

## INVESTMENT FUNDS ALERT

### THE EUROPEAN MARKET ABUSE DIRECTIVE AND THE IRISH STOCK EXCHANGE



This memorandum summarises the recent developments relating to the adoption of the EU Market Abuse Directive (the Directive) in Ireland and, in particular, its effect on both open-ended and closed-ended investment funds listed on the Irish Stock Exchange (the ISE). **The Directive impacts directly on those US-based investment advisors that advise ISE listed funds**, even though (in the case of open-ended funds) the interests in the funds are not traded on the ISE.

The Directive was passed into Irish law on 6 July 2005. The Directive's (and the law's) objective is to prevent insider trading or "market manipulation," a new offence in Ireland, and to ensure the integrity of EU markets. Each fund listed on the ISE already has a series of continuing obligations to comply with, including requirements that the directors of the fund and the investment advisor are precluded from dealing (this is a very broad definition including any sale, purchase, redemption, dealing in options or other present or future rights, as principal or agent for a third party) in the fund's listed shares while in possession of price-sensitive information about that entity (specific information that has not been published, and if it were published, would be likely to affect the price of the listed shares). The fund must also notify the ISE of any change in the financial position or performance of the fund, which is not public knowledge and which may materially affect the price or net asset value of the fund's shares. This obligation has previously been met by funds reporting their net asset value when it has been struck. As yet there is no industry consensus on whether the new law requires funds to report events mid-month (i.e., before the final NAV for the period has been struck). In the event of a material mid-month decline in a fund's value, it is advisable to discuss with your listing broker whether it is appropriate to make an announcement, notwithstanding the preliminary nature of such information. The factors to take into account when making the final decision include, but are not limited to, the fund's liquidity, overall economic conditions, the fund's volatility and risk profile, and whether it is possible to legitimately delay the decision in accordance with paragraph (2) below.

The Directive extends these existing obligations and imposes additional requirements in an effort to prevent market abuse. The two central concepts that constitute market abuse are (1) “Insider Dealing,” which involves trading (or attempting to trade) while in possession of “Inside Information,” and (2) “Market Manipulation.” “Inside Information” is broadly defined as non-public information relating to the issuer of listed securities (i.e., the fund). “Market Manipulation” is broadly defined as meaning any transaction, order or dissemination of information that distorts the price of a financial instrument or is deemed likely to do so. The full definitions of “Inside Information” and “Market Manipulation” are set out in Appendix A.

For any fund listed on the ISE the main additional requirements introduced by the Directive are as follows:

1. A fund must inform the public (via an announcement to the ISE) as soon as it is aware that it possesses Inside Information that directly concerns the fund (except as set out below at paragraph 2).
2. A fund may delay the public disclosure of Inside Information so as not to prejudice its legitimate interests, provided that such omission would not be likely to mislead the public and provided that it is able to ensure the confidentiality of that information. In these circumstances the fund should, without delay, inform the ISE of the decision to delay the public disclosure of the relevant Inside Information.
3. **A listed fund is required to compile and maintain a list of all persons, including the directors, partners, officers, members and employees of its investment advisor, who have access to Inside Information.** The list should state the identity of any persons with access to Inside Information, the reason why they are on the list and the date upon which the list was created (and updated). This list should be promptly updated with relevant amendments. Note that the fund’s administrator may also possess Inside Information and that the appropriate employees of the administrator should therefore be included on the list.
4. Anyone with “managerial responsibilities” (and, where applicable, persons closely associated with them) must notify the ISE of details of transactions carried out on their own account in relation to a listed fund. This extends the scope of the continuing obligations requirement relating to notification of dealings by directors, the investment advisor and other interested parties. Note that this obligation relates to dealing in the fund’s shares, not in its underlying positions. The definition of a “person with managerial responsibilities” and “closely associated persons” is set out in Appendix A.

## APPENDIX A

### KEY DEFINITIONS

For the purposes of this Appendix A, the “issuer” is any fund listed on the ISE. The “financial instruments” include the listed shares or units of any such fund. The “regulated market” is the Official List of the Irish Stock Exchange.

**“Inside Information”** means (a) any information of a precise nature relating directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments which has not been made public and which, if it were made public, would be likely to have a significant effect on the price of those financial instruments or on the price of related financial 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 practices on those markets, or (c) for persons charged with the execution of orders concerning financial instruments, information conveyed by a client and relating to the client’s pending 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 or on the price of related derivative financial instruments.

**“Market Manipulation”** means (a) transactions or orders to trade (i) which give, or are likely to give, false or misleading signals as to the supply of, demand for, or price of financial instruments, or (ii) which secure, by a person or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that the person’s reasons for so doing are legitimate and the transactions or orders to trade, as the case may be, conform to accepted market practices on the regulated market concerned; (b) transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance; or (c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading.

**“Person discharging managerial responsibilities within an issuer”** means a person who is (a) a member of the administrative, management or supervisory bodies of the issuer, or (b) a senior executive, who is not a member of the bodies referred to in (a), having regular access to inside information relating directly or indirectly to the issuer, and the power to make managerial decisions affecting the future developments and business prospects of this issuer.

**“Person closely associated with a person discharging managerial responsibilities within an issuer of financial instruments”** means:

- (a) the spouse of the person discharging managerial responsibilities;
- (b) dependent children of the person discharging managerial responsibilities;

- (c) other relatives of the person discharging managerial responsibilities, who have shared the same household as that person for at least one year on the date of the transaction concerned; or
- (d) any person,
  - (i) the managerial responsibilities of which are discharged by a person (I) discharging managerial responsibilities within the issuer, or (II) referred to in paragraph (a), (b) or (c) of this definition,
  - (ii) that is directly or indirectly controlled by a person referred to in subparagraph (i) of paragraph (d) of this definition,
  - (iii) that is set up for the benefit of a person referred to in subparagraph (i) of paragraph (d) of this definition, or
  - (iv) the economic interests of which are substantially equivalent to those of a person referred to in subparagraph (i) of paragraph (d) of this definition.

## CONTACT INFORMATION

If you have any queries regarding the scope of the Directive or its practical consequences, please contact:

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