

MAR soundings, stabilisation and STORs

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ICMA / MAR background

International Capital Market Association

- “Representing a broad range of capital market interests including banks, asset managers, exchanges, central banks, law firms and other professional advisers, ICMA’s market conventions and standards have been the pillars of the international debt market for almost 50 years.”
- Primary bond issuance - lead managers (but also ECP, secondary bond trading, repo, issuers and investors)
- ICMA Primary Market Practices Committee (Eurobond benchmark), ICMA Asian Bond Syndicate Forum, Nordic syndicate heads, Swiss syndicate heads and related legal/documentation and compliance groups (inc. law firms)
- **Not a law firm!**

Market Abuse Regulation

- In application from 3 July; replaces MAD (indirect Directive → direct Regulation); Level 1 text and Level 2 ‘technical standards’ as implementing/delegated Regulations
- Scope extension from ‘regulated markets’ to ‘multilateral trading facilities’ (MTFs) and in due course ‘organised trading facilities’ (OTFs)
- ICMA focus only on aspects specific to new bond issuance: soundings, stabilisation (and STORs) – these slides focusing on the more salient aspects only

- Suspicious transaction reports ('STRs') → **Suspicious transaction and order reports** ('STORs')
- *"Where [any person professionally arranging or executing transactions] has reasonable suspicion that an order [...] could constitute [...] market manipulation or [...] attempted [...], the person shall **notify the competent authority** [...]"*
- **Prohibited manipulation** under MAR includes *"placing an order [...] which [...] gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument"*
- No obvious exemption for primary market activity
- Consider whether inflation *"is likely to give[...] false or misleading signals as to the [...]demand for [...] a financial instrument"*?
- **Potential screen legend:** *"The EU's Market Abuse Regulation requires regulator reporting where there is reasonable suspicion that an order could be an order that gives, or is likely to give, false or misleading signals as to the demand for a financial instrument, or attempts to do so."*

Soundings (inside information)

- **New procedures** deem soundings of inside information to be *“in the normal exercise of an employment, a profession or duties”* and so not *“unlawful disclosure of inside information”* (safe harbour)
- Wallcrossed procedures **broadly/conceptually consistent** with current good practices
- But much more **procedurally onerous**, inc. prescribed information exchange (investor consent / warnings / ‘cleansing’ estimate) and detailed record keeping (information status rationale, communication content – written ‘minutes’ if not recorded lines)
- Also **‘cleansing’** – obligation to notify soundee when sounded information *“ceases to be inside [...] according to the [sounder’s] assessment”* (soundee cannot rely). Timing trigger: need to release sales, soundee request, issuer notice (and issuer input of factual information)... Beware further wallcrossing risk!
- Soundings **after deal announcement** to rely on generic *“normal exercise of an employment, a profession or duties”* (but follow process anyway?)

Expectation that wallcrossed soundings will continue to be muted (IPT impact) / involve ‘private side’ investors? But shift from bull to bear market?

Soundings (No inside information)

- New **non-wallcrossed procedures** (though seemingly odd in prohibition-driven regime and not envisaged at Level 1).
- ‘Sounding’ **defined** as *“communication of information, **prior to the announcement of a transaction**, in order **to gauge [investor] interest** [...] in a possible transaction and the conditions relating to it such as its potential size or pricing, to one or more investors **by an issuer [...] or a third party acting on [its] behalf**”*
 - independent ‘fishing’ (without inside/client-confidential info)
 - ‘hitting’ levels
 - You know an announcement when you see one?Investor meetings? MTN / SSA levels? Private placements?
- **Procedures** look onerous, but are they really?
- Again **IPT impact** etc?

Sounding procedures

1. **Reasoned record** of whether sounded information is inside or not

2. **'Standard set of information'**

- a) Sounding purpose
- b) Soundee consent to audio/video recording (or 'minutes' for counter-signing within 5 days?)
- c) Soundee confirmation it is correct person to receive sounding
- d) Sounded information considered **[not] inside** by sounder
- e) Each person responsible for own assessment (MAR)
- f) **if possible, estimation when cease to be inside, factors that may alter this and how soundee informed of any such change**
- g) Soundee consent to **[non] inside** sounding
- h) The sounded information, **flagging inside element**

3. Soundee notifies sounder of **internal soundees** (Recital only)

Generally **policies**, 5 year **records**, list of investors **refusing soundings** generally

Stabilisation

- **Basically same** regime as current MAD but again **more procedurally onerous**
- Additional **‘mid-stab’ announcement** (by stabilisation coordinator) of stabilisation trade ‘details’ within 7 days (expected: security ID, date/time, volume, price and perhaps venue – but NOT counterparty IDs). Might be aggregated with ‘post-stab’ announcement if timing works (and ICMA PMH work including new template)
- Query **all-venue NCA reporting**, given scope extension to 149 MTFs or **more targeted approach** based on relevant venues? Also number of data fields to increase in line with MiFID (and then MiFID2)
- **Potential extra-territoriality** impacting Asia/US if indeed some MTFs proactively / systematically onboard public new issues globally, notably to facilitate (grey) trading. (Issuer MAR obligations generally benefit from express no-consent exemption)
- **ICMA Primary Market Handbook** stabilisation materials being updated / circulated in draft (though official publication by 3 July TBC) - including new ‘mid-stab’ announcement



Thank you

Any (further) questions?

