Area	Best practices	Poor practices
Market soundings (Article 11 MAR) **General note: the MFSA carried out its inspections prior to the enactment of the EU Listing Act, at which time, the market sounding regime was mandatory.**	Despite the non-mandatory nature of market sounding regime, when carrying out a market sounding, investment services providers should nevertheless seek to set up effective procedures.	Investment services providers carried out market soundings without following the relevant requirements including, for instance, (i) not providing the market sounding recipient with the standard set of information required by law, (ii) not using the correct templates, and (iii) not keeping proper records.
	Investment services firms conducting a market sounding should also seek to adhere to all the relevant requirements, hence benefitting from the safe harbour laid down by the market sounding regime.	
	Designating a specific person or a contact point to receive market soundings (and communicating this appropriately to the person carrying out the market sounding).	
	Ensuring that the appropriate, internal communication channels are in place.	
	Ensuring the adequate provision of training to the staff receiving and processing the information obtained in the course of the market sounding.	
	Ensuring adequate record-keeping arrangements, in line with ESMA's Guidelines for persons receiving market soundings.	
Market monitoring (Article 16 MAR)	**Arrangements, systems and procedures**	
	Ensuring that the ASP document is an adequate reference point for the staff involved in the monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation.	In the majority of cases, the arrangements, systems and procedures which investment services providers are required to have in terms of article 16 MAR ("ASPs") were found to be inadequate in that they did not provide sufficient detail on the firm's monitoring processes.
	Making adequate reference to the checks undertaken by the Company in relation to the prevention and detection of market abuse and the respective preset thresholds employed by the Company in assessing orders and transactions.	Certain ASPs were simply a reiteration of MAR but failed to explain how monitoring is meant to be carried out.
	Ensuring that any company-specific market abuse risk is adequately covered by the checks being undertaken.	Certain ASPs did not take company-specific market abuse risks into account.
		Certain ASPs did not have preset thresholds which staff are expected to use when assessing potentially suspicious trades and orders. The MFSA is of the view that a lack of predefined thresholds results in inconsistent and arbitrary assessments.
	Ensuring that the company maintains a written record of the reviews and updates which it carries out with regard to its ASPs in line with regulatory requirements.	Certain investment services firms were not following their ASPs, specifically, they were not carrying out the checks required by their ASPs.
		A good number of entities did not assess and/or update their ASPs on an annual basis.
	Monitoring arrangements	
	Ensuring that the company monitors, on an ongoing basis, all orders received and transmitted and all transactions executed, irrespective of whether the orders or transactions relate to instruments traded on local or foreign markets.	The vast majority of investment services providers were found to have been monitoring orders and transactions manually. While this is not strictly prohibited, the MFSA reminded firms of the importance of ensuring that ASPs are appropriate and proportionate in relation to the scale, size and nature of the firm's business.
	Ensuring, on an ongoing basis, that the arrangements are adequate and proportionate to the business of the company, including any preset thresholds which the company may have in place as part of its monitoring arrangements, i.e., ensuring that they generate enough triggers.	Certain investment services providers did not have any ASPs and therefore their monitoring was carried out in an unstructured manner and was therefore inadequate.
		Certain investment services providers argued that they had close, longstanding relationships with clients and therefore deemed their market abuse risk to be low. In such cases, the MFSA noted that these investment services providers had lax monitoring procedures.
		Investment services providers that had largely traded in foreign securities argued that their market abuse risk is low due to the sizable market caps of the relevant securities. The MFSA insists that MAR makes no distinction between transactions carried out locally or overseas, and therefore investment services providers are required to ensure that they monitor all orders and trades, irrespective of the place of jurisdiction.
		At times it was noted that investment services providers did not have sufficient segregation of roles which therefore gives rise to conflicts of interest. In this respect, the MFSA advised that persons providing investment advice to clients should not be involved in monitoring.
	Suspicious transaction or order report	
	Ensuring that whilst the company does not resort to defensive reporting (i.e., by taking an overly cautious approach to reporting), the company does not only submit an STOR where a significant degree of certainty exists as to the suspicion of the relevant order or transaction.	Certain investment services providers were found to have excessively high preset thresholds which leads to under-reporting and over discounting. In this regard, the MFSA reminded the industry that a suspicious transaction or order report ("STOR") should be filed whenever there is a "reasonable" suspicion of market abuse.
	Taking the necessary measures to ensure that any information relating to any suspicious orders or transactions identified are only shared internally on a need-toknow basis to the relevant individuals. This is especially relevant in consideration of investment services providers' obligation to mitigate any risks of tipping off.	In certain instances, the MFSA noted that the failure to submit a STOR was due to inadequate ASPs.
	Ensuring that any suspicious orders or transactions identified are notified to the MFSA expeditiously.	The MFSA also requested caution when designing elaborate escalation procedures (which involve a number of steps) when a suspicious order or trade is identified, since such escalation procedures may lead to over discounting and a delay in the submission of STORs.
	Implementing the necessary measures to ensure that there is adequate segregation between the relevant roles within the entity, hence mitigating any conflicts of interest which may arise.	In certain instances, the MFSA noted that investment services providers tipped off the person whom they were investigating by requesting information from them. The MFSA also noted that certain investment services providers did not keep STORs and investigations sufficiently confidential.
	Staff dealing	
	Although not specifically required by MAR, as part of its supervisory inspections, the MFSA assessed whether investment services providers had any staff dealing arrangements in place with a view of limiting any market abuse risks which may arise from transactions carried out by staff. It was observed that a number of investment services providers had quite robust arrangements.	Certain investment services providers were found not to have implemented any measures in relation to staff dealing, or alternatively, not carrying out basic checks on the information which would have been collected in relation to staff dealing, such as monitoring for possible attempts at frontrunning.
	Ensuring that the company applies the same level of scrutiny to transactions carried out by staff where such transactions are carried out through the company's systems (i.e., subjecting staff dealing to the same level of monitoring which would be applied to any transaction carried out by the customers of the company).	
	Maintaining adequate records with regard to any checks carried out in relation to staff dealing.	
	Record-keeping	
	Ensuring that records in relation to any checks which the company carries out are adequately detailed. Specifically, such information should clearly lay out the suspicious nature of the order or transaction concerned, the checks carried out and the reasons for submitting or not submitting a STOR.	The MFSA noted that the majority of investment services providers had not been maintain adequate records as required by MAR.
		Although some investment services providers deed maintain records of the analysis they carried out, the MFSA noted that in certain instances these records were superficial and did not provide enough detail as to why orders or transactions were or were not reported.
	Training	
	Ensuring that the company not only provides MAR training to the relevant individuals within the entity on a regular basis but also ensuring that such training is adequate, i.e., inclusive of various practical examples, and specifically tailored to cover the market abuse risks faced by the company and the latter's ASPs.	The MFSA noted that certain investment services provider did not provide any MAR training as required by law.
		In other instances, the MFSA noted that training was provided once, and not on an ongoing basis and not as frequently as required.
		On other occasions, the MFSA observed that the MAR training provided was general in nature and lacked practical examples or specific references to the ASPs which the company had in place.
Investment recommendations (Article 20 MAR)	Ensuring that in the event that an entity decides to issue any investment recommendations, it not only has the appropriate procedures and arrangements in place, but also that any such procedures and arrangements are followed closely.	Despite having detailed procedures in place, the investment services providers which had the appropriate policies in place were not always found to have adhered to all the relevant requirements under when issuing investment recommendations. For instance, at times, the investment recommendations did not appear to include any reference to the date and time when the production of the recommendation was completed.