MFSA MALTA FINANCIAL SERVICES AUTHORITY

Capital Markets Supervision
Tel: (+356) 2144 1155

14 April 2025

Dear Chief Executive Officer,
Dear Company Secretary,

Re: Market Abuse Regulation (EU) No 596/2014 ('MAR' or the 'Regulation')
- **Findings following a data-gathering exercise in terms of Article 18 of MAR**

You are receiving this letter as the Chief Executive Officer and/or Company Secretary of an issuer having financial instruments admitted to trading on a trading venue, or for which a request for trading on a trading venue has been made.

1. Background

Market integrity and transparency strengthen investor confidence within financial markets. Consequently, the Malta Financial Services Authority ('MFSA' or the 'Authority') endeavours to ensure high standards of compliance amongst supervised issuers. This is achieved through the use of various supervisory tools, including, *inter alia,* supervisory inspections and meetings, desk-based reviews, investigations, as well as publications providing market participants with clarifications, as the case may be.

Supervisory inspections are crucial in assessing and reviewing market participants' adherence to the various requirements stemming from the MAR regime. Indeed, as you may be aware, within its circular of 09 August 2023, relating to observations from supervisory inspections held with issuers on the prevention of financial market abuse, the MFSA explained that the majority of the issuers confirmed that they held both the temporary LOI and the supplementary permanent LOI. In some other cases, the Authority had noted that issuers used the permanent LOI as a substitute to the temporary LOI, resulting in extensive permanent LOI. The Authority also noted that some issuers had only drawn up and maintained the supplementary permanent LOI. In turn, it appeared that not all issuers had drawn up the temporary LOI, as prescribed by the Commission Implementing Regulation (EU) 2022/1210, namely Article 1(1) therein, which specifically requires issuers to draw up the LOI on a deal-, project- or event-specific basis.

Furthermore, within its circular of 09 August 2023, the Authority had also explained that the majority of issuers had informed their insiders of their obligations under Article 18(2) of MAR, and subsequently obtained their written acknowledgement. Only a few issuers appeared not to have properly informed their insiders of their obligations under MAR, and/or obtained an acknowledgment in writing. In some other cases, the Authority noted that issuers had informed insiders and obtained an acknowledgment in writing well after such individuals were first deemed to be insiders of the issuer and hence included within the respective issuer's

insider list. The Authority also noted that some of the communications used to inform insiders of their obligations under MAR appeared to be weak given that they failed to highlight important information which an insider ought to be made aware of in terms of MAR. The Authority was also concerned to note that although some issuers had informed the individuals listed on the permanent LOI of their obligations under MAR, they had not informed their temporary insiders of the same. A few issuers also appeared to have obtained a verbal acknowledgement from their insiders and were hence not in a position to confirm their adherence with Article 18(2) of MAR.

As part of the Authority's supervisory efforts, throughout April 2024, the Authority had requested twenty eight issuers having financial instruments admitted on a Maltese trading venue (i.e., Main Market, and Prospects), to provide it with a copy of the latest permanent and temporary List of Insiders ('LOIs') and the communications which the Company had sent to the individuals included therein, together with their respective subsequent acknowledgements. An equal sample of main market and prospects issuers were selected for this review.

This letter aims to provide details of the Authority's findings in this regard, and to provide further guidance with regard to the requirements stemming from Article 18 of MAR.

2. Key Findings of the Documentation Submitted to the Authority

2.1. Drawing up the list of insiders

As can be seen in Figure 1 below, the Authority was pleased to note that the majority of the issuers had drawn up both the temporary and permanent insider lists. However, it appeared that a few issuers had only opted for either the temporary or the permanent LOI.

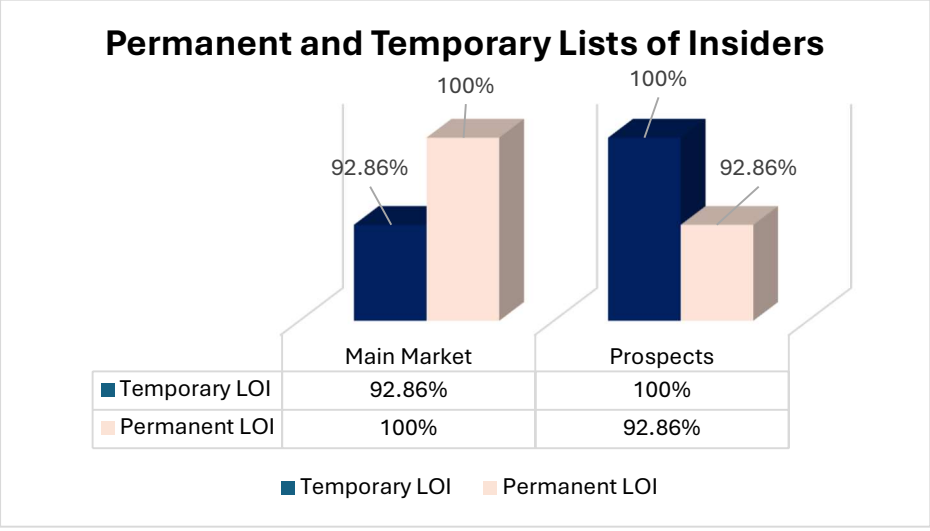

Figure 1: Showing percentage of main markets and prospects issuers which had drawn up the permanent and temporary LOIs

According to Commission Implementing Regulation (EU) 2016/347 drawing up and updating a temporary LOI is mandatory. However, issuers or any person acting on their behalf or on their account are given the discretion to hold a permanent LOI and include therein the details of individuals who have access at all times to all inside information. Although the permanent LOI is not mandatory, the Authority strongly recommends the drawing up of such list, so as to avoid replicating the personal details of those individuals who fall within the definition of permanent insiders for each event included within the temporary LOI.

2.2. Individuals included within the LOIs

Generally, whilst analysing the permanent LOIs provided by the selected issuers, it was noted that several of them appeared to have included individuals who may not have necessary fulfilled the definition of a permanent insider. For instance, several issuers had included their corporate/legal advisors and auditors within the permanent LOI.

The Authority wishes to remind the issuers that according to the Final report on the MAR review, ESMA clarified that within the permanent LOI, the Company should only include individuals who, due to their role, function or position within the Company have access to all of the Company's inside information from that point onwards. Indeed, ESMA also clarified who can be included within the permanent LOI, as follows:

"In ESMA's view, only an extremely limited group of individuals should meet that definition, including the Chief Executive Officer, in certain specific cases the Chief Finance Officer, Executive Assistant, Chairman of the Board, Head of Legal Department/Compliance Officer and Technical Officers".

On the other hand, the temporary LOI should include those individuals who have access to a specific piece of inside information at a particular point in time. In turn, the issuer's external auditors, for instance, would typically only be expected to become privy to a subset of the Issuer's information, whilst conducting the audit and hence, they would be expected to be included within the temporary LOI.

Although it is at the Company's discretion to determine who should be included within the permanent or temporary LOI, issuers should remain mindful of the implications of including individuals within the permanent list, as individuals included therein are understood to be privy to all inside information at all times.

2.3. *Use of official MFSA template*

As can be seen in Figure 2 below, the Authority was pleased to note that the very large majority of the sampled issuers had drawn up their LOIs using the Authority's latest templates, available on its website. The very small minority of issuers which did not appear to make use of the latest templates stemmed from the prospect market.

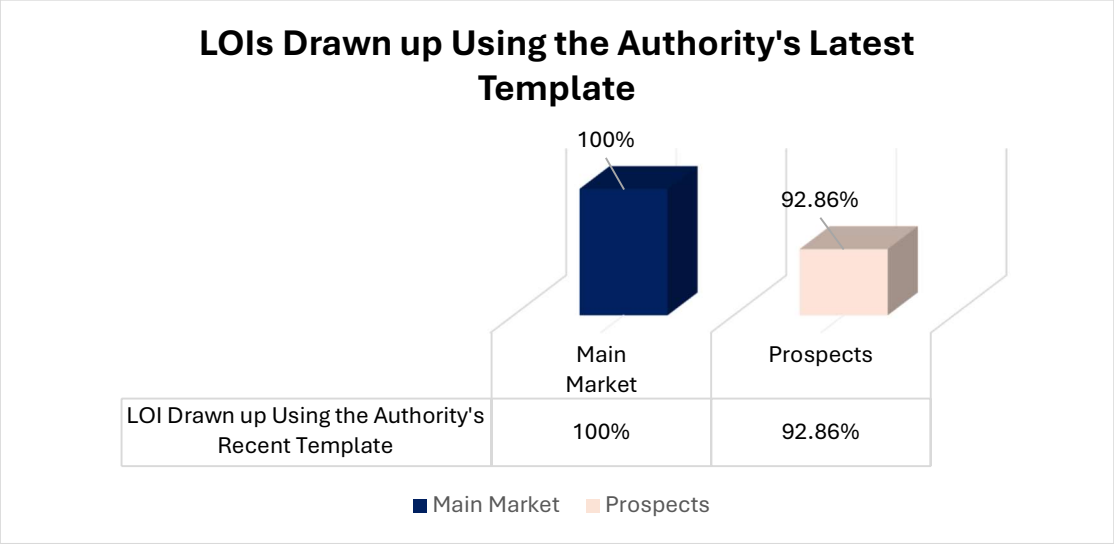

Figure 2: Showing percentage of main market and prospects issuers making use of the Authority's

The Authority would like to remind issuers that the importance of using such templates lies in the fact that such lists are based on the templates found within Annex I of Commission Implementing Regulation (EU) 2016/347.

2.4. *Information included within the LOIs*

In populating the LOIs, a number of issuers appeared not to have included all the information stipulated within the templates contained in Annex 1 of Commission Implementing Regulation (EU) 2016/347. Accordingly, the Authority would like to remind issuers of the importance of including all the information prescribed by the templates, since aside from being a requirement, complete information also assists the MFSA in carrying out its market monitoring function.

The Authority also noted that whilst the majority of the issuers had drawn up the temporary LOI on a deal-specific, project-specific or event-specific basis, whereby each section of the LOI included all the persons with access to the same specific piece of inside information, few issuers had not drawn up the temporary LOI as prescribed by the Commission Implementing Regulation (EU) 2016/347. More specifically, certain issuers had only made a single entry for those individuals who had been involved in more than one project/event/deal. One such

example would be the auditors of the Company, who might be re-engaged by the Company from one audit period to another. In such a case, a new entry would need to be made for each of the auditors at the beginning of every audit cycle. Once the financials are published and the information ceases to be inside information, the 'Ceased – Date' field would need to be populated accordingly. This is shown in Figure 3, below.

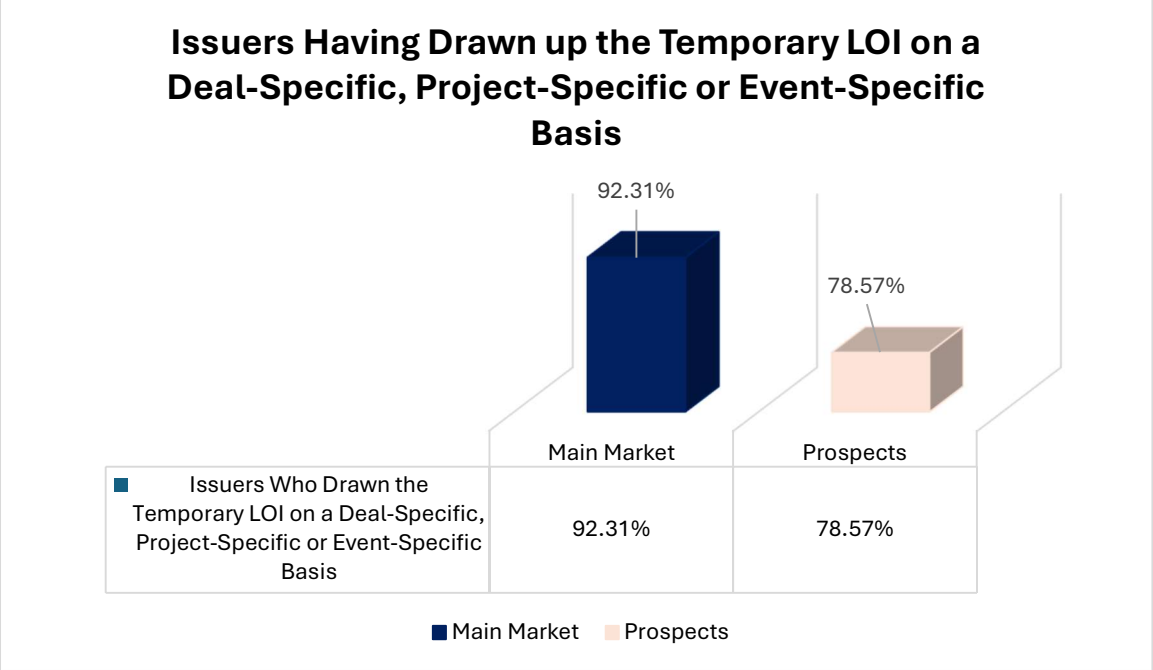

Figure 3: Showing percentage of main market and prospects issuers making use of the Authority's

In view of the above, the Authority would like to remind issuers that temporary LOIs should be drawn up on a deal-, project- or event-specific basis, whereby each section would include all the individuals who have or have had access to the same specific piece of inside information. Issuers are also reminded that for events that take place on an annual basis (e.g. the auditing of an issuer's financial statements), if the same individuals are re-engaged from year to year, such individuals should feature multiple times within the temporary LOI.

In some other cases, the Authority also came across some LOIs in which the issuers did not appear to have included all the individuals who had been privy to the Company's inside information. More specifically, some issuers had not included individuals who had been working on the Financial Analysis Summary ('FAS'), for instance. Others had also not included the individuals who had access to inside information by way of the work carried out in relation to the annual financial statements.

In view of the above, the Authority reminds issuers that although it is ultimately at the issuers' discretion to determine who should feature within their LOIs, it is of the view that individuals

who carry out work in relation to the FASs or the annual financial statements would be expected to be privy to inside information (up until the publication), hence meriting their inclusion within the Company's temporary LOI.

Some issuers within the prospects market had included a number of shareholders within their permanent LOI (i.e., shareholders who held no other position within the company). As you are expected to be aware, according to Article 10 of MAR, where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties, such person would be unlawfully disclosing inside information. In this respect, where a shareholder who is not a director (or does not hold any other senior position) becomes privy to inside information, the disclosure of inside information to such a director would possibly be a tantamount to a breach of the prohibition contained in Article 14 of MAR.

2.5. Information included within the LOIs

The Authority was pleased to note that the majority of the issuers had been retaining the LOIs for a period of at least five years after they had been drawn up or updated. This can be seen in Figure 4, below.

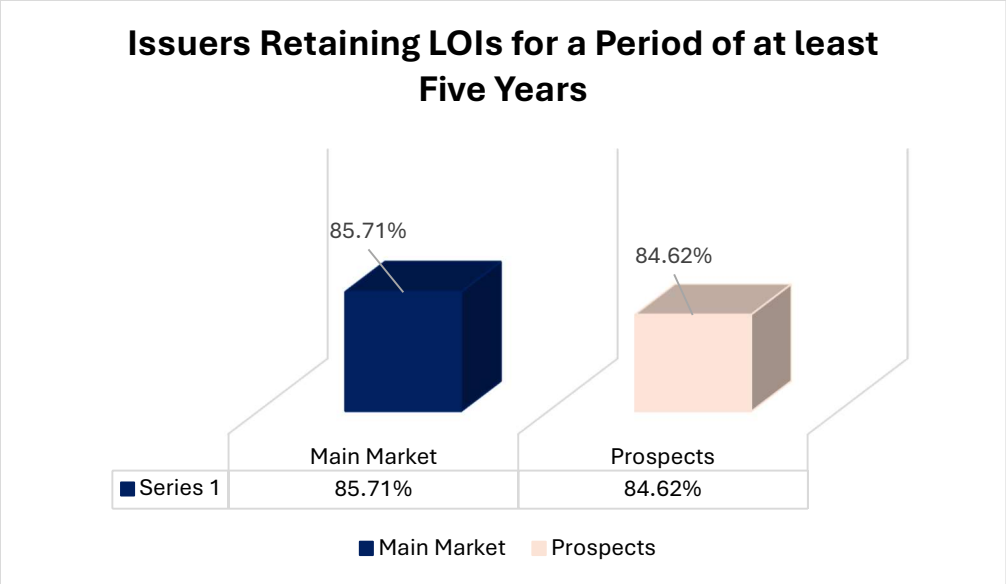

Figure 4: Showing the percentage of main market and prospects issuers retaining insider lists for a period of at least 5 years

However, in some cases, it had been noted that a number of issuers did not appear to have included all of the individuals which would have been expected to be privy to their inside information in the preceding five years. Specifically, some issuers did not appear to have

included the information in relation to all of the audits which would have been expected to have taken place in the preceding five years.

In this respect, issuers are reminded that according to Article 18(5) of MAR, they are obliged to retain the insider lists for a period of at least five years after they are drawn up or updated. Hence the insider list should feature all of the individuals who had been privy to the Company's inside information in the last five years.

2.6. Communications sent in terms of Article 18(2) of MAR

The Authority was concerned to note that following its request, several issuers did not provide it with copies of the acknowledgements which they would have been expected to obtain from of all of the individuals listed included within their LOIs, confirming that they had read and understood the legal and regulatory duties entailed and that they had been aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information. This is being represented in Figure 5, below.

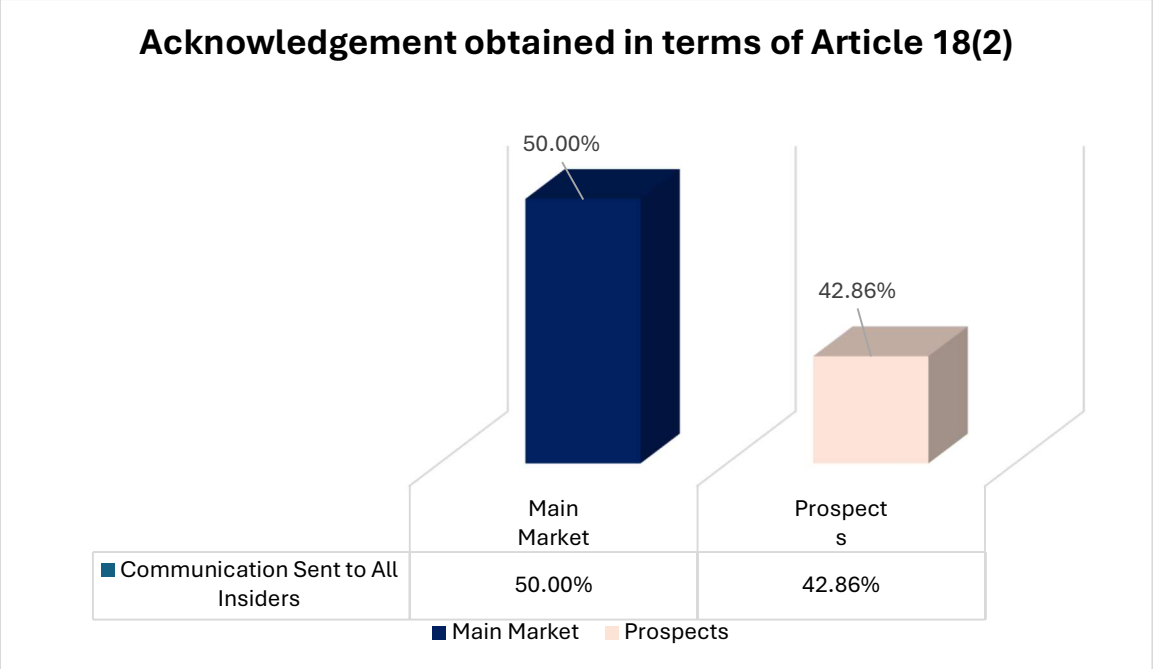

Figure 5: Showing percentage of issuers which had obtained a written acknowledgement in terms of Article 18(2) of MAR

According to Article 18(2) of MAR, issuers are required to take all reasonable steps to ensure that any person on the LOIs acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

In other instances, following its request, the Authority had been provided with a copy of the acknowledgements received in terms of Article 18(2) of MAR, but not the communications which the issuers would have presumably sent to their insiders.

Although Article 18(2) of MAR only requires issuers to ensure that any person on their LOI acknowledges in writing their legal and regulatory duties as insiders and the relevant sanctions, the Authority recommends that the communication which would have been sent to insiders is also kept on record. This ensures that issuers are able to fully substantiate their adherence with Article 18(2) of MAR, i.e., that the insiders were informed of their obligations in a timely manner and that such communication was adequate.

2.7. Timeliness of the communications sent in terms of Article 18(2) of MAR

The Authority was disappointed to note that several issuers appeared to have notified the majority of their insiders long after such individuals were first deemed to be insiders of the company (i.e., the obtainment date) and hence included within their respective insider lists. Nevertheless, some issuers appeared to have informed their insiders of their obligations and the relevant sanctions relatively close to their obtainment, whilst others appeared to have actually informed their insiders as soon as such individuals had become privy to inside information and included within the LOIs.

In some other instances, the Authority noted that the communications appeared to be undated and hence, it was difficult to determine with certainty whether the communications had been sent in a timely manner.

In this respect, the Authority wishes to remind issuers of the importance of ensuring that insiders are made aware of their inclusion within the LOI, their legal and regulatory duties as insiders as well as the sanctions applicable to insider dealing and unlawful disclosure of inside information promptly, upon their inclusion within the Company's List of Insiders.

2.8. Contents of the communications sent in terms of Article 18(2) of MAR

The Authority positively noted that the majority of the issuers sampled had drawn up detailed communications and made adequate reference to the provisions of MAR. Nevertheless, in the minority of cases, the communications to insiders appeared to be weak and failed to highlight important information which an insider ought to be aware of in order to be in a position to acknowledge its legal and regulatory duties and the sanctions applicable under MAR. This is being represented in Figure 6, below.

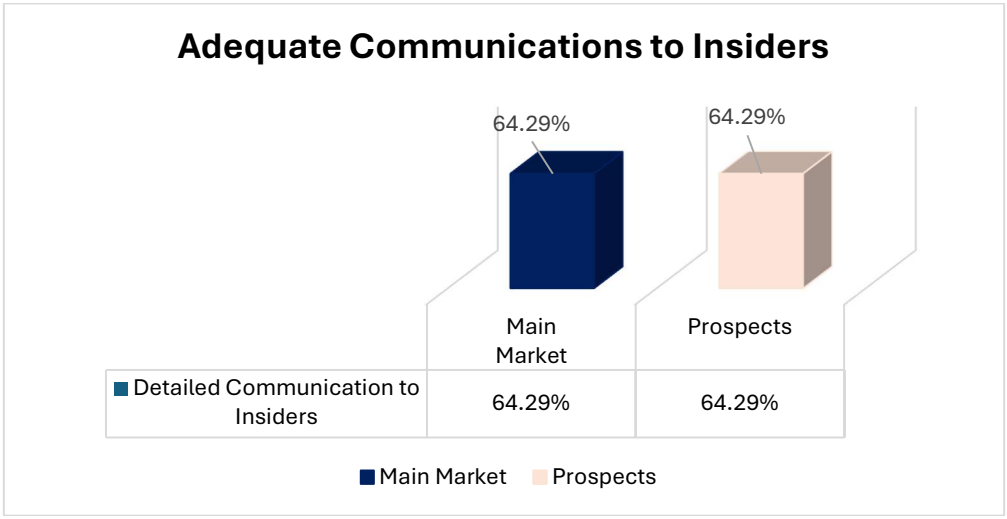

Figure 6: Showing percentage of issuers which appeared to have provided details communications in terms of Article 18(2) of MAR

Whilst going through the communications, the Authority noted that some issuers had opted to also include the obligations applicable to Persons Discharging Managerial Responsibilities ('PDMRs') within the communication sent in terms of Article 18(2) of MAR.

In this respect, it is important to note that whilst the individuals which would typically be considered to be PDMRs of the Company would generally also be expected to be insiders, the majority of insiders would not be expected satisfy the definition of a PDMR under Article 3(1)(25) of MAR. Therefore, where such a communication (i.e., inclusive of both the insiders' and PDMRs' obligations) is sent to all of the issuers' insiders (including those who are not PDMRs), it may lead to confusion.

In this respect, for the avoidance of any confusion which may arise, the Authority recommends that issuers create two separate communications, one addressed to insiders in fulfilment of Article 18(2) of MAR and one which is addressed to PDMRs in fulfilment of Article 19(5) of MAR.

3. Concluding Remarks

Based on the documentation which had been provided to the Authority as part of this exercise, it was positively noted that there appears to have been a positive shift towards increased compliance in terms of drawing up and maintaining the lists of insiders.

Nevertheless, this exercise also highlighted a clear need for further improvements with regard to the efforts which issuers are undertaking in terms of Article 18(2) of MAR. Specifically, the Authority has identified a number of deficiencies relating to the contents and timing of the

communications sent in terms of Article 18(2) of MAR and the subsequent acknowledgements received.

For more information in relation to issuers' obligations in terms of Article 18 of MAR, issuers are encouraged to refer to the various circulars which the Authority has issued in recent years, most notably the Circular of 09 August 2023, which highlights various observations, best practices and common pitfalls gathered from supervisory inspections which the Authority has held with issuers.

Issuers are reminded that where a breach of the requirements emanating from MAR is identified, regulatory action in terms of Article 22 of the Prevention of Financial Markets Abuse Act (Chapter 476 of the Laws of Malta) would be warranted.

Contact

Should you have any queries in relation to the above, kindly contact the Authority on pfma@mfsa.mt.

Yours Sincerely,
Malta Financial Services Authority

Christopher Peter BUTTIGIEG (Signature)
Digitally signed by Christopher Peter BUTTIGIEG (Signature)
Date: 2025.04.13 15:53:29 +02'00'

Christopher P. Buttigieg
Chief Officer Supervision

Lorraine VELLA (Signature)
Digitally signed by Lorraine VELLA (Signature)
Date: 2025.04.13 15:47:08 +02'00'

Lorraine Vella
Head – Capital Markets Supervision