

UK Market Abuse Regulation: Onshoring and Divergence from the EU

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ONSHORING OF THE EU MARKET ABUSE REGIME AFTER BREXIT

With effect from 1 January 2021, the [EU Market Abuse Regulation \(596/2014\)](#) (“EU MAR”) has been “onshored” into UK law through the European Union (Withdrawal) Act 2018 (as amended), as supplemented by [The Market Abuse \(Amendment\) \(EU Exit\) Regulations \(SI 2019/310\)](#) (“UK MAR”) following the expiry of the Brexit transition period on 31 December 2020. To enable a smooth transition, the onshoring of EU MAR has resulted in UK markets and financial instruments remaining subject to the same requirements and protections under UK MAR as under EU MAR as in effect on 31 December 2020, subject to certain changes, which are mostly of a technical nature, including:

- **Scope of UK MAR.** While post-Brexit EU MAR no longer applies to financial instruments admitted to trading or traded on UK trading venues, issuers with financial instruments admitted to trading on both a UK regulated market, multilateral trading facility (“MTF”) or organised trading facility (“OTF”) and an EU regulated market, MTF or OTF will be required to comply with both UK MAR and EU MAR. Issuers (including non-UK issuers) with financial instruments admitted to trading on a UK trading venue will be subject to UK MAR requirements. The UK Financial Conduct Authority (the “FCA”) could still, however, take enforcement action against UK issuers with financial instruments, such as bonds, admitted to trading on EU trading venues, in cases of market abuse that could affect or otherwise undermine UK markets.
- **Notification requirements.** For issuers with financial instruments admitted to trading or traded on UK trading venues, notifications required under UK MAR, such as for delayed disclosure of inside information, the provision of insider lists and the reporting of managers’ transactions, must be made to the FCA. This means that issuers with financial instruments also admitted to trading or traded on an EU trading venue will now be subject to a dual reporting obligation to the FCA and the relevant EU national competent authority.

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- **Supervisory and regulatory functions.** The FCA has assumed responsibility for ESMA's powers and functions, including making binding technical standards, in order to set acceptable market practices in the UK. Similarly, HM Treasury has assumed the European Commission's authority to make delegated acts and regulations specifying procedures relating to infringement reporting.

UK DIVERGENCE FROM THE EU MARKET ABUSE REGIME

The [SME Growth Markets Regulation \(EU\) 2019/2115](#) introduced certain amendments to EU MAR, effective from 1 January 2021. These amendments are currently not reflected in UK MAR. Although the amendments to EU MAR are primarily targeted at small and mid-size enterprises ("SMEs"), some of the changes affect issuers generally. These changes include the following:

- **PDMR reporting obligations.** All issuers are now required to disclose the details of a manager's transaction involving its financial instruments within two business days after receiving notification of such transaction from a person discharging managerial responsibility ("PDMR") or a person closely associated with him or her ("PCA"). This will likely avoid difficulties for issuers to comply with their reporting obligations, which under the previous regime was often challenging when a PDMR or PCA notified an issuer of a transaction on the third business day after such transaction had been completed, which was also the deadline for the issuer's own reporting obligation under the previous regime.
- **Market soundings safe harbour for "qualified investors".** A formal market soundings process will no longer be required for the disclosure of inside information to "qualified investors" (as defined in [MiFID II](#)) in connection with a bond private placement. However, to be able to rely on the safe harbour, issuers must put in place an appropriate non-disclosure agreement with each such "qualified investor" prior to any disclosure or communication of inside information to them.
- **SME insider lists and delayed disclosure.** Insider lists drawn up and maintained by issuers with financial instruments admitted to trading or traded on SME growth markets will now only be required to include 'permanent insiders'. In addition, SME issuers will no longer be required to provide a written explanation of their decisions to delay disclosure of inside information unless requested by the relevant competent authority although SME issuers must still notify the competent authority of any delayed disclosure.

The [Financial Services Bill 2019-21](#), which was introduced in Parliament on 21 October 2020 (the “Bill”), seeks to implement only some of these changes to UK MAR, including the PDMR reporting amendment. However, the Bill does not propose to implement the new market soundings safe harbour or the lighter requirements with respect to insider lists for issuers with financial instruments admitted to trading on SME growth markets in the UK, such as AIM (currently in the UK, AIM issuers are not required to provide written explanations for any delayed disclosure of inside information unless requested to do so by the FCA).

In addition to implementing certain EU MAR amendments, separately the Bill seeks to extend the maximum sentence for criminal market abuse (such as insider dealing) from seven to ten years.

OUR RECOMMENDATIONS FOR ISSUERS

While UK MAR broadly mirrors in substance the requirements and protections under EU MAR, it cannot be assumed that future changes to EU MAR will also be made to UK MAR, and over time it is possible that the divergences between the two market abuse regimes will broaden. Issuers and other market participants should consult with their legal advisers on updating their internal policies and guidance to reflect both the UK MAR and EU MAR regimes, and internal compliance processes should be reviewed regularly and, if necessary, updated to reflect any changes to either market abuse regime.

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Please do not hesitate to contact us with any questions.

LONDON



James C. Scoville
jcscovil@debevoise.com



Vera Losonci
vlosonci@debevoise.com



Milo Gordon-Brown
mgordonbrown@debevoise.com



Laurence Hanesworth
lhanesworth@debevoise.com