

Central Bank of Ireland Review Identifies Market Abuse Deficiencies

Under the Market Abuse Regulation (EU) 596/2014 ("MAR"), firms are subject to obligations to identify, mitigate and manage market abuse risk.

The Central Bank of Ireland (the "CBI") recently conducted a thematic review to assess the effectiveness of firms' market abuse compliance frameworks.

In July 2021, the CBI issued a Dear CEO Letter¹ (the "Letter") setting out its findings and expectations arising from the review.

Wide Range of Firms in Scope

The market abuse obligations in Article 16(2) of MAR ("Article 16 requirements") apply to "persons professionally arranging or executing transactions" which is defined as "a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, financial instruments²".

The European Securities and Markets Authority ("ESMA") recently clarified in its MAR Q&A³ that the scope of the Article 16 requirements is activity-based and not only limited to firms providing investment services under MiFID. ESMA notes that the obligations may apply more broadly to buy side firms such as alternative investment fund managers, UCITS management companies and firms professionally engaged in trading on own account, i.e. proprietary traders.

¹ <https://www.centralbank.ie/docs/default-source/regulation/industry-market-sectors/securities-markets/wholesale-markets/dear-ceo-letter-mar-requirements-to-trade-surveillance-and-reporting-of-suspected-market-abuse.pdf>

What are the main obligations?

Surveillance and Monitoring Systems

Firms are required to establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions in financial instruments.

Reporting

Any actual or attempted insider dealing or market manipulation identified must be reported to the CBI by way of a Suspicious Transaction and Order Report ("STOR") using its online reporting system.

CBI Findings

The CBI's review identified some firm practices that operated risk assessment processes tailored specifically to their particular exposure to market abuse risk.

The review also identified deficiencies in firms' risk assessments, trade surveillance systems and MAR compliance frameworks.

Improve Frameworks to Identify and Mitigate Market Abuse Risk

The CBI expects firms to have documented processes in place to identify all market abuse risks specific to their business model. The process should include an annual review in

² As listed under Annex I of the Markets in Financial Instruments Directive (recast) (Directive 2014/65/EU) ("MiFID").

³ https://www.esma.europa.eu/sites/default/files/library/esma70-145-111_qa_on_mar.pdf

UPDATE

addition to a review of market abuse risk in the case of any business model changes or business expansions.

Training

Firms should improve staff awareness in the detection and assessment of market abuse risk by providing comprehensive tailored training to all staff, including front office and compliance staff.

Improve Efficacy and Integrity of Trade Surveillance Systems

Trade surveillance systems should be aligned to the firm's specific business model and activities. Firms are expected to have quality assurance processes to maintain the ongoing compliance and efficacy of these systems.

Enhance Governance Arrangements for Trade Surveillance

Governance policies should be sufficiently detailed to ensure frontline staff understand the arrangements.

Assess and Enhance Resourcing Arrangements and Avoid Key Person Risk

The CBI stressed the importance of having sufficient dedicated resourcing to support the daily management and supervision of market abuse surveillance, relative to the firm's nature and scale.

Improve the Quality, Frequency and Distribution of Management Information

Management information must be specific to the firm's market abuse risk, and be accurate, timely and relevant. Boards and senior management are required to use this information when managing market abuse risk.

Examine the Volume of Submitted STORs against the Volume of Orders and Transactions

The CBI expects firms to review compliance with the Article 16 requirements to ensure that the volume of STORs submitted is appropriate to the nature, scale and complexity of the firm's business.

Next Steps

All firms that professionally arrange or execute relevant transactions must assess their activities, frameworks, organisational arrangements and controls against the findings in the Letter and execute a time-specific plan to remediate any deficiencies identified.

The CBI expects that any remediation plans should be discussed and approved by the board of directors of the relevant firm before 31 December 2021.

Further Information

Further information on our Irish Financial Services Regulatory Group, and the services we provide is available on our website⁴ and in our brochure⁵.

If you would like to discuss whether your firm may be in scope of these requirements or require assistance with a review of your firm's surveillance and reporting frameworks for market abuse or require any further information, please liaise with your usual Maples Group contact or:

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⁴ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

⁵ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>

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