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BY EMAIL

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CENTRAL BANK OF IRELAND - MARKET ABUSE THEMATIC REVIEW COMPLIANCE BY EQUITY ISSUERS WITH MAR REQUIREMENTS TO RECOGNISE, PUBLISH AND MANAGE INSIDE INFORMATION

Dear [CEO]

The Central Bank of Ireland (Central Bank) is the competent authority in Ireland for the Market Abuse Regulation (MAR) which includes supervisory authority over MAR compliance by issuers of financial instruments.¹ In 2020, the Central Bank commenced the Market Abuse Thematic Review (Review) to assess MAR compliance by issuers of equity instruments listed on Euronext Dublin with the requirements to recognise, manage and publish inside information as soon as possible. This work was a component of a wider thematic review of compliance with MAR, including market surveillance obligations and the obligations of advisors to issuers.

Market abuse is unlawful behaviour on financial markets. It impedes market transparency, a prerequisite for trading on financial markets. It comprises insider dealing, unlawful disclosure of inside information, market manipulation or related attempts. Market abuse undermines market integrity and investor confidence. The Review examined the organisational arrangements that issuers employ to comply with the MAR requirements to recognise and publish inside information, securely maintain insider lists and to avoid breaches of Article 14 MAR which prohibits insider dealing, unlawful disclosure of inside information or related attempts (**Article 14 Prohibitions**).

The Central Bank issued a questionnaire regarding MAR compliance and received responses from all 42 issuers with equity instruments admitted to trading on Euronext Dublin. The Central Bank carried out in-depth assessments of 6 Main Market and 4 Growth Market issuers which included 18 virtual engagements with senior management and relevant compliance personnel.

¹ Regulation (EU) 596/2014 and Regulation 3 European Union (Market Abuse) Regulations 2016 (S.I. No. 349 of 2016).



The Central Bank observed a basic understanding by issuers of the MAR requirements relating to inside information at entity level and some good practices for the governance surrounding market abuse risk and the recognition of inside information. For example, most issuers publish inside information on the day they identify it or the next day, almost all issuers kept the market informed of the effects of Covid-19 on the outlook for their business, and most SME Growth Market issuers maintain event-based insider lists.²

However, the Review also identified deficiencies requiring entity-specific risk mitigation programmes for issuers' compliance frameworks, organisational arrangements and staff understanding. This letter sets out the Central Bank's key findings and expectations regarding its assessment of issuer MAR compliance regarding inside information and their approach to mitigating market abuse risk.³

KEY FINDINGS AND EXPECTATIONS

1. Issuers must enhance their frameworks to identify inside information and publish it as soon as possible

Article 17 MAR requires issuers to publish inside information as soon as possible. Compliance requires correctly defining and recognising inside information and implementing arrangements for timely publication. This ensures transparency and facilitates investors making informed decisions. Timely publication mitigates against the risk of Article 14 Prohibition breaches by issuers, staff and advisors. The Review found evidence of ineffective, outdated and in some cases, an absence of market abuse policies and procedures, including:

- Deficiencies in MAR frameworks that risked firms failing to address adequately the requirement to publish inside information as soon as possible and/or when MAR permits delayed disclosure. The Central Bank also observed an absence of market abuse policies and frameworks, and policies that pre-dated MAR.
- Half of issuers assessed could not evidence a sufficiently articulated approach to identifying inside information and/or clearly articulated reporting lines and escalation paths to management and committees.
- Issuers with inadequate frameworks tended to rely exclusively on advisors to recognise inside information for them.
- Definitional approaches to legal requirements that are informal or depart from the specific legislative text, especially with regard to the test to determine whether information is sufficiently precise to comprise inside information.
- Failure to apply each of the three criteria that MAR requires to be present before an issuer may legally delay publication of inside information. These criteria are: (1) Immediate disclosure is

² At the time of the Review, MAR did not require SME Growth Market issuers to maintain insider lists. Since January 2021, MAR requires these issuers to maintain, at least, an insider list only those persons who, due to the nature of their function or position within the issuer, have regular access to inside information.

³ The Review and key findings align with the Central Bank's Five Principles for a Proper and Effectively Regulated Securities Market, available [here](#).



likely to prejudice the issuer's legitimate interests; (2) Delay is not likely to mislead the public; and (3) The issuer can ensure confidentiality. Issuers tended to apply the "*legitimate interest*" requirement without applying the other criteria to the information.

- Decision-makers who failed to maintain effective records, especially regarding decisions that information was or was not inside information and decisions to delay publication of inside information. Some board minutes recited the relevant definition or criteria but did not apply the criteria to the facts in order to demonstrate compliance.
- Some issuers applied an automatic delay period of 24 hours before disclosure, irrespective of whether the information met the MAR criteria for delay.

The Central Bank expects issuers to:

- Understand MAR and its rationale, which includes promoting transparency, avoiding Article 14 Prohibition breaches and facilitating investigations into such breaches.
- Implement frameworks that identify an issuer's MAR compliance and market abuse risk and require consequential written controls and guidance for staff. This assists issuers to comply with their MAR obligations and mitigates the risk of Article 14 Prohibition breaches by the issuer, its staff and others to whom it grants access to its inside information.
- Ensure boards take ownership of market abuse risk subject to appropriate and well-controlled delegations.
- Adopt a formal, staged approach to inside information identification and permissive delay of publication.
- Maintain contemporaneous and complete written records that demonstrate the application of the correct legal test to the relevant facts. For example, whether information is inside information and whether it meets all of the criteria for any proposed delay in publication.
- Treat the obligation to publish inside information "*as soon as possible*" as a requirement that applies on each occasion an issuer recognises inside information. Issuers should avoid internal controls that envisage automatic publication delay periods ("*24 hours*" or "*short*"). For large, complex issuers, this may reflect experience of what is typically "*possible*" for that issuer but it also risks failure to disclose as soon as possible on each occasion.

2. Issuers must ensure compliance with all elements of MAR regarding insider lists

Article 18 MAR requires issuers to draw up and maintain a list, in a prescribed format, of all persons who have access to inside information and to update it promptly. Issuers must take all reasonable steps to ensure everyone on a list acknowledges, in writing, their legal and regulatory duties and awareness of the sanctions for breaches of the Article 14 Prohibitions.

Article 18 protects market integrity. It encourages issuers to control the flow of inside information thereby mitigating the risk of insiders breaching the Article 14 Prohibitions. Insider lists are a vital tool for competent authorities to identify any person who has access to inside information and the date on which they gained access. Accordingly, Article 18 promotes effective market abuse investigations.



The Review identified deficiencies in the creation, population and maintenance of insider lists, including:

- Twenty five percent of Main Market issuer announcements of inside information by all twenty-two issuers who received the Central Bank's questionnaire did not have an associated insider list entry.
- Incomplete insider lists with missing fields, particularly the rationale for insiders' inclusion on lists.
- The same insiders routinely appeared on both an event-based list and a permanent list. Article 2(2) of Commission Implementing Regulation (EU) 2016/347) states that the details of permanent insiders must not be included in an events-based list.
- Failure to maintain adequate security measures to protect insider lists from unauthorised access.
- Only two Main Market issuers evidenced taking all reasonable steps to ensure insiders received and acknowledged their duties and were aware of the applicable sanctions.

The Central Bank expects issuers to:

- Understand Article 18 MAR and its rationale, which includes mitigating the risk of insiders breaching the Article 14 Prohibitions and facilitating investigating authorities' prompt identification of those who have access to inside information.
- Assess their compliance with the MAR requirement to update the insider list on *each* occasion inside information is identified. There should be consequential entries on the issuer's insider list for each announcement by an issuer of inside information.
- Have a framework in place to ensure full compliance with all aspects of Article 18 MAR, including doing so to the requisite level of detail. For example, "*Person is an insider*" not an adequate description of why a person is on an insider list. The rationale is the reason the person is an insider.
- Review their arrangements and consider whether they are taking *all* reasonable steps to ensure persons in possession of inside information understand their obligations and the applicable sanctions for breach and acknowledge such in writing. Issuers must satisfy this requirement contemporaneously with an insider's inclusion on the list.
- Assess compliance with the requirement to secure insider lists. This includes restricting access through secure folders and password protection, etc.

3. Issuers must provide entity-specific market abuse training to all relevant staff

Failure to train all relevant staff risks an issuer breaching Article 17 and issuers or their staff breaching the Article 14 Prohibitions. Only half of issuers could demonstrate having provided appropriate, business model-specific training to relevant staff. Training and access to MAR policies was often restricted to senior staff and directors.



The Central Bank expects issuers to provide appropriately targeted market abuse training to all relevant staff.

NEXT STEPS AND ACTIONS FOR ALL ISSUERS

As a result of these findings, the Central Bank will now commence supervisory engagement with those issuers where specific concerns have been identified, including the imposition of specific risk mitigation programmes with respect to those concerns.

Whether or not an issuer receives a specific risk mitigation requirement from the Central Bank, all issuers are required to critically assess their activities, frameworks, organisational arrangements and controls against the findings and expectations in this letter and put in place a time bound plan to remediate deficiencies. The Central Bank expects this plan to be discussed and approved by your board by the end of 2021. The Central Bank may have regard to the content and quality of such assessments and plans in future reviews of a firm's compliance.

In circumstances of non-compliance by entities with requirements relevant to the matters raised in this letter, the Central Bank may, when exercising its supervisory and/or enforcement powers, have regard to the consideration given by an entity to the matters in this letter. Please address any queries regarding this letter to MARThematic@centralbank.ie. You are not required to respond to this letter.

Yours sincerely

A handwritten signature in blue ink that reads "Colm Kincaid".

Colm Kincaid
Director of Securities and Markets Supervision