
Implementation of the Market Abuse Regulation

Presented by

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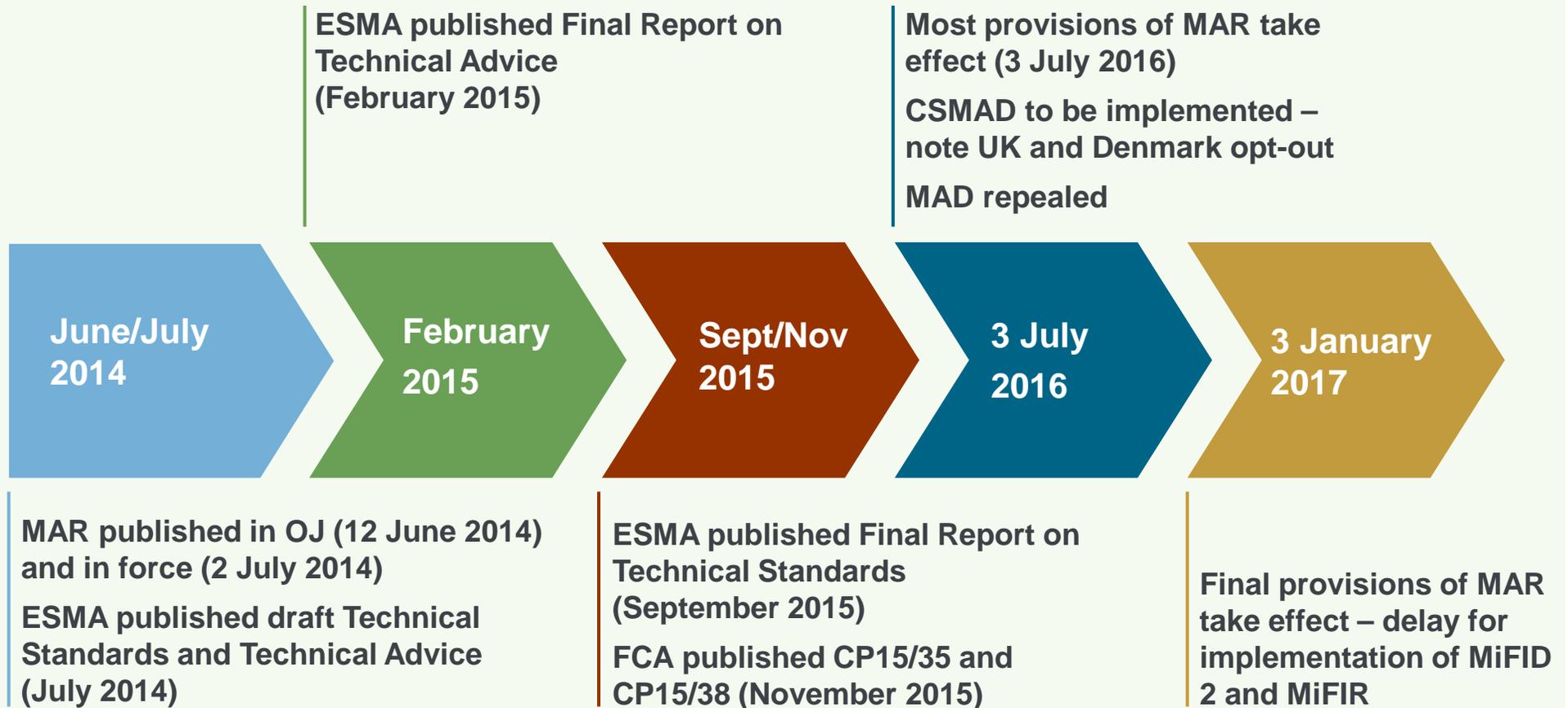


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MAR: structure of rules and implementation timeline



MAR: extending the MAD regime

Wider range of trading venues and securities

Will apply to financial instruments traded on MTFs and OTFs

Benchmarks brought within scope

Emission allowances

Changes to the definition of inside information

MAR Article 7

Now brought broadly in line with UK and EU case law (*Daimler, Hannam*)

“Reasonable investor test” now forms part of definition

Market abusive behaviours have been revised

Insider dealing (MAR Article 8), unlawful disclosure, market manipulation

Code of Market Conduct (COMC) → simplified and renamed MAR 1

Addition of safe harbours / legitimate behaviours

Changes to LPDT Rules for listed companies: disclosing inside information

Delaying disclosure of inside information (MAR Article 17)

- Issuers still required to disclose inside information as soon as possible and may still delay where in legitimate interests:
 - ESMA will provide indicative list of examples of legitimate interests, etc.
 - for financial institutions, option to delay for public interest reasons not available under MAD
- Where disclosure is delayed, on announcement must notify regulator of explanation for delay:
 - FCA will only require explanation for delay to be provided to it upon request
 - ESMA has prescribed information to be notified, but not prescribed form
- ESMA will not provide guidance on when a rumour triggers an announcement obligation

Maintaining insider lists (MAR Article 18)

- Issuers still required to maintain insider lists (for five years)
- Broader scope of issuers caught
- MAR clarifies that where third parties maintain insider lists, issuers retain primary responsibility
- ESMA has prescribed a standard form insider list:
 - reduced requirements from initial consultation draft, retained separate sections for event driven and permanent insiders
 - more personal information required compared with current UK requirements
 - no flexibility to deviate from prescribed form

Changes to LPDT Rules for listed companies: dealings by PDMRs

PDMRs and connected persons still required to report transactions

Broader scope of issuers caught

Introduction of *de minimis* thresholds for reporting – €5,000 per calendar year

Other Member States could raise threshold to €20,000

Form and timing of notification

Can combine notifications in one

Time limit reduced to three business days (now four business days under DTR 3.1.2)

Notification to regulator will be publicly disclosed

Trading in close periods

New requirement that no trading in close periods – 30 days prior to announcement of half year and full year results

Model Code → deleted from Listing Rules (Annex 1 of LR 9) and replaced with guidance on procedures for clearance of dealings

Changes to LPDT Rules for listed companies: action list

1

Disclosure policies

- Develop and update disclosure policies to keep detailed records in relation to the announcement of inside information
- Ensure that there is legal help available to determine difficult questions on whether information is inside information and the justifications for delay

2

Insider lists

- Amend insider lists so that format will match ESMA requirements
- Consider process for acknowledgement of responsibilities by insiders

3

Share dealing code

- Amend share dealing codes to reflect the changes brought in by MAR – the time period for announcements, template notifications and the new de minimis threshold
- Consider adopting a MAR-compliant share dealing code if currently apply the Model Code

4

Internal systems

- Amend existing IT systems to cope with the volume of record-keeping required under MAR – ensure that systems are set up to provide the necessary reporting to national regulators
- Review Listing Compliance Manual

Ensure training for PDMRs and other relevant staff (not just the board) at issuers and for advisers on their obligations under the MAR regime

Market soundings and wallcrossing: new regime

- New regime in MAR Article 11 – provides a safe harbor from unlawful disclosure of inside information
- Requirements apply irrespective of whether or not inside information is being disclosed AND capture block trades
- Concepts of DMPs and MSRs – third party DMPs must be acting on behalf or on the account of an issuer or secondary offeror
- ESMA prescribed various documents for DMPs and will prepare guidelines for MSRs – MSRs must still consider whether they have, in fact, acquired inside information

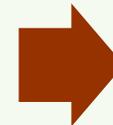
Before conducting a market sounding, DMP must:

- assess whether inside information is being disclosed
- record conclusion and reasoning in writing on an ongoing basis



When conducting a market sounding, DMP must:

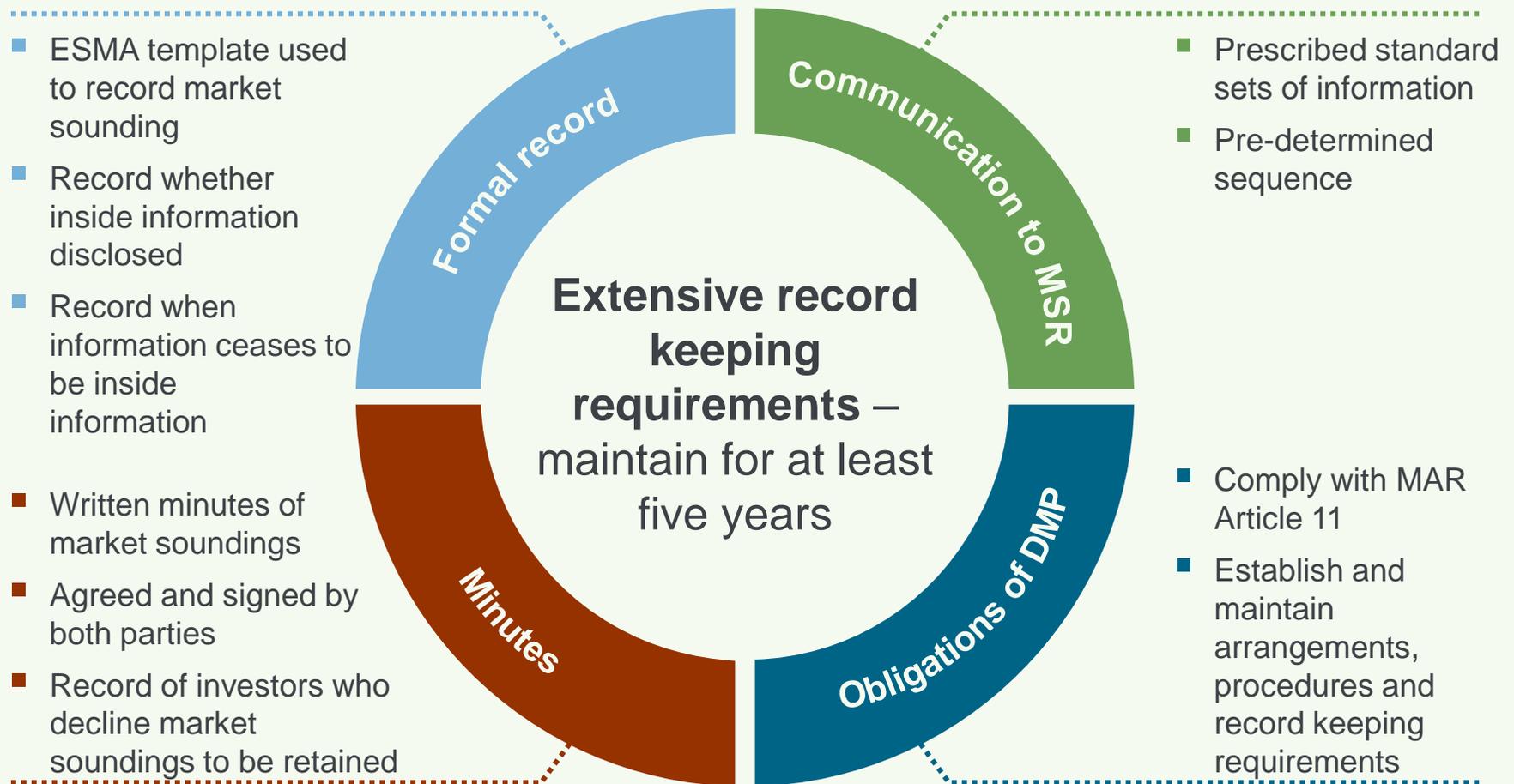
- obtain consent of MSR to receiving information
- inform MSR of prohibitions that apply
- notify MSR of obligation of confidentiality



If inside information is disclosed, DMP must:

- inform MSR as soon as possible when information ceases to be inside information
- make the assessment (onus on the DMP)

Market soundings and wallcrossing: record keeping obligations



Compliance issues for investment banks

STOR reports (MAR Article 16)

- Regime extended – investment firms / market operators now obliged to report:
 - suspicious orders, whether or not they have been executed
 - suspicious transactions that might constitute market abuse or attempted market abuse
- Reports to be submitted “without delay” as per the current system
- Banks must have systems to analyse every transaction and order, both individually and comparatively
- ESMA provided a template for STORs
- Must be retained for 5 years

Investment recommendations (MAR Article 20)

- More prescriptive disclosure/conflicts regime around investment recommendations
- Wider range of communications captured in the new definition in MAR Article 3
- Does it capture sales teams/market colour recommendations?
- Thresholds for conflicts of interests disclosures have been lowered

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