Press Complaints Commission

Sent to All editors

From the Director

4 August 2005

Simon Kelner Esq
Editor
The Independent
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Dear Simon

Change of guidance for financial journalism

I am just writing following the new guidance that the PCC has issued for financial journalists – and in particular those that make or report on share recommendations – following the enacting of the Investment Recommendation (Media) Regulations 2005.

You might have seen from our e-mail releases and reports in the trade press that the guidance was amended so that the British press could take advantage of an opt-out that we negotiated from the Market Abuse Directive and its UK implementing legislation.

One of two conditions for the opt-out is that newspapers carry a 'clear and prominent reference' to the relevant Code of Practice. Most newspapers now do this daily on their business pages, while some refer to the fact that they adhere to the Code on their letters pages.

Publications that do not do this would now be subject to the law rather than the self-regulatory regime in the event of any complaint about misleading share recommendations or conflicts of interest. I am enclosing a copy of our new guidance note, which includes a suggested form of words for a standard box referring to the PCC.

I hope this is helpful. I am sending a copy of this letter to Charlie Burgess.

With kind regards.

Yours ever
Tim

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FINANCIAL JOURNALISM BEST PRACTICE NOTE 2005

Introduction

The newspaper and magazine publishing industry's Code of Practice binds all national and local newspapers, magazines and their websites. Clause 13 of the Code imposes a number of requirements relating to financial journalism, and Clause 1 (Accuracy) also has a particular relevance.

The Code:

- prohibits the use of financial information for the profit of journalists or their associates;
- imposes restrictions on journalists writing about shares in which they or their close families have a significant interest without internal disclosure;
- stops journalists dealing in shares about which they have written recently or intend to write in the near future; and
- requires that financial journalists take care not to publish inaccurate material and to distinguish between comment, conjecture and fact. This is particularly important for any journalists making investment recommendations to readers about whether to buy, sell or hold shares.

The Code operates in the spirit as well as the letter. The intention of Clause 13 is clear: no journalist or editor should undertake any form of activity relating to financial journalism which could be open to misinterpretation or which could damage the integrity of his or her publication.

The Code was deliberately written in broad terms to ensure such high standards: the danger with precise language is that it creates loopholes. In this area of reporting, there should be none. This guidance note – drawn from the house rules of a number of different publications – is intended to supplement the provisions of the Code by laying down best practice in the industry in this area.

It also takes into consideration the Investment Recommendation (Media) Regulations 2005, which incorporate into UK law the EU Market Abuse Directive and which contain specific rules for people – including journalists – who make investment recommendations. There is an exemption in the Regulations for news reporting on recommendations made by third parties. There is also a general exemption for investment recommendations published in media which are subject to a self-regulatory system such as that overseen by the Press Complaints Commission. This exemption is subject to two conditions which are listed at the end of this note.

If it is called upon to investigate a complaint about financial journalism, the PCC will bear in mind the terms of this note as well as the Code's provisions.

The terms of the Code

To whom does the Code apply?

The Code applies to all journalists and their editors. The Code requires disclosure of shareholdings about which journalists are writing to editors or financial editors. Best practice on most publications requires editors to report their own interests to managing directors or publishers: this is most practically done by means of an internal register.

What is a 'significant financial interest'?

The Code uses this terminology – rather than specifying different types of holdings – because what might be insignificant for one person might be very significant for another. Best practice on many publications will mean the disclosure of "any" financial interest, however small. It will usually mean a direct financial interest – although there may be occasions when journalists will need to declare an indirect financial interest, such as in a unit trust, where they are writing about it in a manner which might affect its performance. However, it might be worth noting that the Investment Recommendation Regulations define a 'significant financial interest' as including a "holding exceeding £3000 of the total issued share capital in the issuer of the shares in question". They also suggest that a publication should disclose if its company has a holding of 5% or more in an organisation whose shares they are recommending.

What does the term 'securities' in the Code mean?

The vast majority of publications define "securities" not just as stocks and shares, but include derivatives, contracts for differences and financial spread bets as well. The PCC will interpret the term at its widest, to include any transaction where publication of material may have a potential impact on financial performance.

What do the terms "recently" and "in the near future" mean?

It is impossible to define these terms without producing loopholes. To define the term "recently" as one month, for instance, may make dealing in shares about which a journalist has written on day 31 permissible. That is clearly not what it intended. Best practice makes clear that journalists should not speculate by buying or selling shares on a short-term basis if they have written about them in the past or are intending to write about them in the future. Avoiding buying or selling shares on a short-term basis will assist in avoiding problems. In considering any possible breaches of the Code, the PCC will therefore take into account the length of time during which a journalist has held new securities.

Disclosure of interests and conflicts of interest

What should editors or publishers do when internal disclosure is made to them and they are concerned about a possible breach of the Code?

Best practice on the majority of publications would be for the editor or publisher to instruct a journalist to unwind a transaction or, if the need arises, to take more serious disciplinary action. Most publications would also instruct a journalist not to deal in a specific share or other security. In order to ensure that the internal disclosure regime is as effective as possible, those who maintain a register of shareholdings, or to whom journalists and editors report, should regularly examine those disclosures that have been made for any sign of irregularity.

Should there be an internal register of shareholdings?

Many publications favour a confidential register of holdings by journalists and editors, and this is to be encouraged.

Should there be "external" disclosure of journalists' financial interests?

Complete external disclosure of shareholdings to readers is not a practical proposition because of the number of people – from journalists, to sub editors to editors – who may be responsible for what ultimately appears in a publication. However, voluntary external disclosure from the originating writer of an article should be encouraged where appropriate, and when there is any doubt should be considered best practice.

This buttresses the safeguards inherent in internal disclosure and compliance with the terms of the Code of Practice. A general disclosure that journalists may hold or deal in securities reported on is probably of limited value. A specific disclosure that the originating writer holds or has dealt in the securities reported on will be of value to the reader.

What information should be disclosed by journalists making specific recommendations to readers to buy, sell or hold shares or other securities?

External disclosure of any significant financial interests or conflicts of interest is advisable in these circumstances. This could be done by publishing a reference to a place where the information is publicly available, such as the paper's website. The reference to where any disclosures can be found could also be made in a standard box referring to the PCC (see below under <u>Investment Recommendation (Media) Regulations 2005</u>).

Do any particular rules apply to the publication of recommendations made by other people?

Some publications publish recommendations made by third parties – other newspapers, for example – or summaries of them. If in doing so the publication or journalist changes the direction of any recommendation – for instance, from 'buy' to 'hold' – best practice would be to disclose their own interests or conflicts of interest as outlined above, and to make clear the nature of the change in the interests of accuracy.

There may also be occasions where the direction of a recommendation made by a third party is not changed, but where some other significant alteration is made such as changing the recommended price at which to sell or buy shares. Clause 1 has a relevance here in ensuring that the alteration is made clear. and that readers are aware of the provenance of the original recommendation. If the original recommendation appeared in another newspaper which carried public disclosures of any conflicts of interest, best practice would be either to reproduce these disclosures, or to refer to where they could be found – normally the newspaper's website.

Recommendations and accuracy

Clause 1 (Accuracy) of the Code is particularly important when journalists make recommendations to buy, sell or hold shares, and when newspapers publish recommendations made by third parties. Editors and journalists should ensure that information is presented accurately, that facts are distinguished from interpretations, estimates and opinions, and that care is taken to ensure that sources are reliable.

When publishing recommendations, publications should be as transparent as possible in the interests of good practice. Editors might therefore wish to consider whether, and in what circumstances, it is appropriate for the names of individual journalists who make overt recommendations to be made available (even if this is just via a website).

Investment Recommendation (Media) Regulations 2005

What are the conditions that exempt publications from the terms of the Regulations?

These regulations relate to people who make investment recommendations. There are several exemptions. These include where the following two conditions are satisfied:

- The recommendation appears in a publication that subscribes to a system of self-regulation such as that overseen by the Press Complaints Commission; and
- The publication concerned carries a 'clear and prominent' reference to the Code of Practice when publishing recommendations.

Some publications may find it easier to publish a general reference to the PCC and the Code rather than to the specific financial rules that it contains. They are free to devise their own reference, but by way of guidance a standard box – which could be published anywhere in the newspaper – might say "This newspaper/magazine adheres to the system of self-regulation overseen by the Press Complaints Commission. The PCC takes complaints about the editorial content of publications under the Editors' Code of Practice, a copy of which can be found at www.pcc.org.uk". If the box appeared on the financial pages, it could also point out that disclosures about any interests or conflicts of interest of the publication's financial journalists appear on its website, if that is the case.

Where can I find out more about the Investment Recommendation Regulations 2005?

The regulations can be accessed at:

www.legislation.hmso.gov.uk/si/si2005/20050382.htm

Other tests

Common sense has always been the key to the application of the Code. In this area, many publications apply what they describe as the "Private Eye" test: if it would embarrass a journalist to read about his or her actions in "Private Eye", and at the same time undermine the integrity of the newspaper, then don't do it.

July 1st 2005