

10 November 2021

## Circular on the Market Abuse Regulation (EU) 596/2014 ('MAR' or the 'Regulation') – Notification of Managers' Transactions Made During the Offer Period

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 ('PDMRs')<sup>1</sup> for such issuers, as well as to Persons Closely Associated ('PCAs')<sup>2</sup> with them.

This circular should be read in conjunction with the circular issued by the Malta Financial Services Authority (the 'MFSA' or the 'Authority') on 28 June 2019. The circular, which can be accessed through this [link](#), provides detailed information regarding the obligations of PDMRs and PCAs under Article 19 of the Market Abuse Regulation ('MAR'/the Regulation).

### 1.0 Background

As you are aware, Article 19(1) of MAR requires PDMRs within an issuer and their PCAs to notify the issuer and the MFSA (qua competent authority) of every transaction conducted on their own account relating to the shares or debt instruments of the issuer or to derivatives or other financial instruments linked thereto, promptly and no later than three business days after the date of the transaction, for every transaction once the total value of transactions within a calendar year reaches €5,000.

Through various supervisory interactions held with market participants, the Authority has noted that there appears to be a number of misconceptions regarding the notification

---

<sup>1</sup> 'Persons 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 directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity.

<sup>2</sup> 'Person closely associated' 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 such a person.

obligation which PDMRs and their PCAs are subject to when acquiring units in financial instruments during the offer period i.e. upon subscription. Hence, the Authority is issuing this Circular with the aim of providing further guidance on this matter to all market participants, especially those subject to the notification obligation emanating from Article 19 of MAR.

## **2.0 Scope of MAR: Acquisitions Upon Subscription**

Whereas PDMRs and their PCAs generally understand their obligation to notify the issuer and the MFSA in respect of any transaction carried out on secondary markets, there appears to be a misconception in relation to whether the notification obligation contained in Article 19(1) of MAR equally applies to units in financial instruments acquired during the offer period, i.e. upon subscription.

In this respect, PDMRs and their PCAs are reminded that in terms of Article 2 of MAR, this Regulation applies to financial instruments admitted to trading on a regulated market and a MTF, or for which a request for admission to trading on a regulated market or MTF has been made. Therefore, the requirements contained in MAR, including those stemming from Article 19 do not apply from the moment in time when the financial instruments are admitted to trading, but start applying when the request for admission to trading for such financial instrument has been made.

As a guiding principle, a request for admission to trading is deemed to be made when the request for admission, formally submitted for the first time in writing by the applicant, is received by the trading venue. This does not preclude further exchanges between the applicant and the trading venue on the request for admission. "In writing" should be understood as entailing a level of formalisation in the submission ensuring that all the information necessary for the trading venue to process the request are included, whilst not necessarily implying that the request is made in paper form; it could thus be done through electronic filing.

Apart from Article 2 of MAR, point (a) of Article 10(2) of [Commission Delegated Regulation \(EU\) 2016/522](#), clearly outlines that, transactions subject to the notification obligation include acquisitions, disposals, short sales, subscriptions or exchanges.

**In view of the above, PDMRs and their PCAs are reminded that units in financial instruments acquired upon subscription are also subject to the obligations contained in Article 19(1) of MAR.**

## **3.0 Notifying an Acquisition Upon Subscription: Compiling the 'Date of Transaction' field**

In view of the three-working day deadline stipulated in Article 19(1) of MAR, it is of utmost importance that in making notifications to the Authority and the Issuer, PDMRs and their PCAs provide the exact date on which units can be said to have been acquired or disposed of. From the PDMR notifications which the Authority received thus far, it is evident that generally PDMRs and their PCAs outline the correct date for transactions carried out on

secondary markets, whereas they face difficulty in outlining the exact date for acquisitions made during the offer period (at primary listing stage).

**Consequently, please note that in the case of subscriptions to new issuances, the Authority considers the date of allocation to be the relevant date for the PDMR notification required in terms of Article 19(1) of MAR.**

Greater transparency of transactions conducted by PDMRs at the issuer level, and where applicable, persons closely associated with them, constitutes a preventive measure against market abuse. In this respect, the Authority's position to consider the date of allocation as the date of the transaction for units in financial instruments subscribed for during the offer period is to ensure the principle of transparency in the market.

It follows that when an individual subscribes to a new issue, at the point of filing the application for subscription to units in financial instruments with the respective financial intermediary, the individual would not know with certainty whether the units applied for will be allocated to him/her in their entirety. Accordingly, at this point in time the notification obligation pursuant to Article 19 of MAR would not be due as yet. The situation, however, becomes different at the point at which the Issuer discloses the allocation policy. At this point, the PDMR or PCA would know with absolute certainty the number of units that s/he will receive once the conditions of the issuance are satisfied. Typically, the allocation of the subscribed units would be solely conditional on the financial instrument's admissibility to listing.

With the principle of transparency in mind, the Authority is of the view that, when the allocation policy is made public by the issuer, the conditional nature of the issuance should not prevent PDMRs or PCAs from making the relevant disclosures to the Authority. In other words, although the allocation policy may precede the admissibility to listing of the instrument, there would still be a reasonable expectation that the instrument will be admitted to listing and that the subscribers of the instrument would, in turn, be receiving their allocated units.

#### **4.0 Notifying an Acquisition Upon Subscription: Compiling the 'Place of Transaction' field**

On the basis of PDMR notification forms received thus far, the Authority also notes that the 'Place of Transaction' field within the PDMR notification form is also commonly not filled in properly. On one hand, some PDMR notification forms include the name of the investment firm through which the transaction would have been carried out, whereas other PDMR notification forms would simply denote the name of the member state where the trading venue is located.

In this respect, PDMRs and their PCAs are reminded that where units in financial instruments are acquired during the offer period i.e. upon subscription, the 'Place of Transaction' should be filled in as 'Off-Exchange', since the units would not have been acquired following the placement and matching of an order on the open market, but rather

the transaction is being done directly between two parties (the issuer of financial instruments and the PDMR and/or PCAs) without the supervision of the trading venue.

## **5.0 Issuer's Responsibilities Under Article 19**

In terms of Article 19(3) of MAR, the issuer is required to ensure that the information that is notified in accordance with paragraph 1 is made public promptly and no later than three business days after the transaction in a manner which enables fast access to this information on a non-discriminatory basis.

In this respect, for the sake of clarity, when a PDMR or PCA notifies the issuer of a transaction carried out upon subscription, when disclosing the information notified in accordance with Article 19(1), the issuer should also indicate that the transaction is conditional on admission to listing of the financial instrument.

Consequently, issuers are requested to ensure that their PDMRs and their respective PCAs are guided accordingly when compiling PDMR notifications for units in financial instruments acquired during subscription.

## **6.0 Contacts**

Should you have any queries relating to the above kindly contact the Authority on [pfma@mfsa.mt](mailto:pfma@mfsa.mt).