

EU Market Abuse Regulation shakes up local legal framework

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Introduction

The EU Market Abuse Regulation (596/2014) came into force in Luxembourg on July 3 2016. A new market abuse regime has been implemented, together with a wider set of rules covering the disclosure of:

- inside information;
- insider list manager transactions; and
- modifications relating to multilateral trading facility platforms (MTFs).

The regulation's new framework – in addition to the EU Criminal Penalties for Market Abuse Directive (2014/57/EC) – replaces the existing EU framework on market abuse that was established by the EU Insider Dealing and Market Manipulation Directive (2003/6/EC).

The Market Abuse Regulation is directly applicable in Luxembourg. It is unclear whether the existing rules that conflict with the Market Abuse Regulation or the Criminal Penalties for Market Abuse Directive will be removed from the Act on Market Abuse or adapted.

Changes affecting listed companies

Insider lists

Pursuant to the Market Abuse Regulation, issuers must now establish a list of all persons who:

- have access to inside information; and
- work for them under an employment contract or otherwise perform tasks through which they have access to inside information (eg, advisers, accountants and credit rating agencies).

Delayed disclosure of inside information

As is presently the case, listed companies will be entitled to delay the disclosure of inside information to the public under certain conditions.

Managers' transactions

The Market Abuse Regulation requires persons discharging managerial responsibilities for an issuer, as well as persons closely associated with them, to notify the issuer and competent authority of every transaction conducted for their own account relating to the issuer's shares or debt instruments – or to derivatives or other financial instruments linked thereto – within three business days of the date on which the transaction took place.

Provisions concerning MTFs

The scope of the Market Abuse Regulation has been extended to include MTFs.

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Market soundings

New rules have been introduced pertaining to the disclosure of inside information in the market sounding framework in relation to capital market transactions.

Safe harbour

The safe harbour has been maintained for buy-back programmes and stabilisation, with a number of small changes.

Euro MTF in Luxembourg

The scope of the Market Abuse Regulation has been extended to apply to instruments traded on MTFs, including on the Luxembourg Euro MTF market. In essence, the changes concern the disclosure requirements for:

- inside information;
- insider lists; and
- notifications of transactions by persons discharging managerial responsibilities (PDMRs).

In regards to the disclosure regime, issuers of securities listed on MTFs must now inform the public of inside information (the role of the inside information being the one referred to in the Market Abuse Regulation),⁽¹⁾ in a manner that enables fast access and the complete, correct and timely assessment of the information. Under certain conditions, a delayed disclosure may be possible, subject to certain conditions such as:

- the information of the competent authorities; and
- a written explanation of how the conditions for the delay were met immediately on disclosure of the information to the public.

This regime is similar to that applicable to issuers of securities listed on regulated markets.

Issuers of securities listed on the Luxembourg Euro MTF market must also create a list of persons with access to inside information and provide it to the Luxembourg financial sector regulator (CSSF) on its request.

In addition, transactions conducted by PDMRs and persons closely associated with them must now be publicly disclosed within three business days of the date on which the transaction took place. A list of all PDMRs and persons closely associated with them will be prepared.

The Market Abuse Regulation also introduces the concept of a 'closed period' for MTF issuers' PDMRs, which relates to the prohibition of PDMRs' transactions in certain circumstances.

Materials and useful documents

The CSSF has published a substitution table indicating the relevant provisions of the Market Abuse Regulation and the Act on Market Abuse.⁽²⁾ In order to facilitate the co-existence of European and local applicable provisions, the European Securities and Markets Authority (ESMA) has released frequently asked questions on the Market Abuse Regulation, which highlight – among other things – the obligation to detect and notify suspicious orders and transactions under Article 16 of the Market Abuse Regulation. The ESMA has clarified that this obligation is not limited to investment firms within the meaning of the EU Markets in Financial Instruments Directive (2004/39/EC), but also applies to buy-side firms.⁽³⁾

The application of the Market Abuse Regulation will be detailed in future CSSF circulars and frequently asked questions, including with respect to topics dealt with in CSSF Circulars 06/257, 07/280 and 07/323 within the context of the Act on Market Abuse.

In addition, the notification forms to be used to report to the CSSF any suspicious transactions and order reports and to report managers' transactions will soon be available on the CSSF's website, in addition to templates to be used to prepare insider lists.

For further information on this topic please contact [Josée Weydert](#) or [Arnaud Joseph](#) at NautaDutilh Avocats Luxembourg Sàrl by telephone (+352 26 12 29 1) or email (josee.weydert@nautadutilh.com or arnaud.joseph@nautadutilh.com). The NautaDutilh Avocats Luxembourg Sàrl website can be accessed at www.nautadutilh.com.

Endnotes

(1) Information of a precise nature that has not been made public, relating directly or indirectly to one or more issuers or to one or more financial instruments, and that – if made public – would likely have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

(2) www.cssf.lu/fileadmin/files/MAF/Abus_de_marche/Substitution_table.pdf.

(3) www.esma.europa.eu/sites/default/files/library/2016-738_mar_qa.pdf.

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