The New EU Market Abuse Regulation: Impact on US Issuers

Skadden

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The EU Market Abuse Regulation, which replaced the previous Market Abuse Directive regime, has been in effect since 3 July 2016. Although there is much in the new regime that is familiar, U.S. issuers that have applied to have securities admitted to trading on European Union Regulated Markets will still need to address a number of detailed differences. U.S. issuers that fell outside the scope of the previous Market Abuse Directive regime because they had applied to have their securities admitted to trading on certain EU multilateral trading facilities face a greater compliance burden. This memorandum outlines the new regime's implications for affected U.S. issuers, some issues that have emerged since the implementation and methods of dealing with them.

What has happened?

Since the EU Market Abuse Regulation (EU/596/2014) (MAR) replaced the now-repealed Market Abuse Directive regime on 3 July 2016, it has, amongst other changes, extended the application of inside information disclosure, inside information control, senior managers' share dealings and share repurchase requirements to all issuers — including U.S. issuers — that have applied to have their securities traded on EU multilateral trading facilities (MTFs)[1] or have approved such trading[2].

MAR's territorial scope has also been formally extended to cover trading in relevant securities and derivatives in non-EU countries where, broadly speaking, the relevant investments are traded on an EU Regulated Market or MTF.

What are the new rules meant to achieve?

MAR, which is supplemented by Delegated Acts (the EU form of secondary legislation), is designed to improve confidence in the integrity of European securities and derivatives markets, increase investor protection and encourage greater cross-border co-operation between regulators. MAR's direct application into EU member states' laws (without the need for national transposition) is designed to ensure a harmonised EU approach to EU capital market supervision.

To which issuers and securities does MAR apply?

MAR applies to issuers of financial instruments (broadly, securities and derivatives) admitted to trading (or for which a request for admission to trading has been made) on: i) EU Regulated Markets — for example, the London Stock Exchange's Main Market; and ii) other EU exchanges such as MTFs — for example, the Luxembourg Euro MTF, Ireland's Global Exchange Market, the U.K.'s Alternative Investment Market and the Frankfurt Stock Exchange's Open Market.

MAR also applies to financial instruments whose price or value depends on, or has an effect on, the price or value of a financial instrument traded on a Regulated Market or MTF (called related investments). Although related investments include derivatives, other securities can also be related investments. This can cause uncertainty, for example, where an issuer intends to issue bonds that will be traded on a non-EU trading venue where its other bonds are traded in the EU even without that issuer's consent.

[1] EU financial services regulation divides regulated securities and derivatives trading venues among Regulated Markets (*i.e.*, pre-November 2007 official EU national markets), MTFs (*i.e.*, post-November 2007 EU markets that were not official national markets) and, from January 2018, Organised Trading Facilities (OTFs) (*i.e.*, non-equity trading facilities such as interdealer brokers) that have not so far been regulated as trading venues. MAR's requirements are expected to apply to financial instruments traded on OTFs starting on 3 January 2018, when the recast Markets in Financial Instruments Directive is expected to come into force. MAR's impact on those instruments is therefore not covered in this memorandum.

[2] We refer in this note to trading in these instances to be at the issuer's "consent."

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What does this mean for U.S. issuers?

MAR extends the scope of the EU's market abuse regime to U.S. issuers that applied to have their securities admitted to trading only on an EU MTF (new U.S. issuers). U.S. issuers with financial instruments admitted to trading with their consent on an EU Regulated Market (existing U.S. issuers) had been subject to the previous Market Abuse Directive regime and, therefore, should already be familiar with the types of requirements that MAR imposes on issuers.

It is the practice to list high-yield bonds sold in Europe on a stock exchange, and virtually all high-yield bonds issued in Europe are listed on an EU trading venue, typically the Euro MTF markets of the Luxembourg Stock Exchange or the Irish Stock Exchange. Such issuers (new U.S. issuers) are now subject to MAR. We understand that some bond issuers are choosing to list bonds on stock exchanges not subject to MAR (*e.g.* the Channel Islands Securities Exchange) to avoid MAR application.

New U.S. issuers that maintain procedures to comply with U.S. regulatory requirements should be able to adapt those procedures to comply with their MAR obligations, but MAR requirements go beyond disclosure requirements applicable to U.S. companies under SEC regulations in some respects (as MAR requires immediate disclosure of inside information unless delay can be justified, whereas SEC disclosure requirements are based on periodic and specific event-based reporting requirements). In addition, new U.S. issuers will still need to adopt and implement policies and procedures, for example in relation to the creation of insider lists, to comply with MAR requirements.

What are the key areas of impact for existing and new U.S. issuers?

See the table in the appendix.

What about U.S. issuers whose securities are traded on EU trading venues without their consent?

In certain EU jurisdictions it is possible for brokers to facilitate the trading of securities on an EU trading venue (*e.g.* the Open Market on the Frankfurt Stock Exchange) without the issuer's consent. In such cases, the issuer should not be subject to MAR requirements to disclose and control inside information or restrict senior managers' dealings because these only apply where an issuer has requested admission of its securities to trading on the relevant EU trading venue, or has approved trading where no request for admission was made. Nevertheless, MAR prohibitions on insider dealing, improper disclosure of inside information and market manipulation still extend to securities traded on EU trading venues even where the issuer has not consented to that trading. In practice, those prohibitions will be more relevant to intermediaries who deal and transact in financial instruments, rather than issuers. Nevertheless, U.S. issuers who have not consented to the trading of their securities that takes place on EU trading venues still will need to ensure, in consultation with their advisers, that proposed new issuances, tender or exchange offers, buy-backs or liability management exercises do not inadvertently breach such prohibitions.

What are the sanctions for a breach?

The civil sanctions for market abuse include fines, public censure, injunctions and compensation.

Fines	Issuers	Individuals
Failure to: - maintain adequate systems and controls to prevent market abuse; or - disclose inside information	€2.5 million, or 15% of annual turnover in the preceding business year	€1 million
Failure to comply with rules relating to insider lists and manager transactions	€1 million	€100,000

The Criminal Sanctions for Market Abuse Directive (2014/57/EU) (CSMAD), which all EU member states with the exception of the U.K. and Denmark have opted into, requires the criminalisation of serious cases of MAR's insider dealing, improper disclosure and market manipulation offences. However, CSMAD does not require EU member states to criminalise an issuer's failure to disclose inside information, maintain adequate controls over the flow of inside information or comply with MAR's senior manager dealings requirements, although they are free to do so should they wish.

Where are the rules and guidance?

MAR can be found on the European Commission website. The European Securities and Markets Authority (ESMA) on 13 July 2016 provided non-binding guidance on the delayed disclosure of inside information under MAR and guidance for persons receiving market soundings (see guidelines on MAR).

ESMA also updated its Questions and Answers on the implementation of MAR, including on managers' transactions.

The City of London Law Society and the Law Society's Company Law Committees' Joint Working Parties on Market Abuse, Share Plans and Takeovers Code published a Q&A on MAR, which identifies, and suggests methods of resolving, areas of uncertainty in relation to managers' transactions, share repurchases, disclosure of inside information and insider lists.

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What should U.S. issuers do now?

New U.S. Issuers[3] Should:	Existing U.S. Issuers[4] Should:
Familiarise themselves with MAR's requirements in order to adopt and implement the necessary policies and compliance procedures.	Review existing policies and procedures to identify any required extensions or amendments resulting from MAR.
Ensure that their directors, senior managers and other affected employees are trained on MAR and its requirements, especially in relation to the disclosure of inside information, senior managers' share dealings and wall-crossings.	Train affected employees on the differences from the previous market abuse regime. Ensure that senior managers comply with the new rules on share dealings.
Compile and maintain insider lists in the prescribed format.	Comply with the new requirements on insider lists.
For new and existing issuers: Assess the increased compliance burden. If too onerous in a particular jurisdiction, consider whether to de-list from the exchange(s) in that jurisdiction and migrate the listing of those securities to an exchange that is more lightly regulated. Issuers should check the terms of the relevant securities to determine if they require noteholders' consent to de-list.	

Appenidix: Key Areas of Impact for US Issuers

Area	U.S. Domestic[5] and Foreign Private Issuer[6] Requirements	MAR Requirements	Impact	
			Existing U.S. issuers	New U.S. issuers
Identification and disclosure of inside information	As a general matter, under U.S. securities laws, SEC-registered issuers do not have a duty to disclose material, non-public information to investors, other than when SEC rules specifically require such disclosures, such as: (i) when an issuer will trade in its own securities; (ii) when an issuer is required to update or correct previously disclosed information that was incorrect when originally disclosed; or (iii) where an issuer is required to make certain disclosures, as discussed below.[7] **Disclosure:** **Domestic issuers:** Generally, domestic issuers must file a Form 8-K with the SEC within four business days after the occurrence of a specific event, such as the issuer's: (i) entry into, or termination of, a material	Issuers are obliged to announce to the market as soon as possible all inside information that directly concerns the issuer. **Disclosure:** The obligation on issuers with securities admitted to trading on an EU Regulated Market to disclose inside information to the market as soon as possible is extended to a wider range of markets, such as MTFs. All announcements of inside information must be published on the issuer's website in an easily identifiable section and retained there for five years. (The previous requirement was to keep the information on the website for a year.) **Delayed disclosure:** An issuer may delay the disclosure of inside information if: (i) immediate disclosure is likely to prejudice its legitimate interests;	- Review and update their policies and procedures on identifying and disclosing (or delaying the disclosure of) inside information. - Institute a record-keeping system for decisions to delay disclosure and why disclosure was delayed.	- Prepare policies and procedures to identify and disclose (or delay the disclosure of) inside information in accordance with the MAR regime.

[3] Those issuers with financial instruments traded on an EU MTF that were not previously subject to the EU Market Abuse Directive.

[4] Those issuers with financial instruments already admitted to trading on an EU Regulated Market.

[5] Any company that: (i) has reporting requirements under the U.S. Securities Exchange Act of 1934 (the Exchange Act); and (ii) does not qualify as a foreign private issuer.

[6] A foreign private issuer means any issuer (other than a foreign government) incorporated or organized under the laws of a jurisdiction outside of the U.S. unless: (i) more than 50 percent of its outstanding voting securities are directly or indirectly owned of record by U.S. residents; and (ii) any of the following applies: (a) the majority of its executive officers or directors are U.S. citizens or residents; (b) more than 50 percent of its assets are located in the U.S.; or (c) its business is administered principally in the U.S.

[7] NYSE and NASDAQ rules require listed U.S. domestic and foreign private issuers to release quickly to the public any news or information that might reasonably be expected to materially affect the market for its securities. Additionally, both NYSE and NASDAQ require listed issuers to act promptly to address rumours or leaked information, where such rumours or leaked information have resulted in unusual market activity or price variations.

Area	U.S. Domestic[5] and Foreign Private Issuer[6] Requirements	MAR Requirements	Impact	
			Existing U.S. issuers	New U.S. issuers
	definitive agreement; (ii) completion, or probable[8] acquisition or disposition, of a significant amount of assets; (iii) disclosure of results of operations and financial condition; (iv) creation, acceleration or increase, of a direct, or off-balance sheet, arrangement; (v) material impairment; (vi) unregistered sale of equity securities; (vii) disclosure of certain changes relating to its accountants and financial statements; (viii) change in control or change in directors or officers; and (ix) determination that other events important to its security holders have occurred. **Foreign private issuers:** A Form 6-K must be submitted promptly to the SEC to include material information that the foreign private issuer: (i) makes or is required to make public pursuant to the laws of its country of incorporation or organization; (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange; or (iii) distributes or is required to distribute to its security holders. Other than the obligation to submit to the SEC information that a foreign private issuer has otherwise made public or filed with a stock exchange or regulator, the Form 6-K does not independently create any affirmative disclosure requirements. **Delayed disclosure:** There are no waivers available to delay the timely filing of a Form 8-K or 6-K. Additionally, listed issuers should ensure the timely filing of such reports, as timely filing is a prerequisite to the availability of Rule 144 under the U.S. Securities Act of 1933 (the Securities Act), which enables officers, directors, other affiliates and holders of "restricted securities" to sell their securities in broker transactions in the U.S. (subject to limitations) without registration under the Securities Act. In addition, the failure to timely file reports when required will prevent the issuer from using the "short form" Securities Act registration statements for offers and sales of securities.	(ii) delay is not likely to mislead the public; and (iii) the issuer can ensure the confidentiality of the inside information. ESMA has issued guidelines on the legitimate interests that are likely to be prejudiced by disclosure and the situations in which delay is likely to mislead the public. ESMA notes that the lists are not intended to be exhaustive and that each situation should be assessed on a case-by-case basis. The guidelines preserve the existing ability of issuers to delay disclosing inside information where they are conducting confidential negotiations, the outcome of which would likely be jeopardised by immediate public disclosure, and identify the following exceptions: - where the issuer has developed a new product or invention and its immediate public disclosure is likely to jeopardise the issuer's intellectual property rights; - the issuer is planning to buy or sell a major holding in another entity but has not yet started negotiations, and the disclosure of its intentions is likely to jeopardise the conclusion of the planned deal; or - a deal or transaction previously announced is subject to a public authority's approval (for example, antitrust clearance), and such approval is conditional upon additional requirements, where the immediate disclosure of those requirements will likely affect the issuer's ability to meet them and, therefore, prevent the final success of the deal. This is aimed at circumstances where, in the context of obtaining merger clearance, the antitrust regulator indicates that it will be a condition of granting clearance that the issuer dispose of a particular business. Disclosing that condition would clearly jeopardise an issuer's negotiating position.	- Monitor the decision to delay so that information can be announced promptly once delay is no longer permitted. - Establish systems to notify the relevant national regulator of any decision to delay. - Update processes and systems to ensure that inside information is maintained on the issuer's website for five years.	

[8] Certain significant acquisitions or dispositions will require the disclosure of historical or pro forma financial statements, even when the acquisition or disposition is probable (*i.e.* more likely than not) rather than concluded. The term "probable" is not expressly defined and the determination of whether a transaction is "probable" depends upon the facts and circumstances existing including, but not limited to, whether: (i) a definitive agreement or letter of intent has been entered into; (ii) shareholder or board approval has been secured; (iii) the transaction is under review by regulatory agencies; (iv) financial penalties for non-consummation exist; and (v) a bidding process is still underway.

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			Existing U.S. issuers	New U.S. issuers
	Notify delayed disclosure: Not applicable, as there are no waivers available to delay the timely filing of a Form 8-K or 6-K. **Record keeping:** Not applicable, as there are no waivers available to delay the timely filing of a Form 8-K or 6-K.	Situations where delayed disclosure is likely to mislead the public include where the inside information: - is materially different from the issuer's previous public disclosure relating to the same matter; - relates to the fact that the issuer's financial targets are not likely to be met, where such targets were previously publicly announced; or - contradicts the market's expectations where such expectations are based on signals that the issuer has previously given to the market. **Notify delayed disclosure:** A key new requirement is for issuers to notify the relevant trading venue's national regulator (*e.g.*, the Financial Conduct Authority (FCA) in the U.K.) of the delayed disclosure of inside information. For example, in the U.K., issuers need to notify the FCA of the delay immediately following public disclosure of the information using an online FCA form. Issuers must record how and when they first identified the inside information, the time and date when the decision to delay was made and the persons responsible for making the decision. The FCA may subsequently ask for an explanation for the delay. **Record keeping:** Issuers must keep a record (for five years) of how they reached their decision that to delay disclosure was in their legitimate interests.		
Creation of insider lists	The SEC does not require a registrant to maintain a list of persons working for the issuer who have access to inside information or to adopt a policy relating to insider trading. However, NYSE and NASDAQ rules require listed issuers[9] to adopt a policy that, among other things, outlines and prohibits improper trading in the issuer's securities by its corporate insiders. Pursuant to such policy, the issuer likely will establish, and update as applicable, a list of directors, certain designated officers and employees of	MAR extends to issuers with securities listed on MTFs the pre-MAR obligation to compile and maintain a list of those persons working for them who have access to inside information. **Mandatory format:** Issuers need to collect more information on insiders (for example, the time the person obtained access to the information, date of birth and personal telephone number), which must be maintained in the electronic	- Update insider list requirements to comply with the new prescribed format. - Consider whether any internal policies need to be updated.	- Compile and maintain permanent (if appropriate) and deal-specific insider lists, in the prescribed format. - Ensure that advisers maintain their own insider lists.

[9] Foreign private issuers are permitted to follow their home country practice in lieu of complying with this requirement.

Area	U.S. Domestic[4] and Foreign Private Issuer[5] Requirements	MAR Requirements	Impact	
			Existing U.S. issuers	New U.S. issuers
	the issuer that have regular access to material non-public information about the issuer, and certain individuals serving a function on behalf of the issuer. These individuals typically will, pursuant to the issuer's policy, acknowledge their inclusion on the issuer's list and the additional trading restrictions applicable to them as a result of such inclusion (*e.g.*, outside of a 10b5-1-compliant pre-established trading plan, trades by a corporate insider may only be made outside of blackout windows and only with pre-clearance from the issuer).	format prescribed in Annex I to European Commission Implementing Regulation 2016/347. **Different lists:** Permanent and deal-specific lists may be created, but there must be no overlap between them. **Notify insiders:** A new requirement obliges issuers to ensure that any person who is added to an insider list acknowledges in writing their legal and regulatory duties and that they are aware of the sanctions for misuse. **Adviser lists:** Issuers need to ensure that their advisers, such as lawyers, accountants and credit rating agencies, keep their own insider lists that comply with the mandatory format. **Data protection:** There may be data protection requirements that apply to collecting the information that must be included on insider lists.	- Develop a pro forma memorandum to notify persons who have been added to an insider list.	- Comply with any data protection requirements that apply to the collection and storage of data included on insider lists.
Senior managers' share dealings	The SEC prohibits a person from buying or selling securities on the basis of material non-public information in violation of a duty owed to the shareholders of the issuer (*e.g.*, corporate insiders, such as directors, officers and controlling shareholders, who owe a fiduciary duty to the issuer's shareholders) or where the information has been otherwise misappropriated. Many issuers have therefore adopted insider trading policies that prohibit such persons (and their family members and controlled entities) from trading, outside of a 10b5-1-compliant pre-established trading plan, in the issuer's securities during certain periods (*e.g.*, during quarterly, interim earnings guidance or event-specific blackout periods established by the issuer) and without the issuer's pre-clearance.	Most issuers have share dealing codes. These typically ban dealings in an issuer's financial instruments in closed and prohibited periods and oblige senior managers to obtain clearance before dealing. **Notification:** Senior managers[10] or "persons discharging managerial responsibilities" (PDMRs) in an issuer and persons closely associated with them (PCAs) (*i.e.*, spouses and partners, dependent children, companies, partnerships and trusts controlled by PDMRs), must notify both the issuer and the national regulator of personal transactions they undertake in the issuer's financial instruments. In the case of the U.K., the notification must be made on the online form on the FCA's website. This form must be used by the PDMR, their PCAs and the issuer.	- Consider whether they need a new share dealing code to regulate PDMR and PCA dealings or whether they can update their existing dealing code to comply with MAR, and in particular, with the prohibition on dealing during closed periods and the obligation to notify the issuer within three business days.	- Create a list of PDMRs. - Ask PDMRs to identify their PCAs. - Ask PDMRs to notify those persons in writing of their obligations. - Consider whether they need a share dealing code to regulate PDMR and PCA dealings and, if not, decide on what basis to permit such share dealings; implement policies and procedures for recording dealings.

[10] MAR effectively defines the term "manager" to include senior individuals — that is, either members of the main board of the parent company or those senior executives not on the main board but who have regular access to inside information relating to the parent company and the power to make managerial decisions affecting the issuer's future development and business prospects.

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			Existing U.S. issuers	New U.S. issuers
	Notification: **Domestic issuers:** A domestic issuer's directors and officers must make Section 16 filings with the SEC to report their acquisitions and dispositions of beneficial interests in the issuer's securities (including common stock and derivative securities of the issuer, such as stock options and restricted stock units) within two business days of a transaction resulting in changes in such interest. Once the director or officer files their Section 16 filings (*e.g.*, Forms 3, 4 or 5) with the SEC, the issuer is required to post the form on its website by the end of the next business day. **Foreign private issuers:** The directors and officers of a foreign private issuer are not subject to Section 16 of the Exchange Act and are therefore not required to make Section 16 filings. **Shorter notification deadline:** Not applicable. ***De minimis* disclosure threshold:** Not applicable. **Prohibited dealings:** The SEC prohibits a person from buying or selling securities on the basis of material non-public information in violation of a duty owed to the shareholders of the issuer (*e.g.*, corporate insiders, such as directors, officers and controlling shareholders, who owe a fiduciary duty to the issuer's shareholders) or where the information otherwise has been misappropriated. Many issuers have therefore adopted insider trading policies that prohibit such persons (and their family members and controlled entities) from trading, outside of a 10b5-1-compliant pre-established trading plan, in the issuer's securities during certain periods (*e.g.*, during quarterly, interim earnings guidance or event-specific blackout periods established by the issuer) and without the issuer's pre-clearance.	**Shorter notification deadline:** Senior managers must notify their personal transactions within the shorter deadline of three business days (reduced from four business days). The issuer has to notify the market within the same three business days whereas previously the issuer had until the end of the business day after it had received details from the manager. ***De minimis* disclosure threshold:** Although MAR has introduced a €5,000 per annum threshold for notifying personal transactions, few U.K. issuers will be relying on this limit. The total amount of the transactions in a calendar year must reach €5,000 before subsequent transactions need to be notified. As records will need to be kept in order to establish when the threshold has been reached, most U.K. issuers intend to disclose all senior managers' personal transactions under their internal share dealing codes, as they were required to do under the previous regime. This will also avoid any errors in calculating whether the relevant threshold has been reached. **Prohibited dealings:** MAR prohibits senior managers from conducting personal transactions in an issuer's financial instruments during a closed period, except in certain narrowly defined circumstances (such as severe financial difficulty). The specific exceptions for the acceptance of takeover offers and rights issues that existed under the previous market abuse regime have not been replicated in MAR. The MAR closed periods are now 30 days before publication of the issuer's annual and half-yearly financial results. (However, note that for risk management purposes some issuers take the view that the closed period runs from the end of a financial period until the report on that period.) Outside the MAR closed periods, senior managers may deal as long as they do not commit market abuse (for example, by using inside information that they have by virtue of their position in the issuer).	- Consider whether to require PDMRs and PCAs to notify all transactions or only those above the annual €5,000 threshold. - If a new dealing code is not required, decide on what basis to permit PDMR/PCA share dealings; implement policies and procedures for recording them. - Train PDMRs on the requirements. - Consider whether employment contracts need to be amended to reflect MAR dealing policy requirements.	- Train PDMRs on the requirements. - Consider whether employment contracts need to be amended to reflect MAR dealing policy requirements.

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	No U.S. Model Code of share dealings: The SEC does not require a registrant to adopt a policy relating to insider trading. However, NYSE and NASDAQ rules require listed issuers[11] to adopt a policy that, among other things, outlines and prohibits improper trading in the issuer's securities by its corporate insiders.	On 13 July 2016, ESMA, in its Questions and Answers, confirmed that a results announcement by an issuer would end the 30-day closed period, provided that the announcement contains all the information that an issuer is required to include in its annual report or half-yearly report (according to the rules of the trading venue where the issuer's shares are admitted to trading or under national law). **No U.K. Model Code of share dealings:** Instead, there will be a requirement for systems and controls for granting clearance to deal. A dealing code has been developed jointly by the ICSA, the Quoted Companies Alliance and the GC100, which has been submitted to the FCA for review.		
Share repurchases	Share repurchases announced and conducted within the confines of the SEC's issuer and affiliate non-exclusive safe harbour rule (Rule 10b-18) are not market manipulation. Share repurchases also may be effected through a 10b5-1-compliant pre-established trading plan or through a tender offer for the issuer's securities. **Disclosure and reporting:** In order to avoid potential liability, listed issuers should consider disclosing the existence of a share repurchase program prior to its commencement, and also should disclose any material modifications thereto. Listed issuers also must disclose certain program information (*e.g.*, number of shares repurchased, average price paid per share) in their next periodic report filed with the SEC; for domestic issuers this information will be included in a Form 10-K (annual report) or 10-Q (quarterly report), as applicable, and for foreign private issuers, this information will be included on a Form 20-F (annual report) or Form 6-K (if otherwise disclosed by the issuer in its home jurisdiction or pursuant to foreign exchange disclosure obligations).	Share repurchases announced and conducted within the confines of the EU's buyback safe harbour rules were not market abuse for the purposes of the previous regime. There will continue to be a safe harbour (provided certain conditions are met) for share repurchases under MAR. **Disclosure and reporting:** Full details of the share repurchase programme must be disclosed before the start of trading. Trades must be reported to the relevant competent authority as being part of the programme and must be disclosed before the start of trading. Trades must be reported to the relevant competent authority as being part of the programme and subsequently disclosed to the public. **Price and volume limits:** MAR introduces limits regarding price and volume. The new rules clarify how the volume limit must be calculated when shares are traded on more than one trading venue.	Obtain specific advice.	Obtain specific advice.

[11] Foreign private issuers are permitted to follow their home country practice in lieu of complying with this requirement.

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	Price and volume limits: Applicable for issuers and affiliates who are relying on the SEC's issuer and affiliate non-exclusive safe harbour rule (Rule 10b-18). If the share repurchase is effected pursuant to a tender offer, then the U.S. tender offer price rules are applicable.			
Wall-crossings	**Domestic issuers:** The SEC's Regulation Fair Disclosure (Regulation FD) restricts issuers (or their representatives) from selectively disclosing material, non-public information to certain persons, including research analysts, investment bankers, securities market professionals and holders of the issuer's securities. However, pursuant to an exception set forth in Regulation FD, issuers proposing to enter into a major securities transaction may "sound out" the market in advance and selectively disclose material information to potential investors if the issuer protects against the potential misuse of such disclosure by having the recipients of such information agree to maintain any material non-public information in confidence. **Foreign private issuers:** Foreign private issuers are expressly exempt from Regulation FD. However, foreign private issuers typically voluntarily comply with Regulation FD by endeavouring to avoid the selective disclosure of material non-public information without the concurrent entry into a confidentiality agreement. **Record keeping:** Not applicable. **Receiving inside information:** Not applicable.	Issuers proposing to enter into a possible securities transaction may "sound out" the market in advance. This will likely involve the disclosure of inside information to potential investors (whether existing shareholders or new investors) in order to assess their interest in the proposed transaction, its size, pricing and/or structure. **Record keeping:** Following the 2012 Einhorn/Punch Taverns FCA enforcement case, MAR now specifically regulates the disclosure of inside information to potential investors and requires issuers to follow a prescriptive and detailed process for wall-crossings (MAR uses the term "market soundings"). Issuers can wall-cross potential investors provided that they keep detailed records of such disclosures. Many of these new requirements represent current best practice. The issuer must: - decide whether the information disclosed is inside information and keep a written record of that decision and the reasons for it; - before making the disclosure, obtain the recipient's consent to receive the inside information and to keep the information confidential; - keep a record of the disclosure of the information, including the date and time of each disclosure; - inform the recipient once the information ceases to be inside information; and - make and keep records of the information disclosed for five years.	- Establish a procedure for wall-crossings and detailed record-keeping requirements. - Confirm the protocol to be observed by the financial intermediary involved in the wall-crossing.	

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		Note that the market soundings regime will not apply in all circumstances — for example, where an issuer is assessing the appetite of its own shareholders for a potential M&A transaction, unless the issuer is also conducting an associated fund raising. **Receiving inside information:** Where an issuer is a recipient of inside information, it must have established internal procedures to be officially wall-crossed. ESMA's guidelines on MAR provide guidance for recipients of market soundings.		