POTAMITISVEKRIS

CAPITAL MARKETS

NEWSLETTER

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The EU Listing Act – Key Changes to the Market Abuse Regulation

Our Capital Markets team has put together a summary of the key changes brought by Regulation (EU) 2024/2809 (Listing Act Regulation) to Regulation (EU) 596/2014 on market abuse (MAR).

1. Share Buy-Back Programmes – Reporting and Disclosure Obligations

The reporting process for issuers to qualify for the safe harbour for buy-back programmes under MAR has been simplified. Instead of reporting each buy-back transaction to all competent authorities of the trading venues on which the shares have been admitted to trading or are traded, issuers only need to report to the competent authority of the most relevant market in terms of liquidity as referred to in Article 26(1) of Regulation (EU) 600/2014 (MiFIR).

Issuers' disclosure obligations have also been simplified: They now only need to disclose aggregated information, *i.e.* the total volume and the weighted average price per day and per trading venue. However, issuers still must report all buy-back transactions in both detailed and aggregated forms to the competent authority.

2. Inside Information relating to Pending Orders

The notion of "inside information" relating to pending orders in financial instruments has been broadened to include cases where such information is passed or known by virtue of management of a proprietary account or of a managed fund so as to cover, in addition to persons charged with the execution of orders, all categories of persons that may become aware of a forthcoming order or transaction.

3. Market Sounding

The notion of "market sounding" has been broadened to also include cases where communication of information to potential investors is not followed by a specific announcement of any transaction (as required under the previous MAR regime). This change was implemented to address the different typologies of market sounding.

It is also specified that the requirements laid down in MAR for carrying out a market sounding are optional - a safe harbour for the disclosing market participants which entails the protection from the allegation of unlawful disclosure of inside information. It follows that Article 11(4) of MAR does not impose an obligation on market participants, who may conduct market soundings without complying with the requirements set out therein. In this case, however, they will not be able to take advantage of the safe harbour protection afforded to market participants that do comply with those requirements.

4. Liquidity Contracts on SME Growth Markets

The requirement of agreement of SME growth markets operators to the terms and conditions of liquidity contracts has been removed and is no longer a condition, under Article 13(12) of MAR, for the entry into liquidity contracts by issuers of financial instruments admitted to trading on SME growth markets. This will help remove complexity and foster liquidity provisions in those SME growth markets.

5. Disclosure Obligations of Inside Information in Protracted Processes

Under the previous MAR regime, an issuer or an emission allowance market participant could abstain from disclosing inside information regarding intermediate steps in a protracted process only under the provision of Article 17(4) of MAR, which prescribes that disclosure to the public may be delayed when all of the following conditions are met: (a) immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant; (b) the inside information that the issuer or emission allowance market participant intends to delay is not in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter to which the inside information refers; and (c) the issuer or emission allowance market participant is able to ensure the confidentiality of that information.

Following the amendments introduced in Article 17, only information related to the particular circumstances or the particular event that the protracted process intends to bring about or results in ("final event") needs to be disclosed, as soon as possible after its occurrence, whereas non-disclosure of intermediate steps is no longer subject to the conditions of Article 17(4) of MAR. The rationale behind this change is that information disclosed at a very early stage is of a preliminary nature, and it might mislead investors, rather than contribute to address information asymmetry.

Determining the precise moment when a set of circumstances or an event is considered final – thus triggering a disclosure obligation - can be challenging. To help issuers and emission allowance market participants identify when disclosure of inside information is necessary, the Commission is empowered to adopt a delegated act that sets out a non-exhaustive list of final circumstances or events in protracted processes that trigger the disclosure obligation, along with the specific point in time when each event or circumstance is deemed to have occurred and is to be disclosed.

Notwithstanding the above, in case the confidentiality of information regarding intermediate steps in a protracted process is no longer ensured, issuers and emission allowance market participants must disclose such information to the public as soon as possible.

All relevant changes shall apply from 5 June 2026.

6. Delaying Disclosure of Inside Information

To ensure legal clarity for issuers or emission allowance market participants and consistent interpretation of the conditions for delaying disclosure, condition under Article 17(4)(b) has been clarified through direct reference to prior public statements or other communications made by the issuer or emission allowance market participant. More specifically, the condition of the delay

not being likely to mislead the public, has been replaced by the requirement of the information that is intended to be delayed not being in contrast with the latest public announcement or other type of communication by the issuer or emission allowance market participant on the same matter. To further clarify this, the Commission is empowered to adopt a delegated act that sets out a non-exhaustive list of situations where the inside information that an issuer or emission allowance market participant intends to delay contradicts their latest public announcement or other type of communication on the same matter to which the inside information refers.

The changes shall apply from 5 June 2026.

Further, the scope of the provisions of Article 17(5) of MAR, whereby credit and financial institutions may delay disclosure of inside information, under specific conditions (namely (a) the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system; (b) it is in the public interest to delay the disclosure; (c) the confidentiality of that information can be ensured; and (d) the competent authority has consented to the delay), is extended to include the parent entities of such institutions.

7. Managers' Transactions

The minimum annual threshold of €5,000 triggering the obligation imposed on persons discharging managerial responsibilities ("PDMRs") and those closely associated with them to notify of their transactions to the issuer or the emission allowance market participant and the competent authority under Article 19 of MAR has been increased to €20,000. National competent authorities may increase this threshold to €50,000 or decrease it to €10,000, where justified in light of market conditions.

In addition, the instances under Article 19(12) of MAR where an issuer may grant its consent for an exemption from the prohibition to PDMRs to trade during the closed period are amended to allow transactions in additional financial instruments, other than shares. Moreover, a new paragraph (12a) is added to Article 19, prescribing that the issuer's consent shall be granted in case of PDMRs' transactions that do not relate to active investment decisions undertaken by the PDMR or that result exclusively from external factors or actions of third parties, or that are transactions or trade activities, including the exercise of derivatives, based on predetermined terms. This addition intends to ensure that the prohibition to trade during the closed period applies only to transactions or activities that depend on the willful investment activity of the PDMRs.

8. Administrative Sanctions

The application of the turnover-based sanction mechanism for the determination of the minimum of the maximum administrative pecuniary sanctions amount that may be imposed by national competent authorities on legal persons, pursuant to Article 30(2)(j) of MAR is extended to infringements of obligations relating to insider lists, disclosure of managers' transactions and the dissemination of investment recommendations or statistics.

In specific, member states shall ensure that national competent authorities have the power to impose maximum pecuniary sanctions for the above infringements of at least 0.8% of the annual turnover of a legal person according to the last available accounts approved or, in case of infringement of the MAR provisions relating to dissemination of investment recommendations or statistics, alternatively at least €1,000,000.

For infringements of obligations relating to insider lists and disclosure of managers' transactions, if the national competent authorities deem that the administrative sanctions based on the total annual turnover are disproportionally low with respect to (a) the gravity and duration of the infringement, (b) the degree of responsibility of the person responsible for the infringement, (c) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined, and (d) the disadvantage for the person responsible for the infringement resulting from the duplication of criminal and administrative proceedings and penalties for the same conduct, they may impose administrative sanctions of at least €2,500,000 and €1,000,000, respectively, whereas where the legal person is an SME, member states may ensure that the competent authorities may alternatively impose administrative sanctions of at least €1,000,000 and €400,000, respectively.

The above amendments to MAR will take effect on the 4th of December 2024, save for the provisions related to the disclosure of inside information in a protracted process and the new instances of delaying disclosure of inside information that will apply from the 5th of June 2026.

Be on the lookout for our second Capital Markets Newsletter on the changes brought by the Listing Act Regulation to Regulation (EU) 2017/1129 on the prospectus (Prospectus Regulation).

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