July 2021

CBI Highlights Market Abuse Risk

The Central Bank of Ireland (**CBI**) has issued a press release summarising its review of compliance with the Market Abuse Regulation (EU 596/2014) (the **MAR**) and indicating that specific risk mitigation programmes (**RMP**'s) are being imposed on entities where concerns have arisen.

Background

The MAR, which first came into effect in Ireland on 3 July 2016, prohibits insider dealing, unlawful disclosure of inside information and market manipulation to ensure greater market transparency and integrity. You can read more about the obligations imposed on investment funds by the MAR in our previous briefing here.

Market abuse was identified by the CBI in 2019 as "*a key conduct risk*" and this examination was conducted in order to assess how effectively regulated firms, issuers and issuers' advisors are complying with the MAR, particularly in light of the unique challenges presented both by Brexit and the COVID-19 pandemic.

Review

In summary, the CBI identified the need for "*significant improvements*" to be made, including:

- Regulated firms: Trade surveillance and STOR reporting frameworks to be enhanced, including additional resourcing as necessary
- Issuers: Must improve their practices in relation to the public disclosures of inside information in a timely manner

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- Issuers and issuers' advisors: The quality and governance of insider lists must be improved, including writing to insiders to inform them of their obligations and the consequences of committing market abuse

- Market participants: Staff awareness of and training in MAR should be more comprehensive and specific to the particular risks that an entity faces in the course of its business

In addition to the RMP's, the CBI indicates that it has written to market participants to request that they carry out a critical analysis of their compliance with the MAR and put in place a plan to remedy any breaches without delay.

Sanctions

The CBI is empowered to impose administrative sanctions and other measures for contravention of the MAR by Part 23 of the Companies Act 2014 and the European Union (Market Abuse) Regulations 2016. Those sanctions include "cease and desist" orders, forfeiture of financial gains made or losses avoided, public censure and the suspension/withdrawal of authorisation.

Fines of €1milion to €2.5million (or 2% of annual turnover) can be imposed on legal entities for lower-level breaches, and up to €15million (or 15% of annual turnover) for more serious offences. Individuals can also be fined from €500,000 to €1million for lower-level breaches, and up to €5million for more serious offences.

Criminal sanctions can also be imposed for the most serious market abuse offences under the Market Abuse Directive on Criminal Sanctions (Directive 2014/57/EU), including imprisonment up to a maximum term of four years.

The European Securities and Markets Authority's most recent annual report identified a significant increase in EU market abuse sanctions in 2019, indicating that a total of €82 million was imposed for 279 administrative breaches of the MAR, up significantly from €10 million in 2018 despite a decrease in the number of breaches. A further €6 million was imposed for 60 criminal infringements, again significantly increased from €65,000 in 2018.

Comment

This press release coincides with a recent report by Danske Bank A/S that it has been preliminarily charged for violations of the MAR by the Danish State Prosecutor, including inadequate monitoring of transactions in financial instruments and market manipulation as a result of self-matching trades.

Regulated firms, issuers and issuers' advisors should ensure that they have appropriate systems and controls in place to prevent market abuse, with particular attention to the key areas identified in the CBI review above.

If you require advice in relation to the matters covered in this briefing please contact a member of our Banking and Financial Services Litigation Team.

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