

Market Abuse Regulation in a nutshell: 3 July has arrived



New EU regime on market abuse, disclosure of inside information, insider lists and restrictions on dealings by PDMRs and their closely associated persons.

Effective on 3 July 2016 and supplemented by further rules and guidelines. While the Regulation will have direct effect, some changes in Spanish legislation are expected to ensure consistency.

Similar to current regime but not the same: some changes and important new procedural requirements. Together with MiFID II and MiFIR – applicable in January 2018 – will significantly impact most market participants.

Wider scope

- > The new regime extends its scope beyond regulated markets to Multi-lateral Trading Facilities (MTFs) – such as MAB – and Organised Trading Facilities (OTFs). It also applies to a wider range of financial instruments and products

Inside information

- > Inside information has to be disclosed to the market as soon as possible. As under the previous rules, disclosure can be delayed in certain cases. Generally speaking, if the issuer decides to delay announcement of the information, it won't be necessary to notify it to the regulator (CNMV) until the information is made public
- > Don't think in terms of price-sensitivity: think whether a reasonable investor would use this information when making investment decisions ("reasonable investor test")

Insider dealing

- > Insider dealing arises when a person who has inside information uses it to deal or to attempt to deal (including cancelling or amending an order), whether the dealing is on their own account or the account of a third party. It is also unlawful to recommend or induce another to do so

Unlawful disclosure

- > It is an offence to disclose inside information other than in the proper performance of your employment, profession or duties

Insider lists

- > Although the requirement to maintain an insider list will be broadly the same as it is now, its format and content change. Extensive data has to be recorded for each insider
- > Any person on the insider list should acknowledge in writing the legal and regulatory duties and sanctions entailed

Market soundings

- > The Regulation introduces a safe harbour for market soundings. Detailed records should be kept and specific procedures followed to ensure protection from the unlawful disclosure offence for market soundings

Share buy-backs and stabilisation measures

- > There will continue to be safe harbours for share buy-backs and stabilisation measures, but with slight differences from the existing regime

Dealings by PDMRs and associated persons – closed periods

- > Persons discharging managerial responsibilities (PDMRs) and their closely associated persons have to disclose any transactions in the company's securities, subject to certain thresholds, within 3 business days of the dealing
- > PDMRs can't deal in a "closed period": the 30-day period before financial results are announced, except if the issuer allows it under exceptional circumstances

Market manipulation

- > Attempted market manipulation is now included as an offence. Abusive behaviour in respect of benchmarks is also prohibited

Investment recommendations

- > Care should be taken if you are giving an investment recommendation to ensure that it is objectively presented. Conflicts of interests should be disclosed

Suspicious transaction reporting

- > In addition to suspicious transactions, market operators and investment firms are required to report suspicious orders

Whistleblowing

- > Efficient mechanisms shall be established to allow possible infringements to be reported anonymously to the relevant authorities

Criminal sanctions Directive

- > In addition to the Regulation, in 2014 a new Directive with respect to criminal sanctions for market abuse was published, which forces all Member States to define the most serious practices of market abuse as criminal offences
- > The Directive was expected to be implemented in Spain by July 2016, but the necessary legislative changes have not been proposed yet