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# EU Listing Act to reshuffle Market Abuse Regulation

Regulation (EU) No 596/2014 of 16 April 2014 on market abuse (**MAR**), which aims to prevent and detect market abuse, market manipulation and insider dealing, is expected to undergo an important reform following the adoption of the listing act in relation to the simplification of the listing and post-listing requirements (**EU Listing Act**)[1].

We analyse the most significant changes brought about by the EU Listing Act which may have an impact on issuers.

As a preliminary note, the definition of inside information will be broadened to include all information conveyed by other persons acting on behalf of a client or information obtained by virtue of the management of a managed fund or proprietary account.

Other important amendments include the following:

## A. Disclosure Obligations Simplified:

### Condition to delay disclosure

As a general rule, issuers shall disclose any inside information relating to them as soon as possible.

Subject to certain cumulative conditions set forth in article 17 of MAR, an issuer may delay the disclosure of inside information. In particular, the general condition under which disclosure may be delayed i.e. delay is not likely to mislead the public, which previously left room for interpretation, has been specified: the delaying of disclosure should not be inconsistent with the issuer's past public announcements or other communications.

In addition, the possibility for issuers, qualifying as credit institutions, to delay the disclosure of inside information has been extended to issuers qualifying as financial institutions or parent undertakings of such credit of financial institutions.

### Disclosure of information in "protracted processes"

Immediate disclosure of inside information may be an issue in the context of protracted processes (such as M&A transactions or litigation), where inside information may arise before the conclusion of the process and disclosure of such "intermediate" inside information would influence the outcome of such process.

Following the MAR recast, inside information relating to intermediate steps is exempted from the immediate disclosure obligation in the context of multi-phases processes, with issuers only being required to disclose the "final" circumstances or event as soon as it occurs. However, in order to ensure the integrity of the markets, issuers will be obliged to keep all inside information

[1] See our previous newsflash in this respect here.

(including “intermediate” inside information) confidential until it is publicly disclosed (as for inside information whose disclosure has been delayed pursuant to article 17(7) MAR).

A delegated act will further precise the modalities of this exemption.

### Market sounding

It is clarified that if disclosing market participants comply with the information and record-keeping requirements under article 11 of MAR, they will be protected against claims for unlawful disclosure of inside information. However, if these requirements are not complied with, these market participants will not be presumed to have committed an unlawful disclosure of information.

## B. Obligation to report

### Insider lists

The insider list regime has not yet benefited from the MAR refresh, although based on previous discussions regarding the last draft and market reactions thereto, it is to be expected that the insider list regime will be alleviated in terms of both form and content, so that only “permanent insiders” are to be included, i.e. persons having regular access to inside information due to their function or their position within the issuer (such as staff who have access to such information as part of their duties, managers, supervisory board members, etc.).

### Managerial transactions

The threshold above which transactions carried out by Persons Discharging Managerial Responsibilities (PDMRs) and Persons Closely Associated (PCAs) must be notified to the issuer and the competent authority has been increased from EUR 5,000 to EUR 20,000. In addition, transactions carried out by these persons during the closed period of article 19 para. 11 of MAR are exempted if they are not related to active investment decisions or result from external factors.

The MAR refresh also includes, among others things, reduced disclosure obligations in relation to buy-back programmes, the removal of the requirement for an SME growth market operator to approve the liquidity contract, a reduced sanctions regime for SMEs and the introduction of collaborations platforms between Member States.

These amendments are aimed at clarifying and simplifying the market abuse regime and making it more responsive to the needs of business in order to revitalise EU capital markets.

## C. Next Steps

The text of the provisional agreement will now be finalised and presented to Member States’ representatives and the European Parliament for approval. If approved, the European Council and the Parliament will have to formally adopt the text.

We are monitoring the process and will keep you updated regarding any developments. For more information on this topic, please contact us!

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