

MARKET ABUSE REGULATION: NEW RULES ENTERED INTO FORCE ON 3 JULY 2016

July 2016



Starting from yesterday, 3 July 2016, regulation 2014/596/EU on market abuse (MAR) is directly applicable in all European Union. Similarly, as from the same date also the provisions contained in the relevant implementing and/or delegated regulations enacted by the Commission pursuant to various provisions of MAR are also directly applicable.

MAR, on top of directly prohibiting insider dealing, unlawful disclosure of insider information and market manipulation (including attempted manipulation), also sets out certain obligations, which were until today legislated in national laws and regulation enacted to implement directive 2003/6/CE (MAD), such as the obligations of issuers of financial instruments to disclose inside information to the public and to draw up and keep updated a list of persons who have access to inside information as well as the obligations of the persons discharging managerial responsibilities in issuers (and of persons closely associated with them) to disclose transaction on the relevant financial instruments.

As a result of the entry into force of MAR, as from 3 July 2016, *inter alia*:

- Issuer of financial instruments admitted to trading on "regulated markets" are still required to **disclose inside information** to the public as soon as possible, but they must now do so in accordance with article 17 of MAR and of the provisions of Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016.
- The obligation to disclose inside information to the public now applies also to issuers with financial instruments admitted to trading on **MTFs** (i.e., multilateral trading facilities), as well as to issuers that requested (or consented to) admission of their financial instruments on MTFs. Since such issuers are not subject to the relevant provisions of the so called Transparency Directive (109/2004/CE), in making such disclosure they must comply with Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016.
- Whilst also article 17 of MAR allows (as it was the case in the regime previously in force) an issuer to delay disclosure of inside information provided that certain requirements are met (i.e. (i) that immediate disclosure is likely to prejudice "legitimate interests" of the issuer; (ii) that the delay is not likely to mislead the public; and (iii) that the issuer is able to ensure that the relevant information remain confidential), the relevant obligations of notification and registration of the information related to the delay are now governed by the same article 17 and by Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016, which sets forth the information that the issuer must record and the technical means it must use to delay the public disclosure and to notify the competent authority. In this respect, please consider that Consob, on 1 July, published communication n. 0061330, specifying e-mails' addresses and competent recipients within Consob to be used for all notifications required under MAR, including those relevant for this purposes.
- Issuers (again, now also issuers of financial instruments admitted to trading on MTFs) are required to draw and keep up to date and, if requested, provide to the competent authority a list of all persons who have access to inside information (e.g., directors, employees, advisers and accountants) (the **Insider List**) in accordance with article 18 of MAR and of Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 (which also contain a specific Template in this respect).
- The disclosure of the so called "managers' transactions" must now be made in accordance with the provisions of MAR (article 19). Two Commission regulations (Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 and of Commission Implementing Regulation (EU) 2016/523 of 10 March 2016) complete the legislative framework in this respect. Persons discharging managerial responsibilities (**PDMRs**) as well as persons closely associated with them are required to notify certain transactions (detailed in Commission Delegated Regulation (EU) 2016/522) conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto, promptly and **no later than 3 business days** (as compared to the 5 business days of the previous regime) after the date of the relevant transaction. The term for the issuer to publicly announce the information regarding the "managers transaction" is now 3 business days after the date of the relevant transaction.
- MAR also provides for a "**closed**" (aka "black-out") **period of 30 days** before the announcement of an interim financial report or a year-end report of during which PDMRs must not conduct any of the above transactions on their own account or for the account of a third party.