

Briefing
May 2016

New Market Abuse Regime – Impact on issuers of MSM-listed debt securities

On 3 July 2016, a new market abuse regime will come into force across the EU, replacing the existing EU regime (in force in Ireland since 2005).

Issuers of debt securities listed on the Main Securities Market (**MSM**) of the Irish Stock Exchange are already subject to the existing market abuse regime. This Briefing summarises the key changes that the new regime will introduce for those issuers, and what steps they should take now to ensure that they can comply with the new regime from 3 July 2016.

BACKGROUND

The new market abuse regime will comprise a Market Abuse Regulation (EU) 596/2014 (MAR) and a Market Abuse Directive (CSMAD). MAR will set out the revised market abuse framework, while CSMAD will set out minimum rules for the criminal sanctions that Member States must impose for breaches of the new framework.

While the existing EU regime was based on a 2003 Directive, MAR is a regulation which will be directly effective in each EU Member State without the need for domestic legislation. This is to ensure consistency of implementation. CSMAD will require domestic legislation (further

detail is set out later in this briefing under ‘Civil and criminal sanctions’).

KEY CHANGES

For issuers of debt securities listed on the MSM, the key changes relate to:

- » **insider lists; and**
- » **transactions by persons discharging managerial responsibility (PDMRs).**

INSIDER LISTS

MAR CHANGE

The content of insider lists that must be maintained under MAR is set out in the Annexes to Commission Implementing Regulation (EU) 2016/347. The information is significantly more prescriptive than that required under the existing market abuse regime. For each person on an insider list, the issuer will be required to record their name, birth name, work telephone number, company name and address, reason for being on the insider list, date of birth, date of obtaining access to insider information, date of ceasing to have access to inside information, national identification number, personal telephone numbers (home and mobile) and personal home address.

Issuers must also take reasonable steps to ensure that anyone on an insider list acknowledges (in writing) their legal and regulatory obligations in respect of insider information, and their awareness of the sanctions for breaching those obligations. Issuers must also retain an insider list for at least 5 years after it was prepared or last updated.

ACTION TO BE TAKEN

Issuers will need to amend their systems, policies and procedures by 3 July 2016 to ensure that insider lists follow the prescribed format, that the issuers can populate those lists with the required information and maintain them in accordance with MAR, and that those on insider lists acknowledge their obligations and their awareness of the related sanctions (as mentioned above, issuers are required to take “all reasonable steps” to obtain those acknowledgements).

PDMRS

CURRENT REGIME

Under the current market abuse regime, the obligation to notify transactions by PDMRs extends only to transactions in the issuer’s shares admitted to trading on a regulated market or to derivatives or other financial instruments linked to such shares.

MAR CHANGE

Under MAR, transactions in the issuer's debt instruments will also be subject to the notification obligation and to the express restriction on dealing during closed periods (i.e. the 30 calendar day period leading up to the announcement of an interim financial report or year-end report). The time limit for notifying dealings by PDMRs has also been reduced to 3 business days.

A de minimis threshold applies – the disclosure requirement will not apply to transactions by a PDMR with an aggregate value of less than €5,000 per calendar year. Competent authorities may increase this to €20,000 if that increase can be justified by reference to market conditions.

ACTION TO BE TAKEN

Issuers should:

- » update their policies and procedures in relation to PDMR notifications; and
- » provide training for their PDMRs on the changes and inform them of the sanctions for breaches of those obligations.

OTHER NOTABLE CHANGES

Issuers of debt securities listed on the MSM should also be aware of the following notable changes under MAR:

DELAYED DISCLOSURE

If the issuer delays the disclosure of inside information, once the information is disclosed it will be required to notify the Central Bank or other competent authority of the delay, and may be required to provide information as to how it met the conditions entitling it to delay. The conditions regarding when disclosure of inside information can be delayed are now more prescriptive.

WEBSITES

Issuers will also be required to post, on their websites, all inside information that they are required to publicly disclose, and keep it on their websites for at least 5 years.

CANCELLING/AMENDING ORDERS

Cancelling or amending orders in financial instruments such as debt instruments may now constitute insider dealing if the person came into the possession of inside information after placing the order.

CIVIL AND CRIMINAL SANCTIONS

MAR provides that Member States must ensure that insider dealing, the unlawful disclosure of inside information, market manipulation, breach of the obligation to publicly disclose inside information, breach of the obligation to prepare and maintain insider lists and breach of the obligations regarding PDMRs are the subject of administrative sanctions.

At a minimum, those administrative sanctions must include:

- » a 'cease and desist' order;
- » giving up the profits gained or losses avoided as a result of the breach;
- » public censure;
- » fines;
- » withdrawal or suspension of an authorisation (in the case of an investment firm); and
- » a temporary ban on a PDMR or another natural person from dealing on own account.

Penalties under the Companies Act 2014 may also apply.

CSMAD also requires that serious cases of insider dealing, market manipulation and unlawful disclosure of inside information constitute criminal offences

when committed with intent. CSMAD sets out minimum rules so Ireland and other Member States may adopt more stringent rules. Domestic legislation is required and is expected to be published closer to the transposition deadline of 3 July 2016.

For further information, please speak to your usual Arthur Cox contact or one of the following lawyers:

CORMAC KISSANE

PARTNER, HEAD OF CAPITAL MARKETS
+353 1 618 0529
cormac.kissane@arthurcox.com

HELEN BERRILL

DIRECTOR, ARTHUR COX LISTING SERVICES
+353 1 618 0556
helen.berrill@arthurcox.com

GLENN BUTT

PARTNER, CAPITAL MARKETS
+353 1 618 0549
glenn.butt@arthurcox.com

AIDEN SMALL

PARTNER, CAPITAL MARKETS
HEAD OF LONDON OFFICE
+44 207 832 0200
aiden.small@arthurcox.com

PHIL CODY

PARTNER, CAPITAL MARKETS
+353 1 618 0604
phil.cody@arthurcox.com

LORENA THORNTON

ASSOCIATE DIRECTOR, ARTHUR COX LISTING SERVICES
+353 1 618 0332
lorena.thornton@arthurcox.com

MAEDHBH CLANCY

PROFESSIONAL SUPPORT LAWYER, FINANCE
+353 1 618 0586
maedhbh.clancy@arthurcox.com

arthurcox.com**Dublin**

+353 1 618 0000
dublin@arthurcox.com

Belfast

+44 28 9023 0007
belfast@arthurcox.com

London

+44 207 832 0200
london@arthurcox.com

New York

+1 212 782 3294
newyork@arthurcox.com

Silicon Valley

+1 650 943 2330
siliconvalley@arthurcox.com