



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

T +353 (0)1 224 6000

Bosca PO 559
Baile Átha Cliath 1

PO Box 559
Dublin 1

www.centralbank.ie

[CEO]
[COMPANY]

BY EMAIL

12 July 2021

**CENTRAL BANK OF IRELAND - MARKET ABUSE THEMATIC REVIEW
IMPLICATIONS FOR ADVISORS TO ISSUERS**

Dear CEO

The Central Bank of Ireland (Central Bank) is the competent authority in Ireland for the Market Abuse Regulation (MAR)¹ which includes supervisory authority over MAR compliance by issuers of financial instruments and, for certain purposes, those who act on their behalf or account (Advisors).² The Central Bank conducted a Market Abuse Thematic Review (Review) to assess MAR compliance by issuers of equity instruments listed on Euronext Dublin, the findings of which are set out in a letter communicated to issuers today,³ and related to that exercise also conducted a review of a number of Advisors. This work was a component of a wider thematic review of compliance with MAR which also included market surveillance obligations.

Market abuse is unlawful behaviour on financial markets. It impedes market transparency, a prerequisite for trading on financial markets. It comprises insider dealing, unlawful disclosure of inside information, market manipulation or related attempts. Market abuse undermines market integrity and investor confidence.

By way of preliminary work into Advisor MAR compliance, the Central Bank identified Advisors who routinely act on behalf of most of the issuers involved in the Review and examined the organisational arrangements they employ to comply with Article 18 MAR and to avoid breaches of Article 14 MAR which prohibits insider dealing, unlawful disclosure of inside information or related attempts (Article 14 Prohibitions). Article 18 requires Advisors to draw up and maintain a list, in a prescribed format, of all persons who have access to issuers' inside information and to update it promptly. Advisors must take all reasonable steps to ensure everyone on the list acknowledges, in

¹ Regulation (EU) 596/2014.

² Regulation 3 European Union (Market Abuse) Regulations 2016 (S.I. No. 349 of 2016).

³ <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/securities-markets/wholesale-markets/dear-ceo-letter-mar-requirements-to-recognise-publish-and-manage-inside-information.pdf>



writing, their legal and regulatory duties and awareness of sanctions for Article 14 Prohibition breaches.

Article 18 protects market integrity. It encourages Advisors to control the flow of inside information thereby mitigating the risk of insiders breaching the Article 14 Prohibitions. Insider lists are a vital tool for competent authorities to identify any person who has access to inside information and the date on which they gained access. Accordingly, Article 18 promotes effective market abuse investigations.

The Central Bank observed that Advisors maintained and updated insider lists and were aware of their basic obligations. However, the Review also identified deficiencies that included inadequate organisational arrangements and poor compliance with aspects of Article 18, requiring entity-specific risk mitigation programmes. This letter sets out the Central Bank's key findings and expectations regarding its assessment of Advisors' Article 18 compliance and their approach to mitigating market abuse risk.⁴

KEY FINDINGS AND EXPECTATIONS

Central Bank-identified deficiencies included:

- Failure to understand the purpose of Article 18 by Advisors and their staff, including failure to understand that Article 18 places on Advisors an **independent obligation** to identify inside information they receive from issuers. The Central Bank observed Advisor-reliance on clients and clients' legal advisors for this.
- Informal approach to defining inside information and inadequate processes for recording decisions in this regard.
- Over-inclusion of staff on insider lists, including permitting access by staff who do not need to access the information.
- Lack of security around inside information lists including failures to password-protect lists.
- Failure to take all reasonable steps to explain obligations to insiders and to receive written acknowledgements from them.
- Use of "*confidential*" lists drafted for the purposes of compliance with other legal or ethical obligations instead of insider lists drawn up for the purposes of Article 18.

The Central Bank expects Advisors to:

- Understand the purpose of Article 18 MAR which includes mitigating the risk of insiders breaching Article 14 Prohibitions and to facilitate investigating authorities' prompt identification of those who have access to inside information.

⁴ The Review and key findings align with the Central Bank's Five Principles for a Proper and Effectively Regulated Securities Market, available [here](#).



- Implement arrangements to ensure staff recognise in a timely manner when they are in receipt of issuer inside information, and avoid informal definitions or text that departs from the specific wording of the legislation. For example, the precision test for inside information requires a “*realistic prospect*” of an event occurring, not a “*more than a realistic prospect*”. The latter definition changes the test and is wrong.
- Treat the identification process as independent from the issuer client’s MAR compliance. Article 18 applies to Advisors, not as an extension of their provision of professional services, but rather as a wholly separate obligation on them. Ownership of and responsibility for their own insider lists rests with Advisors.
- Mitigate the risk of Article 14 Prohibition breaches by staff and others by limiting access to information to those who need it to perform their function and by erecting suitable information barriers. Advisors should not grant access to inside information to entire teams/departments without assessing whether the specific staff member is actually working on the matter.
- Treat insider lists as a separate matter from confidential lists. Confidential lists may be required to satisfy other obligations but are not an acceptable alternative to insider lists.
- Review their arrangements and consider whether they are taking all reasonable steps to ensure persons in possession of inside information understand their obligations and the applicable sanctions for breach and acknowledge such in writing. Advisors must satisfy this requirement contemporaneously with an insider’s inclusion on the list.
- Assess compliance with the requirement to populate *all* MAR-prescribed fields in insider lists. For example, “*Person is an insider*” is not an adequate description of why a person is on an insider list.
- Assess compliance with the requirements to maintain appropriate controls to secure and restrict access to inside information and insider lists.

NEXT STEPS AND ACTIONS FOR ALL ADVISORS

As a result of these findings, the Central Bank will now commence supervisory engagement with those Advisors where specific concerns have been identified, including the imposition of specific risk mitigation programmes with respect to those concerns.

Whether or not an Advisor receives a specific risk mitigation requirement from the Central Bank, all Advisors are required to critically assess their activities, frameworks, organisational arrangements and controls against the findings and expectations in this letter and put in place a time bound plan to remediate deficiencies. The Central Bank expects this plan to be discussed and approved by your board by the end of 2021. The Central Bank may have regard to the content and quality of such assessments and plans in future reviews of an Advisor’s compliance.

In circumstances of non-compliance by entities with requirements relevant to the matters raised in this letter, the Central Bank may, when exercising its supervisory and / or enforcement powers, have regard to the consideration given by an entity to the matters in this letter. Please address any queries regarding this letter to MARThematic@centralbank.ie. You are not required to respond to this letter.



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Yours sincerely

Colm Kincaid.

Colm Kincaid

Director of Securities and Markets Supervision