The Banking Law Journal

Established 1889

An A.S. Pratt® PUBLICATION MARCH 2017

LexisNexis

THE BANKING LAW JOURNAL

VOLUME 134 **NUMBER 3** **March 2017**

LexisNexis®

QUESTIONS ABOUT THIS PUBLICATION?

For questions about the **Editorial Content** appearing in these volumes or reprint permission, please call:

Matthew T. Burke at ..... (800) 252-9257
Email: ..... matthew.t.burke@lexisnexis.com

For assistance with replacement pages, shipments, billing or other customer service matters, please call:

Customer Services Department at . . . . . (800) 833-9844
Outside the United States and Canada, please call . . . . . (518) 487-3000
Fax Number . . . . . (518) 487-3584
Customer Service Web site . . . . . http://www.lexisnexis.com/custserv/

For information on other Matthew Bender publications, please call

Your account manager or . . . . . (800) 223-1940
Outside the United States and Canada, please call . . . . . (518) 487-3000

ISBN: 978-0-7698-7878-2 (print)
ISBN: 978-0-7698-8020-4 (eBook)
ISSN: 0005-5506 (Print)
ISSN: 2381-3512 (Online)

Cite this publication as:

The Banking Law Journal (LexisNexis A.S. Pratt)

Because the section you are citing may be revised in a later release, you may wish to photocopy or print out the section for convenient future reference.

An A.S. Pratt® Publication

Editorial Office
230 Park Ave., 7th Floor, New York, NY 10169 (800) 543-6862
www.lexisnexis.com

MATTHEW BENDER

Editor-in-Chief, Editor & Board of Editors

THE BANKING LAW JOURNAL (ISBN 978-0-76987-878-2) (USPS 003-160) is published ten times a year by Matthew Bender & Company, Inc. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices.

For customer support, please contact LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204 or e-mail Customer. Support@lexisnexis.com. Direct any editorial inquires and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., 26910 Grand Central Parkway, #18R, Floral Park, NY 11005, smeyerowitz@meyerowitzcommunications.com, 718.224.2258 (phone). Material for publication is welcomed— articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys.

authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL LexisNexis Matthew Bender, 230 Park Ave, 7th Floor, New York, NY 10169.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, A.S. Pratt & Sons, 805 Fifteenth Street, NW., Third Floor, Washington, DC 20005-2207.

Market Abuse Regulation: Impact on U.S. Public Companies—Part III

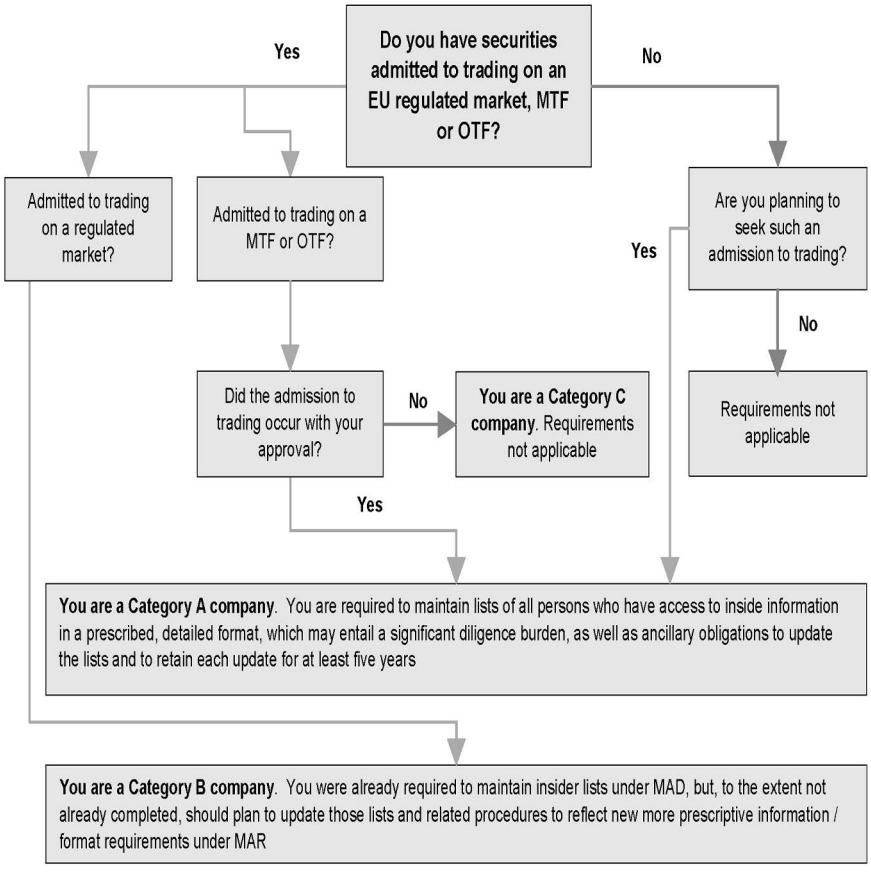
Raj S. Panasar, Leslie N. Silverman, Sandra L. Flow, Aseet Vasudev Dalvi, and Jackson Martin[*]

This multi-part article focuses on the Market Abuse Regulation's implications for U.S. public companies' ongoing obligations and other ordinary course activities if they have debt, equity or other securities admitted to trading on EU trading venues, or are contemplating such admissions to trading. The first part of the article, which appeared in the January 2017 issue of The Banking Law Journal, *gave an overview of the changes made to the previous regime by the Market Abuse Regulation, with particular focus on the ongoing obligation to disclose inside information. The second part of the article, which appeared in the February 2017 issue of* The Banking Law Journal, *focused on restrictions on managers' dealings. This final part of the article explores the obligation to maintain insider lists and impacts on share repurchase programs, as well as certain other considerations. Capitalized terms used in this part of the article but not defined have the meanings set out in the first or second part of this article.*

---

[*] Raj S. Panasar (rpanasar@cgsh.com) is a partner at Cleary Gottlieb Steen & Hamilton LLP focusing his practice on international financing transactions. Leslie N. Silverman (lsilverman@cgsh.com), a partner at the firm, focuses his practice on domestic and international capital markets, representing both issuers and underwriters. Sandra L. Flow (sflow@cgsh.com) is a partner at the firm concentrating her practice on capital markets and corporate governance. Aseet Vasudev Dalvi (adalvi@cgsh.com) is an associate at the firm focusing his practice on international capital markets transactions. Jackson Martin (jamartin@cgsh.com) is an associate at the firm concentrating his practice on international corporate and financial transactions.

INSIDER LISTS (*Category A and B Companies*)



Companies are required under MAR to maintain lists of all persons who have access to inside information, whether working for them under a contract of employment or otherwise. In a clarification of MAD, this requirement expressly extends to advisers, accountants and credit rating agencies. The requirement also applies to individuals and information both within and outside the EU.

Moreover, in a change from MAD, MAR requires insider lists to be prepared using a prescriptive EU-wide template, which, under final technical standards implemented by the European Commission, requires a considerable amount of detail on each insider (including, *e.g.*, function, surname at birth, national identification number, personal telephone numbers, and personal addresses), as well as reasons why the person is an insider and details on when the person obtained and ceased to possess inside information.

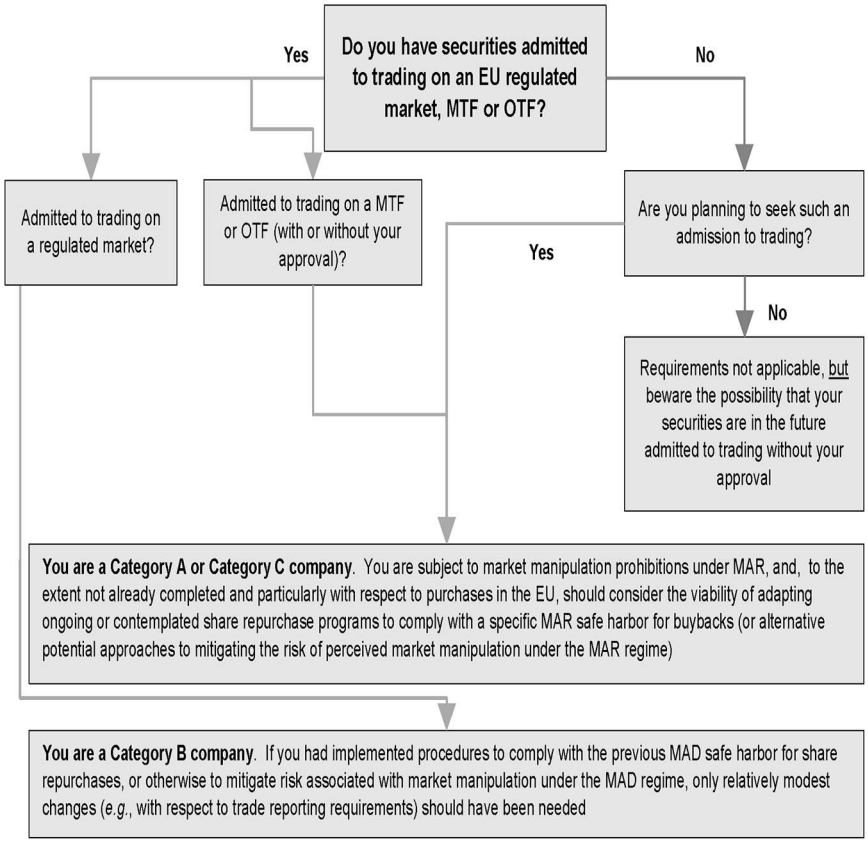
Insider lists must be updated promptly if the reason for an insider's inclusion on the list changes, a new person gains access to inside information or a person ceases to have access to inside information. Each update must be retained for at least five years.

For Category A companies that were unused to comparable requirements under MAD (and that do not maintain comparable insider lists as a matter of practice), these requirements may have imposed a significant diligence burden. Category B companies, previously subject to the MAD regime, should have found updating their existing insider lists and record keeping policies less burdensome, but, in view of the amount and nature of the new information required, may also have needed to invest considerable effort into the task.

Key Next Steps—Category A Companies
To the extent not already implemented, establish policies, procedures and practices to, among other things: • identify all persons who have access to inside information (including advisers, accountants and credit rating agencies); and • prepare insider lists that reflect prescribed content requirements, and update those lists as and when required going forward

Key Next Steps—Category B Companies
To the extent not already completed, update policies, procedures and practices to, among other things: • extend insider lists to advisers, accountants and credit rating agencies (if not already included); and • update insider lists to reflect new prescribed content requirements, and update those lists as and when required going forward

SHARE REPURCHASES (*Category A, B, and C Companies*)



There is an explicit safe harbor from MAR's market manipulation provisions for share repurchase programs that meet specified criteria outlined in MAR and its implementing measures. Accessing the safe harbor requires, among other things, the following:

- *Objective:* A repurchase program that has, as its sole purpose, a reduction in the capital of the company, meeting obligations under convertible debt (and certain other financial instruments exchangeable into equity), or meeting obligations under certain equity incentive programs.
- *Advance disclosure:* The full details of the repurchase program, including the objective of the program, the maximum consideration allocated to it, the maximum number of shares to be acquired and the program's

duration, must be disclosed prior to any trades.

- *Trade reporting:* All trades under the program must be recorded and reported to *all* the competent authorities of the trading venues where the shares are admitted to trading (and disseminated through other prescribed channels, including postings on the company's website) no later than seven trading days after the relevant trades. Trade reporting must be made on both a detailed transaction-by-transaction basis (including the titles and amounts of the securities purchased, dates and times, prices, trading venue and means of identifying any investment firms concerned) and in an aggregated form (indicating aggregated volume and the weighted average price per day and per trading venue).
- *Trading venue:* Trades must be effected through on-market purchases on trading venues.[1]
- *Price limit:* Purchases may not occur at a price higher than the highest price of the last independent trade or the highest current independent bid.[2]
- *Volume limit:* Purchases on any trading day may not exceed 25 percent of the average daily volume of the shares on the trading venue on which the shares are purchased.[3]
- *Trading restrictions:* The company may not sell treasury shares "during the life" of the program. It also may not effect any purchases (including outside the program) during a MAR-prescribed closed period or when it has delayed public disclosure of inside information, unless (i) the dates and volumes of shares to be purchased are set out in the initial public disclosure of the share repurchase program or (ii) the repurchase program is managed by an investment firm or credit institution that "makes its trading decisions concerning the timing of the purchases of

---

[1] For markets that have continuous trading and auctions during the trading day, the safe harbor will not apply to trades conducted during auctions. Shares that are solely traded through auctions will benefit from the safe harbor so long as market participants have sufficient time to react to orders relating to the repurchase program.

[2] When shares are multi-listed on different trading venues, the final technical standards require that this price limitation be applied separately to each trading venue on which the shares are purchased.

[3] The average daily volume will either be the average daily volume traded in the month preceding the month of the initial disclosure of the share repurchase program (provided disclosure of that volume is included in that initial disclosure), or in the 20 trading days preceding the date of purchase (where it is not).

the issuer's shares independently of the issuer."[4] For U.S. public companies that implement repurchase programs through Rule 10b5-1 plans, the typical approach of granting full discretion to an investment firm or credit institution within broad price, volume and timing parameters set by the company (*e.g.*, to purchase a certain volume of shares per week or month under particular price parameters) should be sufficient to satisfy the latter exception, provided that the parameters themselves were not set during a closed period (or when the company was otherwise in possession of insider information, as also required under Rule 10b5-1).

U.S. public companies considering the implications of the points set out above (including Category C companies, which, as noted above, are subject to the prohibition on market manipulation) should note that the requirements of the MAR safe harbor are somewhat different from those for the safe harbor contained in Rule 10b-18 under the Exchange Act. Although the MAR safe harbor is unlikely to be available for purchases off EU trading venues, different approaches could be considered to mitigate MAR-related market abuse concerns in relation to a multi-jurisdictional repurchase program. Particularly for U.S. public companies with a secondary equity listing in the EU, the most conservative approach would likely be to comply with both Rule 10b-18 and any stricter MAR requirements in respect of the U.S. portion of the program,[5] and with the MAR safe harbor and any stricter Rule 10b-18 requirements in respect of the EU portion. However, since behavior outside the MAR safe

---

[4] These limitations do not apply to companies that are themselves investment firms or credit institutions if they have set up effective information barriers.

[5] The principal overlays of such a program over one designed to comply solely with Rule 10b-18 would likely be the following:

- purchases would be limited to the limited purposes permitted by MAR;
- advance disclosure would be required of the objective of the program, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorization for the program has been given;
- treasury shares could not be resold;
- restrictions on privately negotiated repurchases would need to be considered (since, in contrast to Rule 10b-18, where SEC staff guidance makes clear that that privately negotiated repurchases in parallel should not jeopardize the availability of the safe harbor for open market repurchases, similar certainty does not exist vis-à-vis the MAR safe harbor);
- a stricter 25 percent ADTV volume restriction would need to be complied with (without Rule 10b-18's flexibility for block purchases); and
- public disclosure of trades under the program would be required within seven days (versus in the next Form 10-Q (or for fourth quarter repurchases, Form 10-K)).

harbor does not automatically constitute market abuse in the EU, a number of alternatives based on the MAR safe harbor's and/or Rule 10b-18's requirements may also be reasonable from a risk mitigation perspective. For U.S. public companies with only straight debt admitted to trading in the EU, all of whose share repurchases would occur in the United States, compliance with Rule 10b-18 by itself is likely to be sufficient.

Category B companies should also note that, though the MAR safe harbor is similar to that under MAD, there are differences (*e.g.*, with respect to the trade reporting requirements). Accordingly, companies that had implemented procedures to comply with the MAD safe harbor, or otherwise mitigate risk associated with market manipulation, will need to review those procedures and make any appropriate updates (to the extent not already completed).

Key Next Steps—Category A and B Companies
Assess ongoing or contemplated share repurchase programs (within and outside the EU), and related policies and procedures for recording and reporting trades, for compliance with the new MAR safe harbor and/or adequacy of risk mitigation

OTHER CONSIDERATIONS (*Category A, B, and C Companies*)

MAR preserves the MAD prohibitions on the following general behaviors:

- *Insider dealing*: Insider dealing involves behavior where a person possesses inside information and uses that information by acquiring or disposing, for the person's own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates. In contrast to insider trading under Rule 10b-5, there is no requirement that the behavior be in breach of a fiduciary duty or constitute a misappropriation of the information. MAR also expands the MAD prohibition to cover attempts to commit insider dealing and also to the cancellation of orders on the basis of inside information (a restriction beyond what U.S. public companies will be accustomed to under Rule 10b-5, which only applies to purchases and sales of securities). As under MAD, there is a rebuttable presumption that someone who is in possession of inside information has traded on the basis of it.
- *Unlawful disclosure of inside information*: Inside information is unlawfully disclosed if it is disclosed by a person other than in the normal exercise of their employment, profession or duties.
- *Market manipulation*: A person engages in market manipulation if the person engages in one of a range of behaviors (including entering into

transactions or disseminating information) that gives false or misleading signals as to the supply for, demand of or price of a financial instrument. MAR extends the MAD prohibition to cover manipulative high frequency and algorithmic trading and the manipulation of financial benchmarks and spot commodity prices.

It is accordingly important, particularly in view of MAR's potential extraterritorial reach, that U.S. public companies with securities admitted to trading on an EU trading venue (with or without their approval), or that are contemplating such admissions to trading, familiarize themselves with these market abuse offences (as well as differences with analogous U.S. restrictions, which, in some instances—like insider dealing—are notable), update compliance manuals, policies, procedures and practices accordingly, and provide training to relevant staff.

* * *

ANNEX

MAD TO MAR: CHANGES FOR UK-LISTED COMPANIES

The summary of MAD in this Annex is specific to the UK.[6] For Category B companies that were subject to MAD, any assessment of MAR's incremental burden will necessarily entail an analysis against MAD as implemented in the relevant member state(s) in which their securities are admitted to trading.

ONGOING DISCLOSURE OF INSIDE INFORMATION

U.S. Context
U.S. public companies must file or furnish current reports on Form 8-K to the SEC upon the occurrence of one or more of a specific list of events, generally within four business days after occurrence. They are not, however, subject to a *general obligation* to disclose material non-public information analogous to the MAD / MAR requirement, unless transacting in the market or otherwise communicating to investors on a related topic.

[6] In giving effect to the provisions of MAD, the UK in some cases went further than the text of the directive strictly required. As MAR is a "maximum harmonization" regulation, the FCA has been prevented from doing the same with MAR.

	MAD as implemented in the UK	**MAR (*from July 3, 2016*)**
Definition of inside information:	Information of a precise nature which (a) is not generally available, (b) relates, directly or indirectly, to one or more issuers of the qualifying investments or to one or more of the qualifying investments, and (c) would, if generally available, be likely to have a significant effect on the price of the qualifying investments or on the price of related investments "Reasonable investor" test used to *assist* in determining the type of information to be taken into account in assessing a likely significant effect on price	Basic definition identical to the MAD definition; however, the "reasonable investor" test has now been made the very *definition* of likely significant impact on price in MAR itself. Continued relevance of price sensitivity in the analysis accordingly unclear
Timing of required disclosure:	As soon as possible	As soon as possible
Method of disclosure:	Disclosure to a prescribed regulatory information service ("RIS") Website publication simultaneously or following the RIS announcement (but no later than the end of the business day following the RIS announcement) Information to be maintained on website for at least one year	Disclosure to a RIS Website publication is required, although deadlines for posting are not yet clear Information to be maintained on the company's website for at least five years

	MAD as implemented in the UK	**MAR (*from July 3, 2016*)**
Identification / segregation requirements:	No specific requirements	Communications must clearly identify that the information communicated is inside information, among other things The website must "allow users to locate the inside information in an easily identifiable section of the website" and "ensure the disclosed inside information clearly indicates date and time of disclosure and is organized in chronological order." Relevant section of website must be kept separate from "marketing materials"
Delaying disclosure:	Permitted where: (i) the delay is to protect the company's legitimate interests; (ii) the delay is unlikely to mislead the public; and (iii) confidentiality can be maintained	As under MAD, but new ESMA guidance effectively expands the scope of "legitimate interests"[7]

[7] Additionally, for a company that is a financial institution or credit institution, delay permitted with prior approval of competent authority to preserve the stability of the financial system.

	MAD as implemented in the UK	MAR (*from July 3, 2016*)
Notification of delay:	No notification obligation	Company will need to notify the competent authority of a decision to delay when the information is ultimately publicly disclosed. In the UK, the FCA has indicated that reasons for delay will only be required on its specific request Companies will need to record details about any decision to delay disclosure, including when the information first arose, when the decision to delay was taken, when the information is likely to be disclosed, who is responsible for the decision to delay and evidence of the initial fulfillment of the conditions permitting delay (see "Delaying Disclosure" above)

MANAGERS' DEALINGS

Disclosure Obligations

* * *

U.S. Context
Section 16(a) of the Exchange Act requires insiders of U.S. public companies with a class of equity security registered under Section 12 of the Exchange Act to file an initial report of their holdings on becoming insiders (within 10 business days) and report subsequent transactions in the company's equity securities (generally within two business days). U.S. public companies are also generally required to disclose share ownership information, including of directors and executive officers, in their annual reporting. These requirements share similar goals with the PDMR reporting regime under MAD / MAR, but, as further outlined below, are not identical.

	Section 16	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
Persons subject to disclosure obligations:	Officers and directors[8] of a company and persons who are "beneficial owners" of more than 10 percent of a registered class of equity securities of a company[9]	PDMRs and their "connected persons"[10]	PDMRs and "persons closely associated with them"[11]

[8] "Officer" includes the president of a company, its principal financial and accounting officer(s) or controller, any other individual who is a vice president in charge of a principal business unit, division or function and any other individual who performs a policy-making function. A person may be an officer for these purposes without regard to that person's title or formal position. A "director" is, in general, any director of a company, although a corporate shareholder of a company may be deemed to be a director of the company if the shareholder designates one of its representatives to be a director.

[9] An insider's beneficial interest in securities may arise from a direct holding of an equity security, from an indirect interest in a security through a corporation, partnership or trust (of which the insider is a trustee, a settlor or a beneficiary), from equity securities held by certain family members or from equity securities held by an investment partnership from which the insider is entitled to a performance related management fee. Accordingly, although there is no direct obligation on associated persons to report under Section 16, as in the MAD / MAR regimes, holdings of an associated person may be deemed to be holdings of the insider and therefore reportable.

[10] The definition of "person discharging managerial responsibility" in MAD is consistent with that in MAR. "Connected persons" under MAD as implemented in the UK included all persons included in the definition of "persons closely associated with [PDMRs]" in MAR, but also included (i) companies in which the PDMR and connected persons hold 20 percent of the shares/voting interests; (ii) trusts where the trustee may exercise a power of the trust for the benefit of the PDMR; (iii) persons who are partners (under partnership law) of the PDMR or a connected person of the PDMR; and (iv) a firm in which a PDMR (or one of his connected persons) is a partner. In this respect, MAR has narrowed the field of associates of PDMRs who are caught by the regime.

[11] *See* definition of "persons closely associated" under MAR.

	Section 16	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
Relevant securities:	Equity securities registered under Section 12, including, for this purpose, derivative securities as well as other contracts, rights or arrangements the value of which is based on the value of equity securities	Shares and derivatives or other financial instruments relating to those shares	Shares or debt instruments of the company, or derivatives or other financial instruments linked to those shares or debt instruments. Uncertainty remains on whether rules apply to securities not admitted to trading in the EU (without a price-value relationship with securities that are admitted to trading in the EU)
Disclosable transactions:	Applicable persons must disclose (i) their initial holding, at the time of acquisition or, if later, the registration of the class of securities under Section 12 (on Form 3); (ii) changes in beneficial ownership (on Form 4); and (iii) an annual statement of beneficial ownership (on Form 5)	Transactions conducted on their own account	Transactions conducted on their own account[12]

[12] Note that this does not include transactions "for the account of a third party" or "directly or indirectly," unlike the prohibition on transactions during closed periods—see below.

	Section 16	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
	Transactions that must be reported include acquisitions, disposals, grant of options/other rights to receive shares, exercise of options/ other rights to receive shares and various other transfers of beneficial ownership. Does not generally include stock lending or pledging	Brief non-exhaustive list (acquisitions, disposal, accepting awards, accepting gifts, exercising options and placing spread bets) was set out by the FCA in technical notes. MAD text did not explicitly include pledging shares, but the FCA issued a statement confirming that in the UK, share pledges must be disclosed	Lengthy non-exhaustive lists of examples are set out in MAR and implementing regulations,[13] and includes pledging or lending the securities and transactions undertaken by a third party asset manager on behalf of the PDMR/person closely associated
Disclosure made to:	The SEC (through EDGAR)	Company	Competent authority and company
De minimis:	Certain *de minimis* transactions (less than $10,000 in market value) may be reported annually on Form 5 (although often voluntarily reported on Form 4)	None	€5,000 per year
Contents of disclosure:	Information required by Form 4 is broadly the same as under MAR (although does not include the location of the transaction)	Name of PDMR, reason for notification, name of company, description of financial instrument, nature of the dealing, date and place of the transaction and price and volume of the transaction	As under MAD

[13] *See* the list set out in Commission Delegated Regulation of December 17, 2015 *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0522&qid=1459932714328&from=EN.

	Section 16	MAD as implemented in the UK	MAR (*from July 3, 2016*)
Format of disclosure:	SEC-prescribed forms (Forms 3, 4, and 5)	An optional form is available on the FCA website[14]	Prescribed format set out by ESMA and the EU Commission[15]
Timing of disclosure:	Form 3: within 10 days of becoming an insider Form 4: by the end of the second business day following the transaction Form 5: within 45 days of the end of the company's fiscal year	PDMR to disclose within four business days of the relevant transaction; to then be made public by the company as soon as possible, and in any case no later than the business day following notification by the PDMR	PDMR to disclose within three business days of the relevant transaction; to then be made public by the company as soon as possible, and in any case within (the same) three business days of the relevant transaction

Closed Periods[16]

U.S. Context
Although quarterly blackout periods designed to prevent directors, officers and certain other employees from trading in a company's securities for a period of time prior to earnings releases (and until a short time thereafter) are common features of many U.S. public companies' insider trading policies, there are no formal or prescriptive requirements as to timing. Transactions pursuant to Rule 10b5-1 plans will also typically not be subject to blackout periods. Compliance with MAR requirements may thus require significant changes in practices.

[14] https://www.fca.org.uk/static/documents/ukla/forms/dtr-notification-responsibilities-form.pdf.

[15] *See* Commission Implementing Regulation (EU) 2016/523 of March 10, 2016, *available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0523&from=EN.

[16] Although there was no MAD requirement analogous to the closed period under MAR, PDMRs of companies with premium listings on the London Stock Exchange were prohibited from dealing during certain "prohibited periods" set forth in the UK Model Code. This section accordingly summarizes the implications of the Model Code prohibition (which was replaced by MAR).

	Model Code (*previous regime for UK premium-listed companies*)	**MAR (*from July 3, 2016*)**
Persons prohibited:	PDMRs (but PDMRs must seek to prohibit transactions by their connected persons and investment managers)	PDMRs
Prohibited transactions:	Acquisition, disposal, contracts linked to a security's price, actions relating to options, stock lending, granting a charge over a security, any transfer of beneficial ownership	Transactions on their own account or for the account of a third party, directly or indirectly We understand that it is possible that the list of prohibited transactions is likely to be regarded as the same as the list of transactions that must be disclosed under the PDMR disclosure obligation
Relevant securities:	Publicly traded or quoted securities of the company or any member of its group or any securities that are convertible into the same	Shares or debt instruments of the company, or derivatives or other financial instruments linked to those shares or debt instruments. Uncertainty remains on whether rules apply to securities not admitted to trading in the EU (without a price-value relationship with securities that are admitted to trading in the EU)
Clearance to deal:	All transactions by a PDMR require advance clearance from a designated director of the company	No general requirement for clearance. The Model Code obligation for PDMRs to seek clearance has been replaced with a requirement that companies have effective systems and controls in place to ensure that PDMRs seek clearance

	Model Code (*previous regime for UK premium-listed companies*)	**MAR (*from July 3, 2016*)**
Period during which transactions are prohibited:	"Close periods": 60 days prior to a preliminary announcement of annual results; 60 days prior to an annual financial report; if a company reports half-yearly, the time from the end of the half year to the publication of the half-yearly report; if the company reports quarterly, 30 days prior to the announcement of the quarterly results In addition, any time there is undisclosed inside information relating to the company	MAR-prescribed "closed periods": 30 days before the announcement of an interim financial report or a year-end report that the company is obliged to make public under national law or rules of the rules of the trading venue where the company's shares are admitted to trading The FCA has announced that, until further guidance is received from the European Commission or ESMA, it will consider that a closed period ends on the announcement of preliminary results (where the preliminary announcement contains all inside information expected to be included in the relevant later report).[17]
Exceptions to prohibition on transactions:	(i) If not in possession of inside information, a PDMR in severe financial difficulty may sell securities; (ii) various exceptions for acquiring securities under employee share plan where there is no discretion on PDMR's part; and (iii) under a trading plan executed by a third party under pre-agreed written instructions	Exceptions analogous to (i) and (ii) under MAD continue to exist Doubtful that trading that could have taken place under exception (iii) (pre-agreed trading plans) will be permitted under MAR
Other company obligations:	None	A company must (i) maintain a list of its PDMRs and closely associated persons; and (ii) notify PDMRs of their obligations under MAR

[17] The announcement is available at http://www.fca.org.uk/firms/markets/market-abuse/mar/closed-periods-preliminary-results.

INSIDER LISTS

U.S. Context
No analogous requirements, although many companies maintain details of persons with access to material non-public information as a matter of good practice.

	MAD as implemented in the UK	MAR (*from July 3, 2016*)
Insider lists:	Obligation to maintain a list of all persons who have access to inside information	As under MAD
Details to include:	Insider's identity, reason for inclusion on the list and the date on which the list was created and updated	More extensive details of relevant insiders than was required under MAD, including phone numbers, email addresses, home address and national identification numbers
Form of insider list:	No specified form	EU-wide prescribed template must be used[18]
Record keeping:	Insider list to be kept for five years from the last update	As under MAD

SHARE REPURCHASE PROGRAMS

U.S. Context
Share repurchase programs are subject to the general prohibitions against insider trading contained in the U.S. federal securities laws and can also raise concerns as to market manipulation. For these reasons, U.S. public companies should not engage in share repurchases while in possession of material, non-public information (except under a Rule 10b5-1 trading plan) and generally seek to structure their share repurchases to meet the safe harbor provided by Rule 10b-18 under the Exchange Act.

[18] *Available at* http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0347&from=EN.

	Rule 10b-18	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
Objective:	No restriction	Sole purpose to reduce the capital of the company or meet obligations to deliver shares under convertible bonds or employee incentive schemes	As under MAD
Advance disclosure:	No specific obligation to provide detailed disclosure in advance; companies will generally make public disclosure of general intent to engage in repurchase activity before commencing a repurchase plan	Prior disclosure required of: the objective of the program, the maximum consideration, the maximum number of shares to be acquired and the duration of the period for which authorization for the program has been given	As under MAD

	Rule 10b-18	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
Trade reporting:	Disclosure on a monthly basis for the most recently completed quarter in Form 10-K and 10-Qs of: total number of shares or units purchased (with additional footnote disclosure in respect of purchases other than pursuant to publicly announced plans or programs) and average price paid; as well as the total number of shares purchased under publicly announced plans or programs and the maximum number (or approximate dollar value) that may yet be purchased under such plans or programs	The titles and amounts of the instruments bought or sold, the dates and times of the transactions, the transaction prices and means of identifying the investment firms concerned must be publicly disclosed no later than seven market sessions following the date of the transactions	As under MAD, but trades are required to be disclosed on a transaction by transaction basis and on an aggregated basis, as well as broken down for each trading venue Disclosure to be included on the company's website and maintained for five years
Trading venue:	U.S. markets (safe harbor does not extend to purchases made outside the U.S.)	Regulated markets	Regulated markets, MTFs and OTFs
	Also does not extend to off market trades	MAD was silent on off market trades	Safe harbor does not extend to off market trades

	Rule 10b-18	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
Buying restrictions:	A purchase by the company may not be the first trade of the day reported on the consolidated quotation system, nor in the last 10 minutes (for securities with ADTV of $1 million or more or public float of $150 million or more) or 30 minutes (otherwise) of the primary trading session. (Purchases following the close of the primary trading session permitted only subject to certain restrictions) All purchases and bids on each single day must (with limited exceptions) be made through one broker or dealer	No restriction	The safe harbor does not apply to auctions where the relevant market allows continuous trading. Where the shares are traded in auctions then the safe harbor will apply if participants have sufficient time to react to orders relating to the buy-back program
Price limit:	Shares cannot be bought at a price higher than the highest independent bid or last independent transaction price, whichever is higher	Shares cannot be bought at a price higher than the higher of the price of the last independent trade and the highest current independent bid on the trading venue where the purchase is carried out	As under MAD

	Rule 10b-18	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
Volume limit:	25 percent of the average daily trading volume of the shares in the previous four weeks	25 percent of the average daily volume of the shares in any one day on the regulated market on which the purchase is carried out. Average daily volume determined based on volumes in the month preceding the month of the initial disclosure of the share repurchase program (provided disclosure of that volume is included in that initial disclosure), or in the 20 trading days preceding the date of purchase (where it is not)	As under MAD, but no exception for low liquidity
	In the case of a market-wide trading suspension, the 25 percent limit is increased to 100 percent	In cases of extremely low liquidity, the 25 percent limit may be exceeded if the company provides information and explanations to the competent authority in advance, as well as disclosing this adequately to the public and remaining within an overall cap of 50 percent of average daily volume	

	Rule 10b-18	**MAD as implemented in the UK**	**MAR (*from July 3, 2016*)**
	Alternatively, the company may make one block purchase per calendar week and not be subject to the 25 percent limit, subject to certain conditions		
Trading restrictions:	Not a requirement of Rule 10b-18 as such, but companies should not repurchase when in possession of material non-public information (except under a Rule 10b5-1 trading plan)	During the period of the program, the company may not (i) sell shares, or (ii) trade during a period which is a closed period or when the company has delayed disclosure of inside information	
	The Rule 10b-18 safe harbor is not available: (i) during a Regulation M "restricted period" (when the company is engaged in a distribution of the same class of securities); or (ii) during the period from the time of the public announcement of any merger, acquisition or similar transaction until the closing of the transaction (subject to certain exceptions)	Exceptions: (i) the company is an investment firm or credit institution with information barriers in place, (ii) the dates and volumes of shares to be purchased are set out in the initial public disclosure of the share repurchase program, or (iii) the buy-back program is undertaken by a third party investment firm or credit institution that "makes its trading decisions concerning the timing of the purchases of the issuer's shares independently of the issuer"	As under MAD