

# Market Abuse Regulation

**NEVIR & AFM Webinar**  
**13 October 2016**

# Webinar guide



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# Webinar presentators



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- Background
- Application of MAR
- Changes in key elements
- Other revisions

# Regulatory framework



<b>MAD</b>	<b>MAR and CSMAD</b>
Directive 2003/6/EC on market abuse <i>required transposition by Member States</i>	Regulation (EU) 596/2014 on market abuse <i>legally binding and directly applicable</i>
+ implementing measures	Directive 2014/57/EU on Criminal sanctions for market abuse
	+ delegated and implementing acts

# Background

## MAD review

- Technological developments (i.e. HFT)
- Sanctions lacking deterrent effect
- Response to LIBOR scandal

## Key objectives MAR

- Strengthen EU market abuse framework
- Reinforcing capacity of regulators
- Single rulebook and administrative burden

## Extension of scope of **instruments**:

- Financial instruments
- Derivatives (i.e. CFD/CDS)
- Emission allowances
- Spot commodity contracts (not wholesale energy products; only prohibition of market manipulation)
- Benchmarks (only prohibition of market manipulation)

*‘Financial instruments’ are currently defined in MiFID I. From 3 January 2018 they will be defined in Annex 1 of MiFID II.*

## Extension of scope of **markets**:

- Regulated markets
- MTFs
- OTFs
- OTC markets - *the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference*

# Poll question 1



Through which channel were you informed on the new market abuse rules?

- a. AFM
- b. NEVIR
- c. Advisor (lawfirm of communication office)
- d. My organization (e.g. legal counsel)
- e. My network
- f. I was not informed

# Key elements: insider dealing



Definition broadly unchanged (art. 8) but more explained (recitals 23 + 24)

- Attempts are also forbidden
- Exceptions (art. 9; recitals):
  - Chinese Walls
  - Market makers, when acting in the legitimate capacity of providing market liquidity
  - Transactions conducted in the discharge of a prior obligation that has become due
  - Having access to inside information relating to another company and using it in the context of a public takeover bid
  - Own knowledge

Prohibition of unlawful disclosure of inside information is clarified (art. 10)

- Recommending or inducing another person to transact on the basis of inside information
- Disclosure lawful if made in the normal exercise of an employment, a profession or duties
- Specific exception: market soundings (art. 11)

# Key elements: market manipulation

Definition broadly unchanged (art. 12)

- Attempts are also forbidden
- Clarification that use of inside information to amend or cancel an **order** constitutes insider dealing
- Explicit prohibition of benchmark manipulation

# Poll questions 1 – Results



Through which channel were you informed on the new market abuse rules?

- a. AFM
- b. NEVIR
- c. Advisor (lawfirm of communication office)
- d. My organization (e.g. legal counsel)
- e. My network
- f. I was not informed

Public disclosure of inside information  
as soon as possible (art. 17)

- Special cases
  - SME growth markets (possible publication on a trading venue's website)
  - Emission allowance market participants (if not below threshold)

# Key requirements: disclosure



## Specific rules on **delay**

- All issuers, if publication is delayed for legitimate reasons:
  - ***ex post*** notification to CA
  - issuers should provide a **written explanation** upon request of AFM
- Financial and credit institutions due to financial stability concerns:
  - ***ex ante* (prior) consent** of CA

## Rumours

### *True*

- Leaked (if a rumour is 'sufficiently accurate'): public disclosure
- Speculation: 'No comment'
- Consistency in communication
- Examination by issuer on a case by case basis
- Contact (by) the AFM

### *False*

- No action, or 'No comment'
- Very detailed + precise + impact on the share price:  
possible impact of response

## Poll question 2

Do you think the Market Abuse Regulation has any added value for investors in particular?

- a. Yes, very much
- b. Yes, a little bit
- c. No
- d. No opinion
- e. I do not know

- Suspicious transaction and order reports (STORs)
  - **Who?** Trading venues, buy-side firms and proprietary traders
  - **What?** Detecting and reporting
- Insider lists (art. 18)
- Closed periods (art. 19(11))
- Notification of transactions in own shares (art. 19(1))
- Reporting of infringements by whistleblowers (art. 32)

# Other revisions

- Buy-back programmes, stabilisation measures (art. 5)
- Market soundings (art. 11)
- Accepted market practices (art. 13)
- Managers' transactions (art. 19)
- Investment recommendations (art. 20)

## Poll question 2 – Results



Do you think the Market Abuse Regulation has any added value for investors in particular?

- a. Yes, very much
- b. Yes, a little bit
- c. No
- d. No opinion
- e. I do not know

Supervisory and investigatory powers (art. 23), including:

- Access any document in any form, take copies thereof
- Request information from any person, summon and question any person
- Carry out on-site investigations at sites (other than at the private residences of natural persons)
- Require existing recordings of telephone conversations, electronic communications or data traffic records
- Suspend trading of the financial instrument concerned

- With **Public Prosecutor**
  - Monthly meetings
  - Discuss cases and decide on the way forward: administrative sanctions versus criminal sanctions
- With **ESMA** and **other competent authorities**
  - Exchanging information (without delay)
  - Cooperating in investigations
  - Enforcement: cross-border and cross-market to avoid duplication
  - Working on **MAR Q&A**

- Maximum administrative pecuniary sanctions:
  - at least three times the profit/loss avoided
  - at least € 5 million (natural persons) for the main offences
  - at least € 15 million or 15% of total annual turnover (legal persons) for the main offences
- Also:
  - disgorgement of profits gained/losses avoided
  - withdrawal or suspension of authorisations
  - ban against members of the firm's bodies

***For an overview, visit the AFM website:***

## Definitieve lagere regelgeving

Ter informatie wijzen wij u graag op de publicatie door de Europese Commissie (EC) van de uitvoeringsverordeningen voor onder andere:

- Artikel 4 MAR - [Uitvoeringsverordening \(EU\) 2016/378](#)
- Artikel 11 MAR - [Uitvoeringsverordening \(EU\) 2016/959](#)
- Artikel 17 MAR - [Uitvoeringsverordening \(EU\) 2016/1055](#)
- Artikel 18 MAR - [Uitvoeringsverordening \(EU\) 2016/347](#)
- Artikel 19 MAR - [Uitvoeringsverordening \(EU\) 2016/523](#)

Daarnaast zijn er diverse gedelegeerde verordeningen door de EC gepubliceerd:

- Diverse artikelen MAR - [Gedelegeerde verordening \(EU\) 2016/522](#)
- Artikel 5 MAR - [Gedelegeerde verordening \(EU\) 2016/1052](#)
- Artikel 11 MAR - [Gedelegeerde verordening \(EU\) 2016/960](#)
- Artikel 13 MAR - [Gedelegeerde verordening \(EU\) 2016/908](#)
- Artikel 16 MAR - [Gedelegeerde verordening 2016/957](#)
- Artikel 20 MAR - [Gedelegeerde verordening 2016/958](#)

# Questions?

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