

Market Abuse Regulation for AIM companies

An overview of the MAR rules which impact AIM companies.

Submitted	5 May 2016
Reviewed	23 January 2018
Applicable Law	UK (England & Wales) , European Union
Topic	Equity Capital Markets Corporate & Governance > Listing; disclosure & transparency rules
Contact	Chris Horton , Charles Mayo

The EU Market Abuse Regulation (MAR) extended the market abuse regime and the disclosure of inside information obligations to include companies with financial instruments admitted to multilateral trading facilities (MTFs) and therefore extended these obligations to companies with shares admitted to AIM. As a result, AIM companies have to comply with the rules on disclosure of inside information, insider lists and disclosure of dealings by persons discharging managerial responsibilities (PDMRs) (this includes directors) and persons closely associated to them; all of which applied to them for the first time.

What is MAR?

MAR replaced the Market Abuse Directive (MAD) with effect from 03 July 2016. As MAR is an EU regulation it has direct effect in the UK. MAR is supplemented by additional rules set out in EU Implementing Regulations, Delegated Regulations and ESMA Guidance.

The EU Commission has also adopted a Directive on Criminal Sanctions for Insider Dealing and Market Manipulation but the UK opted out of this directive, and it has not therefore been implemented in the UK.

The London Stock Exchange (LSE) published its final changes to the AIM Rules for Companies (AIM Rules) in connection with MAR on 14 June 2016 (AIM Notice 45). These changes came into effect on 03 July 2016. The changes involve dual regulation for AIM companies for disclosure of price sensitive information, as they have to comply with two disclosure regimes: AIM Rule 11 and Article 17 of MAR and have obligations to both AIM Regulation and another competent authority which is the Financial Conduct Authority (FCA) in the UK. The LSE, however, simplified the rules in relation to directors' dealings and restrictions on dealings by deleting the relevant AIM Rules so that AIM companies only have to comply with the rules in MAR.

An overview of how MAR applies to AIM companies can be found [here](#).

Post 03 July 2016 changes

Inside AIM

On 02 August 2016, AIM Regulation published an Inside AIM. This refers AIM companies to ESMA's updated Q&As on MAR for clarification on the position on closed periods and the announcement of preliminary results and confirms that no further amendments will be made to the AIM Rules on this point. It also states that AIM Regulation continues to support AIM companies using Listing Rule 9.7A1 (preliminary statement of annual results) as the benchmark for the announcement of their annual results.

The Inside AIM also includes a link to FAQs for AIM companies and Nomads published by the LSE in relation to MAR and the AIM Rules.

AIM became a SME Growth Market

From 03 January 2018, MiFID2 introduced a new designation of "SME Growth Market" that operators of qualifying markets can voluntarily apply for. AIM has been registered as an SME Growth Market with effect from 03 January 2018.

Rule 26 - as a result, minor consequential changes have been made to the AIM Rules for Companies, including the following changes to Rule 26 which requires AIM companies to maintain a website on which information should be available, free of charge. The changes require a company to keep the following information on its website for at least five years:

- any prospectus an AIM company has published
- annual financial reports and half yearly financial reports, and
- regulatory notifications made public containing inside information for the purposes of MAR.

See [AIM Notice 48](#) and the consequential [changes](#).

Insider lists - as AIM is now an SME growth market, AIM companies can take advantage of the exemption (under Article 18(6) of MAR) from drawing up an insider list on the usual basis, provided that the company:

- takes all reasonable steps to ensure that any person with access to inside information acknowledges the legal and regulatory duties and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information, and
- is able to provide the FCA (or other competent authority) with an insider list upon request.

There is also a different prescribed form of insider list to be used by SME Growth Market issuers should they be requested to provide this to the regulator.

Whilst this change would appear to reduce the administrative burden for AIM companies, they will still have to have systems and processes in place to produce insider lists in the required form should these be requested by the regulator and it may be simpler for companies to continue producing insider lists as they go along.

AIM company fined for late disclosure of inside information under MAR

The FCA has fined Tejoori Limited (Tejoori) £70,000 for failing to disclose inside information as required by Article 17(1) of the MAR. This is the first financial penalty imposed by the FCA on an AIM company for non-compliance with MAR and also its first enforcement action of any sort under MAR. An overview of the case can be found [here](#).

See our [Market Abuse Regulation knowledge centre](#) for more information on MAR.

How can AIM companies comply with MAR?

AIM companies need to:

Disclosure of inside information - have procedures for determining whether any information is inside information and for publicly disclosing inside information to ensure that they comply with both the AIM Rules and MAR. For MAR purposes:

- any announcement of inside information must include certain specified information
- publication of inside information must be on a dedicated section of the website, set out in chronological order and must be kept there for five years, and
- detailed records must be kept of any decision to delay disclosure of inside information as any delay has to be reported to the competent authority and, if required, a written explanation of the reasons for the delay has to be provided.

Insider lists - have procedures for creating, updating and keeping insider lists which are MAR compliant, in particular:

- MAR provides a template for the insider list
- the insider list will have to be available electronically and needs to be accessible and retrievable, and
- a written acknowledgment must be obtained from all insiders.

PDMR dealings

- create lists of PDMRs and "persons closely associated" with them
- provide training to PDMRs and applicable employees on the rules, and
- have a dealing policy that complies with the AIM Rules and the restrictions on dealing in MAR. The policy also has to include procedures for notifying deals that have to be made public under MAR.

This document (and any information accessed through links in this document) is provided for information purposes only and does not constitute legal advice. Professional legal advice should be obtained before taking or refraining from any action as a result of the contents of this document.