

Market Abuse Regulation ('MAR')

Questionnaire for Investment Services Providers in their capacity as persons professionally arranging or executing transactions and the State of Play of Compliance with Article 16 of MAR.

NOTE: This Questionnaire is being addressed to all market participants, particularly investment services providers (including AIF Managers, Alternative Investment Funds, De Minimis AIF Managers, Investment Firms, Notified Alternative Investment Funds, Professional Investor Funds, Recognised Private Collective Investment Schemes, Retail – Maltese Non-UCITS Schemes, Retail – Maltese UCITS Schemes, Retail – Overseas Non-UCITS Schemes) who carry out activities, as a result of which, they fall within scope of the definition of persons professionally arranging or executing transactions.

Contents

List of Acronyms	3
Market Abuse Regulation ('MAR')	4
Section A: General Information	6
Section B: Overview	7
Section C: Self-Assessment	9

List of Acronyms

AIF	Alternative Investment Fund
MAR	Market Abuse Regulation
MBR	Malta Business Registry
MFSA	Malta Financial Services Authority
MTF	Multilateral Trading Facility
OTF	Ordinary Trading Facility
UCITS	Undertakings for the Collective Investment in Transferable Securities

Market Abuse Regulation ('MAR')

Questionnaire for investment services providers in their capacity as persons professionally arranging or executing transactions

Scope

This Self-Assessment Questionnaire is being addressed to all investment services providers as highlighted in the Authority's [Circular of 15 November 2022](#), particularly those which as part of their activities **professionally engage in the reception and transmission of orders for, or in the execution of transactions in, financial instruments**.

Replies to the questionnaire are to be received by the Authority **by not later than 16 December 2022**.

Filling in this Questionnaire is mandatory and any omissions by the Company to provide the correct information within the stipulated deadline may be followed up by the Authority and taken into consideration when carrying out its own assessment of whether the Company falls within the scope of the definition of persons professionally arranging or executing transactions pursuant to Article 3(1)(28) of MAR and the Company's level of compliance with Article 16 of MAR.

Background

An integrated, efficient and transparent financial market requires market integrity. The smooth functioning of securities markets and public confidence in markets are prerequisites for economic growth and wealth. Market abuse harms the integrity of financial markets and public confidence in securities and derivatives.

Market abuse is a concept that encompasses unlawful behaviour in the financial markets and, for the purposes of this Regulation, it should be understood to consist of insider dealing, unlawful disclosure of inside information and market manipulation. Such behaviour prevents full and proper market transparency, which is a prerequisite for trading for all economic actors in integrated financial markets. In turn, MAR, which came into force on 03 July 2016, establishes a common regulatory framework on insider dealing, the unlawful disclosure of inside information and market manipulation (market abuse) as well as measures to prevent market abuse to ensure that the integrity of financial markets in the Union prevails and to enhance investor protection and confidence in those markets.

Since 2018, the Authority had been holding a number of onsite compliance meetings relating to the requirements stemming from MAR with entities falling within the scope of MAR, particularly issuers and persons professionally arranging or executing transactions. In turn, and in view of the onsite compliance meetings held between 2018 and the beginning of 2020, the Authority proceeded to issue its [Circular of 29 April 2020](#). Within this circular, the Authority referred to the main findings emanating from such compliance meetings and also put forward a number of recommended good practices for entities falling within the scope of Article 16 of MAR. Additionally, the Circular also clarified that since the Regulation had been into force since 2016, and taking into consideration the number of onsite compliance meetings held with market participants and the guidance provided to market participants through MFSA circulars issued, firms were expected to be compliant with all the applicable requirements under MAR.

In turn, market participants were informed that, as a way forward, it was the Authority's intention to proceed with carrying out supervisory inspections instead, whereby entities would be required and

expected to prove proper and full adherence to the respective requirements emanating from MAR and its delegated and implementing regulations. Breaches of the requirements emanating from MAR would warrant regulatory action in terms of Article 22 of the Prevention of Financial Markets Abuse Act, Chapter 476 of the Laws of Malta.

Article 16 of MAR

Article 16 of MAR, specifically paragraph 2 therein, requires any **person professionally arranging or executing transactions** as defined in Article 3(1)(28) of MAR to establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions which could constitute market abuse, or an attempt thereof. 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 MFSA without delay.

The Self-Assessment

As part of its continuous efforts to ensure risk-based supervision, the Authority intends to continue to carry out such supervisory inspections with firms which are most significant and/or which carry out activities which pose the greatest risk of market abuse and threat to the protection of investors and the integrity of financial markets. In turn, in order to ensure that such supervisory inspections are as targeted, objective and risk-based as possible, the Authority is requesting market participants, specifically investment services providers, to carry out the below self-assessment. As explained in the Circular of 15 November 2022, such Self-Assessment will be primarily aimed at gathering detailed information on the types of services provided by each investment services provider, with the ultimate aim of enhancing the information which the Authority already has in hand, and at the same time assisting the Authority in determining whether the activities which they carry out place them within the scope of MAR, in turn making them subject to the requirements to prevent, detect and report market abuse, as laid down in Article 16 of the Regulation.

Please note that although the Company is being hereby requested to assess for itself whether it is in scope of Article 16 of MAR, it should note that replies will not be taken at face value. The Self-Assessments themselves will not determine whether the Authority will choose to carry out supervisory interactions with any particular investment services provider in terms of Article 16 of MAR. As aforementioned, the Self-Assessment is primarily intended to enhance the information which is available to the Authority and hence, it shall not replace the assessment which the Authority undoubtedly carries out prior to determining which investment services providers shall be subject to supervisory interactions.

On a final note, the Authority confirms that it will treat the responses to the Questionnaire in strict confidence.

Contacts

Should you have queries on the content of the Questionnaire, please do not hesitate to contact the Authority on pfma@mfsa.mt.

Section A: General Information

A1	Entity Information	
A010	License Holder Name	
A011	MBR Registration Code	
A012	Authorisation Date	
A013	Description of Licensed Activities	

A2	Contact Information	
A020	Name of Contact Person	
A021	Role of Contact Person	
A022	E-mail Address	
A023	Telephone Number	
A024	Date of Submission	

A3	Services Provided		
A030	Description of services provided by the Company		
A031	Execution of orders in Local Market	Yes <input type="checkbox"/>	No <input type="checkbox"/>
A031-1	If yes, indicate average number and average value of transactions executed in the local market	Average Number of Transactions	Average Value of Transactions
A032	Execution of orders in Foreign Markets	Yes <input type="checkbox"/>	No <input type="checkbox"/>
A032-1	If yes, indicate average number and average value of transactions executed in foreign markets	Average Number of Transactions	Average Value of Transactions
A033	Transmission of Orders	Yes <input type="checkbox"/>	No <input type="checkbox"/>

A034	If any of A031, A032 or A033 (or all) have been populated with 'Yes', kindly indicate the basis upon which such executions are made, e.g., on behalf of customers, proprietary trading, investment strategy, etc.

A4	Other Information
A040	If you are a UCITS/AIF Manager, kindly provide a list of sub-funds below

Section B: Overview

In the table below, please indicate (by ticking accordingly) which of the following financial instruments are relevant to the Company in terms of the reception, execution and transmission of orders.

B1	Financial Instruments¹	R²	E³	T⁴
B010	Transferable securities	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B011	Money-market instruments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B012	Units in collective investment undertakings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B013	Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields, emission allowances or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B014	Options, futures, swaps, forwards and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B015	Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

¹ Financial Instruments as per the definition laid down in Article 3(1)(1) of MAR

² Reception

³ Execution

⁴ Transmission

	products traded on an OTF that must be physically settled			
B016	Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B017	Derivative instruments for the transfer of credit risk	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B018	Financial contracts for differences	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B019	Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
B0110	Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

C1	Internal Controls	
C010	Have you ever been approached with non-public information about a prospective corporate action e.g., new issue of securities?	Yes <input type="checkbox"/> No <input type="checkbox"/>
C010-1	If yes, was the information received assessed to verify that it did not constitute inside information?⁵	Yes <input type="checkbox"/> No <input type="checkbox"/>
C011	Does the entity have policies and procedures in place in relation to the reception of inside information, specifically to ensure that the persons professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, financial instruments do not carry out such activity on the basis	Yes <input type="checkbox"/> No <input type="checkbox"/>

⁵ Article 7(1)(a) of MAR defines inside information as 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 or on the price of related derivative financial instruments.

	of inside information (i.e. insider dealing, front running)?		
C012	If any of A031, A032 or A033 (or all) have been populated with 'Yes', kindly confirm whether the entity has any arrangements, systems and procedures in place in relation to the prevention, detection and identification of market abuse.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C012-1	If yes, please provide a brief description of the controls which the entity has in place in this regard.		
Answer			
C013	Taking into consideration the activities the entity carries out, how susceptible is the entity to the risk of insider dealing? Please substantiate your answer.		
Answer			
C014	Is there a segregated securities dealing function within your firm?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C014-1	If yes, does the dealing function query any suspicious or anomalous trades to understand the reasoning behind such trades?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C014-2	If no, is there a sign off by an independent colleague to review any concerns prior to the execution of transaction?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C015	Does the Company have internal pre-trade controls to prevent trading in the financial instruments of Companies for which the entity is in possession of inside information, or pre-trade controls in place to detect suspicious trading?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C016	Does the Company have internal pre-trade controls to identify and detect attempted market manipulation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C017	Is the investment decision-making function monitored?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C017-1	If yes, how, and what records are kept on file in this regard?		
Answer			

Section C: Self-Assessment

In view of the license granted to the Company and in view the entity's replies to the questions above, in your view, does the entity fall within the scope of Article 16 of MAR?

Yes

No