

Subsidiary Legislation made under s. 42.

MARKET ABUSE REGULATIONS 2012

Repealed by LN. 2016/142 as from 3.7.2016

(LN. 2012/182)

Commencement **22.11.2012**

Amending enactments	Relevant current provisions	Commencement date
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Transposing:

Directive 2003/6/EC
Directive 2004/72/EC

EU Legislation/International Agreements involved:

ARRANGEMENT OF REGULATIONS.

Regulation

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Market Abuse

MARKET ABUSE REGULATIONS 2012

In exercise of the powers conferred on him by section 42 of the Market Abuse Act 2005 and in order to transpose into the law of Gibraltar Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Market Abuse Regulations 2012 and come into operation on the day of publication.

Interpretation

2.(1) In these Regulations, unless the context otherwise requires—

“Act” means the Market Abuse Act 2005;

“competent authority” means the competent authority appointed by regulation 2 of the Market Abuse (Competent Authority Appointment) Regulations 2005;

“credit institution” means any person as defined in section 2 of the Financial Services (Banking) Act;

“investment firm” means any person as defined in section 2(1) of the Financial Services (Markets in Financial Instruments) Act 2006;

“person discharging managerial responsibilities within an issuer” means a person who is—

- (a) a member of the administrative, management or supervisory bodies of the issuer;
- (b) a senior executive, who is not a member of the bodies as referred to in paragraph(a), having regular access to inside information relating, directly or indirectly, to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of this issuer;

“person closely associated with a person discharging managerial responsibilities within an issuer of financial instruments” means—

- (a) the spouse of the person discharging managerial responsibilities;

- (b) dependent children of the person discharging managerial responsibilities;
- (c) other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned;
- (d) any legal person, trust or partnership, whose managerial responsibilities are discharged by a person referred to in the preceding definition or in paragraphs (a), (b) and (c) of this definition, or which is directly or indirectly controlled by such a person, or that is set up for the benefit of such a person, or whose economic interests are substantially equivalent to those of such person;

“person professionally arranging transactions” means an investment firm or a credit institution; and

“section” means a section of the Act.

(2) Any term used in these Regulations but not defined in this regulation shall be interpreted in accordance with the provisions of the Act.

Factors to be taken into account when considering market practices.

3.(1) For the purposes of applying section 4(3) and section 5(4) of the Act, the competent authority shall ensure that the following non exhaustive factors are taken into account, without prejudice to collaboration with authorities in other EEA States, when assessing whether the competent authority can accept a particular market practice—

- (a) the level of transparency of the relevant market practice to the whole market;
- (b) the need to safeguard the operation of market forces and the proper interplay of the forces of supply and demand.;
- (c) the degree to which the relevant market practice has an impact on market liquidity and efficiency;
- (d) the degree to which the relevant practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice;

- (e) the risk inherent in the relevant practice for the integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant financial instrument within the whole EEA;
- (f) the outcome of any investigation of the relevant market practice by the competent authority in particular whether the relevant market practice breached rules or regulations designed to prevent market abuse, or codes of conduct, be it on the market in question or on directly or indirectly related markets within the EEA;
- (g) the structural characteristics of the relevant market including whether it is regulated or not, the types of financial instruments traded and the type of market participants, including the extent of retail investors participation in the relevant market.

(2) The competent authority shall, when considering the need for the safeguard referred to in sub- regulation (1)(b), in particular analyse the impact of the relevant market practice against the main market parameters, such as the specific market conditions before carrying out the relevant market practice, the weighted average price of a single session or the daily closing price.

(3) The competent authority shall ensure that practices, in particular new or emerging market practices are not assumed to be unacceptable by the competent authority simply because they have not been previously accepted by it.

(4) The competent authority shall review regularly the market practices they have accepted, in particular taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructure.

Consultation procedures and disclosure of decisions.

4.(1) For the purposes of applying section 4(3) and section 5(4) of the Act, the competent authority shall observe the procedures set out in sub-regulations (2), (3), (4) and (5) when considering whether to accept or continue to accept a particular market practice.

(2) Without prejudice to section 21(1) of the Act, before accepting or not the market practice concerned, the competent authority consult as appropriate relevant bodies such as representatives of issuers, financial services providers, consumers, other authorities and market operators.

(3) The consultation procedure under this regulation shall include consultation of competent authorities in other EEA States, in particular

where there exist comparable markets, such as in structures, volume, type of transactions.

- (4) The competent authority shall—
- (a) publicly disclose its decisions regarding the acceptability of the market practice concerned, including appropriate descriptions of such practices;
 - (b) ensure there is transmitted its decisions as soon as possible to the Committee of European Securities Regulators which shall make them immediately available on its website,

(5) The disclosure referred to in paragraph (a) of sub-regulation (4) shall include a description of the factors taken into account in determining whether the relevant practice is regarded as acceptable, in particular where different conclusions have been reached regarding the acceptability of the same practice on different EEA markets.

(6) When investigatory actions on specific cases have already started, the consultation procedures set out in sub-regulations (1) to (5) may be delayed until the end of such investigation and possible related sanctions.

(7) A market practice which was accepted following the consultation procedures set out in regulations (1) to (5) shall not be changed without using the same consultation procedures.

Inside information in relation to derivatives on commodities.

5. For the purposes of applying section 4(3), users of markets on which derivatives on commodities are traded, are deemed to expect to receive information relating, directly or indirectly, to one or more such derivatives which is—

- (a) routinely made available to the users of those markets; or
- (b) required to be disclosed in accordance with legal or regulatory provisions, market rules, contracts or customs on the relevant underlying commodity market or commodity derivatives market.

Lists of insiders.

6.(1) For the purposes of applying section 12(1), lists of insiders includes all persons covered by that section who have access to inside information relating, directly or indirectly, to the issuer, whether on a regular or occasional basis.

- (2) Lists of insiders referred to in sub-regulation (1) shall state at least—
- (a) the identity of any person having access to inside information;
 - (b) the reason why any such person is on the list;
 - (c) the date at which the list of insiders was created and updated.
- (3) Lists of insiders referred to in sub-regulation (1) shall be promptly updated—
- (a) whenever there is a change in the reason why any person is already on the list;
 - (b) whenever any new person has to be added to the list;
 - (c) by mentioning whether and when any person already on the list has no longer access to inside information.
- (4) The competent authority shall ensure that lists of insiders are kept for at least five years after being drawn up or updated.
- (5) The competent authority shall ensure that the persons required to draw up lists of insiders take the necessary measures to ensure that any person on such a list that has access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information.

Managers' Transactions.

7.(1) For the purposes of applying section 13(1), all transactions related to shares admitted to trading on a regulated market, or to derivatives or other financial instruments linked to them, conducted on the own account of—

- (a) persons discharging managerial responsibilities within an issuer; and
- (b) persons closely associated with a person discharging managerial responsibilities within an issuer of financial instruments,

shall be notified within five working days of the transaction date to the competent authority pursuant to the provisions of the Act where the issuer is registered in Gibraltar or, where the issuer is not registered in Gibraltar, where the issuer is required to file in Gibraltar the annual information in

relation to the shares in accordance with section 3 of the Prospectuses Act 2005.

(2) Until the total amount of transactions has reached five thousand Euros at the end of a calendar year, no notification shall be required.

(3) The total amount of transactions shall be computed by summing up the transactions conducted on the own account of persons discharging managerial responsibilities within an issuer with the transactions conducted on the own account of persons closely associated with persons discharging managerial responsibilities within an issuer of financial instruments.

(4) The notification shall contain the following information–

- (a) name of the person discharging managerial responsibilities within the issuer, or, where applicable, name of the person closely associated with such a person;
- (b) reason for responsibility to notify;
- (c) name of the relevant issuer;
- (d) description of the financial instrument;
- (e) nature of the transaction (e.g. acquisition or disposal);
- (f) date and place of the transaction; and
- (g) price and volume of the transaction.

Suspicious transactions to be notified.

8.(1) For the purposes of applying section 14(1), persons professionally arranging transactions shall decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves insider dealing or market abuse, taking into account the elements constituting insider dealing or market abuse, referred to in Parts I and II of the Act, and in regulation 5.

(2) Without prejudice to section 9 of the Act, persons professionally arranging transactions shall be subject to the rules of notification in the Act where it is registered or has its head office or branch in Gibraltar.

(3) The notification shall be addressed to the competent authority.

(4) Where the competent authority receives the notification of suspicious transactions, it shall transmit such information immediately to the competent authorities of the regulated markets concerned.

Timeframe for notification.

9. Where a person professionally arranging transactions becomes aware of a fact or information that gives reasonable ground for suspicion concerning the relevant transaction, he shall make a notification to the competent authority without delay.

Content of notification.

10.(1) Where a person makes a notification to the competent authority under these Regulations, he shall transmit to the competent authority the following information—

- (a) description of the transactions, including the type of order (such as limit order, market order or other characteristics of the order) and the type of trading market (such as block trade);
- (b) reasons for suspicion that the transactions might constitute market abuse;
- (c) means for identification of the persons on behalf of whom the transactions have been carried out, and of other persons involved in the relevant transactions;
- (d) capacity in which the person subject to the notification obligation operates (such as for own account or on behalf of third parties); and
- (e) any information which may have significance in reviewing the suspicious transactions.

(2) Where that information is not available at the time of notification, the notification shall include at least the reasons why the notifying persons suspect that the transactions might constitute insider dealing or market manipulation.

(3) All remaining information shall be provided to the competent authority as soon as it becomes available.

Means of notification.

11. Where a person makes a notification to the competent authority under these Regulations he may do so by mail, electronic mail, telecopy or telephone, provided that in the latter case confirmation is notified by any written form upon request by the competent authority.

Liability and professional secrecy.

12.(1) Where a person makes a notification to the competent authority under these Regulations–

- (a) he shall not inform any other person, in particular the persons on behalf of whom the transactions have been carried out or parties related to those persons, of this notification, except by virtue of provisions laid down by law; and
- (b) the fulfilment of this requirement shall not involve the notifying person in civil or criminal liability of any kind, providing the notifying person acts in good faith.

(2) The competent authority shall not disclose to any person the identity of the person having notified any transactions, where disclosure would, or would be likely to harm the person having notified the transactions.

(3) Sub-regulation (2) is without prejudice to the requirements of the enforcement and the sanctioning regimes under the Act and to the rules on transfer of personal data laid down in the Data Protection Act 2004.

(4) A notification in good faith to the competent authority under these regulations shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve the person notifying in civil or criminal liability of any kind related to such notification.

Enforcement.

13. The provisions of sections 41 and 41A of the Act apply in relation to these Regulations as they apply in relation to the Act.