SPOTLIGHT
STOCK MARKET

Guidance from Spotlight regarding MAR and inside information

2.23.2021

Background

The purpose with this guidance is to facilitate the listed companies compliance with Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (”MAR”), which entered into force on 3 July 2016. By this document Spotlight aims to provide guidance and to present how the market place view the companies’ obligations according to MAR. The rules constitutes obligations for the companies listed at Spotlight, in particular with regards to public disclosure of inside information, notifications of transactions in financial instruments undertaken by persons discharging managerial responsibilities (PMDRs) and insider lists (previously called logbook”). The purpose with MAR is to counteract market abuse and to make sure that the market gets access to relevant and clear information fast and at the same time. That is a prerequisite for maintaining the general public’s confidence in the market, in its function and in the listed companies. The EU also adopted Directive 2014/57/EU of the European Parliament and of the Council on criminal sanctions for market abuse (”MAD”) in order to ensure an effective implementation of the provisions in MAR. In order to ensure that MAR and MAD is complied with in Sweden, the Swedish legislator has adopted Act (2016:1307) on criminal sanctions for market abuse on the securities market and the Act (2016:1306) with supplementary provisions to the EU Market Abuse Regulation. Please observe that the information below may be affected by any further guidance from the EU, the European Securities and Markets Authority (ESMA) or the Swedish Financial Supervisory Authority (the SFSA). If you have any questions about the content in this guidance, please contact our issuer surveillance by phone on 08-511 680 00 or by email at issuer@spotlightstockmarket.com.

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Inside information

What is inside information?

In article 7 MAR inside information is defined as follows:

Information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments

Which type of information that constitutes inside information differs from company to company and has to be decided on a case-by-case basis based on the criteria in article 7 MAR, i.e. whether the information:

i. is of precise nature,
ii. has not been made public,
iii. directly or indirectly relates to the company or to a financial instrument, and
iv. if it were made public, would be likely to have a significant effect on the price of that financial instrument.

Each part of the definition is explained and exemplified below.

Information of precise nature

Only information of precise nature may constitute inside information. Information that states that an event has occurred or that a situation actually is present is information of precise nature – the listed company may for example have obtained a patent for a product, have obtained an order or have entered into a cooperation agreement with an external partner. On the other hand, information about an event or a situation that possibly could occur in the future but now is uncertain with regards to its realisation cannot be considered to be information of precise nature, since it is uncertain if the event or situation actually will occur. However, there may be occasions where there are real prospects that an event will occur in the future or that a specific situation will be at hand in the future, which make it possible for the listed company to know beforehand that the event or the situation will come into realisation in the near future. An example of this is that the listed company is negotiating an agreement with a counterparty where the company and the counterparty agrees on more and more of the provisions of the agreement and getting closer to a signed agreement the longer the negotiations continues. When the negotiations are getting close to finalization and only a few provisions and conditions are yet to be agreed upon, there are often times real prospects that the ultimate goal will come into realisation – i.e. the agreement will be signed and entered into. Such knowledge about real prospects for realisation of an event/an ultimate goal is also considered to be information of precise nature.

Information that has not been made public

In addition to that the information must be of precise nature, the information must *also* be **non-disclosed** in order to, possibly, constitute inside information. This means that information which the listed company already has disclosed to the market and which has been disclosed to the public, not can constitute inside information.

Information which directly or indirectly relates to the listed company or its financial instrument

In addition to that the information must be of a precise nature and must be non-disclosed in order to, possibly, constitute inside information, the information must also directly or indirectly relate to the listed company's financial instrument (for instance its shares) in order to, possibly, constitute inside information. This means, for instance, that the information must relate to the listed company or to a company within the same group as the listed company and thereby, the financial instrument/the financial instruments which is/are traded on the marketplace. The information must be of such a kind that it affects the listed company either in a positive or in a negative manner and which thereby affects the listed financial instrument.

Information which is likely to have a significant effect on the price of that financial instrument

In addition to that the information must be of precise nature, must be non-disclosed, must directly or indirectly relate to the listed company or to its financial instrument in order to, possibly, constitute information, the information must also be likely to have a significant effect on the price of that financial instrument. The listed company shall only consider how important the information is for the listed company and its business when assessing whether or not certain information is likely to have a significant effect on the price of the listed company's financial instrument (for instance its shares). It should be assessed how significant (either in a postiive or negative way) the information is for the business of the listed company. It is fundamental that the company present the information in a clear and objective manner, so that the market does not misinterpret or overvalue the importance of the information. The main principle is that the market shall get the same information about the news/the event in the company by way of the press release as the company has – everyone shall get access to the same information. The listed company cannot automatically be considered to have made an incorrect assessment even if it has assessed that the information was not likely to have a significant effect on the price but the information, when published, proved to have a significant effect on the price. Thus, the question on whether the company has made a correct assessment or not does not depend on the actual effect on the price of the financial instrument, but on whether the information *should* have had a significant effect on the price or not. Whether the information should have had a significant effect on the price or not depends on how significant the information was for the listed company and its business.

A press release should contain a so called MAR-label, should the company consider that the information in the press release constitutes inside information (see example of MAR-label in *italics* below). This label is often placed at the end of the press release and indicates by its reference to MAR that the information in the press release constitutes inside information.

This information is information that Calmark Sweden AB (publ) is obliged to make public pursuant to the EU Market Abuse Regulation (Regulation (EU) No 596/2014). The information was submitted for publication, through the agency of the contact person set out above, at 18:40 CET on December 16, 2020.

The above means that a listed company will be able to make a correct assessment of whether or not certain information is likely to have a significant effect on the price of its shares or not, as long as it has good knowledge about its business and its day-to-day operations. Circumstances and events that do not significantly differ from the company's day-to-day operations or the usual result of such operations, will never constitute inside information. Thus, the company may reject a large amount of information as not relevant for a more detailed assessment of whether it is likely to have a significant effect on the price or not, by way of having a clear notion and definition as to what the day-to-day operations in the company are. When assessing whether or not certain information is of such a kind that it is likely to have a significant effect on the price of the company's shares or not, it could also be helpful to consider whether a reasonable investor would take the information into account when making an investment decision. Would a reasonable investor purchase or sell the listed company's shares if he/she received the information? Is the information that significant? This theoretical test is another way of clarifying that the information has to be significant for the company and its business in order for it to be information which would be likely to have a significant effect on the price – the information has to be so significant that a reasonable investor would trade on the information. Thus, information

may arise within the company that are of either positive or negative nature but not significant enough for qualifying as inside information.

What has been presented above means that information that constitutes inside information in one company does not have to constitute inside information in another company (and vice versa). This is a consequence of the fact that different companies have different day-to-day operations and that the result of this day-to-day operations varies from company to company. It is therefore hard to say something in general about which type of information that typically may constitute inside information, but information about the following events in a company may be inside information (but does not constitute inside information per se):

- orders of a high economical value for the company,
- orders of a high strategical value for the company,
- share issues and other capitalisation decisions,
- cooperation agreements or other material agreements for the company,
- acquisitions and divestments of companies,
- significant credit losses or customer losses,
- financial difficulties,
- material changes in profit/loss or financial position,
- research findings, development of new products or important discoveries,
- grant of patent applications or access to new markets for the company's product,
- decisions of public agencies that significantly affects the company and its business,
- the initiation or outcome of legal disputes and relevant court decisions,
- information leaks,
- profit warnings and reverse profit warnings,
- significant transactions undertaken by PDMR:s,
- far-reaching changes in the business of the company.

The company may contact Spotlight in case of uncertainty as to whether certain information shall be considered to be inside information. Spotlight may be contacted during market hours. In case of uncertainty, the company should preferably contact Spotlight at an early stage. Spotlight's staff may give guidance with regards to questions on inside information, but the final assessment is always the company's responsibility. Spotlight's staff is bound by confidentiality undertakings.

When shall inside information be disclosed?

As soon as possible

According to article 17.1 MAR, inside information shall be disclosed to the public **as soon as possible**. This shall be made by way of a press release which shall be published through the company's news distributor (for instance Cision News) in order to make sure that the information is effectively distributed to the public. Only after this has been done may the information be considered to have been published in accordance with MAR.

The meaning of the term "as soon as possible" can neither be defined nor be described beforehand with sufficient precision. The term indicates **a principle of urgency** and that, in general, only a short period of time may pass between the occurrence of the obligation to inform the market and the fulfilment of such obligation. The company shall be able to motivate the time from the occurrence of the obligation to inform to the actual disclosure of the information to the public and that time should not be longer than necessary. The possibility to prepare the disclosure beforehand affects how long the process of disclosing the information may be (if the company have had the possibility to prepare the disclosure beforehand, the acceptable time frame from the occurrence of the obligation to inform to the actual disclosure is shorter than otherwise). If the information has been subject to a delayed disclosure (see below), the company has usually been able to prepare the disclosure beforehand. Hence, the actual

disclosure of the information to the market should be made fast in such a case. On the other hand, if the inside information arises suddenly and unexpected more time is generally required for managing the disclosure of the information. Spotlight's disciplinary committee has ruled on matters regarding whether inside information has been disclosed *as soon as possible* on several occasions, hence further guidance on the concept and the interpretation of it may be obtained from these rulings.[1]

Instead of disclosing inside information as soon as possible, the company may (on its own responsibility) in accordance with article 17.4 MAR decide to delay the disclosure of the information (see below).

The fact that inside information has to be disclosed as soon as possible means that the information needs to be disclosed no matter the day of the week and no matter the time of the day and regardless of whether the trading on the marketplace is open or not.

The obligation to disclose information is, thus, not restricted to the opening hours of the marketplace or to regular office hours. The "SFSA" has expressed that a company cannot be considered to have disclosed inside information as soon as possible if:

- an issuer has received the inside information when the market is closed and chooses to wait with disclosing the information only on the basis that the market is closed,
- an issuer has received inside information during a weekend and chooses to wait with disclosing the information only because the news distributor which the issuer normally uses not is available,
- inside information has arisen but the issuer chooses to wait with disclosing the information with the purpose of getting more details, or
- the issuer's internal organization for disclosure of inside information slows down the process of disclosing the information.[2]

Delayed disclosure of inside information

Article 17.4 MAR prescribes that a listed company is allowed to delay disclosure of inside information if certain criteria for doing so are fulfilled. A company is only allowed to delay disclosure of inside information if the following criteria are met:

(i) immediate disclosure is likely to prejudice the legitimate interests of the company,
(ii) delay of disclosure is not likely to mislead the public, **and**,
(iii) the company is able to ensure the confidentiality of the information.

All three criteria above needs to be met in order for a listed company to be allowed to delay a disclosure of inside information. If these three criteria are not met, the inside information needs to be disclosed as soon as possible. Each of the criteria are explained and exemplified below. It is generally hard to maintain a delayed disclosure after the moment of realization, i.e. after the circumstance or the event has turned into realization.

(i) Legitimate interests

All interests that a company may have of not disclosing inside information as soon as possible do not qualify as legitimate interests. As the examples below show, one should understand "legitimate interests" as interests that are based on the company's ability to drive its business forward. The first criterion is met if such a legitimate interest is likely to be prejudiced by a disclosure of the inside information as soon as possible.

Examples of legitimate interests which are likely to be prejudiced in the case of an immediate

[1] Disciplinary committee | Spotlight (spotlightstockmarket.com)
[2] Frågor och svar om insiderinformation (fi.se)

disclosure:

(i) Ongoing negotiations (for example agreements relating to acquisitions) if a disclosure would affect the outcome or the normal negotiation procedure.

(ii) The company has developed a product or an invention and an immediate disclosure of this is likely to jeopardize the company's prospects of obtaining intellectual property rights (for instance patent rights) for the product/invention.

(iii) Information about that the company intends to acquire or divest a major shareholding in another company and that the planning of the said measures is affected by the disclosure of the information (for example in situation where the planning has started but not the negotiations).

(iv) Information about a transaction that previously has been disclosed and that is conditioned upon approval from public authorities where such an approval is a condition for executing the transaction and a disclosure is likely to have a negative effect on the company's possibility to fulfill the prerequisites and thereby could jeopardize the transaction.

(v) The financial capacity in the company is severe and in immediate danger, but the situation is not so serious that the company risks entering into bankruptcy and an immediate disclosure of the inside information would seriously harm the interest of existing and potential shareholders by jeopardizing the closure of negotiations which the company conducts in order to ensure the company's financial recovery.

(ii) Mislead the public
In addition to that an immediate disclosure of inside information would be likely to prejudice the company's legitimate interests (criterion 1), it should *also* not be likely that a delayed disclosure misleads the public (criterion 2). One should not interpret "mislead" in this context as meaning that the company aims to lie or deceive, but rather that the public/the market believes that a certain situation exists in the company and that the inside information which the company would like to wait with disclosing would change the perception of the company. An example of such a situation could be that the company previously in a financial report has forecasted a certain result and that the company later on realises or discovers that the result will be significantly better or significantly worse than expected. In such a situation the market believes that the financial result will be as forecasted and trade on that expectation, and therefore it is considered as misleading to not disclose information about the changed expectations/forecasts. The company must therefore disclose a so called profit warning or a reverse profit warning.

(iii) The company is able to ensure that the information remains confidential
In addition to that an immediate disclosure of inside information would be likely to prejudice the company's legitimate interests (criterion 1) and that it should not be likely that a delayed disclosure would mislead the public (criterion 2), the company must *also* be able to ensure that the information remains confidential (criterion 3). In order to be able to meet this criterion, the company needs to ensure that all relevant persons that receives inside information are included in the insider list (see further below). It is only persons that *need* to receive the inside information in order to carry out their work who should get access to the information and be included on the insider list, the company shall not inform more persons about the inside information that the company would like to wait with disclosing than what is necessary. All persons that receives the inside information shall be included on the insider lists.
The company shall make it clear for the recipient of the information that the information needs to be handled confidentially and that the recipient becomes "insider" by receiving the information and thereby is prohibited by law to use the information for its own or other's advantage. The recipient shall confirm in writing that the recipient is aware of his/her duties and applicable sanctions. Preferably this is done by the company sending an email to the recipient who then confirms by email that he/she has received, read and understood his/her duties. Should an external party which is not a consultant or an advisor to the company have knowledge about the

information (for instance a counterparty in a contractual negotiation), the company should enter into a non-disclosure agreement with the external party. The non-disclosure agreement shall prohibit the external party from disclosing the information. The company's consultants and advisors shall be included on the insider lists if they receive inside information. The third criterion for delaying a disclosure of inside information is no longer met should an event occur which leads to that the company no longer can ensure that the information remains confidential. If so, the inside information shall be disclosed as soon as possible.

The three criteria above needs to be met during the entire time the disclosure of the inside information is delayed and therefore a decision to delay disclosure of inside information needs to be reconsidered regularly. If the company's possibility for delaying the disclosure has changed in such a way that the criteria for delaying the disclosure no longer are fulfilled, the delayed disclosure may still continue if such a delay can be motivated on other grounds (which meets the three criteria stated above). This shall be documented.

Information to Spotlight and the SFSA
It is appropriate for a company to inform Spotlight when it decides to delay disclosure of inside information.

A press release that contains inside information and which has been subject to a delayed disclosure does not need to contain a reference to that the information has been subject to a delayed disclosure. However, the company shall immediately after the press release has been disclosed notify the SFSA about the fact that the information has been subject to a delayed disclosure. This shall be done by way of an e-mail to the following e-mail address: finansinspektionen@fi.se. Companies which are listed at Spotlight and registered abroad, shall notify the competent authority in the country of their registration. The heading in the e-mail shall refer to article 17 MAR and the company's entire name. The e-mail shall contain the following information:
- name and contact details to the person that sends the information (e-mail address and telephone number),
- heading/title of the press release in which the information was disclosed,
- date and time for the disclosure,
- date and time for the decision to delay the disclosure, and
- the identity of all the persons responsible for the decision to delay the disclosure.

There is also a feature in the digital tool *MCLogg*, which is a part of Spotlight's offer, that may be used for notifying the SFSA about the delayed disclosure of inside information when the information has been disclosed by way of a press release. MCLogg Adviser is a tool for handling of inside information and delayed disclosures digitally and contains, among other things, tools for creating and maintaining logbooks, reminder functions and automatic e-mails to insiders and to the SFSA. The service is developed by MCL's own specialists in securities- and market law in close collaboration with software developers and experts in market surveillance. For more information: https://mcl.law/en/mclogg-adviser-insiderlog/

Inside information and financial reports
The work with putting together financial reports goes on for a longer period of time where the company's board of directors and senior executives successively gets a more and more comprehensive picture of how the company's financial position has developed during the historical financial period that will be presented, the longer the work progresses. It is often hard to determine when inside information arises during this process and whether the information will be seen differently later on in the process when other parts of the financial situation is reviewed in more detail, which may either strengthen the company's opinion that the information is inside information or lead to the conclusion that the information not should be considered to be inside information (since different parts of the financial report affects the general impression of the report). A way of handling this situation is to always make a delayed disclosure when the work with putting together the financial report has begun. The three criteria for making a delayed

disclosure are usually fulfilled in this initial phase (given that the company handles the insider list correctly) and the company may therefore wait with disclosing the financial report and publish it in accordance with its financial calendar instead. If it turns out that the final version of the report does not contain any inside information, the company may simply close the insider list and does not need to notify the SFSA about it. However, if the final version of the financial report contains inside information the company should notify the SFSA about that the information has been subject to a delayed disclosure when the press release and the financial report has been published (but not before that).

As has been described above, it is not allowed to make a delayed disclosure of inside information if it is likely that such a delay of the disclosure will mislead the public. The company may not delay the disclosure of the inside information in such a situation, but has to disclose a so-called profit warning or a so-called reverse profit warning as soon as possible should the company during the process with putting together the financial report realise that the result is significantly better or significantly weaker than previously forecasted and communicated.

Inside information and market soundings
Oftentimes a company needs to contact one or more potential investors when conducting a share issue before the information about the share issue may be disclosed. In these situations the company often has a need to assess and evaluate the potential investors' interests of taking part in a transaction and how that transaction should be priced and structured. Market soundings may be conducted in connection with an initial public offer or following offerings of securities or financial instruments, for instance a rights issue or a directed share issue. When conducting such a market sounding the company may have to reveal inside information to potential investors in order to enable these investors to understand the transaction and its implications. It is allowed to disclose inside information to potential investors in these situations, but only if:

(i) the listed company document its assessment of whether the market sounding will involve revelation of inside information,
(ii) the listed company obtains consent from the recipient stating that the recipient would like to receive inside information,
(iii) the listed company informs the recipient about the prohibition against insider dealing and the requirement that the information shall remain confidential, **and**
(iv) the listed company draws up an insider list (previously called logbook) and includes the persons that have received the inside information on the insider list together with a description of the inside information that the persons have received (see below regarding insider lists).

Insider list (previously called logbook)

MAR requires that companies shall draw up an insider list for the persons that have access to insider information and works for the company, for example, employees and consultants (for instance counsels or accountants). As regards other persons that do not work for or on behalf of the company but still have access to the inside information, such as counterparties, these shall not be included on the insider list. Instead, it is sufficient that the company ensures that the information remains confidential in other ways – for instance by way of entering into non-disclosure agreements. Only persons that need the inside information in order to be able to perform their work should get access to the information (see above).

An insider list needs to meet a number of requirements as regards formalities. An insider list shall at least contain the following information:

a) The identity of the person who have access to inside information.

b) The reason for including that person on the insider list.

c) The date and time at which that person got access to inside information.

d) The date on which the insider list was drawn up.

Furthermore, the insider list needs to be updated without delay if the reason why a person is included on the insider list changes, if a new person gets access to inside information and therefore needs to be added to the insider list or if a person no longer has access to inside information. When updating the insider list the time for the update needs to be written on the list.

The listed company shall undertake all reasonable measures to ensure that all persons included on the insider list confirm in writing that they are aware of their obligations and applicable sanctions. Such a written confirmation should at least state that the person:
- has received inside information regarding the company,
- is aware of the obligations which follows from being included on an insider list,
- is aware of the prohibition on insider crime in the Act (2005:377) on criminal sanctions for market abuse in connection with trade in financial instruments and on the prohibitions of insider trading in MAR, which means that it is prohibited to make use of inside information by trading (on your own behalf or on behalf of others) in shares and/or other financial instruments in the company, by inducing, via advice or in any other way, someone else to trade in shares and/or other financial instruments in the company and by disclosing inside information to another person, except where such disclosure takes place as a normal part of the discharge of duties, activities or obligations.

Transactions undertaken by persons discharging managerial responsibilities

The company's responsibilities

Companies that are within the scope of MAR have an obligation to notify all persons discharging managerial responsibilities (PDMRs) about these persons' obligations to notify their transactions. The company shall notify the PDMRs in writing (by e-mail is sufficient) and the SFSA recommends that the PDMRs also confirm in writing that they have received the information/notification from the company. The company shall make sure that it is able to receive notifications from PDMRs (for instance by e-mail). The company also has an obligation to create a list stating the PDMRs and the persons closely associated with them (see below). The list shall not be sent to the SFSA, if not the SFSA requests it. The SFSA may impose sanctions on the company should it not fulfil its obligations. The sanctions may not be higher than a) an amount in SEK that is equivalent to EUR 1m on 2 July 2014, b) two per cent of the legal person's or, where applicable, the group's turnover in the previous financial year, or c) three times the profit that the legal person, or a third party, obtained as a result of the regulatory infringement, where this amount can be ascertained.

The PDMRs responsibilities

PDMRs:

a) a member of the administrative, management or supervisory body of that entity[3],
b) a senior executive who is not a member of the bodies referred to in point (a), who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity[4].

[3] For instance chief executive officer, deputy chief executive officer and board members.
[4] For instance CFO, but not a controller.

PDMRs have an obligation to report transactions that they have undertaken in financial instruments issued by the company. The PDMRs shall no later than three business days after the day of the transaction report the transaction to the SFSA:s transactions register (the register may be accessed through the website of the SFSA) and notify the company. The reporting to the SFSA shall, thus, be made digitally. The reporting obligation applies as soon as a PDMR has conducted a transaction to a total amount of EUR 5 000 during a calendar year. This means that if a PDMR has conducted a transaction which leads to that the threshold of EUR 5 000 is reached, that particular transaction and all the following transactions during that calendar year should be reported. No consideration should be taken to netting when assessing whether the threshold of EUR 5 000 has been reached, i.e. no consideration is taken to if a PDMR both has purchased and sold financial instrument issued by the company, it is instead the total volume of EUR 5 000 (purchased, sold or both) that is of relevance.

PDMRs shall also inform to them closely associated persons about these persons' responsibilities and obligations (see below).

The SFSA may impose sanctions on PDMRs should they not fulfil their obligations. The sanctions may not be higher than a) an amount in SEK that is equivalent to EUR 500 000 on 2 July 2014, or b) three times the profit that the physical person, or someone else, obtained as a result of the regulatory infringement, where this amount can be ascertained.

Responsibilities for persons closely associated with PDMRs

Closely associated persons:

a) a spouse, or a partner considered to be equivalent to a spouse in accordance with national law,
b) a dependent child, in accordance with national law,
c) a relative who has shared the same household for at least one year on the date of the transaction concerned, or
d) a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point (a), (b) or (c), which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

The same obligations apply for persons closely associated with PDMRs as regards reporting of transactions to the SFSA and notification to the company, as it does for PDMRs. The same goes for sanctions for incorrect reporting.

Trading prohibition

PDMRs are prohibited from conducting any transactions in the financial instruments issued by the company on their own behalf or on another person's behalf, directly or indirectly, during a period of 30 calendar days before the publication of an interim financial report or a year-end report. This prohibition does not apply to persons closely associated with PDMRs.

The SFSA may impose sanctions on PDMRs should they breach the trading prohibition. The sanctions may not be higher than a) an amount in SEK that is equivalent to EUR 500 000 on 2 July 2014, or b) three times the profit that the physical person, or someone else, obtained as a result of the regulatory infringement, where this amount can be ascertained.

Useful links

Spotlight’s regulations (spotlightstockmarket.com)

Frågor och svar om insiderinformation (fi.se) (only available in Swedish)

Disciplinary committee | Spotlight (spotlightstockmarket.com)

MCLogg Adviser – MCL | Markets & Corporate Law

Academy | Spotlight (spotlightstockmarket.com)