A&L Goodbody

CORPORATE FINANCE

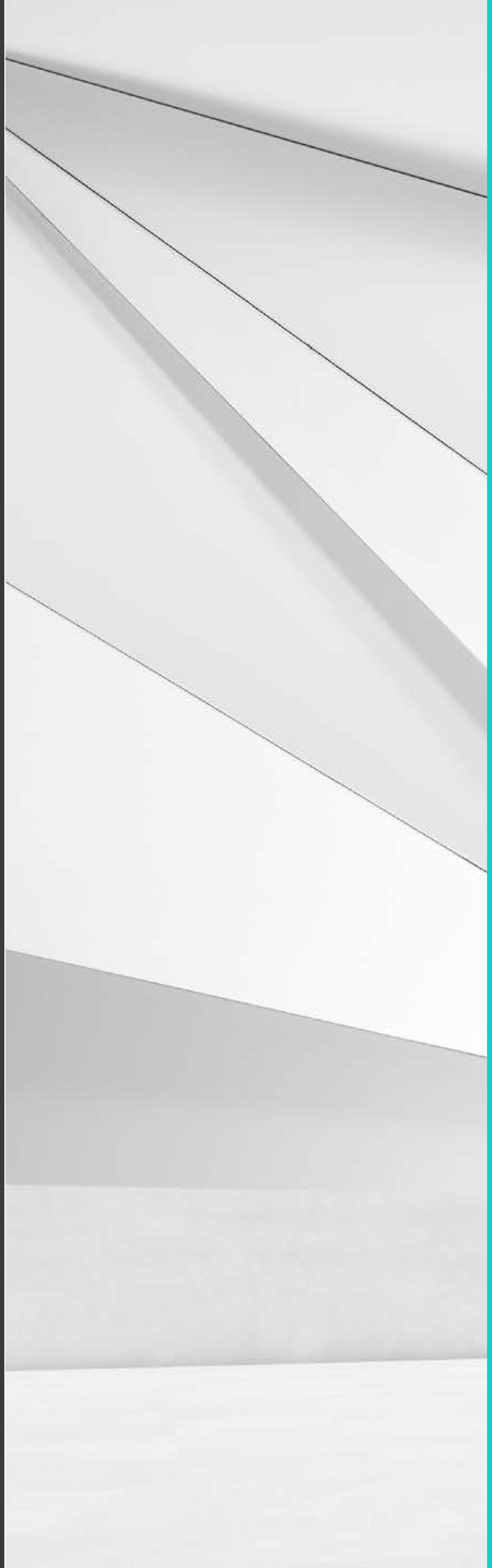
Central Bank fires warning shots on market abuse

On 12 July, the Central Bank of Ireland (**Central Bank**) published a series of findings and Dear CEO letters on compliance with the Market Abuse Regulation (**MAR**). The letters are not confined to regulated firms and issuers but are also addressed to advisors who act on behalf of, or on account of issuers

The findings recognise some good practices; but they also identify a need for significant improvements and call for immediate steps to be taken. A number of risk mitigation programmes (**RMPs**) have been issued to certain market participants where specific concerns were identified requiring remediation within a period specified by the Central Bank to those market participants. In addition, all market participants have been required to critically assess their MAR framework in light of the Central Bank findings, to put in place a time bound plan to remediate deficiencies, and to have such plan discussed and approved by boards by the end of 2021. This is a significant supervisory step and can, in certain cases, be a precursor to enforcement.

4 MIN READ

This wide-ranging regulatory action follows an industry-wide Market Abuse Thematic Review that looked at how regulated firms, issuers and their advisors mitigate the risk of market abuse. Since the implementation of MAR, which replaced the previous Market Abuse Directive in July 2016, there has not been a published sanction by the Central Bank on market abuse. The warning shot from the Central Bank signals a sea-change in approach from the regulator and we anticipate that enforcement actions will follow. In this article, our markets experts review the key takeaways and set out the next steps for affected firms.



Room to improve

Regulated entities

It is interesting to note that most regulated firms assessed by the Central Bank require RMPs. The main improvements required by the Central Bank relate to enhancing surveillance to identify suspected market abuse and improving the framework for suspicious transaction and order reports (**STOR**s). In addition, governance arrangements should be effective. Every regulated entity that was reviewed by the Central Bank was identified as requiring additional resourcing to meet regulatory expectations on MAR compliance. To address this key deficiency, staff training is required to raise awareness of the risk of market abuse.

By the end of 2021, boards of regulated entities must approve a plan to review activities, frameworks and organisational arrangements and controls relating to MAR compliance. Resourcing will be a key issue across the sector, regulated entities reviewed were found to have inadequate levels of staffing and/or systems. Firms should act now to enhance resourcing in what is already a challenging market.

A starting point for any review is a risk assessment specific to each firm’s market activities and business model, which will inform staff training and assist with the identification and subsequent reporting of suspicious activity. STORs should be examined against the volume and complexity of a firm’s orders and transactions and firms should ensure that the volume of STORs submitted reflects the nature and scale of their business.

The Central Bank has indicated that firms are expected to implement a process to identify market abuse risks, which should be considered, mitigated and managed. In addition, firms should review their surveillance framework and calibrate alert systems, document any changes and implement a quality assurance process. There should be appropriate governance around the amendment of parameters and alerts. Governance arrangements should also be assessed and detailed policies should be implemented to ensure consistency in application of arrangements. At board level, the Central Bank expects discussion and challenge on MAR and trade surveillance in particular, this will require enhanced management information specific to market abuse risk.

Equity Issuers

The Central Bank received questionnaire responses from 42 issuers listed on Euronext Dublin equity markets and subsequently carried out in-depth assessments on 10 of those issuers (6 Main Market and 4 Growth Market).

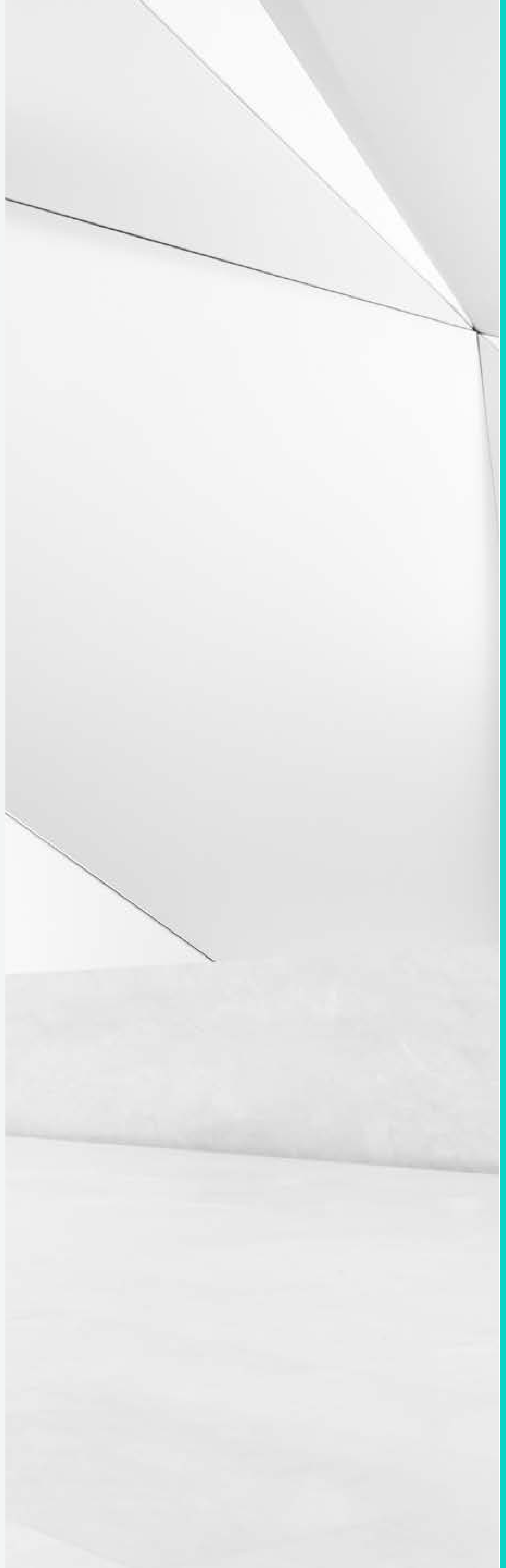
Equity issuers are expected to improve frameworks that identify their market abuse risks to ensure public disclosures of inside information are made as soon as possible and also improve the systems by which inside information is identified. The Central Bank affirms the "realistic prospect" precision test for potential future events and expects equity issuers to improve the systems by which the delayed disclosure regime is applied. Insider list management should also be reviewed to ensure lists are compliantly populated, updated on each occasion that inside information is identified or insiders are added, and have processes for providing insiders with information on their obligations, and warning them of the consequences of breaches. Staff training on MAR should be improved by making it comprehensive and tailoring training to the issuer's business risks. In terms of governance, issuer boards are generally expected to take ownership of market abuse risk with well-controlled delegations.

By the end of 2021, the Central Bank expects all issuers to have a board approved plan and timeline for critically assessing activities, frameworks, organisational arrangements and controls for MAR compliance that addresses these regulatory concerns.

Advisors

As part of the Market Abuse Thematic Review, the Central Bank examined advisors who act on behalf of issuers and examined the arrangements employed by these advisors to identify inside information they receive from issuers and to ensure insider lists compliance requirements and controls against market abuse were being followed.

The Central Bank identified that improvements could be made in relation to the identification of inside information, the management and governance of insider lists, and the requirement to provide insiders with information on their obligations and the consequences of breaches. Advisors are expected to have a board approved plan to assess their compliance with MAR and remediate any deficiencies by the end of 2021.



What next?

Aside from those market participants with RMPs to address, it is clear that all other market participants will have a lot to do in order to identify and rectify any deficiencies by end 2021. Although debt issuers were not apparently included in the thematic review, such firms may wish to review MAR compliance to get ahead of future regulatory engagements. Given the Central Bank's sharpened focus on market conduct, it is likely that identified deficiencies will attract a real risk of enforcement action.

Our experts are available to guide issuers and market participants through the implications of the Dear CEO letters and to assist with the preparation of gap analyses and the upgrading of processes and procedures.

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