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Additional Information

Level 1 Regulation

Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Integrity

Topic

Inside information, public disclosure and delayed disclosure of inside information

Subject Matter

Disclosure of inside information related to Pillar II requirements

Question

Are credit institutions required under MAR to publish systematically the results of the Pillar II assessment and/or any information received in relation to the Minimum Requirement for own funds and Eligible Liabilities (MREL) exercise?

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Original language

[ESMA70-145-111 MAR Q&A, Q&A 5.1]

A main objective of the Market Abuse Regulation (MAR) is to enhance market integrity. This is notably achieved through a prompt and fair disclosure of information to the public.

For issuers of financial instruments, this objective has been translated into the requirement under Article 17 of MAR. Issuers who have requested or approved admission of their financial instruments to trading on a Regulated Market, or in the case of instruments only traded on an MTF or on an OTF issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested their admission to trading on an MTF, must inform the public as soon as possible of any inside information relating directly to them. According to Article 7 of MAR, inside information is such information that is:

- non-public,
- precise, and
- if it were made public would be likely to have a significant effect on the price of the issuer's financial instrument or related financial instruments.

MAR offers, by way of exception to the immediate disclosure of inside information, the possibility on a case-by-case basis to delay such disclosure under certain conditions. In accordance with Article 17(4) of MAR, any issuer may thus delay, under its own responsibility, the public disclosure of inside information such as not to prejudice its legitimate interests provided that such omission is not likely to mislead the public^[1] and the issuer is able to ensure the confidentiality of the information. Where the issuer is also a credit or financial institution, Article 17(5) of MAR allows for another possibility to delay in exceptional circumstances, the public disclosure of inside information, under the issuer's responsibility, in order to preserve the stability of the financial system. Where such an issuer intends to delay under Article 17(5) of MAR, it needs the prior consent of the competent authority on the basis that the following conditions are fulfilled: i) the disclosure of the inside information entails a

risk of undermining the financial stability of the issuer and of the financial system, ii) it is in the public interest to delay disclosure and iii) the confidentiality of the information can be ensured.

However it is not feasible to define ex-ante, in a general manner, how the relevant conditions should be met and therefore the concerned issuer needs to assess, on a case-by-case basis, the particular circumstances before deciding to delay the disclosure of inside information under Article 17(4) of MAR or notifying to the competent authority its intention to delay under Article 17(5) of MAR.

Under MAR, an issuer can also be liable for market manipulation in case of dissemination of false and misleading information, including failure to properly disclose inside information to the public.

Many credit institutions across the European Union are issuers of financial instruments and thus subject to the regime established under MAR, when at the same time they are also subject to the prudential supervision of the banking regulators.

Consequently, in the context of the Supervisory Review and Evaluation Process (SREP) to be conducted in accordance with Article 97 of Directive 2013/36/EU (CRD IV), whenever a credit institution subject to the market abuse regime is made aware of information, notably the results of the exercise, it is expected to evaluate whether that information meets the criteria of inside information.

Along the same line, in the context of the MREL exercise to be conducted by the Single Resolution Board in accordance with the Bank Recovery and Resolution Directive, whenever a credit institution subject to the market abuse regime is made aware of information, it is expected to evaluate whether that information meets the criteria of inside information.

If these criteria are met, the MAR provisions apply with respect to the relevant disclosure requirements. Such a credit institution would have then to publicly disclose the inside information as soon as possible unless it has delayed such a disclosure after having assessed that all the conditions for delaying apply.

ESMA recalls that, if and when a publication (e.g. an article published in the press or internet postings) which is not resulting from the issuer's initiative in relation to its disclosure obligations or a rumour in the market relates explicitly to (a piece of) information that is inside information within the issuer, according to Article 17(7) of MAR that issuer is expected to

react and respond to the relevant publication or rumour if that (piece of) information is sufficiently accurate to indicate that the confidentiality of this inside information is no longer ensured. In such circumstances, which should be the exception rather than the rule and should be examined by the issuer on a case-by-case basis, a policy of staying silent or of “no comment” by the issuer would not be acceptable. The issuer’s reaction or response should be made publicly available in the same conditions and using the same mechanisms as those used for the communication of inside information, so that an ad hoc announcement has to be published without undue delay.

Finally, it is noted that the disclosure of inside information is a matter of national supervision and enforcement of MAR, solely under the competence of the national competent authorities designated to that effect in accordance with Article 22 of MAR and whose heads are members of the Board of Supervisors of ESMA.

[1] ESMA issued MAR Guidelines on [delay in the disclosure of inside information](#) (ESMA/2016/1478; 20 October 2016).