

# MFSA

## MALTA FINANCIAL SERVICES AUTHORITY

Securities & Markets  
Supervision Unit

31<sup>st</sup> December, 2014

To: The Company Secretary

Unit Tel: (+356) 21441155

Unit Fax: (+356) 21449308

Dear Sir/Madam,

**Re: Market Abuse Regulation and Market Abuse Directive II**

***Market Abuse on buy-back programmes and stabilisation measures, market soundings, technical means for public disclosure of inside information and delays, insider list, managers' transactions: format and template for notification and disclosure and investment recommendations***

As you may appreciate, market malpractice has the capacity of damaging the integrity and reputation of the Maltese financial market. In this respect, the Market Abuse Regulation (hereinafter referred to as 'MAR') and the new Market Abuse Directive (henceforth referred to as 'MAD II'), both of which will enter into force on the 3<sup>rd</sup> July, 2016, have the purpose of *inter alia* safeguarding the integrity of the Maltese and European Community financial markets and to enhance investor confidence in such markets. The Malta Financial Services Authority ('MFSA') is vested with the function of ensuring compliance with the MAR and MAD II regime. The Prevention of Financial Markets Abuse Act ('PFMA'), Chapter 386 of the Laws of Malta, is expected to remain in force to reflect the transposition of the new MAD II and the implementation of certain MAR provisions into the Maltese laws.

Listed companies have an important role in safeguarding the integrity of the Maltese market and in assisting the MFSA in enforcing the MAR and MAD II regimes. This letter seeks to draw the listed companies' attention to certain new requirements introduced under this regime.

**MAR** has brought about the following changes:

- i. It has laid down a list of when the exemption of the buy-back programmes and stabilisation measures can arise;
- ii. It has introduced regulations on the practice of market soundings;
- iii. With respect to the technical means for public disclosure of inside information and delays, new requirements were introduced while also expanding the requirements already found under MAD 2003. The changes are the following:



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- a. It has expanded the scope to issuers of financial instruments traded only on a Multilateral Trading Facility (MTF) or an Organised Trading Facility (OTF), provided that these issuers have requested admission to trading on a MTF or have approved trading on a MTF or an OTF;
  - b. It has expanded the scope to the emission allowances market participants (EAMP), unless they are exempted on the basis of thresholds to be determined in an EU Commission delegated act;
  - c. It has introduced the manner in which the issuer should disclose inside information and of the requirement to post for 5 years that information on its website;
  - d. It has introduced the possibility for Small and Medium Sized Enterprises (SME) growth markets issuers to post inside information on the trading venue website instead of their own website;
  - e. It has introduced an additional possibility of delaying public disclosure, under certain conditions, in order to preserve the stability of the financial system;
- iv. It provides for the creation, maintenance and update of insider lists by issuers or any person acting on their behalf or on their account, where it shall now precisely include, together with the details that are already included, the date and time at which that person obtained access to inside information and the date of any update;
  - v. It has widened the scope of the financial instruments covered by the managers' transactions;
  - vi. It has widened the applicability of investment recommendations and statistics.

The European Securities and Markets Authority ('ESMA') was requested to draft technical standards and technical advice. On the 11<sup>th</sup> July, 2014, ESMA published a Consultation Paper on Draft Technical Standards on the Market Abuse Regulation, and another Consultation Paper on Draft Technical Advice on Possible Delegated Acts concerning the Market Abuse Regulation. These two papers deal with the changes referred to above. Company secretaries shall refer to the MFSA circular dated 4<sup>th</sup> December, 2014.<sup>1</sup> They are moreover under an obligation to consult the PFMA Guidance Notes last updated on the 3<sup>rd</sup> July, 2012 to familiarise oneself with the applicable requirements under the existing regime.<sup>2</sup>

### *i. Buy-Back Programmes and Stabilisation Measures*

Insider dealing and market manipulation do not apply for buy-back programmes and stabilisation measures. The exemption, in the case of buy-back programmes, is triggered when

*“(a) the full details of the programme are disclosed prior to the start of trading;*

<sup>1</sup> This circular can be accessed through the following link - <http://www.mfsa.com.mt/pages/announcements.aspx?id=20>

<sup>2</sup> The PFMA Guidance Notes can be accessed through the following link - <http://www.mfsa.com.mt/pages/viewcontent.aspx?id=284>



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*(b) trades are reported as being part of the buy-back programme to the competent authority of the trading venue in accordance with paragraph 3 and subsequently disclosed to the public;*

*(c) adequate limits with regard to price and volume are complied with; and*

*(d) it is carried out in accordance with the objectives referred to in paragraph 2 and the conditions set out in this Article and in the regulatory technical standards referred to in paragraph 6.”*

Article 5 (2) of MAR lists the purposes that have to be met to be able to benefit from such exemption.

In the case of stabilisation measures, the exemption is triggered when

*“(a) stabilisation is carried out for a limited period;*

*(b) relevant information about the stabilisation is disclosed and notified to the competent authority of the trading venue in accordance with paragraph 5;*

*(c) adequate limits with regard to price are complied with; and*

*(d) such trading complies with the conditions for stabilisation laid down in the regulatory technical standards referred to in paragraph 6.”*

ESMA is required to draw up draft regulatory technical standards, which will be submitted to the European Commission by the 3<sup>rd</sup> July, 2015, to specify the conditions that buy-back programmes and stabilisation measures must meet, including conditions for trading, restrictions regarding time and volume, disclosure and reporting obligations, and price conditions.

### **ii. Market Soundings**

In terms of Article 11 (1), MAR explains that ‘*A market sounding comprises the communication of information, prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more potential investors by:*

*(a) an issuer;*

*(b) a secondary offeror of a financial instrument, in such quantity or value that the transaction is distinct from ordinary trading and involves a selling method based on the prior assessment of potential interest from potential investors*

*(c) an emission allowance market participant; or*

*(d) a third party acting on behalf or on the account of a person referred to in point (a), (b) or (c).’*

Persons carrying out market sounding, referred to as disclosing market participants, are under an obligation, before making the disclosure, to:

*“(a) obtain the consent of the person receiving the market sounding to receive inside information;*

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*(b) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;*

*(c) inform the person receiving the market sounding that he is prohibited from using that information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and*

*(d) inform the person receiving the market sounding that by agreeing to receive the information he is obliged to keep the information confidential.”*

The disclosing market participant must maintain a record of any piece of information that is delivered and must also make a written statement, prior to conducting a market sounding, assessing whether inside information will be divulged. This statement must be provided to the Malta Financial Services Authority upon request.

ESMA will draw up draft regulatory technical standards and submit them to the European Commission by the 3<sup>rd</sup> July, 2015, to determine appropriate arrangements, procedures and record keeping requirements.

### **iii. Technical means for public disclosure of inside information and delays**

In terms of Article 17 of MAR, the issuer is under an obligation to ensure that inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and shall post and maintain on its website for a period of at least five years all inside information it is required to disclose publicly. However, the said article also provides for circumstances when delay of inside information can take place.

ESMA will provide for technical standards to determine:

- i. The technical means for appropriate public disclosure of inside information; and
- ii. The technical means for delaying the public disclosure of inside information

These technical standards will be submitted to the European Commission by the 3<sup>rd</sup> July, 2015.

### **iv. Insider list**

In terms of Article 18 (1) of MAR, “issuers or any person acting on their behalf or on their account, shall:

*(a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they*

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*have access to inside information, such as advisers, accountants or credit rating agencies (insider list);*

*(b) promptly update the insider list in accordance with paragraph 4; and*

*(c) provide the insider list to the competent authority as soon as possible upon its request.”*

The same article provides for a checklist that has to be abided by. Any subject person must update the list promptly, including the date of the update of when a change takes place. ESMA will determine the precise format of insider lists and the format for updating insider lists. These draft technical standards will be submitted to the European Commission by the 3<sup>rd</sup> July, 2015.

An exemption to this article arises with respect to SME growth market. Issuers whose financial instruments are admitted to trading on an SME growth market are exempt from drawing up an insider list, whenever the following conditions are met:

*“(a) the issuer takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information; and*

*(b) the issuer is able to provide the competent authority, upon request, with an insider list.”*

This exemption was introduced to reduce the administrative burden on SMEs. However, SMEs will still need to produce the insider list, upon request, to the MFSA.

### **v. *Managers’ transactions: format and template for notification and disclosure***

In terms of article 3 (25) of MAR, a person discharging managerial responsibilities means “*a person within an issuer, an emission allowance market participant or another entity referred to in Article 19(10), who is:*

*(a) a member of the administrative, management or supervisory body of that entity; or*

*(b) a senior executive who is not a member of the bodies referred to in point (a), who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity.”*

Subject persons must notify the MFSA of every transaction conducted on their own account, as provided for by Article 19 of MAR. ESMA will draw up draft technical standards, which will be submitted to the European Commission by the 3<sup>rd</sup> July, 2015, concerning the format and template in which the formation is to be notified and made public.

### **vi. *Investment recommendations and statistics***

Company Secretaries have the responsibility to ensure that an objective recommendation or statistics is presented, as provided for under Articles 20 and 21 of MAR. These are understood to include research and technical analysis as well as newspaper articles and radio, TV or Internet interviews.

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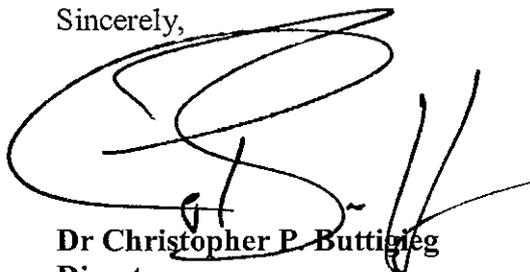
In this respect, ESMA is required to draw up draft regulatory standards, which will be submitted to the European Commission by the 3<sup>rd</sup> July, 2015, to determine the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interests.

*vii. Compliance with MAR and MAD II*

Subject persons are encouraged to familiarise themselves thoroughly with MAR and MAD II. All market operators shall contribute to the prevention of market abuse. In this regard, MFSA expects company secretaries to have proper written procedures covering the above-mentioned obligations.

Please do not hesitate to contact the undersigned, Mr Edward Grech (egrech@mfsa.com.mt) or Dr Ilona Schembri (ischembri@mfsa.com.mt) should you have any queries with respect to the above.

Sincerely,

A handwritten signature in black ink, appearing to be 'C. Buttigieg', written over a faint, circular stamp or watermark.

**Dr Christopher P. Buttigieg**  
**Director**