

Client Update

Europe's New Market Abuse Regulation: What U.S. Issuers Need to Know

LONDON

James C. Scoville
jcscoville@debevoise.com

Vera Losonci
vlosonci@debevoise.com

Dominic Blaxill
dblaxill@debevoise.com

Thomas Matthews
tmatthews@debevoise.com

MOSCOW

Natalia A. Drebezhgina
nadrebezhgina@debevoise.com

Alan V. Kartashkin
akartashkin@debevoise.com

Maxim A. Kuleshov
makuleshov@debevoise.com

A new Market Abuse Regulation¹ (“MAR”) came into effect throughout the European Union on 3 July 2016. It is one of the most extensive new securities regulations in Europe in recent years, and imposes significant new requirements on issuers with shares, debt and other securities listed or traded on European exchanges. The scope of the new regulation is broad. As many of the requirements will be unfamiliar to U.S. companies who may be captured by the new rules—and may be inconsistent in some respects with their current practices—U.S. companies with debt or shares listed or traded in Europe should be particularly mindful of the new regulations and consider whether new policies need to be put in place to comply with the requirements.

MAR’s reach extends not only to issuers incorporated in Europe, but to those incorporated outside as well—and includes companies who have dual share listings (even if their primary listing is in the United States or another jurisdiction), or have debt listings on either a “regulated” or exchange-regulated market, such as the Irish Stock Exchange’s Global Exchange Market (“GEM”) and Luxembourg Stock Exchange’s Euro MTF market. Although U.S. high-yield issuances have tended not to include a European listing in recent years, historically such listings have been popular, and U.S. companies thus may unexpectedly be caught by the new rules.

This Client Update provides a brief overview of MAR’s requirements, particularly those that might be most relevant to a U.S. issuer. Other Debevoise client updates which give more detailed information on MAR can be found [here](#) and [here](#).

¹ Regulation (EU) No. 596/2014 of 16 April 2014.

OVERVIEW

MAR covers market abuse (insider dealing and market manipulation) in relation to “financial instruments”:

- that are admitted to trading on an EU-regulated market or for which a request for admission to trading on a regulated market has been made (for instance, the main markets of the LSE and Euronext);
- that are admitted to trading on a multilateral trading facility (“MTF”) or for which a request for admission to trading on an MTF has been made (for instance, the Irish Stock Exchange’s Global Exchange Market (“GEM”) and the Luxembourg Stock Exchange’s Euro MTF Market, popular venues for U.S. high-yield and other debt listings);
- that are traded on an organised trading facility (“OTF”) (although financial instruments traded on an OTF will not be covered until MiFID II, the EU directive and regulation that will replace the current Markets in Financial Instruments Directive, comes into effect, which is currently expected to be in January 2018); or
- whose price or value depends on or has an effect on the value of any of the above financial instruments (for instance, credit default swaps and contracts for differences).

The list of “financial instruments” includes transferable securities, money-market instruments, units in collective investment undertakings (i.e., fund interests) and derivative contracts. Transferable securities include shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of those shares; bonds or other forms of securitized debt, including depositary receipts in respect of such securities; and any other securities giving the right to acquire or sell any such transferable securities or giving rise to a cash settlement determined by reference to transferable securities, currencies, interest rates or yields, commodities or other indices or measures.

IMPACT ON ISSUERS

MAR imposes significant requirements on the disclosure and control of “inside information” (the European equivalent to material, non-public information), as well as on the reporting and trading of shares and debt securities by senior managers. The most significant requirements are summarized below.

Disclosure of “Inside Information”

Unlike U.S. law, MAR imposes on issuers an obligation to inform the public as soon as possible of “inside information”. “Inside information” is information of a “precise” nature², that (1) has not been made public; (2) relates, directly or indirectly, to one or more issuers or to one or more financial instruments; and (3) if it were 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 (that is, it is information that a reasonable investor would be likely to use as part of the basis of their investment decisions). Companies are allowed to delay the disclosure of inside information only in certain limited circumstances, including where it is necessary to protect an issuer’s “legitimate interests”, so long as the confidentiality of the information can be maintained. MAR requires issuers to inform the applicable regulator of any such delay after the inside information is disclosed, and provide, at the regulator’s request, a written explanation of the reasons for the delay.

Insider Lists

Under MAR, issuers are required to draw up an “insider list”, identifying those persons who have access to inside information. These lists must be in a prescribed format and must include detailed information, such as full work and home addresses, date of birth, and role and reason for being an insider. The list must also indicate the date *and time* at which each individual obtained, and ceased to have access to, the inside information. Insider lists must be maintained in electronic format and kept up to date, and the regulator may make a request for an issuer’s insider list at any time. Companies can request that advisors working for them keep insider lists on their behalf, although the issuer remains fully responsible for complying with the MAR requirements.

Managers’ Transactions

MAR imposes trading notification requirements and trading restrictions on “persons discharging managerial responsibilities” (“PDMRs”) of issuers with shares or debt instruments or derivatives or other financial instruments linked to those securities, in each case which are listed on a regulated market (or for which a listing is applied for). MAR’s trading notification requirements and trading

² Information is of a “precise” nature if it: (1) indicates a set of circumstances that exists or may reasonably be expected to come into existence, or an event that has occurred or may reasonably be expected to occur; and (2) is specific enough to enable a conclusion to be drawn on the possible effect of that set of circumstances or event on the prices of the financial instruments (or the related derivative financial instrument, the related spot commodity contracts, or the auctioned products based on the emission allowances).

restrictions also apply to senior managers of issuers which have “approved” trading of their securities on an MTF or OTF (or requested admission to trading on such a facility) or requested admission to trading on such a facility. As the rules apply to issuers which have “approved” trading of their securities on an MTF or an OTF or requested admission to trading on such a facility, they should not apply to issuers with securities traded on an over-the-counter market where they have not taken any action to approve trading on that market.

MAR places obligations and restrictions on PDMRs as well as persons closely associated with PDMRs. A PDMR is defined as someone who is a member of the administrative, management or supervisory body of the issuer, or a senior executive with regular access to inside information relating directly or indirectly to the issuer and power to take managerial decisions affecting the future developments and business prospects of the issuer. A “person closely associated” (“PCA”) with the PDMR includes a spouse, civil partner, dependent child, relative living with the PDMR, or a legal person, trust or partnership which is managed or controlled by, or set up for the benefit of, a PDMR or someone closely associated with them.

MAR requires PDMRs and PCAs to notify the issuer and the relevant regulator within three business days of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto, over and above a EUR 5,000 annual threshold. Transactions to be notified include the pledging or lending of financial instruments by or on behalf of a PDMR or a person closely associated with them. The notification must include details, such as the price and volume of the transaction, and the issuer must make such information public no later than three business days after the date of the transaction.

Issuers are required to draw up a list of all of their PDMRs and PCAs with them and must notify all of their PDMRs, in writing, of their obligations. PDMRs are then required to pass on such notification to all PCAs.

MAR also contains a prohibition on PDMRs conducting any transaction on their own account or for the account of a third party relating, directly or indirectly, in the shares or debt instruments of the issuer or in derivatives or other financial instruments linked to them, during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public (subject to certain narrow exceptions).

Market Manipulation

MAR contains exemptions for share buy-backs and stabilisation activities, as well as specific rules for market-sounding activities, which should be of particular interest for companies considering major M&A or other transactions.

NEXT STEPS FOR ISSUERS

MAR contains many new and potentially unfamiliar requirements on a U.S. issuer with shares or debt securities listed or traded in Europe. U.S. companies with listed and traded securities in Europe will need to review their current systems and policies and implement any required changes to ensure that they comply with MAR.

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Please do not hesitate to contact us with any questions.