FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

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Shadow insider trading: Regulatory expectations and emerging conduct risk

This report introduces the concept of 'shadow insider trading' and outlines the view of the Financial Markets Authority – Te Mana Tātai Hokohoko (FMA) on how the statutory prohibitions against insider trading under the Financial Markets Conduct Act 2013 may apply to this concept.

Shadow insider trading broadly refers to using material information about one listed issuer to inform trading in the quoted financial products of another listed issuer, where the two listed issuers are connected in some way that means information about one may have a material effect on the other's share price.

We understand from market participants that shadow insider trading is common industry practice. As such, this report is intended to educate market participants about the behaviour and standards we expect from those we regulate. We are publishing this report in line with our statutory functions, which include promoting confident and informed participation in New Zealand's financial markets by businesses, investors and consumers.

What is shadow insider trading?

The concept of shadow insider trading refers to a form of insider trading where a person in possession of non-public material information about one listed issuer uses that information to trade in the quoted financial products of another, economically related listed issuer.

Insider trading traditionally involves trading in the quoted financial products of the listed issuer directly associated with the material information. However, shadow insider trading targets listed issuers whose quoted financial product prices may be indirectly impacted by the material information due to sectoral, operational or financial similarities.

Insider trading as prohibited by the FMC Act

The prohibition on insider trading is set out in Part 5 of the Financial Markets Conduct Act 2013 (FMC Act).

Section 240(1) of the FMC Act prohibits a person from engaging in any of the conduct set out in sections 241(1), 242(1), and 243(1) if the person is an 'information insider' of the listed issuer.

Section 234(1) of the FMC Act defines an 'information insider' as a person who:

1. Has material information relating to the listed issuer that is not generally available to the market; and
2. Knows or ought reasonably to know that the information is material information; and
3. Knows or ought reasonably to know that the information is not generally available to the market.

Section 231(1) of the FMC Act defines 'material information' as:

1. Information that a reasonable person would expect to have a material effect on the price of a listed issuer's quoted financial products if it were generally available; and
2. Information that relates to particular financial products, a particular listed issuer, or particular listed issuers, rather than to financial products generally, or listed issuers generally.

Section 232(1) of the FMC Act defines information as 'generally available to the market':

1. If –
   (a) it is information that has been made known in a manner that would, or would be likely to, bring it to the attention of persons who commonly invest in relevant financial products; and
   (b) Since the information was made known, a reasonable period for it to be disseminated among those persons has expired; or
2. If it is likely that persons who commonly invest in relevant financial products can readily obtain the information (whether by observation, use of expertise, purchase from other persons, or any other means); or
3. If it is information that consists of deductions, conclusions, or inferences made or drawn from either or both of the kinds of information referred to in 1 and 2.

Application of the FMC Act to shadow insider trading

The FMA's view is that information about a listed issuer, or about a particular sector, industry, or other matter that relates to a listed issuer, is capable of constituting 'material information' about another listed issuer under s 231(1).

For example: Where a person possesses information about Issuer A that is material to Issuer B, they may be considered an information insider to Issuer B. This applies where the person either has actual knowledge that the information is material and not generally available to the market, or they ought reasonably to know that the information is material and not generally available to the market.

This is subject to the requirement under s 231(1)(b) that the information cannot be so general that it relates to financial products generally or listed issuers generally and must be narrow enough to apply to a class of financial products or listed issuers.

Accordingly, conduct comprising shadow insider trading is capable of comprising a breach of the prohibition on insider conduct under s 240 of the FMC Act, in relation to trading (s 241), disclosing information (s 242) or advising or encouraging trading (s 243).

The reasonable person is one who commonly invests in shares and holds them for a period of time based on their view of the inherent value of those shares.[1]

[1] *Huljich v R* [2025] NZCA 155 at [57].

Materiality

To constitute insider trading under the FMC Act, a reasonable person must expect that the information regarding one listed issuer, if generally available, would likely have a material effect on the price of quoted financial products of the other listed issuer.

Materiality is assessed on whether a reasonable person would expect a material impact on price at the time the information was held, not with the benefit of hindsight.

Example scenarios

In considering the application of insider trading prohibitions to shadow trading scenarios, a principles-based approach encourages firms to reflect on the broader purpose of the law – namely, to promote market integrity and fairness. The following scenarios are illustrative only and are not intended to be exhaustive.

Capital raise scenario

In sectors characterised by a small number of dominant listed issuers, market announcements regarding a capital raise by one major listed issuer can reasonably be expected to influence the share prices of its peers. An announcement of an upcoming capital raise may result in market reactions such as short-term selling pressure or changes to sector weighting. Where a person becomes aware of non-public information about the upcoming capital raise, acting on this information – for example by selling down holdings in a peer issuer ahead of the announcement and subsequently repurchasing those securities at a lower price – may indicate the use of material information that is not generally available for strategic gain. In circumstances where the issuers operate within a small sector, the link between one issuer's capital event and its effect on a peer's share price may be sufficiently material that such trading could fall within the scope of insider trading prohibitions.

Merger and acquisition scenario

Shadow insider trading risks can also arise where a person becomes aware of confidential merger or acquisition transactions involving one listed issuer and, based on this information, trades in a closely comparable peer. For example, if an individual is informed of an upcoming acquisition that is likely to positively revalue a target issuer, they may infer that similar listed issuers in the same sector will also benefit through investor sentiment or valuation benchmarking. If they trade in the peer issuer before the acquisition is made public, the trading may constitute insider conduct.

Regulatory expectations

Market participants are reminded that trading decisions made with the benefit of non-public material information may fall within the scope of insider trading prohibitions under the FMC Act regardless of whether the trade involves the issuer to whom the information directly relates.

We expect individuals and institutions in possession of non-public material information to carefully assess the potential implications of their trading activity across all related quoted financial products. When trading

in correlated shares or within concentrated sectors, decision-makers must consider whether the information they hold could be viewed as material to the broader market or related issuers.

Entities should also be vigilant in documenting and reviewing trade rationales, particularly when they involve significant transactions outside of normal trading patterns or coincide with known market-moving events.

Robust internal governance and compliance frameworks are essential to managing these risks. We expect asset managers to have clear policies in place that address the handling and use of non-public information, including in relation to sector peers, and to foster a culture of ethical decision-making. Timely disclosure, meaningful trade approvals, and contemporaneous documentation are key to demonstrating sound judgement and regulatory compliance.

We will continue to monitor and respond to evolving conduct risks. Market participants are encouraged to engage with us, seek legal or compliance advice when necessary, and prioritise market integrity. By doing so, entities can support fair, efficient, and transparent markets that are aligned with the long-term interests of investors and New Zealand's financial system as a whole.

We acknowledge that some firms consider our view on shadow insider trading poses practical difficulties for intermediaries. We value constructive discussion on this issue and encourage those who would like to discuss it further to contact us via questions@fma.govt.nz, attention the Market Conduct team.