Our regulatory experts give an overview of the UK implementation of the new EU Market Abuse Regulation, its scope and key provisions, and the potential fines individuals and companies can expect if there is a breach.

What is the Market Abuse Regulation?


The objective of the regulation is to increase market integrity and investor protection, ensure a single rulebook and level playing field across the EU and increase the attractiveness of securities markets for capital raising.

UK implementation

MAR is an EU Regulation, which means it will apply directly in the UK without the need for any domestic implementing legislation. As a result, the UK has limited policy discretion in how the provisions of the regulation take effect; however, it will require changes to the Financial Services and Markets Act 2000 and the Financial Conduct Authority (FCA) Handbook (including the Model Code, the Listing Rules and the Disclosure and Transparency Rules), for the UK to become compliant with the provisions in MAR.
Scope

The scope of is significantly broader than that of MAD. MAR extends the scope of the UK market abuse framework to new markets, new platforms and new behaviours that have developed since MAD came into force. Broadly, any conduct or action that can have an effect on a financial instrument is within the scope of the regulation, whether it takes place on a trading venue or not.

What is market abuse?

Insider dealing, unlawful disclosure of inside information and market manipulation. In addition, and for the first time, attempted insider dealing and attempted market manipulation will be prohibited under the new regulation. There is a defence if the transaction or order was legitimate and in accordance with market practices accepted by the regulator.

What is inside information?

Inside information is that which "has not been made public, is precise and relates to one or more issuers of financial instruments that, were it to be 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".

Key provisions

MAR places an emphasis on individual responsibility to maintain proper systems and controls, which reflects the regulator’s focus on personal responsibility. We summarise below the areas that are of most interest to entities trading on a regulated market, multilateral trading facility or an organised trading facility.

Market soundings

- MAR introduces a framework for persons to make legitimate disclosures of inside information in the course of market soundings. Although the framework introduces a range of new notification and record keeping requirements, many of these should
represent current good practice.

- "Market sounding" is the "communication of information, prior to the announcement of a transaction, to gauge the interest of potential investors in a possible transaction and the conditions relating to it, such as its potential size or pricing, to one or more potential investors".
- Market soundings can be conducted by a wide variety of parties, including third parties acting on behalf of, or on the account of, an issuer, a secondary offer or or a person intending to make a takeover bid for the securities of a company or a merger with a company. Market soundings can take place orally (for example, in meetings or on telephone calls) or in writing.

**Buy-back programme and stabilisation measures**

- The rules in MAR continue to provide a safe harbour (provided certain conditions are met) for buy-backs and stabilisations. MAR introduces new price and volume limits and amends the disclosure and reporting requirements. These rules apply to issuers, offerors or entities undertaking the buy-back or stabilisation.
- Buy-backs or stabilisation measures that do not satisfy the conditions and limitations for the safe harbour must comply with the general market abuse regime, in addition to all applicable company law and regulatory requirements.

**Suspicious orders and transactions**

- The regulation introduces new procedures, notification and record keeping requirements for making suspicious transaction and order reports. The requirements are aimed at market operators, investment firms that operate a trading venue and persons that professionally arrange or execute transactions.

**Inside information and disclosure**

- The regulation sets out the technical means for issuers to disclose inside information to the public. The disclosure requirements broadly reflect the rules under the existing market abuse regime, while also extending these to a broader range of financial instruments.
Notifications on delay

- The existing market abuse regime allows for the delay of disclosure of inside information, but it is the notification requirements to the regulator that are new under MAR. These apply to general delays of disclosure of inside information and delays to preserve the stability of the financial system.

Insider lists

- MAR introduces new rules on the format of insider lists and the data to be recorded for each insider by issuers (or any entities acting on their behalf), as well as notification and record keeping requirements.
- Issuers (or any person acting on their behalf) must draw up, and maintain, a list of all those persons working for them, either under a contract of employment or otherwise, that have access to inside information.

Transactions by PDMRs

- MAR retains the notification regime for transactions in the issuer by persons discharging managerial responsibilities and persons closely associated with them (PDMRs).
- MAR introduces a new de minimis threshold for disclosure of PDMR transactions, as well as new rules on the format and content of notifications of dealings to the issuer and the regulator.
- MAR prohibits PDMRs within an issuer from conducting any transactions on their own account, or for the account of a third party, relating to the financial instruments of the issuer during a closed period, unless there are exceptional circumstances (such as severe financial difficulty) or due to the characteristics of the trading involved (for example, dealings under employee share schemes or transactions where the beneficial interest in the relevant financial instrument does not change). The closed period is 30 days before the announcement of an interim financial report or a year-end report.
- The London Stock Exchange has completed its consultations on changes to the AIM Rules for Companies. It has deleted the existing provisions of rule 21 (restrictions on dealings) and introduced, in its place, a new rule 21 that will require an AIM company to have a dealing policy and sets out the minimum provisions the dealing policy should contain.
The Model Code (part of the Listing Rules) is incompatible with MAR and will be deleted with effect from 3 July 2016.

Sanctions for breach of MAR

Sanctions for breach of the regulation include public censure, withdrawal or suspension of authorisation and disgorgement of the profits gained, or losses avoided, as a result of the breach.

Individuals are liable to fines of up to:

- €5 million for insider dealing, unlawful disclosure or market manipulation.
- €1 million for failure to maintain adequate systems and controls to prevent market abuse or failure to disclose inside information.
- €100,000 for breaches in connection with insider lists, PDMR transactions or investment recommendations.

Companies are liable to fines of up to:

- €15 million, or 15% of annual turnover in the preceding business year, for insider dealing, unlawful disclosure or market manipulation.
- €2.5 million, or 2% of annual turnover in the preceding business year, for failure to maintain adequate systems and controls to prevent market abuse or failure to disclose inside information.
- €1 million for breaches in connection with insider lists, PDMR transactions or investment recommendations.

Next steps

Companies should now be identifying the changes needed to their policies and procedures, training and systems and controls in advance of the implementation of MAR.

Key areas of focus:

- share dealing code - do you have a MAR compliant share dealing code?
- PDMR notifications - have you notified your PDMRs of their notification obligations and
restrictions in relation to share dealing under MAR? Have your PDMRs notified their persons closely associated of their obligations under MAR?

- insider dealing policy - does it reflect the obligations and liabilities applicable to insiders under MAR?
- insider lists - do you have all the data required to complete your event driven or permanent insider lists?
- insider responsibilities notification - have you notified all insiders (in writing) of their legal and regulatory duties and the sanctions applicable to insider dealing and unlawful disclosure of inside information? And have you received their acknowledgments back?
- disclosure procedures for inside information - have you identified who will be responsible for deciding if (and for how long) you will delay the disclosure of inside information? And who will take responsibility for notifying the FCA?
- market soundings - are your policies and procedures consistent with the new rules under MAR?

If you need any further advice please contact Kam Dhillon or Oliver Riley.

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