trading in a regulated market;** or
  - **in the English language and also in a language in which documents may be submitted to the competent supervisory authorities of other member states of the European Economic Area where the investment security has been admitted to trading in a regulated market.**

Other obliged persons shall abide by the said rules as appropriate.

Pursuant to Article 122 (1) of the Act on Capital Market Undertakings, a notification of a holding of a proportion of voting rights may be submitted either in the Czech language or in the English language.

2. General rules on sending information

The provisions of Article 15 (1) of the Implementing Decree define the basic manner of sending information, which consists in the communication through a web application accessible on the website of the Czech National Bank (an Internet application of the Czech National Bank for the gathering of information duties and for the registration of entities, hereinafter the "Application"). If the size of certain information makes it impossible to send the information through the Application (which may exceptionally be the case in relation to an annual report, consolidated annual report, half-yearly report and consolidated half-yearly report), it is possible to send the information on a data medium (e.g. CD, DVD). Information sent on a data medium by issuers referred to in Article 118 (1) of the Act on Capital Market Undertakings, issuers referred to in Article 121a of the Act on Capital Market Undertakings or by other obliged persons must be sent to the Czech National Bank so that the Czech National Bank receives it not later than on the day as at which the issuers or other obliged persons must fulfil their information duty.

Alternative manners of sending are set out in Article 16 of the Implementing Decree. Pursuant to paragraphs 1 and 2 thereof, a notification of a holding of a proportion of voting rights and a notification of a managers' transaction may be sent electronically also without an accepted electronic signature (see below), on condition that a confirmation is sent simultaneously in writing or through a data box pursuant to Act No. 300/2008 Coll., on electronic acts and on authorised document conversion, as amended. A notification of a suspicion of the use of inside information or of market manipulation may be sent also without an accepted electronic signature (see below) and, for technical reasons, also in other manners pursuant to paragraph 3 thereof. In particular, such technical reasons shall be understood as non-functionality of the electronic connection between the notifier and the Czech National Bank.

Information may be deemed sent to the Czech National Bank only at the moment it contains all of the particulars prescribed by the applicable legal regulations[33)].

3. Contact person when sending information

The signature of a contact person must be attached to most of the information being sent. This rule also applies when any person is sending information on behalf of the obliged person other than the person authorized to do so pursuant to the applicable legal regulation. Issuers referred to in Article 118 (1) of the Act on Capital Market Undertakings, issuers referred to in Article 121a of the Act on Capital Market Undertakings, financial instrument's issuers and other obliged persons must **always** appoint a contact person with respect to their permanent and regular information duties (Article 15 (3) (a) of the Implementing Decree).

The contact person shall be a specific natural person, even if the sending of information on behalf of the obliged person is being arranged by a legal entity. No duties are imposed on the contact person itself, as the responsibility for the proper fulfilment of the information duty remains with the obliged person itself. The purpose of the regulation is to ensure that, in case of problems while sending information, there is a person in charge who the Czech National Bank can refer to.

The authorization of the contact person should be made in written form and signed by persons who are authorized to act on behalf of the obliged person. In the authorization of the contact person, the obliged person shall provide the Czech National Bank with the necessary data (Article 18 (1) of the Implementing Decree). Simultaneously, it shall be obliged to inform the Czech National Bank without undue delay about any changes to such data. In this manner, the obliged person may authorize more persons than one, each of whom may be authorized to send information belonging to a different field.

4. Ensuring the authenticity of sent information

In order to ensure the authenticity of sent information, both in terms of provability of its origin and in terms of any unauthorized intervention in its content by third parties, the contact person or natural person (acting on behalf of the obliged person (notifier) pursuant to the applicable legal regulation) **shall be obliged to provide the sent information with a guaranteed electronic signature based on a qualified certificate issued by an accredited provider of certification services** (hereinafter the "accepted electronic signature")[34)]**.**

In order to prevent confusability of information, unique identification of information is required.

5. Rectification of sent information

The provisions of Article 17 of the Implementing Decree set out the procedural rules to resolve a situation where the obliged person finds out that it sent incorrect or incomplete information to the Czech National Bank. The sending of rectified information is governed by the general rules pursuant to Articles 15 and 16 of the Implementing Decree. However, in addition to the general rules, the rectified information must be supplemented with the content and reasons for such rectification. Rectified information must also be supplemented with the identification of the original information. Should any information that has been rectified once already be rectified again (a second or further rectification of the original information), the

[33)] Cf. judgment of the Metropolitan Court in Prague file no. 6 Ca 218/2003 of 31 August 2006.

[34)] The requirement for an accepted electronic signature follows from Article 11 (1) of Act No. 227/2000 Coll., on electronic signature, as amended, that does not permit the usual form of electronic signature to be used in the sphere of public authorities.

rectified information shall always contain the identification of the immediately preceding information only (the entire process of rectification is thus chained and easier to decipher).

6. Technical delaying of public disclosure

The obliged person may also impose a short-term embargo (information restriction) on the public disclosure of information to be sent, if it is necessary to ensure a concurrent public disclosure thereof at more places than one. However, such an embargo should be imposed only exceptionally (cf. Article 127 (2) of the Act on Capital Market Undertakings and Article 20 (2) of the Implementing Decree). An embargo is permissible primarily in a situation where information should be publicly disclosed through more persons than one at the same moment and the whole process needs to be technically coordinated. However, we expect that in the current situation as regards the development of technologies, such an embargo may consist in not more than just a few dozens of minutes. Should the embargo take longer, it would have to be regarded as the delaying of public disclosure of inside information under compliance with the statutory requirements (see above).

7. Form of public disclosure of obligatory published information

Obliged persons must publicly disclose information in the form of a data file suitable for downloading (Article 19 of the Implementing Decree). The Portable Document Format (with a ".pdf" suffix) is expected or, if such a format is impossible to use, any other data formats may be used that are commonly used in electronic communication and that do not permit to edit the content.

In order to prevent confusion of obligatory published information with any other messages, the obliged person must distinguish the obligatory published information from its commercial and promotional messages (e.g. in the section "for investors" by clearly identifying the former as "obligatory published information"). Similarly, it is undesirable for the different items of obligatory published information to be confused with each other (cf. Article 19 (2) of the Implementing Decree). Therefore, the title under which the obligatory published information is presented on the website of the obliged person should clearly identify what information is concerned (e.g. "Economic results for the 1st quarter").

Any publicly disclosed inside information must be accessible to the public continuously for a period of at least 5 years after its public disclosure or, as the case may be, until the listing has been terminated, if the latter happens earlier. Annual reports, consolidated annual reports, half-yearly reports and consolidated half-yearly reports must be accessible to the public continuously for a period of at least 5 years after their public disclosure with no exception. Pursuant to Article 196 (2) of the Act on Capital Market Undertakings, the other obligatory published information must be published in the aforementioned manner for a period of at least 3 years.

8. Manner of public disclosure of obligatory published information

In the Czech Republic, issuers and other obliged persons are obliged to publicly disclose obligatory published information always at two places at the same time (Article 20 (1) and (2) of the Implementing Decree)[35)]:

a) The obligatory published information shall be publicly disclosed in unabridged form, in a manner enabling remote access (i.e., on the website of the issuer or other obliged

[35)] In relation to this issue, cf. decision "On the duty to publish the annual report duly and timely" (KCP/11/2005) published on the website of the Czech National Bank.

person), and in a manner that issuers normally use to publicly disclose information about their activities.

Relevant are not the rights of the issuer or other obliged person to such a website or the inclusion of the issuer's corporate name in the domain, but the fact whether this address can be found easily and in the usual manner according to the corporate name or firm of the issuer. All listed companies can be expected to use their own website to communicate not only with investors, but also with customers and with the public in general – and exactly on that website the obligatory published information should be publicly disclosed on the main page, in the section "for investors", etc. The website should be well-arranged, the information on it should be easy and logical to find and accessible without restrictions and free of charge.

b) At the same time, the issuer or other obliged person shall ensure that the obligatory published information is publicly disclosed in one of the following manners:

- in unabridged form by means of a financial Internet portal that serves to disseminate information relating to the capital market and that is generally and regularly visited (hereinafter the "Internet portal", a list of Internet portals is published by the Czech National Bank on its website); or
- in unabridged form as a report of an agency that serves to disseminate information relating to the capital market (hereinafter the "agency", a list of agencies is published by the Czech National Bank on its website).

The annual report, consolidated annual report, half-yearly report, consolidated half-yearly report and the report of the issuer's statutory body may also (due to their size) be publicly disclosed by means of an Internet portal or agency only in the form of a hypertext link to the website of issuers referred to in Article 118 (1) of the Act on Capital Market Undertakings, of issuers referred to in Article 121a of the Act on Capital Market Undertakings or of other obliged persons where such reports are publicly disclosed in unabridged form.

For easy identification of obligatory published information, the issuer or other obliged person shall ensure that, along with it, the Internet portal or agency shall also publish data pursuant to Article 20 (3) of the Implementing Decree. The issuer or other obliged person shall do the same when publicly disclosing the obligatory published information themselves.

Any potential amendments to or rectifications of obligatory published information shall be publicly disclosed in the same manner in which the obligatory published information was publicly disclosed. In the case of rectification of erroneous data, it is necessary to state the content and reasons for such rectification as well as the unambiguous identification of the original information.

Information may be deemed publicly disclosed only at the moment when it contains all of the particulars prescribed by the applicable legal regulations[36)].

If obligatory published information is publicly disclosed also in another member state of the European Economic Area, it must be concurrently publicly disclosed in the Czech Republic.

9. Significant data relating to obligatory published information

The scope of significant data relating to obligatory published information is defined in Article 21 of the Implementing Decree. Such data must be archived in connection with

[36)] Cf. judgment of the Metropolitan Court in Prague file no. 6 Ca 218/2003 of 31 August 2006.

obligatory published information, and the Czech National Bank may request the obliged person at any time to provide such significant data for the purposes of exercising supervision.

The details about the manner of ensuring the secure sending pursuant to Article 21 (b) of the Implementing Decree shall be understood as such details that minimize the risk of damage to the data and unauthorized access and that provide certainty as regards the source of obligatory published information.