

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR ON THE MARKET ABUSE REGULATION (EU) 596/2014 (‘MAR’ OR THE ‘REGULATION’)

PREVENTION AND DETECTION OF MARKET ABUSE BY INVESTMENT FIRMS AND TRADING VENUES

This Circular is being addressed to [i] persons professionally arranging and executing transactions; and [ii] market operators and investment firms which operate a trading venue.

1. Introduction – Who is obliged to submit a Suspicious Transactions and Orders Report (‘STOR’)?

i. Trading Venues

Article 16(1) of MAR requires market operators and investment firms that operate a trading venue to establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing, market manipulation and attempted insider dealing and market manipulation, in accordance with Articles 31 and 54 of Directive 2014/65/EU.

In this respect, market operators and investment firms are required to report orders and transactions, including any cancellation or modification thereof, that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to the competent authority of the trading venue without delay.

ii. Persons Professionally Arranging and Executing Transactions

Article 16(2) of MAR requires that any person professionally arranging or executing transactions to establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the competent authority without delay.

Persons professionally arranging or executing transactions are subject to the notification rules of the Member State in which they are registered or have their head office, or, in the case of a branch, the Member State where the branch is situated. The notification shall be addressed to the competent authority of that Member State.

2. Indicators of Market Manipulation

Whilst Article 12 of MAR provides a definition for market manipulation, one might also wish to refer to Annex I of MAR and Annex II of Commission Delegated Regulation (EU) 2016/957. The said Annexes offer more detailed explanations on the indicators of manipulative behaviour relating to [i] false or misleading signals and to price securing; and [ii] the employment of a fictitious device or any other form of deception or contrivance.

Please find practical examples to explain the two indicators mentioned above.

Example 1. – Manipulative behaviour relating to false signals and price securing

“Indicators that secure prices of financial instruments and can lead to misleading signals include orders to trade given or transactions undertaken that represent a significant proportion of the daily volume of transactions in the relevant financial instrument, in particular when those activities lead to a significant change in their prices, amongst others.”

Such a manipulative behaviour may be done by taking on a number of buying positions, also by colluding parties, in a particular financial instrument on the secondary market. The rationale behind such buying positions would be solely to post the price of this financial instrument to an artificial level to generate interest from other investors.

Triggers to identify such manipulative behaviour might include [i] an unusual concentration of transactions and/or orders to trade by the individual(s) concerned through the use of one or more different accounts; or [ii] transactions or orders to trade with no other apparent justification than to increase the price of or to increase the volume of trading.

Example 2. – Manipulative behaviour relating to the employment of a fictitious device or any other form of deception or contrivance

“Indicators relating to the employment of a fictitious device or any other form of deception or contrivance include orders to trade given or transactions undertaken by persons that are preceded or followed by dissemination of false or misleading information by the same persons or by persons linked to them, or orders to trade that are given or transactions undertaken by persons before or after the same persons or persons linked to them produce or disseminate investment recommendations which are erroneous, biased, or demonstrably influenced by material interest.”

Practices as defined above may be done by disseminating false or misleading market information through the media, including the internet, which results or is likely to result in the moving of the price of the targeted financial instrument in a direction favourable to the position held or to a transaction planned by the person or persons interested in the dissemination of the information.

The Authority urges readers to go through Annex I of MAR and Annex II of Commission Delegated Regulation (EU) 2016/957 into detail to get an understanding of the various manipulative mechanisms which might be used.

Trading venues and persons professionally arranging and executing transactions are required to get accustomed to such indicators in order to prevent and detect market manipulation and submit STORs, when necessary.

3. Submission of STORs

STORs should be submitted to the respective competent authority without delay once there is a reasonable suspicion that an order and/or transaction could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. STORs should also be submitted in instances where there are suspicious orders which are cancelled or modified after being placed.

Article 8 of Commission Delegated Regulation (EU) 2016/957 requires persons professionally arranging or executing transactions, as well as, market operators and investment firms operating a trading venue to submit STORs, including any supporting documents or attachments, to the respective competent authority using the electronic means specified by that competent authority.

Persons professionally arranging and executing transactions or market operators and investment firms which operate a trading venue, may gain access to a template for STORs on the MFSA's website by following this link - <https://goo.gl/XeLrTh>

4. Administrative Sanctions and Other Administrative Measures

The Authority would like to point out that in terms of Article 30(1)(a) of MAR, the MFSA has the power to take appropriate administrative sanctions and other administrative measures relating to infringements of Article 16(1) and (2). In this respect any market operators, investment firms and persons professionally arranging or executing transactions are required to ensure that they have in place effective arrangements, systems and procedures for the submission of STORs without delay once reasonable suspicion of actual or attempted insider dealing or market manipulation is formed.

5. Contacts

Should you have any queries on the above, or on any other related topic please contact the Authority on pfma@mfsa.com.mt.

In the eventuality where an STOR is required to be submitted to the Authority, please download and duly fill the [form](#) and submit it to pfma@mfsa.com.mt.

**Communications Unit
Malta Financial Services Authority
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