



MARKET ABUSE REGULATION

KEY POINTS FOR NOMADS

The Market Abuse Regulation (MAR) will come into effect in the UK on 3 July 2016. MAR is an EU regulation with direct effect in the UK, and will be supplemented by various additional rules which will be set out in implementing regulations and delegated regulations, some of which have yet to be adopted.

Companies admitted to trading on AIM and their nominated advisers need to take action to prepare for the implementation of MAR. We have set out below a non-exhaustive list of some of the key points for consideration by nomads in the coming weeks.

This note assumes that the AIM Rules will be revised in the form currently proposed by the London Stock Exchange. Any amendments made to relevant codes/guidance etc to ensure compliance with MAR will have to be made on a 'subject to' basis, to take account of any revised guidance/rule changes that are published and/or come into force prior to or after 3 July 2016.

Dual regulation

Issue: AIM and the FCA as dual regulators of AIM companies

To consider/actions:

- How should this be managed from a practical standpoint?
- Encourage your clients to consider who should be responsible within their organisation for liaising with the FCA. It probably makes sense if it is the same person who has responsibility for liaising with you as nomad.
- Discuss and agree with your clients how the interaction with the FCA on MAR is going to work in light of the company's relationship with AIM Regulation.
- Consider implementing a process to ensure that you as nomad are always informed of any discussions the company has with the FCA.

Issue: AIM Rule 11

To consider/actions:

- Remember the obligations under AIM Rule 11 and under MAR are similar, but not the same. Compliance with one will not constitute compliance with the other. AIM Regulation has confirmed that it will coordinate its approach on this point with the FCA.

Inside information

Issue: Committees/Decision-making

To consider/actions:

- Does the company currently have a committee in place to consider relevant disclosures? If not, should it put one in place?
- If the board decides that a committee is not necessary, then it should ensure that there is clear guidance on who is responsible for taking (and has authority to take) decisions around disclosure and delaying disclosure.

Issue: Records

To consider/actions:

- A template for recording decisions in relation to inside information should be adopted.
- Detailed records should be kept of any decision to delay disclosure. Any delay has to be reported to the FCA, and a written explanation of the delay provided, if the FCA requires one to be given, so it is crucial that the relevant information is to hand.

Issue: Announcements

To consider/actions:

- Make sure your internal teams and your clients are aware that all announcements of inside information under MAR are required to include specified information.

Issue: Website

To consider/actions:

- The company's website should be reviewed for compliance with MAR requirements regarding disclosure of inside information, including the requirement for information to be included on the website for at least five years.
- The information on the website should be set out in a dedicated section and be in chronological order.

Insider lists

Issue: Form and content

To consider/actions:

- Remind your clients that insider lists need to be kept electronically and need to be accessible and retrievable – an implementing regulation of MAR provides a template for the insider list.
- The insider list should include the identity of any person with access to inside information, the reason why the person is on the insider list, the date and time when that person gained access to inside information, and the date of the list itself.

Issue: Who needs to be on the list?

To consider/actions:

- Consider with your clients whether they should be maintaining a permanent insider list, and identify who those permanent insiders are, and others likely to have access to inside information.
- You should encourage your clients to begin gathering the information they need about those individuals (date of birth, phone numbers, addresses, for example).
- Inform your clients that they may want to seek advice on whether local data protection or other similar laws apply that require consent or any other steps taken in relation to storing information on the relevant people.
- Inform your clients that written acknowledgements of their status and the restrictions imposed on them should be obtained from all insiders.
- Your client companies should identify existing transactions constituting inside information which are unlikely to be notifiable before July and take the same steps in relation to relevant individuals as they are taking for permanent insiders.

Directors/PDMR dealings

Issue: Who are they?

To consider/actions:

- Consider whether there are any non-directors who should be treated as PDMRs.

Issue: Closely associated persons

To consider/actions:

- Ensure directors and other PDMRs are fully appraised of the revised regime, work with them to identify their 'closely associated persons' and to consider their existing arrangements and whether there are any potentially problematic areas that require review.

Issue: Notification of dealing

To consider/actions:

- Make sure that all directors and other PDMRs are aware that they now have an obligation to notify a deal to the company and the FCA within three business days of the deal taking place. The company also has to notify the deal to the market within three business days of the deal taking place, so realistically the directors and PDMRs will need to notify the company well within the timeframe allowed.

Issue: Preliminary statements of annual accounts

To consider/actions:

- AIM Regulation has noted that in the absence of further guidance from ESMA, it is not clear under MAR whether an issuer is able to end its closed period by the publication of a preliminary statement of annual accounts. Further guidance may be issued on that in due course, though AIM Regulation has commented that any questions regarding preliminaries and MAR should be directed to the FCA in the first instance.

MIFID II/SME Growth Markets

Issue: Insider lists/full compliance

To consider/actions:

- A slight relaxation to the rules on insider lists will apply for companies on SME growth markets. In particular, they will not need to maintain insider lists on a real time basis as long as they can provide the relevant information to the FCA on request and they need only include personal addresses and telephone numbers if available at the time the information is requested by the FCA. The relevant legislation (being MIFID II) will not however be applied until January 2018 at the earliest, so even if AIM does in due course decide to seek SME growth market status, all companies will need to comply with the full regime in the first instance.

Documentation

Issue: Internal briefing documents

To consider/actions:

- Update your internal briefing documents, to make sure that you are able to advise and guide your client companies on the new regime.

Issue: Share dealing codes

To consider/actions:

- The share dealing code will need to be amended at the very least to ensure (during MAR close periods) that the code is aligned with the new requirements.
- The proposed new AIM Rule 21 requires that all AIM companies have 'a dealing policy' in place, and also sets out what it expects that policy to cover, including:

- what the relevant close periods are;
- when clearance must be obtained, who grants that clearance and what the procedures are for obtaining clearance;
- the timeframe in which a relevant person can deal once clearance is received;
- how the AIM company will assess whether clearance to deal may be given; and
- procedures on how the AIM company will notify deals required to be made public under MAR.
- You should also consider in relation to a company's dealing code:
 - whether or not to permit the €5,000 notification threshold as permitted under MAR; and
 - whether to retain the two month close period in any circumstance and if so, what those circumstances should be and whether any exemption should apply.
- Consider whether any amendments need to be made to director service contracts and share option plans (for example automatic vesting provisions) to ensure compliance with MAR.
- AIM Regulation has indicated that it expects all AIM companies to have appropriate policies in place by 3 July 2016.

Transactions

Issue: Market soundings

To consider/actions:

- Market participants and recipients of market soundings will need to update their processes to ensure they are consistent with MAR and adopt any relevant templates.

Issue: Buybacks/Stabilisation

To consider/actions:

- Review and amend current procedures for share buybacks, stabilisation and research and investment recommendations to ensure that they comply with MAR.

Please do not hesitate to contact one of our team with any questions.

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