

MARKET ABUSE REGULATION II (MAR)

WHAT IS MAD II? (MARKET ABUSE DIRECTIVE II)

Following the onset of the global financial crisis, the European Commission determined that the Market Abuse Directive adopted in 2003 (MAD I) needed to be updated and strengthened. In response to that conclusion, MAD II entered into force on July 2, 2014, with the majority of its provisions becoming effective on July 3, 2016.

Broadly speaking, the MAD II market abuse proscriptions involve:

- Trading in financial instruments on the basis of inside information
- The improper disclosure of inside information
- The manipulation of market prices through both the entering of orders to trade, as well as executed transactions
- The dissemination of rumours and false and/or misleading information
- Additionally, MAD II introduces criminal penalties for “serious cases” of intentional market abuse. Further, MAD II creates liability for persons having control or supervisory responsibilities.

The overarching purpose of MAD II is to strengthen regulation, create deeper market transparency, prevent market abuse and manipulative behaviours, and encourage market participants to maintain the integrity of the markets. MAD II extends itself to a far broader range of markets and types of financial instruments, including; cross-market/cross-product manipulation of financial instruments and spot commodities markets; high frequency/algorithmic trading; benchmark manipulation; and insider dealing. In that financial instruments are increasingly traded off-market in fragmented markets, MAD II extends itself beyond regulated markets to organised trading facilities (OTFs), multilateral trading facilities (MTFs), and instruments traded over the counter which affect the price/rate of financial instruments and commodities subject to MAR.

Today, MAD II extends regulation across new market structures, trading venues, across products, across borders, and most significantly, includes the intention to trade (not just executions). The tone of MAD II is much more prescriptive about what is manipulative than previous regulations – and extends the definition of manipulative behaviour to cross-market abuse in not only those instruments previously deemed regulated asset classes and products, but the newly expanded asset classes and instruments under MAR as well.

Catalysts for the Adoption of MAD II

- New trading platforms, increased market fragmentation, technologies and the global nature of today’s markets create opportunities to manipulate markets
- Gaps existed in MAD I in the regulation of these new markets, platforms and in the over-the-counter (OTC) trading of financial instruments
- Commodities (spot and derivatives) regulations were not governed by MAD I and various alleged market-wide improprieties begged for increased market regulation of those markets
- The ripple effects and financial ramifications of the LIBOR scandal were a wake-up call for the need for a regulatory framework for benchmarks in both financial instruments and commodities
- The ability to take advantage in differences in the laws of the 28 EU member states and thus bypass enforcement of MAD I
- Lack of sanctioning powers or criminal sanctions by authorities in some countries with regards to insider dealing and market manipulation offences

Significant Proscriptions - MAR Prohibitions

- MAD II prohibits insider dealing and improper disclosure of inside information and market manipulation and now prohibits attempted insider dealing and market manipulation, a very critical distinction from MAD I.
 - MAR now provides that making decisions to cancel or amend existing orders on the basis of inside information will be deemed insider dealing (i.e. the intent factor).
 - The definition of inside information now extends beyond financial instruments and now includes information on commodities derivatives, spot commodity contracts, and emission allowances.
- The non-exhaustive list of market manipulation indicators defined in Annex 1 of MAR, and the ESMA Consultation Paper include, but are not limited to:
 - Giving or disseminating misleading information about the supply, demand or price, or establishing an artificial price/rate level
 - Affecting price/rate by manipulation, deception or contrivance
 - Manipulating financial instrument and commodity benchmarks via the dissemination of false or misleading information or via the entering of orders to trade and/or transactions
 - Acting alone or in concert to secure a dominant position over supply or demand which has the effect of fixing prices/rates or creating other unfair trading conditions
 - Trading at the opening, or the close, or during other price sensitive periods with the effect of creating artificial price/rate levels and misleading investors
 - Engaging in market disruptive practices through the placement, cancellation, and modification of orders to trade

NICE ACTIMIZE SOLUTIONS FOR MAD II/MAR

NICE Actimize's holistic trade surveillance solutions empower firms, giving you the ability to view orders, trades, and communications data and efficiently manage and monitor for insider dealing, market manipulation and any prohibited disclosures of confidential client information or material non-public information. Proactively analyse all order and trading interactions while monitoring the full trade life cycle in conjunction with relevant news events to determine suspicious activity and recognise suspicious multi-channel communications.

Comprehensive Trade Surveillance Coverage

Out-of-the-box detection scenarios provide clients with superior analytics, trade surveillance across assets, regulations, verticals, markets, and borders along with monitoring activities for market manipulation, fraud, customer/investor fair dealings, insider trading, behavioural patterning and trending, and more.

Complete Communication Surveillance

Utilise voice and digital interaction data across multiple channels proactively to detect illicit activities such as market abuse violations, insider dealing, and interest rate rigging. We help you reduce investigation time and effort, while enhancing compliance coverage, meeting regulatory burdens without the need for manual retrieval and archiving.

Intuitive, Flexible User Interface

The Actimize platform enables users to tune detection logic with easy to use, table-driven settings, thresholds, and scoring mechanisms. These tuning devices are specifically designed to address the complex and ever changing regulatory requirements of securities firms, by enabling business users to adapt out-of-the-box models to their specific business environment -- without coding or IT involvement. This process significantly reduces false positive rates, allowing investigators to efficiently identify key issues and improve productivity by focusing their time more effectively.

Integrated Risk Case Management

Actimize Enterprise Risk Case Manager (ERCM) is a fully integrated, Web-based case manager for efficient alert management, management reporting, ad hoc investigation, and audit trail functionality. This improves organisational communication and minimises redundant efforts, while meeting regulatory books and records obligations.

Enhanced Integration and Oversight

The Actimize platform enables clients to leverage existing investments in data infrastructure and gain a single view of compliance risk across the enterprise. Actimize offers a robust suite of surveillance and supervisory tools that can extend coverage across the enterprise, thereby reducing overall costs due to savings in data infrastructure, deployment, training, and support. The out-of-the-box functionality enables firms to gain maximum coverage for critical needs rapidly, reducing both risk and implementation costs. Common dashboards, reporting tools, and audit trails limit the need for specialised IT reporting support and enable better insight into customer and employee behaviour, allowing managers to make decisions that are more informed.

Advanced Investigation Capabilities

The Actimize Detection and Research Tool (DART) offers clients unparalleled access to organisational trade data with the option of 'on the fly' scenario creation and the ability to search and query access reaches any attached data source. Capabilities include plain language queries, query by example, real-time instant feedback, and one-click query automation. Every query is shareable with other investigators in a single click, improving knowledge share across the entire organisation.

Market Visualisation

Actimize Market Visualisation enables quick identification of issues in the context of market activity. Firm transactions, alerts, and market news overlay graphical market data, empowering users with increased flexibility, enhanced alert investigation, and the ability to identify issues and spot anomalies quickly.

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