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ALERT MEMORANDUM

Changes to Market Abuse and Transparency Regime in the EU Capital Markets

– Highlights for Asset Managers with EU Portfolio Companies / Activities –

May 23, 2016

Key take-aways

- New EU market abuse regime will come into force on July 3, 2016
- Amended EU voting rights notification regime since November 2015
- Sanctions have become much more severe
- Compliance systems and procedures may have to be amended in light of these changes

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following persons:

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New market abuse regime

- Market Abuse Regulation ("**MAR**") extends scope of market abuse regime to issuers of financial instruments traded on a multilateral trading facility ("**MTF**") or an organized trading facility ("**OTF**"); this includes, for example, Euro MTF in Luxembourg, Global Exchange Market in Ireland, Professional Securities Market in the UK, Open Market of the Frankfurt Stock Exchange, and similar exchange-regulated markets; financial instruments of (foreign) issuers may be listed on MTFs / OTFs at the behest of a broker (without the issuer being involved or taking any action); the old regime (Market Abuse Directive, "**MAD**") covered EU regulated markets only
    - MTF / OTF issuers thus become subject to additional obligations, including ad-hoc disclosure and insider lists; directors of such issuers and other persons discharging managerial responsibilities and persons closely related to them become subject to rules regarding directors' dealings

Relevance for asset managers: Managers should consider reviewing their portfolio companies to assess whether funds hold interests or seek to invest in MTF / OTF issuers; if partners or employees of the asset manager act as directors or senior management such persons may have to comply with the new rules on directors' dealings; appropriate procedures to monitor future investments / directorships in MTF / OTF issuers should be considered

- Numerous changes to the substantive provisions regarding insider dealing, ad-hoc disclosure, director dealings, and the prohibition of market manipulation will come into force, including
    - New rules regarding market soundings prior to offerings / takeovers / mergers
    - Detailed rules on insider lists including the format and the requirement that insiders have to acknowledge in writing that they are aware of the obligations / sanctions
    - The obligations of directors to disclose dealings in securities of the issuer have been extended and apply not only to shares and instruments linked to shares but also debt and other financial instruments; the notification period has been reduced to only three business days; a standard template is to be used
    - A closed period is introduced providing that directors' dealings are generally prohibited during a period of 30 calendar days before the announcement of an interim financial report or a year-end report

Relevance for asset managers: Managers should educate and train their personnel with respect to these changes. In particular, insider lists kept by the manager or by portfolio companies that include personnel associated with the manager and the process for "onboarding" of insiders to insider lists should be reviewed for compliance with the new rules. Any directors or senior management of portfolio companies listed on a regulated market or an MTF / OTF should be educated about the new rules on directors' dealings

Amended voting rights notification regime

- The voting rights notification regime contained in the EU Transparency Directive was amended; deadline for EU Member States to transpose the amendments into national law was November 2015

- The voting rights notification regime continues to apply to voting rights and certain other instruments related to voting rights of issuers listed on a regulated market in the EU (in contrast to MAR, no extension to voting rights / instruments of MTF / OTF issuers)

- The special rules and exceptions relating to parent companies of asset managers have not changed

- The amended Transparency Directive now provides for notification obligations of persons holding instruments which, without granting a right to acquire voting shares, have a similar economic effect; also, aggregation of voting shares with all other instruments subject to a notification obligation is now mandatory

    - While some member states had already introduced similar provisions (e.g., Germany), others had to introduce corresponding rules for the first time

- Voting rights notification obligations are now triggered by entering into a purchase contract that provides for an unconditional right / obligation to transfer voting shares without delay (rather than being triggered by settlement of transfer only, as was the case in several jurisdictions in the past); in addition, changes to periods within which notifications must be made

- New rules on the calculation of voting rights attributable to cash-settled instruments (delta adjustment) apply

- Nine EU member states, including Belgium and Luxembourg, have not yet transposed the amendments into their national laws

Relevance for asset managers: Since these changes were introduced in many EU jurisdictions by the end of 2015, compliance systems and procedures should already have been amended to reflect these changes. Managers may want to consider reviewing the suitability and appropriateness of the amendments based on the experience gained under the new regime since its introduction. Continued monitoring of the jurisdictions in which transposition has not yet occurred

Sanctions have become much more severe under MAR and the amended Transparency Directive

- Fines amounting to up to € 15 million or 15% of the annual (consolidated group) turnover (MAR) and up to € 10 million or 5% of the annual (consolidated group) turnover (voting rights notification regime) now possible

- Mandatory naming and shaming by regulator in case of violations

- In early 2015, even prior to the stricter sanctions regime, a foreign asset manager was fined over € 3 million by the German regulator for non-intentional violations of voting rights notification obligations which shows that compliance is challenging and regulators are alert

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