A New Beginning For Capital Markets: What Will Be the Impact of the European Market Abuse Regulation (MAR)?

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Eventually, last 3 July 2016 the new Regulation governing abuse of the market (Regulation (EU) No. 596/2014 of the European Parliament and of the Council of 16 April on market abuse) (hereinafter, "**MAR**" or the "**Regulation**") started its development.

More than two years have passed since its publication in the Official Journal of the European Union (OJEU), but the time has now come for the more pertinent standards considered under the Regulation to be applied in all European member states.

The Regulation's main aim is the establishment of a regulatory framework at a European level which governs transactions involving privileged information, the illegal communication thereof and manipulation of the market. This will be implemented via measures intended to prevent the market abuse and thus ensure the integrity of the financial markets at a European level in order to strengthen protection of investors and bolster their confidence.

The road map established by the Regulation provided a certain amount of time for the member states to proceed with adapting their own stock market regulations, and in this way make them compatible with the new requirements to be incorporated. Thus, in the Preamble to Royal Decree 4/2015 of 23 October, which approves the revised text of the Spanish Securities Market Law (hereinafter, "**SML**"), it had already been emphasized that the revised text was temporary subject to adapting it to new European regulations, including the Regulation in question.

Accordingly, the Regulation has been directly applicable to all member states since 3 July and, consequently, the rules regarding the market are identical for all of them. Furthermore, the Regulation contradicts certain aspects of current Spanish regulations in addition to regulating others aspects not explicitly covered by regulation. This state of affairs is highly relevant to all those involved in the market who, in some way or another, are affected by the regulations governing the use of privileged information or manipulation of the market. All listed companies in Spain (both those listed on official secondary markets or those listed on multilateral negotiation systems such as the Spanish Alternative Stock Market (MAB) and the Spanish Alternative Fixed Income Market (MARF)), their advisors and directors, their shareholders and potential investors from this moment onwards must be up to date with the new developments introduced by the Regulation and the other policies that are being developed.

The Regulation provides several relevant features, which the main ones are outlined below:

With regard to the scope of the Regulation, it is extended to include other securities that are traded using multilateral trading facilities (MTF), organised trading facilities (OTF), as well as certain over-the-counter activities including derivatives and credit default swaps. Notwithstanding the above, the SML has already regulated in its Article 322.3 the inclusion of MTF regarding market abuse.

In addition, Article 7 of the Regulation sets out the new definition of insider information. In this sense, insider information operations will be those carried out by a person who is in possession of this information and who uses it not only to acquire or dispose of financial instruments referred to in said information, but also to cancel or amend an order issued before said person had knowledge of the insider information. Furthermore, it will be an offence if anyone uses such recommendations or inducements to engage in insider dealing when they use or disclose the recommendation or inducement knowing, or having the obligation of knowing, that it is based on insider information. In relation to the above, the new definition of insider information will directly affect the Internal Codes of Conduct (ICC) of the listed Spanish companies who will be forced to amend them and introduce new requirements for their directors, executives and employees.

In this respect, various situations are also laid out relating to the illegal disclosure of insider information in the event that a person who has access to insider information discloses it to a third party and this announcement is within a market context, unless the announcement is made in a professional circumstances or in the exercise of their duties. Nevertheless, there are other scenarios set out in the Regulation that are considered legitimate, for example, the use of insider information obtained during a public takeover or merger. Accordingly, the Spanish regulator (Spanish Securities Market Commission (CNMV)) has already implemented mechanisms and measures that permit the reporting of any actual or potential breaches in order to prevent the disclosure of insider information, as well as, other mechanisms of disclosure of inside information by the issuers.

Furthermore, another aspect to point out is the establishment of a notification procedure for any transactions carried out by persons with management responsibilities and other employees closely associated to them. First of all, the process begins with any of the abovementioned persons having to notify both the issuer and the CNMV of any transactions carried out by themselves regarding shares or any financial instrument related to shares that exceeds certain thresholds, no later than 3 working days after the completion of the transaction (the previous regulation stipulated 5 working days). Therefore, any person who has management responsibilities in an issuer may not proceed with any transaction for a period of 30 calendar days before the announcement of an interim financial report or a year-end report, unless otherwise provided.

In conclusion, the Regulation will have a huge effect upon the SML as well as upon other Spanish regulations; CNMV has already begun to introduce new measures through its statements (*comunicados*) as to how to comply with its obligations until a new Spanish Government has been elected, and the Regulation will not be fully implemented until this occurs.