

17 March 2022

Circular to Listed Entities in Reaction to the War in Ukraine and its Impact on EU Financial Markets

This Circular is being addressed to Listed Entities whose financial instruments are admitted to trading on a trading venue¹.

1.0 Background

The Authority would like to draw your attention to the [Public Statement](#) issued by the European Securities and Markets Authority ('ESMA') on 14 March 2022, recommending that action is taken by financial market participants in light of the war in Ukraine. This Circular provides additional information on some of the market recommendations presented in ESMA's Public Statement.

2.0 Sanctions Compliance

Financial market participants, including Listed Entities, should ensure compliance with the relevant sanctions. Therefore, issuers are expected to monitor the respective restrictions and reassess as necessary. In this respect, Listed Entities are reminded of their overarching transparency requirements, whereby the market should be kept duly informed as necessary.

3.0 Market Disclosure

Public Disclosure of Inside Information

In its Public Statement, ESMA recommends that issuers disclose as soon as possible any relevant significant information concerning the impact of the war in Ukraine on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation ('MAR').

In accordance with ESMA's Public Statement and in consideration of the current war in Ukraine, the Authority would like to remind issuers of their obligations under MAR. The current war in Ukraine may attribute to changes in production, supply chains and ongoing

¹ Article 4(1)(24) of Directive 2014/65/EU defines a Trading Venue as a Regulated Market, a Multilateral Trading Facility or an Organised Trading Facility.

business of various issuers. In this respect, to ensure utmost transparency in the market, issuers are reminded of their obligations to inform the public as soon as possible of inside information which directly or indirectly concerns the issuer, in terms of Article 17(1) of MAR.

Issuers are invited to assess the consequences of the current situation and decide whether disclosure of information is warranted.

For the purpose of this assessment, issuers are reminded that pursuant to Article 7 of MAR, inside information refers to information of a precise nature, which has not been made public, relating directly, or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments.

Therefore, if the issuer is aware of a significant impact that the current war in Ukraine might have on *inter alia* its operations or performance, it must be particularly made public immediately and without further delay. The issuer should ensure that the inside information is made public in a manner that enables fast access, is complete, and can be properly and timely assessed by the public.

Furthermore, in light of the fact that the war in Ukraine is still subject to future developments, it is recommended that issuers periodically reassess the impact of current events and should there be the need to communicate further updates to the public, issuers are expected to do so immediately, and without delay.

The Authority recommends that when issuers conduct assessments, reasonings and adequate justifications as to why information was or was not considered to amount to inside information, these are kept in writing. Such reasonings and justifications should be made available to the MFSA if and when requested.

Delayed Disclosure of Inside Information

Issuers are also reminded that Article 17 of MAR offers an exception to the requirement of immediate disclosure of inside information to the public. On a case-by-case basis, issuers have the possibility to delay such disclosure provided that the conditions contained in Article 17(4) or Article 17(5) are met.

Please note that with respect to credit institutions opting for a delay in disclosure under Article 17(5) of MAR, the Authority needs to be made aware of the intention to delay disclosure beforehand, in order to provide its consent or otherwise to the delay in disclosure. Should the MFSA not consent to the delay in disclosure of inside information, the issuer is required to disclose the inside information immediately.

May we also remind you that where disclosure of inside information has been delayed in accordance with sub-article 4 and 5 of Article 17 and the confidentiality of that inside information is no longer ensured, including where a rumour explicitly relates to inside

information the disclosure of which has been delayed², the issuer is under the obligation to disclose that inside information to the public as soon as possible.

In case of a delay in disclosure of inside information, issuers are encouraged to also consult Commission Implementing Regulation (EU) 2016/1055 which specifies the technical means for appropriate disclosure of inside information and for delaying the public disclosure of inside information in terms of Article 17 of MAR; as well as the Guidelines issued by ESMA.

Unlawful Disclosure of Inside Information and Insider Dealing

As you are aware, insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider dealing.

On the other hand, unlawful disclosure of inside information arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties.

In view of the surrounding circumstances, as well as in light of ongoing updates relating to the war in Ukraine, it is imperative that Listed Entities take the necessary measures to prevent unlawful disclosure of inside information and/or insider dealing. As aforementioned any inside information should be made public in a manner that enables fast access, is complete, and can be properly and timely assessed by the public. Furthermore, Listed Entities are encouraged to remind their respective employees about the prohibitions contained in Article 14 of MAR, namely that a person shall not:

- (a) Engage or attempt to engage in insider dealing;
- (b) Recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- (c) Unlawfully disclose inside information.

4.0 Financial Reporting

In its Public Statement, ESMA promotes transparency in the issuers' 2021 year-end financial reports. In this regard, specific reference is made to both quantitative as well as qualitative disclosures that may be necessary to reflect the "*...actual and foreseeable direct and indirect*

² Only where that rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured.

impacts of the crisis...” on the issuer and its activities. ESMA also refers to the transparency that issuers shall provide in their annual shareholders’ meetings and their interim financial reports, as relevant.

Listed Entities are to provide updated information, including through their financial reports which are still not finalised, that will aid investors in understanding the current or expected impact, or otherwise, of the conflict in Ukraine.

Contact

Should you have any queries in relation to the above, kindly contact the Authority on pfma@mfsa.mt in relation to the Market Abuse Regulation and its Regulatory Technical Standards; and transparency@mfsa.mt in relation to Transparency requirements and Financial Reporting obligations.