



MAR Article 16 – Prevention and detection of market abuse - Best Practices

Market operators and investment firms that operate a trading venue and any person professionally arranging or executing transactions have to comply with the obligation to prevent and detect (attempts of) market abuse as is laid down in Article 16 of the Market Abuse Regulation (MAR). The STOR (Suspicious Transactions and Order Reports) desk of the Dutch Authority for the Financial Markets (AFM) started visiting a broad population of market participants in the second half of 2016 and the first half of 2017. This in order to gain insights in how the market was dealing with the MAR that came into force on 3 July 2016 in general, and more specific the implementation of MAR Article 16. During these visits the STOR desk observed several best practices regarding the prevention and detection of market abuse. We share these best practices in this document.

Looking back prior to and during the publication news events

Prior to and during the publication of important news events, such as a public takeover bid or a profit warning, the risk of information asymmetry in the market exists due to a possible leakage of inside information. The AFM advises to analyze orders and/ or transactions (of clients) prior to - and after the publication of an important press release in order to identify possible (attempts of) insider trading.

Institutionalize the analysis

Institutionalizing the analysis of signals of potential market abuse as much as possible allows different persons within the organization to analyze and compare order –and transaction developments in a univocal way. The development of a scoring methodology is an example. Consistent analysis is important. In addition, “professional judgement” is an essential factor for judging and qualifying certain conduct as (an attempt of) market abuse. Therefore, it is important that employees stay alert, undergo training and that they therefore not solely rely on the signals generated by the (automated) monitoring and surveillance systems.

Proper risk management

Adequate risk management may lead to situations in which (attempts of) market abuse will be detected easier. By applying strict pre-trade controls, market abuse by your employees or clients can be prevented. For instance, one may think of a situation where it is not possible for an employee or a client to place an unusual number of orders in a penny stock. Adequate risk management could prevent the occurrence of different forms of market abuse.

Alert models: generic approach

Adding generic elements to your surveillance models is considered a best practice by the STOR desk of the AFM. A generic element is for instance realized profit, impact on the price of the financial instrument, volume developments, volatility developments, etc. The conduct of an investor who wants to manipulate the market is often aimed at the creation of movement in price- or spread of a financial instrument. A person trading on inside information is eager to build a position before the event is made public. Quickly transferring realized profits to another account can also be a possible indication. Generic elements are a valuable addition in recognizing and signaling possible market abuse.

Relationship between compliance and the business

A culture where compliance and the business are in close contact with each other will contribute to more adequate prevention and detection of market abuse. Additionally, close contact between compliance and the business will result in a situation where the business is aware that it can discuss different cases with compliance. To be more specific, cases of possible market abuse can be put up to compliance. On the other hand, compliance is aware of what is going on within the business and the possible problems that the business encounters. Regular contact between business and compliance results in a positive contribution to the development of a market abuse prevention and detection culture within the organization.

Contact met de AFM

In case of incidents and/or questions, please contact the STOR desk by phone on +31 (0)20 797 3716, or by email via STORdesk@afm.nl

Disclaimer: The purpose of these best practices is to provide information. No rights may be derived from it, and hence no action should be based solely on its contents. If the text deviates from the MAR, the wording of the MAR prevails. The actual text of the Market Abuse Regulation is available on the EU's website.