

4 June 2024

Circular on the Market Abuse Regulation ('MAR'/the 'Regulation')

ESMA Issues Statement to Remind Issuers of the Legislative Framework Applicable to 'Pre-Close Calls'

This Circular is being addressed to all market participants falling within scope of MAR (particularly issuers of financial instruments traded on a trading venue) and should be read in conjunction with the Regulation and its Delegated and Implementing Regulations, ESMA's Question and Answer Document on MAR and previous circulars issued by the Authority, as the case may be.

1.0 Background

On 29 May 2024, ESMA has issued a [statement](#) (the 'Statement') to remind issuers of the legislative framework applicable to 'pre-close calls'¹ and to identify a number of good practices which issuers should follow when engaging in such calls.

Within the Statement, ESMA explains that together with NCAs, it has recently observed a number of high volatility episodes in EU share prices, some of which took place after 'pre-close calls' between issuers and selected analysts. The media has also made this link and has, in some cases, raised suspicion about possible unlawful disclosure of inside information.

2.0 Supervisory Expectations

ESMA considers that 'pre-close calls' carry inherent risks of inadvertent unlawful disclosure of inside information, increased by the lack of publicity of these events and the absence of records of what was presented.

¹ Pre-close calls are communication sessions between an issuer and analysts who generate research, forecasts and recommendations related to the issuer's financial instruments. These sessions occur just before the periods preceding an interim or year-end financial report, during which issuers avoid providing additional information or updates. The outcomes of pre-close calls can influence market expectations and instrument prices.

In turn, ESMA reminds issuers about the prohibition of unlawful disclosure of inside information, and that public disclosure of inside information should take place in accordance with Article 17 of the Regulation and Commission Implementing Regulation (EU) 2016/1055. Consequently, 'pre-close calls' should only provide non-inside information.

The Statement also explains that whenever inside information is accidentally disclosed during a 'pre-close call', Article 17(8)² of MAR would apply to restore information parity, without prejudice to the application of Articles 10 and 14 of MAR. It further explains that if a person has incidentally received inside information in the course of these calls, they would be subject to the prohibitions of engaging in insider dealing, unlawful disclosure of inside information, and recommending or inducing any person to engage in insider dealing. ESMA also strongly recommends that the said person reports the incident to the relevant NCA(s) without delay.

3.0 Supervisory Expectations and Good Practices

Through the Statement, ESMA explained that some European Issuers have addressed these risks by adopting the following good practices:

- Carrying out (prior to the 'pre-close calls'), a thorough assessment of the information they intend to disclose to make sure they are not disclosing inside information;
- Publicly disclosing upcoming 'pre-close calls' with sufficient notice, for instance on the issuer's website, highlighting details, date, place, topics to be discussed, and intended participants;
- Making the material and documents used during 'pre-close calls' simultaneously available on the issuer's website (e.g. slides and notes, including macroeconomic data shared with participants);
- Recording the pre-close calls and making the recordings available to NCAs upon request;

² Where an issuer or an emission allowance market participant, or a person acting on their behalf or for their account, discloses any inside information to any third party in the normal course of the exercise of an employment, profession or duties as referred to in Article 10(1), they must make complete and effective public disclosure of that information, simultaneously in the case of an intentional disclosure, and promptly in the case of a non-intentional disclosure. This paragraph shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association, or on a contract.

- Keeping records of the information disclosed during the 'pre-close calls' and publishing such records on the issuer's website, to permit access to those records by the public at large.

4.0 Contacts

Should you have any queries in relation to the above, please do not hesitate to contact the Authority on pfma@mfsa.mt for any further clarifications.