Title: Financial Services and Markets Act 2000 (market abuse) Regulations 2016	Post Implementation Review
PIR No: N/A	**Date: 28/11/2022**
Original IA/RPC No: RPC-HMT-3361(1)	**Type of regulation: Domestic**
Lead department or agency: HM Treasury	**Type of review: Statutory**
Other departments or agencies: **Financial Conduct Authority**	**Date measure came into force:** **03/07/2016**
	Recommendation: Keep
Contact for enquiries: **Sebastian.astin-chamberlain.@hmtreasury.gov.uk**	**RPC Opinion: N/A**

1. What were the policy objectives of the measure? (Maximum 5 lines)

The EU Market Abuse Regulation (EU MAR) established a new civil market abuse regime, replacing the EU Market Abuse Directive, with the aim of increasing market integrity and investor protection, and enhancing the attractiveness of securities markets for capital raising.[1] EU MAR broadened the scope of instruments covered by the market abuse framework, strengthening the regime for commodity and related derivative markets.

The Market Abuse Regulation prohibits insider dealing, unlawful disclosure of inside information and market manipulation, and empowers the Financial Conduct Authority (FCA) to prevent and detect market abuse.

The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016 (the Regulations) made amendments to the Financial Services and Markets Act 2000 (FSMA), in order to implement EU MAR in the UK. In particular, the Regulations made the following changes which had an impact on business:

- providing the FCA with a broader set of powers to request information from issuers and to require the publication of information by issuers of financial instruments (for example, requiring a company that has listed on a regulated market and issued shares for trading to publish certain information which could influence the share price);
- repealing the FCA's powers to set the reporting requirements for Persons of Direct Managerial Responsibility (PDMRs), to be replaced by MAR - the main practical impact of which was the introduction of a €5,000 reporting threshold below which PDMRs are not required to report transactions, with an option for the FCA to increase the threshold to $20,000. PDMRs are senior managers within firms, who are likely to have access to inside information, and who are more likely to be in a position to benefit from trading in the company's shares before that information is made public (insider dealing).

Now that the UK has left the EU, the EU MAR as amended and forming part of retained EU law applies in the UK and is referred to as the Market Abuse Regulation (MAR). This PIR assesses whether the changes made by the Regulations met the following objectives:

1. Where the Regulation provided the FCA with a powers to request information from issuers and to require the publication of information by issuers, whether the reporting burden on issuers is proportionate, consistent with the original impact assessment.
2. Where MAR amended the PDMR reporting threshold, whether the €5,000 threshold provides an appropriate balance between reducing the risk of insider dealing and providing transparency to the market, and reducing the burdens on reporting persons.

[1] EU Market Abuse Regulation (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0596)

2. What evidence has informed the PIR? (Maximum 5 lines)

The FCA has provided the following data and analysis (set out in the Annex) which has informed this PIR:

- the number of requests which the FCA have made to issuers in relation to providing information, requiring the publication of information;
- the number and value of PDMR transactions reported to the FCA.

3. To what extent have the policy objectives been achieved? (Maximum 5 lines)

The government judged that the policy objectives have been achieved. The powers provided to the FCA to request information or to require the publication of information by issuers (described in more detail in section 4) have been effective in enabling the FCA to monitor the risk of insider dealing and providing transparency to investors. The volume of requests made is line with estimates in the original impact assessment, which the government considers to be proportionate.

PDMR transaction reporting is an important secondary supervision and enforcement tool, providing the FCA with important data to support investigations into potential market abuse, as well as providing transparency to the market. A reporting threshold of €5,000 therefore remains appropriate, striking a balance between providing transparency to the market, reducing the risk of insider dealing and reducing the burden on reporting persons.

Sign-off for Post Implementation Review: Economic Secretary to the Treasury

I have read the PIR, and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***Andrew Griffith*** Date: 28/11/2022

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions? (Maximum 5 lines)

The 2015 Impact Assessment (IA) estimated a total cost of £45,000 per year to industry. It made the following assumptions:

1. The FCA already had **powers to require information from issuers**. These powers are used to gather information from issuers for the purposes of investigating potential infringements of MAR. The IA estimated that the expansion to a wider group of persons would result in an additional 30 requests each year (from a baseline of around 36 requests per year), at a cost to business of £500 per request, totalling £15,000 per year.

2. The IA estimated that the new FCA powers to request **explanations of delays** in **disclosing inside information** would result in 15 responses each year, at a cost of £1,000 per notification in relation to work-hours and legal advisory fees, totalling £15,000 per year. As set out in the IA, this was deemed to be a more proportionate approach than requiring issuers to provide a written explanation to the FCA on every occasion where the disclosure of inside information was delayed.

3. The FCA already had **powers to require the publication of information and corrective statements by issuers**, where the FCA deems that the issuer should have disclosed information to the market. The IA estimated that the expansion of this power to cover a wider group of persons would result in the publication of:
    - an additional 10 statements each year (from a baseline of 10 statements), at a cost of £750 each, totalling £7,500 per year.
    - a maximum of 5 corrective statements each year (from a baseline of 2), at a cost of £1,500 each, resulting in a maximum total cost of £7,500, but acknowledged that it is rare for the FCA to require the publication of corrective statements so this figure could in practice be lower.

4. The existing market abuse framework required **PDMRs to report on transactions** of any value. The IA therefore assumed that the introduction of a €5,000 threshold would not result in an increased burden on industry, as firms would already have the necessary systems and controls. The IA set out that an FCA consultation on whether to opt for a €5,000 or €20,000 threshold found no evidence to justify a higher threshold, with many respondents of the view that a €5,000 threshold would provide value to the market.

5. Were there any unintended consequences? (Maximum 5 lines)

This PIR has not identified any unintended consequences as a result of the Regulations.

6. Has the evidence identified any opportunities for reducing the burden on business? (Maximum 5 lines)

The Post Implementation Review has not identified any opportunity to reduce the burden on businesses.

7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements? (Maximum 5 lines)

The 2020 review of EU MAR published by the European Securities and Markets Authority (ESMA) considered the reporting threshold for PDMR transactions.[2] Five EU countries have opted to implement the higher €20,000 threshold – Denmark, France, Italy, Spain and Germany. ESMA noted that most respondents considered the €5,000 threshold to be too low and that a €20,000 threshold would be more meaningful, however most national regulators considered that a €20,000 threshold was too high and would not provide a fair picture of PDMRs' transactions in issuers financial instruments. ESMA concluded that the current thresholds are appropriate and strike' the right balance between a high-level market transparency and a proportionate compliance burden'.

Recommended Next Steps (Keep, Amend, Repeal or Replace)

This PIR has concluded that the Regulations, which represent a small part of the UK's civil market abuse regime, have met their intended objectives. **The recommendation is therefore to keep the Regulations.**

The Financial Services and Markets Bill introduced to Parliament on 22 July 2022 implements the outcomes of the financial services Future Regulatory Framework Review, repealing retained EU law relating to financial services and enabling the Treasury and the financial services regulators to replace it with regulation designed specifically for UK markets.

These Regulations will be repealed as part of this process and the Treasury and the FCA will have the opportunity to consider the findings of this PIR in the round, and decide whether any reforms are needed to the UK civil market abuse regime.

[2] ESMA MAR review – final report (https://www.esma.europa.eu/sites/default/files/library/esma70-156-2391_final_report_-_mar_review.pdf)

ANNEX - Data and analysis provided by the FCA

The FCA has provided data and analysis on the areas covered by the PIR which has enabled HM Treasury to assess the extent of the actual reporting generated by the requirements against the estimates in the original impact assessment.

Powers to request information from issuers, and to require the publication of information by issuers.

The FCA has provided the following estimates of the numbers of requests made to issuers over the period July 2019 to July 2021:

- 120 specific written requests to issuers to provide information, an average of 60 per year. The original IA estimated approximately 60 requests per year - an additional 30 requests on a baseline of around 36 requests

- 50 requests to issuers to provide explanations of delays in disclosing inside information, an average of 25 per year. The original IA estimated 15 requests per year.

- 18 requests to issuers and persons to publish information or to make corrective statements, an average of 9 requests per year. The original IA estimated a maximum 25 requests per year, but acknowledged that the volumes could be lower.

These estimates are based on voluntary requests which the FCA has made to issuers, rather than instances where the FCA has formally exercised its powers. It is FCA standard practice to make voluntary requests in the first instance, with the existence of formal powers acting as an incentive to comply with these voluntary requests. This data covers the period from July 2019 only as the FCA implemented a new operational system in July 2019 which meaning it is able to more easily retrieve the relevant information for this period.

These figures are broadly in line or slightly higher than those estimated in the original impact assessment. The higher figures are due to the estimates in the impact assessment being based on historic data, which would have reflected the narrower scope of the regime prior to MAR being introduced.

Reporting threshold for PDMR transactions

The FCA has provided data the proportion of PDMR transactions reported to the FCA and the market between January 2016 and July 2021 that fall below the current reporting threshold, and would fall below a reporting threshold set at a higher level. When considering this data, it is worth noting that, despite the introduction of the €5,000 threshold, some reporting persons continue to report all transactions to the FCA, meaning 11% of transitions reported fall below the current threshold.

Threshold	% of reports below the threshold
€5,000 (current threshold)	11% of reports
€10,000	17% of reports
€20,000	30% of reports
€50,000	46% of reports

This data suggests that increasing the PDMR threshold, particularly to €20,000, could significantly reduce transparency to investors and reporting for the FCA to identify and address insider dealing. Moreover, as evidenced by the fact that some reporting persons continue to report all transactions even after the introduction of a threshold, increasing the threshold would not necessarily result in lower costs to firms, as firms would need to maintain the necessary systems and controls to monitor and approve transactions.