
**THE IMPACT OF THE MARKET ABUSE LAW ON
INVESTMENT FUNDS**

JULY 2006

INTRODUCTION

The Market Abuse Directive was transposed into Luxembourg law by the law of the 9th of May 2006 on market abuse (the “**Law**”). The Law’s objective is to prevent market manipulation and insider dealing, both forms of market abuse. The Law applies to all financial instruments, including units of investment funds (and not just investment companies) admitted to trading on a regulated market¹ or for which an application for admission to trading has been made or admitted to trading on an MTF or for which an application has been made for admission to trading. In Luxembourg, this concerns the regulated market of the Luxembourg Stock Exchange² as well as the Euro MTF market.

The Law applies to acts carried out in Luxembourg or abroad concerning financial instruments listed or on whose behalf an application to list has been made on the regulated market in Luxembourg or on a market operated in Luxembourg as well as to acts carried out in Luxembourg concerning financial instruments listed or on whose behalf an application to list has been made on a regulated market abroad.

OFFENCES COVERED BY THE LAW

The Law sets out two offences, that of insider dealing and that of market manipulation.

Insider dealing involves trading or attempting to trade while in possession of Privileged Information³ relating to the issuer of securities in relation to which an investment recommendation⁴ has been made (the “**Issuer**”).

Market manipulation means any transaction, order or dissemination of information that distorts the price of a financial instrument or is likely to do so.

¹ As defined by Article 4, Paragraph (1) point 14) of Directive 2004/39/EC

² It should be noted that participants of the Euro MTF are also prohibited from the manipulation of the market and are obliged by the Law to take steps to prevent and detect market abusive practises.

³ Privileged information is defined as information of a precise nature which has not been made public, relating, directly or indirectly, to one or more Issuers of financial instruments and which, if it were made public, would likely to have a significant effect on the prices of those financial instruments or on the prices of related derivative instruments, (b) in relation to derivatives on commodities [...]; information of a precise nature which has not been made public, and relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market prices on those markets, or (c) for persons charged with the execution of orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments on the prices of related derivative financial instruments (the “**Privileged Information**”). (Article 1.1 of the Law).

⁴ An investment recommendation is defined by the Law as meaning research or other types of information recommending or suggesting an investment strategy, directly or indirectly concerning one or more financial instruments or issuers of financial instruments, including opinions issued on the flow, current or future value of these financial instruments intended to be publicly distributed or made public.

OBLIGATIONS IMPOSED BY THE LAW

Article 12 of the Law imposes an obligation on all credit establishments and financial sector professionals, to notify the *Commission de Surveillance du Secteur Financier* (the “**CSSF**”) as soon as possible where they believe that a transaction could reasonably be suspected of constituting market abuse.

The informer notifying the CSSF of a suspect transaction is prohibited from briefing either a third party, the person(s) suspected to have committed an abuse of the market, or any party linked to the latter person(s) of the notification given to the CSSF.

The CSSF shall not disclose the identity of the informer if to do so would harm, or risk to harm, such person.

For an investment fund whose shares/units are listed and that can be considered an Issuer, the additional requirements introduced by the Law are as follows:

- that the Issuer publish Privileged Information concerning that fund as soon as it is possible to do so (article 14) (unless the Issuer can avail of one of the exemptions - as set out in article 15). The Privileged Information must be published in such a way as to communicate the information to the public as quickly as possible and in a synchronised way. The Issuer is required to publish the Privileged Information on their website for a period of three months, in at least English, French or German.
- that the Issuer, or a person acting on their behalf, draw up and maintain a list of all persons acting on behalf of the Issuer with access (whether direct or indirect) to Privileged Information regarding the Issuer. The Issuer shall communicate this list to the CSSF upon request (article 16). Persons on the list shall be notified of their inscription.
- The list shall mention:
 - the identity of all persons having access to Privileged Information;
 - the reasons underlying their inscription on the list; and
 - the dates of the creation and the updating of the list.
- persons who discharge the duties of management for a Luxembourg based fund as well as any persons closely connected with them must declare to the CSSF all transactions carried out on their own account relating to the securities of the listed fund or any derivatives or other financial instruments linked to them to the CSSF and to the Issuer within five business days of any such transaction being concluded (article 17).
- to establish appropriate procedures ensuring the confidentiality of Privileged Information and that those with access to such Privileged Information are made aware of their duties of confidentiality and are aware of the sanctions for the misuse of such Privileged Information (article 27).

SANCTIONS

The CSSF, without prejudice to the jurisdiction of the Luxembourg courts, is the competent authority to ensure that the Law is complied with. If the CSSF becomes aware that acts of an Issuer subject to its control constitute a breach to the Law, the CSSF is entitled to suspend such Issuer as well as any persons also subject to the control of the CSSF and connected to the breaching Issuer, from all or part of its activities for up to a maximum of five years.

For breaches of the above listed obligations, the sanctions imposed under the Law can be either financial or punitive. Fines range from 125 EUR to 125,000 EUR. The CSSF can publish the fines imposed unless to do so do would seriously impact on the financial markets and/or would result in a disproportionate prejudice to the breaching party. The financial and regulatory sanctions are not mutually exclusive.⁵

⁵ Imprisonment of 8 days to two years and/or a fine of up to 1,500,000.- EUR can be imposed where a market abuse offence is established.

SUMMARY

- **Professional Obligations imposed on Issuers by the Law**
 - *Obligation to notify the CSSF as soon as possible of any suspected market abuse;*
 - *Obligation to publicly disclose Privileged Information as quickly as possible and in a synchronised way;*
 - *Obligation to draw up and to maintain a list of all persons acting on behalf of the Issuer with access to Privileged Information;*
 - *Obligation for persons discharging management duties for a Luxembourg based fund as well as any persons closely connected to them to declare all transactions relating to securities of the Issuer, carried out for their own account, within five business days from the conclusion of such transaction;*
 - *Obligation to establish appropriate procedures ensuring the confidentiality of Privileged Information and make any persons having access to Privileged Information aware of their duties of confidentiality as well as the sanctions.*
- **Sanctions relating to breaches of these professional obligations by the CSSF**
 - *Administrative fine ranges from 125 euro to 125,000 euro;*
 - *Possibility to suspend the activities of the Issuer that is subject to the control of the CSSF as well as any persons connected to the Issuer and also subject to the control of the CSSF for up to a maximum of five years.*

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