Potential regulatory changes improving Market Abuse Regulation

Report on identification and analysis of obstacles faced by issuers in MAR resulting in weaker investor protection, with possible regulatory improvements

EXECUTIVE SUMMARY

A What is the purpose of this report?

Market Abuse Regulation has been in force for 3 years. The Regulation is aimed at protecting investors from different ways of market abuse, but it also imposes several obligations on issuers that have to be fulfilled constantly. Although the key elements of the system enforced in MAR were in place in previous regulations, some provisions changed significantly or introduced new obligations.

A three-year period is adequate to assess the main ways in which MAR has influenced issuers.

In order to gain in-depth insight into the results of MAR, the Polish Association of Listed Companies (SEG) has launched an analysis+drafting study. It's results are described in this report.

B How was the study conducted?

The study was conducted in two main stages.

Stage 1: In January 2019 SEG conducted an survey identifying which obligations resulting from MAR pose the main burdens on issuers. The survey was conducted online on 16-29 January 2019 and during a conference on 23 January 2019.

Results of the survey were analysed and the SEG's experts proposed several possible regulatory solutions to the main obstacles faced by issuers. Possible solutions were checked against their influence on the level of investor protection. Only solutions that, according to the experts' best understanding, don't deteriorate the degree of investor protection and those that increase investors' safety were kept in the second stage of the study.

Stage 2: In the second stage of the study, the chosen possible solutions were presented to representatives of issuers during a conference on 27 March 2019. Attendees of the conference were surveyed on their preferences of inclusion of particular regulatory solutions in the forecasted future amendment of MAR.

The survey was targeted at issuers listed on the Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System.

The project was coordinated and the study's results were analysed by Miroslaw Kachniewski, President of SEG, and by Piotr Biernacki, Vice-President of SEG.

C What are key findings from the study?

Identified problem	Possible solutions limiting burdens while maintaining high level of investor protection and market integrity
Unprecise definition of inside information	• Introduction of definition of price-sensitive information • Making the definition of inside information more precise • Limiting the disclosure requirements to events significantly influencing financial standing of issuer • Creating catalogue of most frequent types of inside information • Defining the notion of reasonable investor • Deleting "clarifications" in MAR art. 7.2 and 7.4
Unclear regime of delay of inside information publication	• Defining situations in which delay does not mislead the public • Introduction of definition of price-sensitive information • Introduction of possibility to delay financial inside information
Burdensome and unnecessary lists of PCAs	• Lifting the requirement to keep lists of PCAs
Complicated regime for reporting transactions by PDMRs and PCAs	• "Resetting the counter" not once a year, but after every notification • Lifting the requirement to notify "autonomous" transactions
Level of sanctions irrelevantly high in relation to SMEs, microcaps or start-ups	• Relating the maximum sanction to the size of company/earnings of managers
To high discretion in calculation of sanctions discouraging market participants	• More specific allocation of particular sanctions to particular violations • More specific provisions on sanction calculation

SEG od 1993 roku
member of EuropeanIssuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR BIERNACKI MIROSŁAW KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

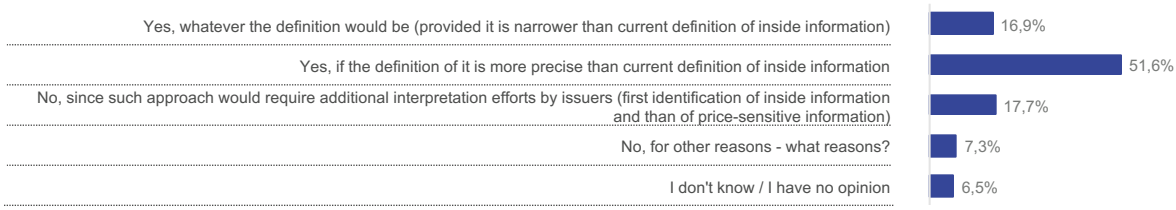
PART I: DEFINITION OF INSIDE INFORMATION

1 Are you in favour of creating a definition of price-sensitive information?

single choice question, n=124, surveyed in stage 1

Under current regime issuers have problem with defining the moment, when the given inside information should be disclosed. Possibly prompt disclosure should ensure equal access to information, but at the same time could undermine the potential profits of companies (and – in turn – their investors). This is the consequence of very vague and capacious definition of inside information. Such an information could be in practice any information "a reasonable investor would be likely to use as part of the basis of his or her investment decisions".

The solution to this problem could be introduction of a notion of price-sensitive information. The regulations on inside information would remain unchanged (definition, prohibition of trading, insider lists), however, there would be no requirement to disclose it. The disclosure would be done on the moment, when such information would become sure and precise – would become a price-sensitive information. And during the period, when the information is being formed, ripens, acquires factors, which could influence the price – it would be protected at the same level as it is under current regulations, however, without the requirement of immediate disclosure.

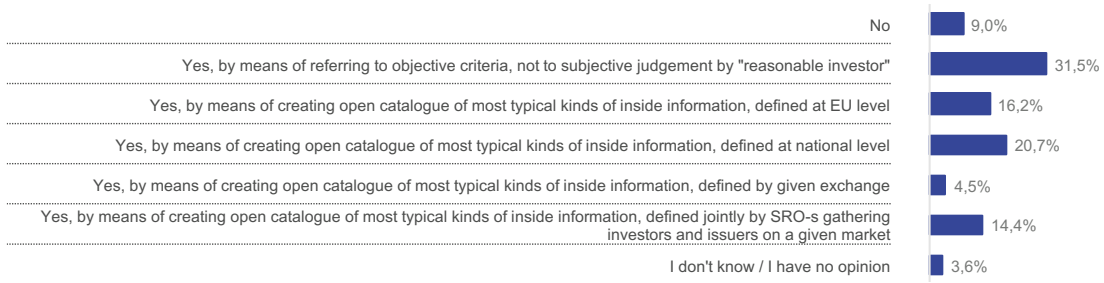


Respondents of the survey have clearly indicated a need for more precise regulations concerning what should and what should not be disclosed by the issuer. A vast majority of them (68,5%) are in favour of the proposed solution described above. This is an indication than the concept of two-steps identification and disclosure (inside information and price-sensitive information) should be taken into consideration by the regulators and supervisors (DG FISMA and ESMA) in works towards amended version of the Market Abuse Regulation, which starts in 2019.

2 Are you in favour of making the definition of inside information more precise?

single choice question, n=111, surveyed in stage 1

The current definition of inside information is so capacious, that it potentially includes almost any event, that could influence the decisions of investors. Hence, this definition should be made more precise to limit the risk for issuers and to make the disclosure policies more coherent and useful for investors.



87,4% of issuers' representatives are in favour of making the definition of inside information more precise. Adding more precision to the current definition of inside information is a difficult task, but representatives of issuers surveyed have given several directions as how this can be achieved. Over half of them (55,8%) supports the idea to create an open catalogue of most typical kinds of inside information. This catalogue should be introduced by the regulator on the national (20,7%) or EU level (16,2%).

Smaller groups of respondents would prefer the catalogue to be prepared by organisations of investors and issuers or by the stock exchanges. A significant group of respondents (31,5%) would prefer introduction of more objective criteria into the definition and elimination of the notion of "reasonable investor" which is one of the most un-clear aspects of the Market Abuse Regulation that issuers have to cope with.

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

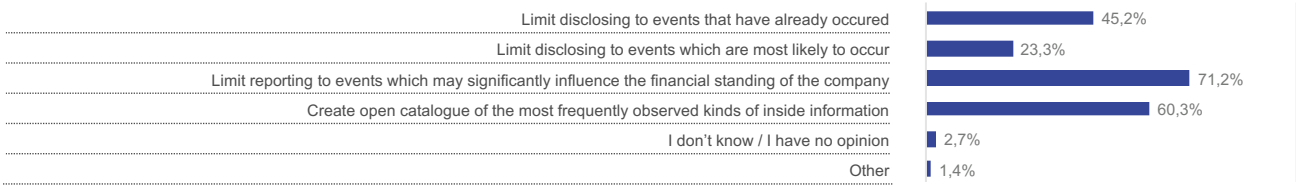
Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

3 How can the notion of „precise" be made more precise?

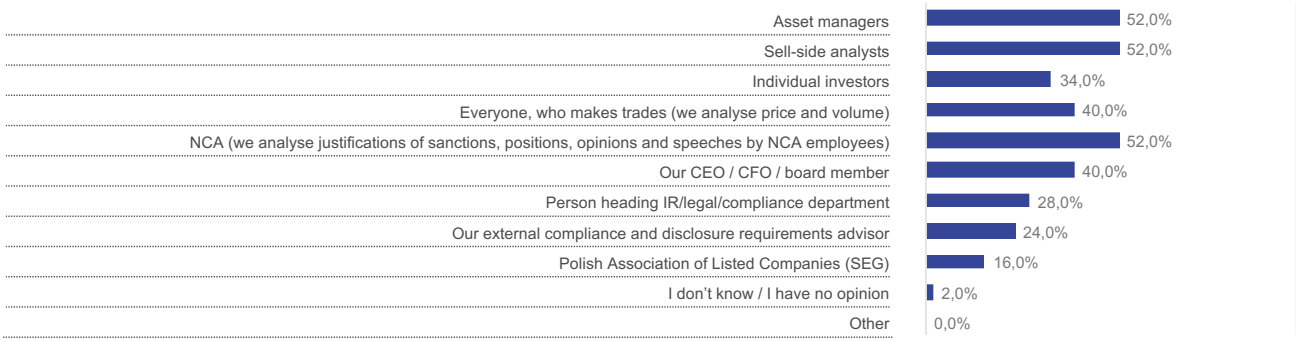
multiple choice question, max 3 answers, n=73, surveyed in stage 2



The respondents were mostly in favour of making the notion "precise" less problematic in applying by limiting reporting only to events which may significantly influence the financial standing of the company (71,2%). For majority of them (60,3%) creating an open catalogue of most frequently observed kinds of inside information would be a good solution. Almost half of participants (45,2%) was of opinion, that only events which have already occurred should be subject to disclosure. Only 23,3% selected the answer "limit reporting to events which are very likely to occur", which would be much more precise than the current regulatory requirement, but still appears to be too vague for application.

4 Whose view is important for you while assessing, what reasonable investor would take into account?

multiple choice question, max 5 answers, n=50, surveyed in stage 2



Just over a half of respondents (52%) tends to consider the views of asset managers, sell-side analysts or NCA employees while defining inside information. Large part of them (40%) analyses price and volume as well as takes into account the view of company top managers. Only every third company (34%) considers that individual investors' view is important while defining inside information, which should not be perceived surprising (the views of individual investors are most diversified and most difficult to analyse).

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

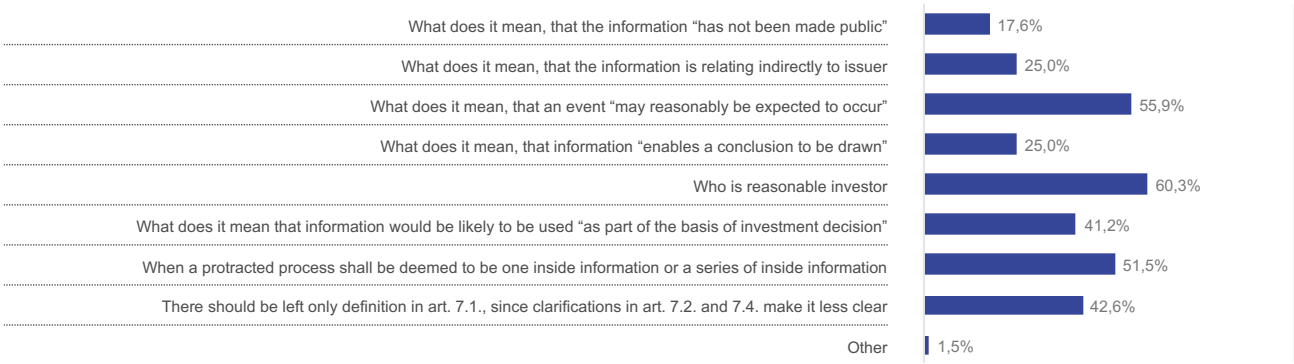
Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

5 Which elements should be made more precise in the definition of inside information?

multiple choice question, max 3 answers, n=68, surveyed in stage 2



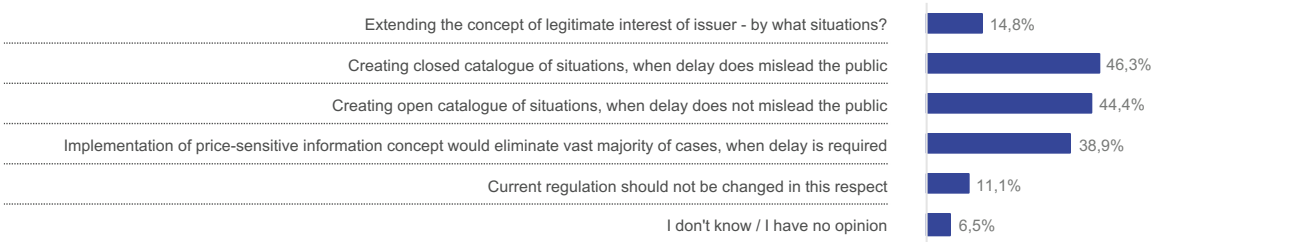
Majority of respondents would be in favour of defining the notion of reasonable investor (60,3%), events that "may reasonably be expected to occur" (55,9%) and the difference between information as protracted process or a series of inside information. However, there is surprisingly high support (42,6%) for simplifying the definition of inside information, basing just on provisions of art. 7.1., which are perceived more clear, than further "clarifications" under art. 7.2. and 7.4.

PART II: DELAY OF DISCLOSURE OF INSIDE INFORMATION

6 Are you in favour of following amendments in the process of delay of inside information publication?

multiple choice question, max 3 answers, n=108, surveyed in stage 1

The current regulations related to delay in disclosure of inside information create many problems, including ensuring confidentiality of delayed information (in particular by the persons not working on behalf of issuer). This problem would be very difficult to solve by amending regulations (unless the notion of inside information would be introduced), but there are some possibilities to make delaying easier and less risky.



Over one third of the survey's respondents are of the opinion that introduction of price-sensitive information concept (described in detail in point 1) would solve the majority of problems issuers have with delay of disclosure of inside information. Other representatives of issuers would like the regulators to create a closed (46,3%) or open (44,4%) catalogue of situations in which delay does not mislead the public. Only one in 9 respondents state that current solutions provided in the Market Abuse Regulation relating to delay of disclosure of inside information should not be changed.

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

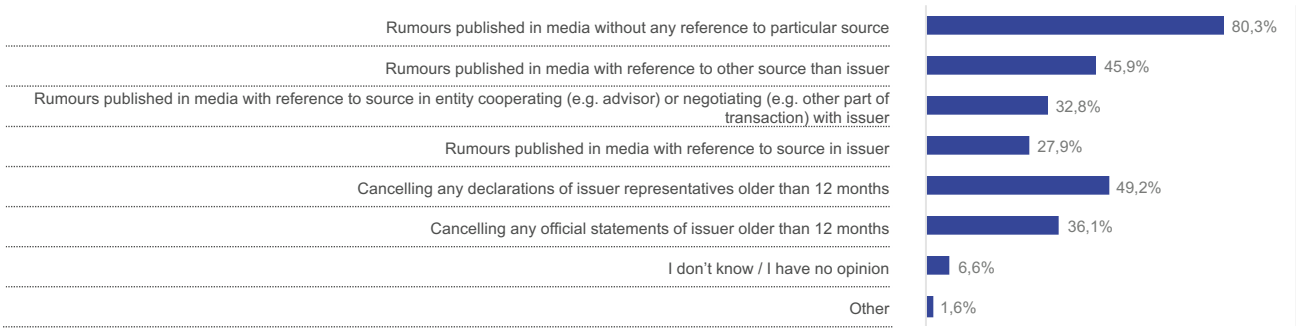
Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

7 What kind of examples of not misleading the public should be embraced in (open or closed) catalogue (i.e. what kind of situations should not require reaction of the issuer)?

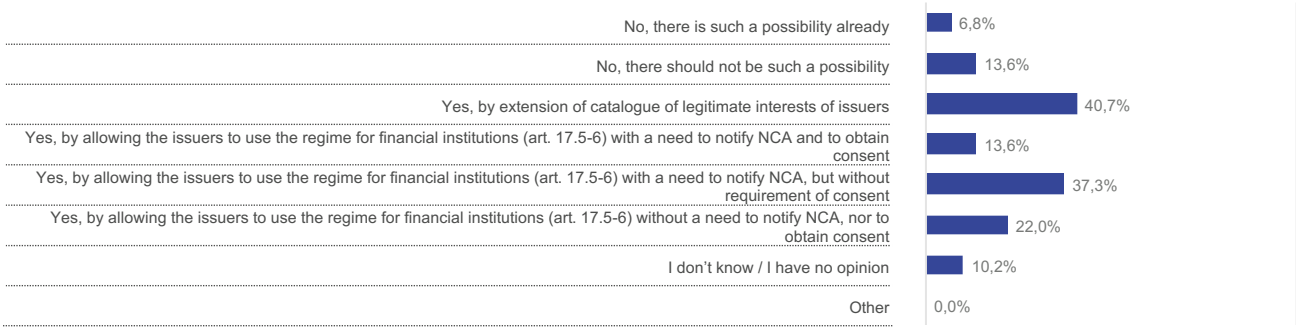
multiple choice question, max 3 answers, n=61, surveyed in stage 2



The general opinion is that issuers should not be obliged to react to rumours (80,3%). Less respondents are of this opinion if there is indicated particular source of information (45,9%), and even less, when this source is connected to the issuer (32,8%) or the issuer is indicated as source (27,9%). Half of respondents (49,2%) wouldn't like to respond to earlier declarations or to official statements (36,1%) if they could be considered outdated (i.e. are older than 12 months).

8 Should MAR allow for delay in publication of financial inside information, and if yes, how?

multiple choice question, max 2 answers, n=59, surveyed in stage 2



Issuers are generally (72,9%) in favour of extending by them the delay regime designed for financial institutions as defined in MAR art. 17.5 and art. 17.6. The biggest part of them (37,3%) was in favour of allowing the issuers to use this delay regime with a need to notify NCA, but without requirement of consent. Moreover, large part of respondents (40,7%) is of the opinion, that the catalogue of legitimate interests of issuers should be extended to cover also possibilities of delay of financial inside information.

SEG od 1993 roku
member of EuropeanIssuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

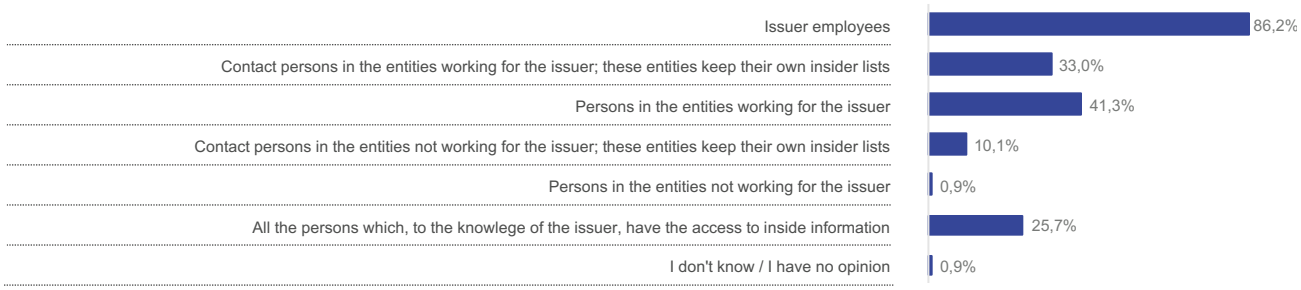
Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

PART III: INSIDER LISTS

9 Which persons having access to inside information should be included in the list kept by issuer?

multiple choice question, max 3 answers, n=109, surveyed in stage 1

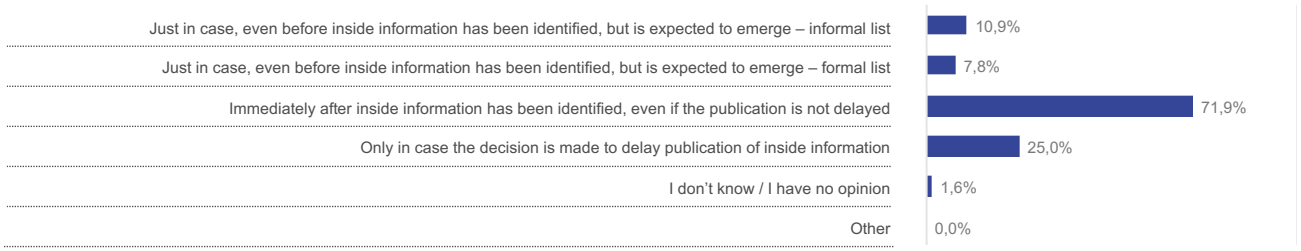
Keeping insiders lists in particular countries varies to large extent. There is different approach relating to including in the lists persons, who are not employed by issuer, e.g. lawyers or advisors. It becomes even more complicated in case of lawyers or advisors not associated to issuer, e.g. working on behalf of other side of transaction. The applied solutions vary between trying to include in the lists all the persons having access to inside information and including in the lists only employees of issuer, while all the other parties keep their own insiders lists.



Representatives of issuers are almost unanimous (86,2%) that issuer's employees who have access to inside information should be included in the insider list kept by the issuer. 41,3% of the survey's respondents are of the opinion that insider lists kept by the issuer should also include persons in the entities working for the issuer and 33,0% are of the opinion that only contact persons in these entities should be included on the lists kept by the issuers and the entities should be obliged to keep their own insider lists including other persons. At the same time only one in nine respondents (11,0%) thinks that the issuers should also keep on the lists persons in entities not working for the issuer. Another group of respondents (25,7%) state that the issuer should include in the lists all persons which, to the knowledge of the issuer, have access to inside information, irrelevant who's employees are those persons. The notion of "to the knowledge of the issuers" is of high importance in this case, as this relieves a part of responsibility from the issuer who is sometimes not capable of precise identification of all persons who have access to inside information, especially in case of persons not working for the issuer.

10 Under what circumstances should insider list be created?

multiple choice question, max 2 answers, n=64, surveyed in stage 2



Vast majority of respondents (71,9%) was of the opinion, that insider list should be created immediately after inside information has been identified, even if the publication is not delayed. However, as many as 25% had different view – that in case of immediate disclosure there is no information gap, so there is no need to keep the list. Only 18,7% approves a concept of drafting insider lists "just in case", and almost half of them (7,8%) is in favour of creating formal lists even before the inside information has been formally recognized.

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

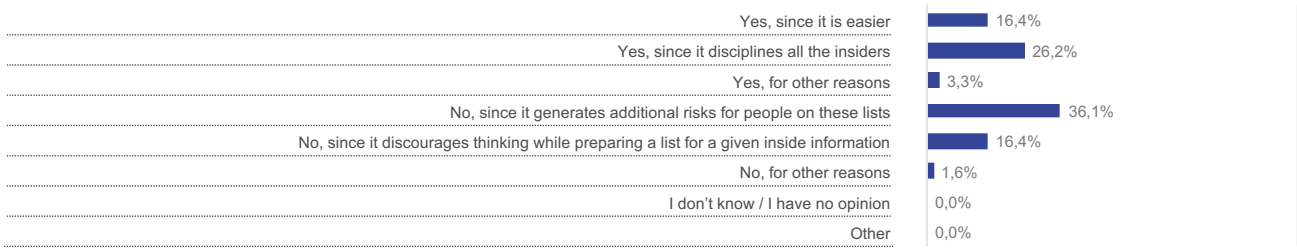
Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

11 Is list of persons with permanent access to inside information a good solution?

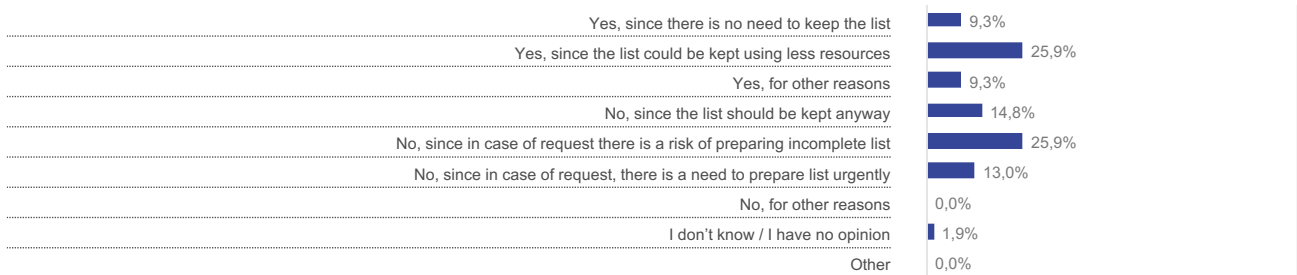
single choice question, n=61, surveyed in stage 2



The respondents were extremely split in relation to this question. 45,9% of them was in favour of creating lists of permanent insiders, mostly (26,2%) because it disciplines all the insiders, while 54,1% were against, mostly (36,1%) since it generates additional risks for people on these lists. The answer to this question could be to large extent biased by the function of respondent in the company.

12 Is a possibility to draw up insider lists ex post a good solution?

single choice question, n=54, surveyed in stage 2



Again, the respondents were quite split, since 44,5% likes the idea of creating insider lists ex post, mostly (25,9%) since the list could be kept using less resources, while 53,7% was of different opinion, mostly (25,9%) since in case of request there is a risk of preparing incomplete list. Moreover, as many as 14,8% were of opinion, that even if there is no formal requirement to keep insider lists, but such lists could be requested by the NCA, still the lists should be kept to ensure compliance.

SEG od 1993 roku
member of EuropeanIssuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by:
PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

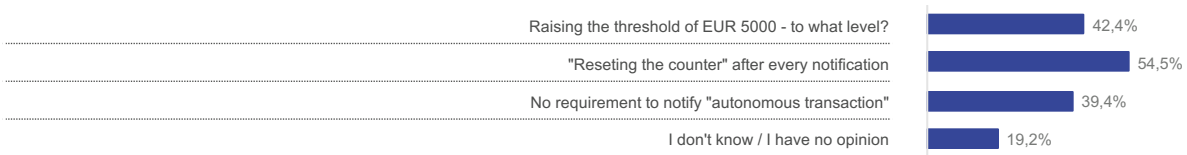
Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

PART IV: TRANSACTIONS AND LISTS OF PDMRs AND PCAs

13 What amendments in reporting PDMRs and PCAs transactions could be implemented not to lower transparency in this respect?

multiple choice question, max 3 answers, n=99, surveyed in stage 1

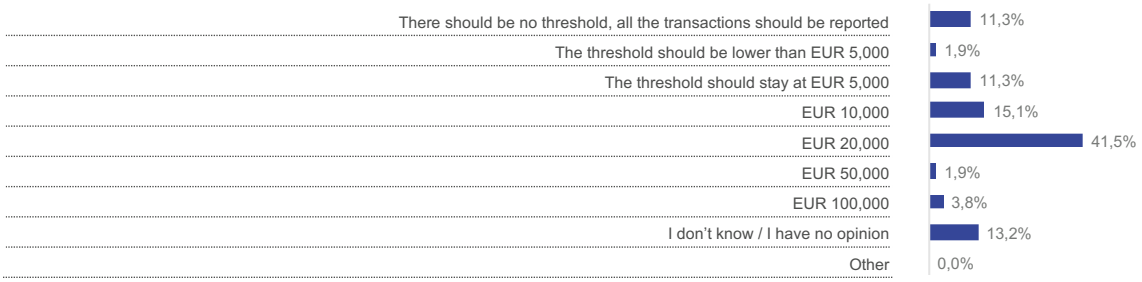
Reporting PMDRs transactions is important for investors, but such disclosure could be achieved much easier and cheaper. The threshold for reporting could be raised (EUR 5000 is not a significant deal). Moreover, whatever the threshold is, there should be no requirement do report every single transaction beyond this threshold – much more logical seems to “reset the counter” after every notification, so that the market would be informed on the “packages” of transactions instead of many insignificant notifications. There is also a problem of reporting “autonomous” transactions, which PDMRs have no influence on (e.g. motivation schemes) – such notifications published under current regulation could mislead investors.



A significant group (42,4%) of the survey’s respondents are in favour of raising the threshold of transactions to be disclosed by PDMRs and PCAs. 8 respondents proposed to raise the threshold to EUR 10.000, 2 respondents to EUR 15.000, 5 respondents to EUR 20.000, 3 respondents to EUR 25.000 and 4 persons stated that the threshold should depend on the market capitalisation of the company. The majority of issuers’ representatives (54,5%) support an idea to “reset the counter” after each disclosed transaction – a mechanism which is explained in detail above. A significant group of respondents (39,4%) suggest that elimination of the requirement to notify “autonomous transactions” would simplify obligations defined in art. 19 of the Market Abuse Regulation. The size of the groups favouring each of the solutions justifies the regulators and supervisors working on MAR amendment to take those suggestions into consideration.

14 What should be the threshold of reporting managers’ transactions?

single choice question, n=53, surveyed in stage 2



Majority of respondents (62,3%) is of the opinion, that the threshold for reporting managers’ transactions should be higher and 41,5% selected the threshold at the level of EUR 20,000 (allowed by MAR, but not necessarily by NCAs). At the same time as many as 11,3% of them indicated, that there should be no threshold and all the transactions should be reported to the market. Only 11,3% are satisfied with the current threshold at EUR 5,000.

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it’s authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

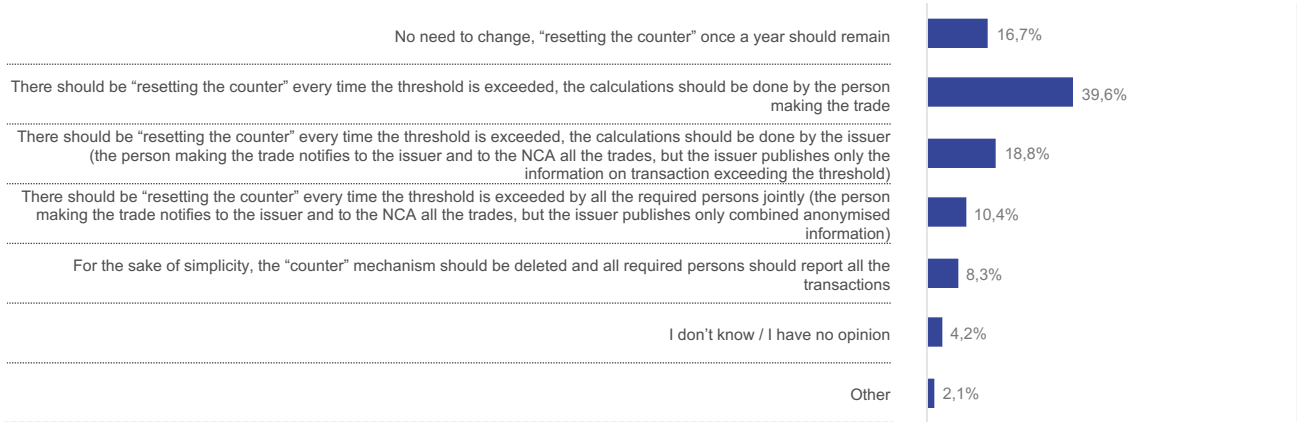
Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

15 What should be the mechanism for "resetting the counter"?

single choice question, n=48, surveyed in stage 2



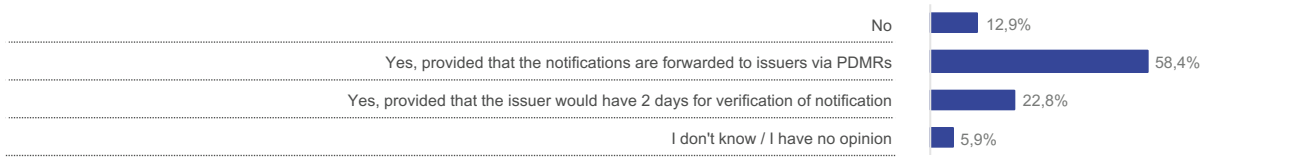
The current status is that "resetting the counter" is undertaken once a year and 16,7% of respondents is in favour of this solution, while 68,8% of them is of the opinion, that "resetting" should take place every time the threshold is exceeded and the report published (in other words, there should be no requirement to report minor transactions until they sum up to threshold again). Such an approach requires that someone needs to monitor if the value of transactions exceeds the threshold and the most popular option (39,6%) was that this should be done by the person making the trade (as it is in the existing regulations).

16 Are you in favour of cancelling the requirement to keep the list of persons closely associated to PDMRs?

single choice question, n=101, surveyed in stage 1

For the purpose of notifications of transactions, MAR requires issuers to keep updated lists of PDMRs, which is perfectly justified. However, MAR requires also issuers to keep updated lists of closely associated persons (PCAs), which in theory is logical (issuer should have means of verifying, if the received notification comes from pCA), but in practice is very burdensome (3 kinds of personal relations with PDMRs, 4 kinds of economic relations with PDMRs and 4 kinds of economic relations with persons tied by personal relations with PDMRs) and requires revealing quite intimate information. According to research done by the Polish NCA, as many as 25,200 PCAs have been identified in Poland. It is possible to estimate that in the whole EU that number may exceed 500,000 persons.

The same level of transparency could be achieved without the need to keep the lists of PCAs in case PCAs would be notifying issuers on their transactions via "their" PDMRs or if the issuer gained extra time (e.g. 2 business days) to verify the notification.



A vast majority of issuers' representatives (81,2%) are in favour of cancelling the requirement to keep the list of persons closely associated, as drawing up and keeping a list of PCAs is one of the most burdensome obligations for the issuer, for the PDMRs and for the PCAs themselves. The majority of respondents are in favour of solutions that would eliminate the need to keep those lists while achieving the same level of market transparency. 58,4% of issuers' representatives support the idea of cancelling the requirement to keep the list of PCAs provided that the notifications are forwarded to issuers via PDMRs. Additional 22,8% of respondents would accept additional 2 days for the issuer to verify identity of the PCA who sent the notification.

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

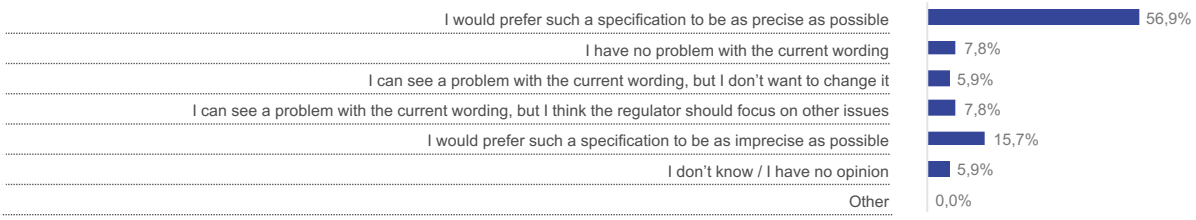
Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

PART V: SANCTIONS

17 Are you in favour of specifying the sanctions for particular violations?

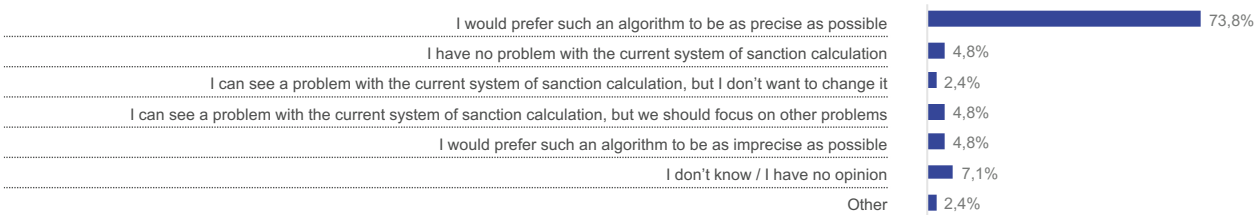
single choice question, n=51, surveyed in stage 2



The existing provisions define the same sanctions for very wide scope of possible violations, i.e. the same sanction for breach of very wide scope of very different requirements (breach of which would result in very different implications for the market) specified in MAR e.g. in art. 18-20 (6 pages of text). Vast majority of respondents (70,6%) are not satisfied with such legal framework and 56,9% would prefer specification of sanctions to be as precise as possible. On the other hand, 15,7% are of opposite view, while 7,8% are satisfied with the existing provisions.

18 Are you in favour of detailed algorithm for sanction calculation?

single choice question, n=42, surveyed in stage 2



The answers indicate, that even if some of respondents are satisfied with the existing legal framework on the specification of sanctions (see question 17), almost all of them are not satisfied with the current system of sanction calculation and as many as 73,8% would prefer to create an algorithm for sanctions calculation, which should be as precise as possible. Only 4,8% are satisfied with the existing system of sanctions calculation and the same number would prefer an algorithm for sanctions calculation to be as imprecise as possible.

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

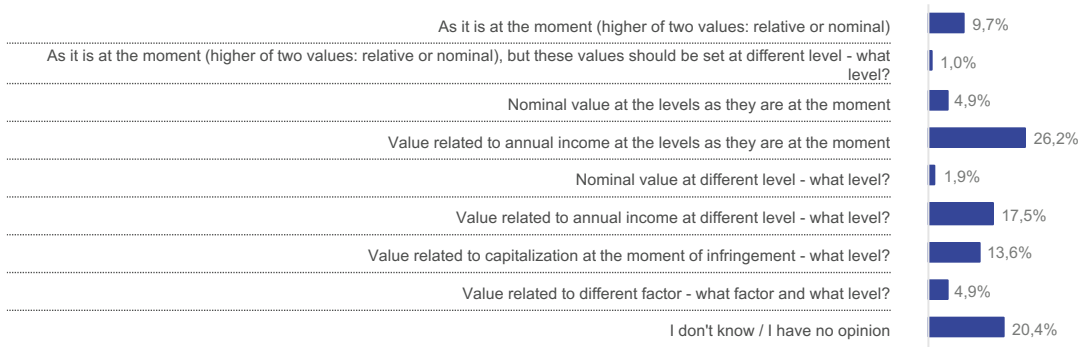
Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

19 How should be defined the maximum sanction to be imposed on issuers?

single choice question, n=103, surveyed in stage 1

The current wording of MAR provides relatively higher sanctions to be imposed on SMEs than on the biggest listed companies. If the sanction is defined e.g.: „2% of annual income or EUR 2,5 million, whichever is bigger" in case of big companies maximum sanction is 2% of their annual income, while in case of small companies – EUR 2,5 million, which can be much higher than 2% or even 100% of annual income (on the Polish market there are listed as many as 294 companies with market capitalization below EUR 2,5 million). SMEs should not be discriminated, so the maximum sanction expressed in absolute terms should be deleted. Moreover, annual income is not a good measure of financial strength of given enterprise due to different profit margins – much better would be e.g. market capitalization.



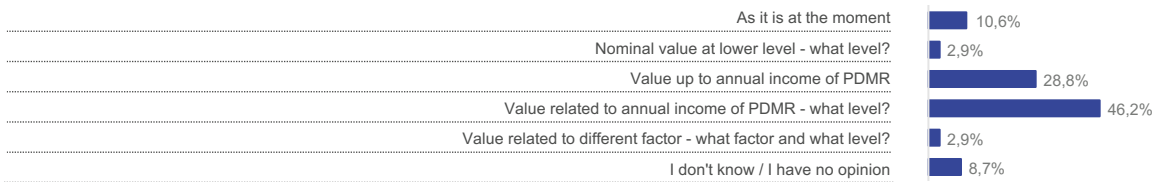
Only 9,7% of the survey's respondents support current system of maximum administrative sanctions set out in the Market Abuse Regulation. The vast majority of respondents would welcome redefined maximum sanctions towards a system that doesn't hurt smaller issuers and, as consequence, their shareholders. The largest group supports leaving only the sanction's value related to annual income at the current level (26,2%).

Another 17,5% would like to see the value related to annual income set at a different level (usually respondents proposed "0,5%" or "1% or less"). 13,6% of issuers' representatives would prefer maximum sanctions related to market capitalisation at the moment of infringement (most of them proposed the level of 0,1% of the market cap, some proposed 1%).

20 How should be defined the maximum sanction to be imposed on PDMRs as natural persons?

single choice question, n=104, surveyed in stage 1

The maximum sanctions to be imposed on natural persons are defined at the levels, which are not proportional to the Polish market. In case of infringement of MAR art. 16 and 17 (almost 4 pages of requirements are defined there, so there is a lot of possible unintentional misconduct) the maximum sanction is EUR 2,5 million – an amount, which a manager on the Polish market will not earn over his/her lifetime. The sanction on natural persons should be referred to their income or to other market parameters, not to absolute terms.



A similar percentage of the survey's respondents (10,6%) support current system of maximum administrative sanctions for members of management, supervisory and administrative bodies. The vast majority of issuers' representatives support an idea of maximum sanctions for natural persons related to their annual income. 28,8% are in favour of limiting the maximum sanction to the level of the natural person's annual income. Nearly half of respondents (46,2%) would limit the maximum sanction even further (a most often proposal was to set it to 50% of the person's annual income, some respondents proposed the limit at 10%).

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR BIERNACKI MIROSŁAW KACHNIEWSKI
design by: theideacraft.com

Possible changes in MAR

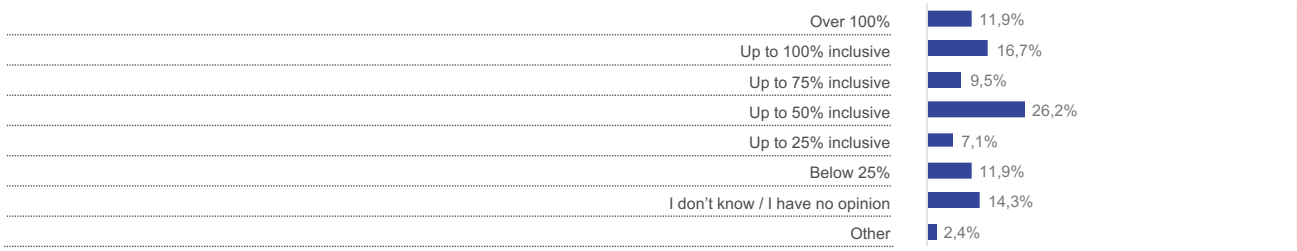
Source: data gathered by the Polish Association of Listed Companies (SEG) via online survey on 16-29 January 2019 and during conferences on 23 January and 27 March 2019

Target group: issuers listed on Warsaw Stock Exchange regulated market and NewConnect Alternative Trading System

Authors: analysis of results by Piotr Biernacki & Miroslaw Kachniewski

21 How maximum sanction should relate to manager's annual compensation?

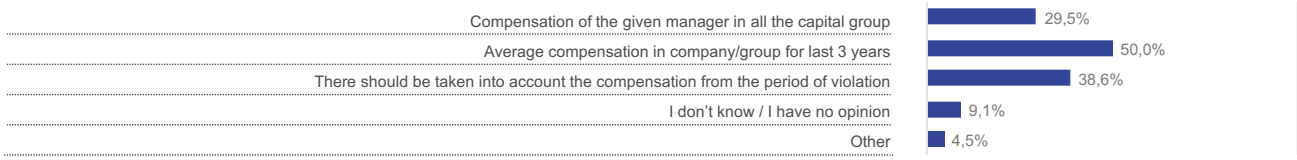
single choice question, n=42, surveyed in stage 2



The maximum sanctions under MAR for natural persons are excessive in relation to managers of small companies, micro caps and startups. The vast majority (71,4%) of respondents are of the opinion, that such a sanction should not exceed annual compensation of the manager and 45,2% would see it at the level not exceeding half of annual compensation of the manager (which still should be discouraging enough). On the other hand 11,9% would see the maximum sanction higher than annual compensation of managers.

22 What should the manager's compensation for the purpose of sanction calculation include?

single choice question, n=44, surveyed in stage 2



In case the sanction is related to compensation of manager, such a compensation needs to be defined in terms of its components, volatility and timing of violation. In relation to the first problem 29,5% of respondents were of opinion, that this should include compensation of the given manager in all the capital group (we may assume, that the rest was against). As to volatility – the compensation of managers often varies over years, so half of respondents were in favour of calculating average over 3-year period. The last problem refers to the lapse of time between the violation and sanction imposed (in Polish reality this could take 5 years), over which the financial situation of company and manager could significantly change. So 38,6% were of opinion, that the calculation should relate to the period of violation.

SEG od 1993 roku
member of European Issuers FSR

The infographics is of informational and educational nature and it's authors do not bear any responsibility for decisions taken based on its contents

This work is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License. To view a copy of this license, visit http://creativecommons.org/licenses/by-nc-nd/4.0/

infographics prepared by: PIOTR MIROSŁAW BIERNACKI KACHNIEWSKI
design by: theideacraft.com