

The Market Abuse Regime for Irish SPVs

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In July 2016, the Market Abuse Regulation (**MAR**) and the Market Abuse Directive (**MAD**), concerning criminal sanctions for market abuse, came into effect across EU.

They signified a transformation in the EU's approach to market abuse, significantly expanding the scope of its regulatory reach with the aim of providing a comprehensive approach to ensuring market integrity and transparency.

Prior to MAR, the regulatory focus was primarily on issuers of securities listed on EU regulated markets. However, MAR extends these regulatory obligations to a broader array of platforms (including multilateral trading facilities (**MTFs**) such as the Global Exchange Market) and securities.

The broadening of the regulatory scope under MAR has several implications. It aims to ensure market integrity and investor protection by establishing a uniform regulatory framework to prevent market abuse. For special purpose vehicles (**SPVs**) with debt securities listed in Ireland, MAR brings about specific considerations that need to be carefully managed, including:

- restrictions on the disclosure and handling of inside information
- prohibition of market manipulation
- reporting obligations related to transactions with Persons Discharging Managerial Responsibilities (**PDMRs**) and their closely associated persons
- requirements in relation to suspicious activity reporting

The MAR regime is enforced by national competent authorities within each EU member state, which have the power to investigate and impose penalties for violations. In Ireland, the national competent authority is the Central Bank of Ireland.

Insider dealing and information

MAR prohibits any involvement in insider dealing, which includes activities such as engaging in, attempting, recommending, or inducing another individual to partake in insider dealing. Insider dealing occurs when someone trades, or attempts to trade, on financial instruments based on inside information that is not publicly available and would likely have a significant effect on the prices of those instruments if it were made public. This also extends to recommending or inducing another person to engage in trading based on such information.

Irish SPVs must ensure timely and accurate disclosure of inside information that directly concerns the debt securities they have issued. Inside information is any information of a precise nature, which has not been made public, relating to the issuer or its financial instruments, and which, if it were made public, would likely have a significant effect on the prices of those instruments.

While MAR mandates the immediate disclosure of inside information, it also provides for the possibility of delaying this disclosure under certain conditions. SPVs must ensure that the delay in disclosing inside information is in compliance with MAR requirements, such as ensuring that the delay won't mislead the public and that confidentiality can be maintained. Importantly, the rationale for the delay must be properly documented and provided to the competent authority upon request.

Further, SPVs are required to keep and regularly update a list of all persons who have access to inside information. This insider list must be structured according to MAR's specifications and be readily available to the Central Bank of Ireland upon request. Maintaining such lists involves ensuring that those listed are aware of their legal and regulatory obligations and the penalties for insider dealing and unlawful disclosure of inside information.

Transactions with PDMRs

MAR imposes strict requirements on PDMRs and individuals closely associated with them regarding transactions on their own account involving shares, debt instruments, and related financial instruments of the issuer. These transactions must be reported both to the CBI and the public under specific conditions outlined in MAR, within three business days of the transaction. Additionally, transactions involving pledging or lending of financial instruments, as well as trading carried out by a portfolio manager on behalf of a PDMR, are considered transactions for notification purposes.

The obligation to notify arises only once a *de minimis* threshold is reached, which varies by EU Member State, and typically stands at either €5,000 or €20,000. This figure is based on the cumulative value of such transactions by a PDMR.

One notable departure from the previous regulatory framework is that, with a few exceptions, MAR places restrictions on PDMRs preventing them from engaging in transactions during the 30 calendar days leading up to the announcement of an interim financial report or year-end report.

Market manipulation

The MAR unequivocally prohibits both market manipulation and any attempts at market manipulation. SPVs must be vigilant to avoid actions that could be construed as market manipulation. This includes ensuring that any public communications or transactions do not give misleading signals regarding the supply, demand, or price of the financial instruments.

Market manipulation encompasses various activities and behaviours aimed at distorting or improperly influencing the market. This includes giving false or misleading signals about the supply, demand, or price of financial instruments or securing the price of one or several financial instruments at an abnormal or artificial level. Actions that either give false or misleading signals or are likely to do so, as well as actions that secure, or are likely to secure, the price of a financial instrument at an abnormal level, are covered. However, such behaviour is exempt if conducted for legitimate reasons and conforms with an 'accepted market practice' under MAR.

Reporting of suspicious activities

Entities must establish and maintain effective systems and procedures for detecting and reporting potentially suspicious orders and transactions - any behaviour that could be seen as market abuse must be reported to the CBI.

SPVs are required to have in place internal procedures to report suspicious activities and establish a clear process for the escalation of concerns to the appropriate level within the organisation, where a decision can be made on whether a suspicious transaction report should be filed with the CBI. Detailed records of all orders and transactions in financial instruments, whether they are executed or not must be recorded and kept, as these records are crucial in investigations of market abuse and must be kept for a minimum of five years.

Summary

Compliance with MAR is not just about adhering to regulatory requirements; it's also about encouraging transparency and trust in the financial markets. For Irish SPVs, understanding and integrating these considerations into their operations is essential for maintaining integrity and investor confidence in their listed debt securities.

Working closely with our colleagues in our fiduciary arm, Ogier Global, we are well experienced

in providing the full suite of services that an issuer may require to comply with MAR from regulatory advice to maintaining insider lists and adopting MAR policies.

About Ogier

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