

Caught by the New Market Abuse Regime?

Entry into force of the Market Abuse Regulation

On 3 July 2016, the new European market abuse regime will take effect across the European Union. The regime consists of two parts: Regulation (EU) 596/2014 of 16 April 2014 on market abuse ("**MAR**") and Directive 2014/57/EU of 16 April 2014 on criminal sanctions for market abuse ("**MAD 2**"), as well as various implementing measures and guidance issued by the European Securities and Markets Authority ("**ESMA**"). MAR will be directly applicable as from this date, whereas MAD 2 is still awaiting transposition into Luxembourg law.

Extension of scope of market abuse regime

Of particular relevance to investment funds, management companies and alternative investment fund managers will be the extension of scope of the existing market abuse regime from financial instruments (and their issuers ("**Issuers**")) admitted to trading on a regulated market to those traded on a multilateral trading facility ("**MTF**") such as the EuroMTF. Following the entry into application of the revised Markets in Financial Instruments Directive ("**MiFID II**"), those financial instruments traded on an organised trading facility ("**OTF**") within the meaning of MiFID II will also come into scope of the new regime. It also applies to financial instruments, the price or value of which depends on the aforementioned financial instruments.

EuroMTF listed Funds

Funds with shares or units listed on the EuroMTF and which have previously been excluded from the existing market abuse regime will now find themselves facing new and reinforced obligations under the revised regime, such as the broader definition of inside information, the penalisation of attempted insider dealing, stricter requirements regarding the maintenance of insider lists, and greater disclosure requirements. Some of these reinforced requirements of particular relevance are summarised below.

- **Ad-hoc disclosure of inside information**

Issuers and therefore those with shares listed on MTFs will now be subject to the obligation to inform the public as soon as possible of inside information concerning them. When doing so, the Issuer must do so in a manner that enables fast access and complete, correct and timely assessment of the information by the public. Such disclosure shall not be combined with marketing activities and the information must be posted and maintained on the website of the Issuer for a period of five years.

While a delay of disclosure of inside information to the public will still be possible if immediate disclosure is likely to prejudice the Issuer's legitimate interests and certain further conditions are met (reference is made to the [proposed draft guidelines of ESMA](#) relating to the circumstances concerning a delayed disclosure), Issuers shall inform the *Commission de Surveillance du Secteur Financier* ("**CSSF**") or other relevant competent authority that disclosure was delayed and prepare a written explanation.

The [Commission Implementing Regulation](#) laying down implementing technical standards regarding the required disclosure and for delaying public disclosure has just been published in the Official Journal setting out certain requirements, especially regarding recordkeeping with regard to decisions to delay disclosure. Concerned entities may therefore wish to consider reviewing their procedures for identifying inside information, the need for it to be disclosed and the possibility of delaying such disclosure as well as putting in place appropriate recordkeeping and administrative procedures.

• Insider Lists

Issuers will be subject to the reinforced requirements regarding the maintenance of insider lists. In particular, they must identify and maintain a list of all those who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information. They shall be able to provide this list to the relevant competent authority such as the CSSF upon request.

• Managers' Transactions

Persons discharging managerial responsibilities and associated persons will need to notify both the Issuers and the relevant competent authority (such as the CSSF) of every transaction conducted on the account of these persons relating to shares or debt instruments of that Issuer or to derivatives or other financial instruments linked thereto.

Detection and reporting of market abuse

In line with clarifications of ESMA and the new market abuse regime, AIFM and UCITS management companies (among others) will be required to establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions.

Sanctions

MAR and MAD 2 provide for both criminal and administrative sanctions.

For the ease of reference, please click here to access the [MAR](#) and [MAD 2](#).

We are at your disposal to further discuss the above. Feel free to liaise with any of the contacts provided or your usual Linklaters contact.

This publication is intended merely to highlight issues and not to be comprehensive, nor to provide legal advice. Should you have any questions on issues reported here or on other areas of law, please contact one of your regular contacts, or contact the editors.

© Linklaters LLP. All Rights reserved 2016

Linklaters LLP is a limited liability partnership registered in England and Wales with registered number OC326345. It is a law firm authorised and regulated by the Solicitors Regulation Authority. The term partner in relation to Linklaters LLP is used to refer to a member of Linklaters LLP or an employee or consultant of Linklaters LLP or any of its affiliated firms or entities with equivalent standing and qualifications. A list of the names of the members of Linklaters LLP together with a list of those non-members who are designated as partners and their professional qualifications is open to inspection at its registered office, One Silk Street, London EC2Y 8HQ or on www.linklaters.com and such persons are either solicitors, registered foreign lawyers or European lawyers.

Please refer to www.linklaters.com/regulation for important information on Linklaters LLP's regulatory position.

We currently hold your contact details, which we use to send you newsletters such as this and for other marketing and business communications.

We use your contact details for our own internal purposes only. This information is available to our offices worldwide and to those of our associated firms.

If any of your details are incorrect or have recently changed, or if you no longer wish to receive this newsletter or other marketing communications, please let us know by emailing us at marketing.database@linklaters.com.

Contacts

For further information please contact:

Emmanuel-Frédéric Henrion
Partner

(+352) 2608 8279
emmanuel-frederic.henrion@linklaters.com

Hermann Beythan
Partner

(+352) 2608 8372
hermann.beythan@linklaters.com

Silke Bernard
Partner
Investment Management Group
(+352) 2608 8223
silke.bernard@linklaters.com

Freddy Brausch
Partner
(+352) 2608 8239
freddy.brausch@linklaters.com

Josiane Schroeder
Counsel
Investment Management Group
(+352) 2608 8275
josiane.schroeder@linklaters.com

Rodrigo Delcourt
Counsel
Investment Management Group
(+352) 2608 8293
rodrigo.delcourt@linklaters.com

35 Avenue John F. Kennedy
P.O. Box 1107
L-1011 Luxembourg

Telephone (+352) 26 08 1
Facsimile (+352) 26 08 88 88