EU Market Abuse Regulation: Listing Act changes relevant to debt capital markets

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The Council of the EU adopted the Listing Act package yesterday – it will be published in the Official Journal in Q4 2024.

One part of the package (the **Listing Regulation**) will amend the EU Market Abuse Regulation (**MAR**). **This briefing highlights the changes to MAR that are relevant to debt capital markets.**

For more information EU Prospectus Regulation changes that are relevant to debt capital markets, read our recent insights here.

INSIDER LISTS

MAR will be amended to allow all issuers use an **'alleviated format' insider list** (which Member States can currently allow issuers with financial instruments admitted to training on an SME Growth Market to use (as a lighter administrative burden)). ESMA must develop technical standards on the format of those lists within 9 months.

PERSONS DISCHARGING MANAGERIAL RESPONSIBILITIES (PDMRs)

The PDMR reporting threshold will increase to transactions totalling €20,000 in a calendar year. Competent authorities will be allowed to increase the new threshold to €50,000 or reduce it to €10,000.

The existing exemption for trading in respect of employee shares or saving schemes will be extended to employee schemes concerning financial instruments other than shares. The **restriction on PDMRs trading during closed periods will also be limited to "*active investment decisions*" undertaken by the PDMR** or "*transactions or trade activities…that result exclusively from external factors or actions of third parties, or that are transactions or trade activities, including the exercise of derivatives, based on predetermined terms*".

INSIDE INFORMATION

The fourth limb ((d)) of the definition of inside information in Article 7(1) of MAR (which applies to persons charged with the execution of orders concerning financial instruments) will be widened given that, in practice, a broader range of persons could be aware of an upcoming order or transaction.

PROTRACTED PROCESSES

New provisions will be included in MAR dealing with when the obligation to disclose inside information arises in respect of a protracted transaction. While more relevant to M&A-type transactions / mergers, this should still be borne in mind.

Where there is a protracted process, MAR is being amended to confirm that the disclosure requirement shouldn't cover announcements of mere intentions, ongoing negotiations or their progress. Disclosure is only needed in respect of the circumstances / event that the protracted process intends to bring about once that circumstance / event occurs. There will be a Commission Delegated Act setting out a non-exhaustive list of final circumstances / events which would trigger the disclosure obligation and the moment when that trigger is deemed to have occurred.

When inside information regarding intermediate steps in a protracted process hasn't been disclosed, but the confidentiality of that information is no longer ensured, the issuer will have disclose it as soon as possible.

DELAYED DISCLOSURE OF INSIDE INFORMATION

The provisions relating to delayed disclosure of inside information won't apply to non-disclosure of intermediate steps in a protracted process.

The three conditions under which the disclosure of inside information can be delayed (immediate disclosure likely to prejudice the issuer's legitimate interests; delayed disclosure unlikely to mislead the public; issuer is able to ensure the confidentiality of that information) are being amended. The first and third conditions will remain the same, but **the second condition (delayed disclosure unlikely to mislead the public) will be replaced by a condition that the inside information is not in contrast with the latest public announcement / other type of communication by the issuer about the matter to which the inside information relates**. The Commission will adopt a delegated act with a non-exhaustive list of situations relevant to the new second condition. This change will apply 18 months after the Listing Regulation is published in the Official Journal.

MARKET SOUNDINGS

The definition of 'market sounding' will be amended to include communications of information not followed by any specific announcement of a transaction, as inside information might be disclosed to potential investors in respect of a transaction that doesn't go

ahead / isn't announced (and issuers should still be able to benefit from the protections of the market soundings framework in that case).

The Listing Regulation clarifies that the market soundings framework is optional for disclosing market participants (**DMPs**). A DMP who follows the framework will benefit from the safe harbour against the disclosure of inside information, but a DMP that doesn't opt to follow the framework won't be presumed to have unlawfully disclosed inside information.

Irrespective of whether a DMP opts to follow the framework, it will still have to specifically consider whether the market sounding involves the disclosure of inside information, record its conclusion and the reasons for it in writing, and inform the recipient if the disclosed information ceases to be inside information (but won't have to take the latter step if the information has already been publicly announced).