

EU MARKET ABUSE REGULATION AND THE CHANNEL ISLANDS ALTERNATIVE

by Kate Storey

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In 2003 the European Commission introduced an EU-wide market abuse regime under the EU Market Abuse Directive (**MAD**). Designed to address situations where investors had been disadvantaged, the increasingly global nature of financial markets and developments of new trading platforms and technologies caused MAD to become outdated. In response, the Market Abuse Regulation (**MAR**) was published in 2014, becoming effective from 3 July 2016. It aims to deal with concerns of market distortion by expanding the scope of existing offences and introducing new offences, such as attempted insider dealing and market manipulation.

KEY CHANGES

Scope of regime

MAR extends the range of instruments covered beyond regulated markets, e.g. the London Stock Exchange, to include all instruments admitted, or having requested admittance, to trading on multilateral or organised trading facilities and certain over-the-counter transactions (within the EU).

The regime also extends to cover behaviour within and outside the EU in relation to instruments trading on an EU platform.

Definition of insider dealing

'Insider dealing' now includes amending or cancelling orders once a person becomes aware of inside information or using a recommendation which a person knows, or reasonably should know, is based on inside

information. Additionally, 'insider dealing' now applies to persons holding capital in the issuer and attempts to commit insider dealing.

Market manipulation prohibition

A prohibition on attempts to engage in any of the activities amounting to market manipulation has been introduced, including the manipulation of benchmarks.

Introduction of market soundings

'Market soundings' are defined as communications of information prior to the announcement of a transaction, in order to gauge the interest of potential investors, allowing lawful disclosure of inside information to be made in certain circumstances.

Changes to disclosure and transparency Rules

Issuers are now permitted to delay disclosure of relevant information where disclosure may prejudice the issuer's legitimate interests, delay is unlikely to mislead the public and the issuer is able to ensure confidentiality of the information.

Additionally, issuers must keep 'insider lists' of all persons with access to inside information employed by them or otherwise performing tasks allowing access to inside information. Persons on the insider list must also acknowledge in writing the legal and regulatory duties entailed.

Dealings by persons discharging managerial responsibilities (PDMRs)

PDMRs and those associated with them must make public transactions conducted on their account relating to the shares or debt instruments of issuers or to derivatives or other instruments relating to the issuer, as well as notifying the issuer and the competent authority, subject to a de minimis threshold of EUR 5000.

PDMRs are also not permitted to conduct transactions relating to instruments of issuers during a 'closed period' of 30 calendar days before the announcement of interim financial reports or year-end reports.

IMPLICATIONS OF MAR IN THE CHANNEL ISLANDS

The impact of MAR in the Channel Islands is mitigated by the fact that Guernsey and Jersey are not within the EU and therefore MAR does not have effect in the Islands; consequently MAR does not apply to listings on the Channel Islands Securities Exchange (**CISE**), significantly reducing administrative burden compared to listings on European markets subject to MAR. However, CISE has revised its Model Code in order to align it with certain provisions of MAR, including the definitions of closed period and PDMRs, and a "safe harbour" for dealings by a PDMR pursuant to a "trading plan"; CISE's stated intention being to ensure that it remains competitive at a time of changing market practices. Issuers with a CISE listing should therefore review their current dealing policies for compliance with the revised Model Code, which is effective from 1 September 2016. The CISE Model Code does not apply to listings under Chapter 8 (specialist debt securities) of the CISE Listing Rules.

As a result of MAR, Appleby Securities (Channel Islands) Limited (which provides Sponsor services for listings on CISE) is seeing a pipeline of business coming to us in the form of high yield bonds. MAR was designed for the equity markets but it takes a blanket approach to all types of securities, which means it is disproportionately onerous on issuers of debt, including high yield bonds, which are held long term by professional investors. A listing of such securities on CISE is outside of the requirements of MAR whilst on the other hand being subject to proportionate rules; as such, this has prompted significant interest from issuers and advisers in either bringing new issues to CISE, or migrating currently listed securities from EU regulated exchanges.

Of course, Guernsey and Jersey companies with securities listed or trading on European markets will need to review the requirements of MAR. Some issuers and securities not previously caught are now subject to MAR. Issuers covered by the old regime will continue to be caught and will need to update their policies and procedures.

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