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["NAVIGATING MARKET ABUSE AND REGULATORY SURVEILLANCE" - REMARKS BY PATRICIA DUNNE, DIRECTOR OF SECURITIES AND MARKETS SUPERVISION AT THE BLOOMBERG VAULT AND CBI SEMINAR](#)

## "Navigating Market Abuse and Regulatory Surveillance" - Remarks by Patricia Dunne, Director of Securities and Markets Supervision at the Bloomberg Vault and CBI Seminar

28 November 2023 [Speech](#)

Good afternoon, I would like to thank Bloomberg for inviting me to this event. I welcome the opportunity to discuss the important topic of market abuse and the significance of surveillance in combatting market abuse while ensuring the integrity of markets and the protection of investors.

Today I will touch on the key principles that we are looking to satisfy in our supervision of securities markets, reflecting on the role of surveillance in delivering these principles. I will also focus on findings from a recent supervisory assessment of telephone and electronic communications. I will finish up by sharing some insights and perspectives on broader market integrity matters including:

- enhanced Central Bank trade surveillance capabilities,
- suspicious Transaction and Order Reports,
- international co-operation, and
- Central Bank engagement with the Gardai National Economic and Crime Bureau.

### Our Mission and Principles

The mission of the Central Bank is to serve the public interest by safeguarding monetary and financial stability while working to ensure that the financial system operates in the best interests of consumers and the wider economy. Our work in supervising securities markets is a core component of this mission.

We are looking to see a market that satisfies five principles:

- A Market with a high level of protection for investors and market participants.
- A Market that is transparent, ensuring disclosure of all relevant product features and their prices without ambiguity.
- A Market that is well governed and comprises of firms that uphold the highest ethical and governance standards.
- One that is trusted by both those seeking to raise funds and those seeking to invest .... And finally;
- One that is resilient enough to continue to operate its core functions in stressed conditions

The MiFID and market abuse regimes are comprehensive regulatory frameworks designed to ensure transparency and integrity in financial markets across the EU. Market surveillance (including telephone and electronic communications) are integral components of these regulatory frameworks. Surveillance serves as the eyes and ears of the financial markets, playing a critical role in ensuring that market participants;

1. Adhere to applicable laws, rules & guidelines
2. Maintain the highest standards of integrity, transparency and investor protection, and
3. Are deterred from engaging or attempting to engage in misconduct.

By monitoring orders, trades, telephone and electronic communications, firms can (and must) detect and report insider trading, market manipulation and other misconduct that can undermine trust and fairness in financial markets.

Furthermore, surveillance is essential for protecting investors' interests. By monitoring and scrutinizing trade related data and communications, we create a regulatory environment where investors can trust that their interests are protected and that firms and their employees act in the best interests of their clients.

### Hybrid- Working

COVID-19 altered many things, none more so than working norms and the implementation in many organisations of hybrid-working arrangements. As highlighted in our Securities Markets Risk Outlook Report this year, whilst firms and employees have welcomed the hybrid working, these arrangements can exacerbate conduct related risks as firms adapt to new ways of operating.

The risk of market abuse arising from the use of unmonitored, unauthorised or unencrypted telephone and electronic devices can be heightened in a remote working environment.

Maintenance of full and accurate communication records is important in order to evidence the intention behind trading.

Our supervision teams must be able to assess firms' compliance with market abuse requirements, conduct of business obligations, best execution and order handling requirements. This information is also necessary to assist in the resolution of disputes between investment firms and their clients. The use of unapproved channels limits a firm's ability to monitor communications and hinders the effectiveness of its controls functions. Monitoring communications not only allows a firm to evidence transaction terms and fulfil its obligations to clients; it also helps it to identify misconduct.

Central Bank supervisors recently undertook a conduct risk assessment of telephone and electronic communications in firms engaged in securities markets activity.

This assessment sought to assess the frameworks and controls implemented by firms to ensure that the use, recording and monitoring of authorised telephone and electronic communications complies with MiFID requirements.

In October, the Central Bank published an industry communication setting out the findings of this review and highlighting areas which firms should pay particular attention to:

Firstly, the assessment found that none of the firms included in the review made amendments to telephone and electronic communications policies or procedures despite those firms moving from a largely in-office environment to an entirely remote or hybrid working model during and post COVID. This indicates that firms did not fully consider the conduct risk, which may arise as a result of hybrid working and highlights potential deficiencies in overall risk management frameworks with regard to new or emerging risks.

Secondly, deficiencies in the monitoring of electronic communications were identified. Supervisors observed that the lexicons used for electronic communication monitoring have not been appropriately calibrated. Firms were heavily reliant on default system lexicon words and phrases.

Finally, it was evident from the assessment that the majority of firms did not provide formal and regular management information to senior management relating to telephone and electronic communications. If senior management are not in receipt of such information, they are not in a position to challenge and/or make changes where necessary.

Whilst the above highlights areas for substantial improvement, it is also important to highlight some positive observations from the assessment including:

- Telephone and electronic communications are recorded and retention periods are set in accordance with MiFID requirements.
- Many firms provide corporate devices to their employees as a mechanism to reduce the risk of communications undertaken via unauthorised or unapproved channels.
- All firms had the necessary IT infrastructure to ensure record keeping and recording of electronic communications.

These observations suggest that a strong foundation exists to bolster capabilities in this area of regulatory compliance.

The findings of this assessment are relevant to all entities engaging in trading activity. The responsibility to ensure communications are undertaken on authorised channels rests not only with compliance and risk functions, first line staff have an important role in ensuring that communications are undertaken in accordance with the firm's policies.

Over the last 3 to 4 years, we have seen an evolution in the communications technology used. Webex, Teams and Zoom came to the fore during COVID and continue to be utilised by firms. We continue to see new technology being developed, with other applications and platforms such as WhatsApp, Snapchat and Instagram continuing to evolve to meet customer demands. It is a difficult task for a firm to ensure that no employee is communicating with clients or other persons using these platforms. However, the firm must ensure that it is taking all reasonable steps to prevent unauthorised communications over unapproved channels. Culture and conduct are vital in this regard. Maintaining an effective conduct focused culture is critical to upholding positive behaviour, mitigating instances of misconduct and market abuse. (We published a Thematic Report on Fostering an Effective Conduct Focused Culture in June of this year)

In order to assist in mitigating the risk arising from unauthorised use of telephone and electronic communications, I would encourage firms to:

- review relevant policies and procedures;

- assess their electronic communication monitoring; and
- ensure that staff have received adequate training.

As you know all market participants have an obligation to ensure that arrangements to identify, mitigate, and manage market abuse risk are effective. All the more so as the nature, scale and complexity of securities market activity in this jurisdiction increases.

This obligation also extends to the Central Bank and I wanted to reflect on a number of initiatives in this regard.

#### **Enhanced CBI Trade Surveillance capabilities**

The growth of securities markets activity in Ireland post-Brexit prompted a risk assessment of our own trade surveillance capabilities. Following this assessment, a decision was made to acquire a new market leading trade surveillance tool, which is embedded in our overall market integrity surveillance framework. Future proofing our tool was a key consideration in our decision-making and our new surveillance tool will cover a greater range of financial instruments and venues while significantly enhancing our capabilities in the area of order book and price manipulation monitoring.

#### **STOR Submissions**

There has been a number of supervisory initiatives in recent years focussed on market integrity and we have issued a number of communications since 2021 emphasising the importance of effective trade surveillance systems and the need for high quality timely STORs.

There is certainly a correlation between these supervisory initiatives and communications with the quality and quantity of STORs we now receive. STORs have become significantly more detailed, with clear rationales included in the reports. More STORs are being submitted with additional information provided as evidence for the suspicion including links to corporate transactions, order book data etc. However, these improvements are off a very low base.

The reporting of STORs should not be viewed as just another regulatory reporting obligation, their submission symbolises a commitment to fair and transparent markets. Given the wealth of data points you hold on both your clients and counterparties and given the relatively low levels of reporting already referenced, we believe we should be in receipt of more STORs, in particular from buy side firms.

#### **International Co-Operation**

In globalized securities markets where transactions cross borders and jurisdictions seamlessly, international co-operation in combatting market abuse is imperative. Those intent on committing market abuse intentionally crisscross jurisdictions and different regulatory regimes thereby creating challenges for any one individual regulator. However, through international co-operation, regulators share crucial intelligence (including STORs) and demonstrate a co-ordinated effort to combat market abuse.

The Central Bank is a signatory to both the IOSCO and ESMA Multilateral Memorandum of Understanding concerning consultation, cooperation and the exchange of information. We frequently liaise with national competent authorities in the EU and beyond to obtain additional information relating to our enquiries. We, in turn, also deal with a large amount of similar requests from other authorities. This demonstrates the collective commitment of EU and international authorities to detect, prevent and take action where there are instances of market abuse.

#### **CBI engagement with Garda National Economic Crime Bureau**

Over the past 2-3 years, the Garda National Economic Crime Bureau and the Central Bank have enhanced and built upon the existing relationship between both authorities. There is a strong collaborative inter-agency approach to identifying, investigating and taking action against market abuse. The Central Bank, where it suspects that a criminal act has occurred refers market abuse cases to the Gardaí. As part of these referrals, the Central Bank's market abuse team undertakes extensive and often multi-year investigations involving co-operation from overseas authorities (such as FCA). The Central Bank provides detailed assessments of the trading pattern, insider lists and any other evidence that would be of value to the Gardaí.

Gardaí criminal investigations commence following a referral from the Central Bank. We provide significant market insight and analysis to the Gardaí, in turn; their experienced detectives have provided significant expertise into criminal investigation techniques and structuring investigations. We have begun to see the fruits of that work emerge. There are several cases being investigated by both authorities and there is a strong pipeline of cases where work is underway.

#### **Conclusion**

Let me conclude.

I started my remarks today setting out the key principles we are looking to satisfy in our supervision of securities markets. Our collective efforts in surveillance plays a key role in delivering on these principles.

As we come to the end of 2023 attention turns to 2024 work planning. Our supervisory planning process is guided by these principles. Undoubtedly, you are also in the midst of 2024 work planning, I'd urge you all to reflect on these principles and consider them in the context of your own plans.

I will now open the floor to any questions.

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