

Deloitte regulatory news alert

Market Abuse Regulation

1 June 2016

Draft Commission Delegated Regulation on prevention and detection of market abuse

Background

On 28th September 2015, ESMA delivered a first set of draft regulatory technical standards related to the market abuse regulation and submitted it to the European Commission. The Commission has published in March a Delegated Regulation that specifies the appropriate arrangements, systems and procedures as well as the notification template for preventing, detecting and reporting abusive practices or suspicious orders / transactions of any financial instrument. It will ensure the application of *Article 16* of the Market Abuse Regulation No 596/2014.

Impacted actors: The delegated Regulation will apply to market operators, investment firms operating a trading venue and any person professionally arranging or executing transactions.

Specifically and for the application of the *Article 16.2* described here-below, ESMA has confirmed in a Q&A published on May 30th that “persons professionally arranging or executing transactions” include buy side firms, such as investment management firms (AIFs and UCITS managers), as well as firms professionally engaged in trading on own account (proprietary traders). This definition should be read independently from what lies in the MIFID texts.

Overview of the Commission Delegated Regulation

To prevent and detect market abuse, this delegated regulation focus on 3 areas:

1. Prevention, monitoring and detection

Impacted actors are required to establish and maintain sound governance (i.e. arrangements and procedures) as well as effective systems to prevent and detect market abuse or any attempt (*Article 3*).

The systems and procedures should allow the analysis and comparison of every transaction / order placed, modified, cancelled or rejected from a trading venue. In addition, alerts set on a basis of pre-defined parameters should call for further investigation in the event of a potential market abuse.

The arrangements, systems and procedures must be:

- appropriate and proportionate to the scale, size and nature of the business activity;
- regularly assessed (at least annually);
- clearly formalized in writing with documented information maintained for a period of five years (*Article 2(5)*).

2. Reporting obligations

It is also required to report any suspicious transaction / order to their corresponding competent authority (i.e. the CSSF in Luxembourg) without delay (*Article 5*). To facilitate the assessment of the national competent authority, the transmission of a "Suspicious Transaction and Order Report" (*STOR*) must follow the template set out in Appendix of the Delegated Regulation.

On 25th May 2016, ESMA issued a communication mentioning that, although the MAR provisions requiring competent authorities to transmit notifications that they receive to ESMA are expected to be delayed (*Article 4(2) and 4(3) of Regulation 596/2014*), the application date for the reporting to the competent authorities (*Article 4(1)*) remains 3 July 2016.

However, the application of this latter article implies that the IT system developed for the implementation of MiFIR is ready by July 3rd and this will not be the case in a majority of Member States. ESMA and the competent authorities will communicate in the course of 2016 on the availability of the system. In the meantime, the former regulation remains applicable (*Article 11 of Regulation 1287/2006*) and Member States may require additional information on financial instruments.

3. Training

The EU regulatory framework set to prevent market abuse (MAD/MAR) highlights the importance of having qualified employees capable to identify and manage market manipulations. Staff involved in the prevention, monitoring and detection of insider dealing or market manipulation should receive an effective and comprehensive training. This training should be organized on a regular basis and proportionate to the size and business nature of the institution (*Article 4*).

Next steps

The Commission Delegated Regulation is expected to enter into force on 3rd July 2016.

How can Deloitte help you?

Over the last few years, the regulators have put greater scrutiny and transparency on order / transactions of any financial instruments. As a leading firm in regulatory matters, Deloitte can assist you to be prepared with Market Abuse obligation.

Our services include:

- the preparation and documentation of procedures
- training on insider dealing and market manipulation to your relevant staff
- the assistance with selection or development of the most appropriate automated system for the identification and management of market abuses
- gap analysis of your operating model and current governance to identify any risk of non-compliance with the Market Abuse Regulation

We trust this information is of assistance and remain at your disposal for any question.

Your contacts

Laurent Collet

Partner | Strategy Regulatory & Corporate Finance

Tel: +352 45145 2112

lacollet@deloitte.lu

Johnny Yip Lan Yan

Partner | Investment Management Leader

Tel: +352 45145 2489

jyiplanyan@deloitte.lu

Martin Flaunet

Partner | Banking & Securities Leader

Tel: +352 45145 2334

mflaunet@deloitte.lu

Simon Ramos

Partner | Advisory & Consulting IM Leader

Tel: +352 45145 2702

siramos@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

© 2016 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg