

28 June 2019

Circular on the Market Abuse Regulation (EU) 596/2014 ('MAR' or the 'Regulation') - PDMR Notifications

This Circular is being addressed to issuers whose financial instruments are admitted to trading on a trading venue, or for which a request for admission to trading has been made; and to persons discharging managerial responsibilities for such issuers, as well as to persons closely associated with them.

1.0 Notification of Managers' Transactions under Article 19 of MAR

In terms of Article 19 of MAR, **persons discharging managerial responsibilities ('PDMRs'), as well as persons closely associated with them ('PCAs')**, shall notify the issuer or emission allowance market participant and the competent authority, as follows:-

- In respect of issuers, of every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto;
- In respect of emission allowance market participants of every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto.

PDMRs shall notify the persons closely associated with them of their obligations under Article 19 of MAR, in writing and shall keep a copy of this notification.

1.1 Who is Subject to the Notification Obligation?

PDMRs and PCAs, of issuers whose financial instruments are traded on a regulated market or multilateral trading facility ('MTF') are subject to a notification obligation.

With effect from 3 January 2018, PDMRs and PCAs, of issuers whose financial instruments are traded on an organised trading facility ('OTF') as defined in Article 4(1)(23) of [Directive 2014/65/EU](#), are also subject to a notification. However, such obligation only exists if the issuer has requested or approved admission to trading of the financial instruments on an MTF or OTF.

1.2 Jurisdiction

The rules applicable to notifications with which PDMRs and PCAs are required to comply, shall be those of the Member State where the respective issuer or emission allowance market participant is registered. Accordingly, PDMRs and PCAs relating to all issuers who have financial instruments admitted to trading on a trading venue within the EU and who are registered in Malta, shall submit PDMR notifications to the MFSA.

1.3 Who is a PDMR?

In terms of Article 3(1)(25) of MAR, a person discharging managerial responsibilities means a person within an issuer, an emission allowance market participant or another entity referred to in Article 19(10) who is:

- (a) A member of the administrative, management or supervisory body of that entity; or
- (b) A senior executive, who is not a member of the bodies referred to in point (a), who has regular access to inside information relating to directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity.

1.4 Who is a PCA?

A person closely associated, in terms of Article 3(1)(26) of MAR means:

- (a) A spouse, or a partner considered to be equivalent to a spouse in accordance with national law;
- (b) A dependent child, in accordance with national law;
- (c) A relative who has shared the same household for at least one year on the date of the transaction concerned; or
- (d) A legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in point (a), (b) or (c), which is directly or indirectly controlled by such a person, which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of a such a person.

With reference to point (d) above, reference to *'the managerial responsibilities of which are discharged'* contained in Article 3(1)(26) of MAR is not to be read in the same way as the definition of PDMR within an issuer contained in Article 3(1)(25) of MAR. The reference to *'the managerial responsibilities of which are discharged'* in Article 3(1)(26)(d) of MAR should be read to cover those cases where a PDMR within an issuer (or a closely associated natural person) takes

part in or influences the decisions of another **legal person, trust or partnership ('Legal Entity')**, to carry out transactions in financial instruments of the issuer.

For example, in the case of mere cross board membership, where a person sits in the administrative, management or supervisory body of an issuer and also in the board of another legal entity where they exercise executive or non-executive functions, without however taking part nor influencing the decisions of that legal entity to carry out transactions in financial instruments of the issuer, then that person should not be considered discharging managerial responsibilities within that Legal Entity for the purposes of Article 3(1)(26)(d) of MAR. Therefore, that Legal Entity should not be subject to the notification obligations under Article 19(1) of MAR, unless it is directly or indirectly controlled by, is set up for the benefit of, or its economic interests are substantially equivalent to those of that person.

2.0 Transactions Subject to the Notification Obligation

Each and every transaction conducted on own account of the PDMR or of the PCA in the following financial instruments is subject to the notification obligation:

- Shares or debt instruments of the issuer which are traded on a regular market, on an MTF or OTF at the request or with the approval of the issuer
- Derivatives or other financial instruments linked thereto; or
- In case of emission allowance market participant, in emission allowances, auctioned products based thereon or derivatives relating thereto.

Financial Instruments referred to in the points above are those specified in Annex 1, Section C of [Directive 2004/39/EC](#).

In accordance with Article 19(1)(a) of MAR, transactions in units or shares in a collective investment undertaking (CIU), are subject to a notification obligation if the exposure to the **issuer's shares or debt instruments exceeds 20% of the assets held by the CIU. Furthermore,** notification obligation also applies for other financial instruments which provide exposure to a **portfolio of assets in which the exposure to the issuer's shares or debt instruments exceeds 20% of the portfolio's assets, in terms of Article 19(1a)(b) of the MAR.**

Transactions executed within the scope of remuneration programmes, such as allocation of shares, are also subject to a notification obligation, irrespective of whether the person entitled to allocation has influence over the allocation in question or not.

Article 10 of [Delegated Regulation \(EU\) 2016/522](#) contains a list of transaction types which are subject to a notification requirement, as follows:-

- (a) acquisition, disposal, short sale, subscription or exchange;
- (b) acceptance or exercise of a stock option, including of a stock option granted to managers or employees as part of their remuneration package, and the disposal of shares stemming from the exercise of a stock option;
- (c) entering into or exercise of equity swaps;
- (d) transactions in or related to derivatives, including cash-settled transaction;
- (e) entering into a contract for difference on a financial instrument of the concerned issuer or on emission allowances or auction products based thereon;
- (f) acquisition, disposal or exercise of rights, including put and call options, and warrants;
- (g) subscription to a capital increase or debt instrument issuance;
- (h) transactions in derivatives and financial instruments linked to a debt instrument of the concerned issuer, including credit default swaps;
- (i) conditional transactions upon the occurrence of the conditions and actual execution of the transactions;
- (j) automatic or non-automatic conversion of a financial instrument into another financial instrument, including the exchange of convertible bonds to shares;
- (k) gifts and donations made or received, and inheritance received;
- (l) transactions executed in index-related products, baskets and derivatives, insofar as required by Article 19 of Regulation (EU) No 596/2014;
- (m) transactions executed in shares or units of investment funds, including alternative investment funds (AIFs) referred to in Article 1 of Directive 2011/61/EU of the European Parliament and of the Council (1), insofar as required by Article 19 of Regulation (EU) No 596/2014;
- (n) transactions executed by manager of an AIF in which the PDMR or a PCA has invested, insofar as required by Article 19 of Regulation (EU) No 596/2014;
- (o) transactions executed by a third party under an individual portfolio or asset management mandate on behalf or for the benefit of a PDMR or a PCA;

- (p) borrowing or lending of shares or debt instruments of the issuer or derivatives or other financial instruments linked thereto.

In accordance with Article 19(7) of MAR, transactions that must be notified shall also include:

- (a) the pledging or lending of financial instruments by or on behalf of a PDMR or PCA;
- (b) transactions undertaken by persons professionally arranging or executing transactions or by another person on behalf of a PDMR or PCA, including where discretion is exercised;
- (c) transactions made under a life insurance policy, defined in accordance with Directive 2009/138/EC of the European Parliament and of the Council (26), where:
- the policyholder is a PDMR or PCA;
 - the investment risk is borne by the policyholder, and
 - the policyholder has the power or discretion to make investment decisions regarding specific instruments in that life insurance policy or to execute transactions regarding specific instruments for that life insurance policy.

2.1 Notification of shares received as part of remuneration package

Article 19(1) of MAR was construed to prevent insider dealing and to provide investors with a highly valuable source of information. A notification of entering into a remuneration package contract, according to which a PDMR is entitled to receive share only upon the occurrence of certain conditions, is not covered by this Article. Therefore, pursuant to Article 19(1) of MAR and Article 10(2)(i) of Commission Delegated Regulation (EU) 2016/522, the PDMR has to notify only upon the occurrence of the conditions and the actual execution of the transaction.

3.0 Managers' Transactions Threshold

PDMRs, as well as persons closely associated with them shall notify the issuer or the emission allowance market participant and the competent authority of any subsequent transaction once **a total amount of €5,000 has been reached within a calendar year.**

When calculating the €5,000 threshold pursuant to Article 19(8) of the MAR, the transactions of the manager and those of the persons closely associated with them are not aggregated. For instance, if in one calendar year, a CEO of a company buys €3,000 in equity and their spouse buys another €3,000, such transactions would require a notification since neither the CEO nor the spouse have (individually) exceeded the €5,000 threshold.

3.1 Exchange Rate

If transactions are executed in a currency which is not the Euro, then the official daily spot foreign exchange rate which is applicable at the end of the business day when the transaction takes place is to be used to determine if the threshold is reached. Where available, the daily euro foreign exchange reference rate published by the European Central bank should be used.

3.2 Price of Gifts, Donation and Inheritance

According to Article 10(2)(k) of Commission Delegated Regulation (EU) 2016/522, donations and gifts made or received or inheritance received are transactions to be notified under Article 19(1) of MAR. The value of these transactions needs to be taken into consideration for the purpose of calculating the cumulated amount of the transactions of a PDMR or a person closely associated to a PDMR to assess whether the threshold has been exceeded, hence triggering the obligation to notify and disclose all subsequent transactions.

For the purpose of the threshold calculation, the price to consider for donations, gifts and inheritance is the last published price for the financial instrument concerned in accordance with the post trade transparency requirements under MiFIR on the date of acceptance of the donation, gift or inheritance, or where such price is not available that day, the last published price.

However, when a notification has to be made the price field for a gift, donation or inheritance is expected to be zero.

4.0 Trading During Closed Periods

In terms of Article 19(11) of MAR, a PDMR shall not conduct any transactions on its own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked to them during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public according to:

- (a) **The rules of the trading venue where the issuer's shares are admitted to trading; or**
- (b) National law.

The types of transactions which a PDMR is prohibited from carrying out during a closed period under Article 19(11) of MAR are the same as those types of transactions subject to the notification requirements set out under Article 19(1) of MAR.

It is however pointed out that the prohibition to trade during closed periods only applies to a PDMR when conducting transactions on its own account or for the account of a third party,

whereas the notification of transactions required under Article 19(1) of MAR also applies to persons closely associated to a PDMR.

Please note that an issuer may allow a PDMR to trade on its own account or for the account of a third party during a closed period, in the circumstances mentioned in Article 19(12) of MAR.

4.1 Timing of the Closed Period

In terms of Article 19 of MAR, there should be only one closed period relating to the announcement of every interim financial report and another relating to the year-end report. The term *announcement* used in Article 19(11) refers to the public statement where the issuer announces the information included in an interim or a year-end financial report that the issuer is **obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading or national law**. The date when the announcement is made is the end date of the thirty-day closed period.

In case of year-end financial report, the announcement refers to the public statement made by the issuer to announce, in advance to the publication of the final year-end report, the preliminary financial results agreed by the management body of the issuer and that will be included in that report. This applies only if the disclosed preliminary financial results contain all the key information relating to the financial statistics which are to be included in the year-end report.

If the information announced after publication changes, then it will not trigger another closed period but should be addressed in line with the requirements set out in Article 17 of MAR. For additional information relating to Article 17, please refer to the [circular](#) titled *Delay in Disclosure of Insider Information by Issuers* published by the Authority on 10 December 2018.

5.0 **ESMA Questions and Answers on Managers' Transactions**

Please note that ESMA has issued Questions and Answers (Q&As) on **Managers' Transactions**. The purpose of these Q&As is to provide a means for ESMA to collect and address publicly questions from stakeholders with the purpose of ensuring the consistent and effective day-to-day application of Union law within ESMA's remit.

A copy of the Q&As can be accessed through this [link](#).

6.0 Notification Form

Notifications shall be made through the Authority's online notification platform, which may be accessed through [this](#) link.

7.0 Content of the Notification and Notification Deadline

7.1 Date of the Transaction

The date of the transaction is deemed to be the date on which a transaction is executed or concluded.

7.1.1 Date of the Transaction in the case of an Inheritance

In the case of an inheritance, both the acceptance of an inheritance and any subsequent division of said inheritance must be reported. The date of the transaction, in the event of an inheritance is deemed to be the date on which the inheritance is expressly accepted.

7.1.2 Date of the Transaction in the case of a Donation

In the case of donations which have not been recorded by a notary, the date on which performance is affected is deemed the date when the transaction was concluded. For instance, if a manager donates shares and the promise of donation the said shares is not recorded by a notary, the date on which the shares are entered into the **donee's securities account is deemed** decisive.

7.1.3 Date of the Transaction in the case of Subscriptions

In the context of subscription rights, when a PDMR/PCA first subscribes to, for instance an equity or debt issue belonging to the issuer, the PDMR or PCA as subscriber might not know when their subscription is accepted by the company. Therefore, the date when the person subject to the notification obligation (PDMR or PCA) becomes aware of the acceptance of their subscription order is normally taken to be the date upon which the transaction was concluded.

7.2 Notification Deadline

Notifications of managers' transactions exceeding the €5,000 threshold should be made promptly and no later than three business days after the date of the transaction.

The terms business days as stipulated in Article 19(1) subparagraph 3 refers to all days of the week which are not Saturdays, Sundays or holidays. A holiday relevant for the calculation exists when the day in question is a **public holiday at the location of the issuer's registered office or at the location of the Authority.**

7.3 Submission of the Notification

The online notification form has been drawn up in accordance with the Annex to Implementing Regulation (EU) 2016/523.

It is important to note that in addition to submitting the PDMR notification to the Authority, PDMRs and PCAs are also required to inform the respective issuer, in accordance with Article 19(1) of MAR. Issuers and emission allowance market participants are subsequently obliged disseminate the information to the public in a non-discriminatory basis within three working days from the date of the transaction, in accordance with Article 19(3) of MAR.

7.4 Content of the Notification

The PDMR Notification is comprised of four sections. Section one is to be filled with the details of the PDMR or PCA whereas section two should include the reason for notification, that is, the position or status of the individual. Section three requires the details of the issuer, emission allowance market participant, auction platform, auctioneer or auction monitor and Section four indicates the details of the transaction.

If the transaction was conducted by way of partial execution, the information on each individual partial execution is to be provided. Each partial execution is to be included within a new row of the 'Price(s) and 'Volume(s)' tab of the notification tab. The aggregated information will be displayed automatically within the 'Aggregated Information' tab.

8.0 Issuers' Responsibilities

In terms of Article 19(5) of MAR, issuers are required to inform PDMRs of their obligations under MAR in writing and shall draw up a list of all PDMRs and PCAs.

Should you have any queries relating to delayed disclosure of inside information, kindly contact the Authority on pfma@mfsa.mt.