



## **The REMIT Compliance Scan**

### ***a step wise approach to be REMIT proof***

#### **Situation appraisal**

Each company active in the electricity or gas wholesale market already has to comply to insider trading and market abuse rules of REMIT and in the near future to the reporting rules of REMIT and probably also to the new financial regulation such as EMIR and MiFID II. Insider trading rules are already common in the financial industry for many years, so energy companies could learn valuable lessons of how banks dealt with this issue. To make sure that your company will comply to all the regulations you should implement a Compliance Program as well as an Insider Trading Policy.

#### **Expertise Maycroft**

Kasper Walet has 25 years of practical and academic knowledge and experience with Compliance and Insider Trading processes as well as similar processes like these for risk management and change management. We managed several similar projects for energy companies and supported them with the design, assessment and implementation of their programs and processes. It would be our pleasure to do this for you as well.

#### **Methodology**

To prepare your organization for the upcoming regulation such as REMIT, MiFID and EMIR we recommend that you will perform a proper and successful change management process. Based on our many years of expertise we advise you to follow the next steps derived from the Best Practices in the financial and energy industry:

***Step1: Design and implementation of Compliance Policy***

***Step 2: Design and implementation Insider Trading Policy***



These steps could be done in parallel as there will be a lot of overlap. By first conducting these 2 projects you will already get a clear picture about all relevant issues within your organization. Besides you will have to involve all the (potentially) impacted people within your organization which will also help to create and enhance the awareness and is a prerequisite for a successful change management.

### **Step 1: Design and implementation Compliance Policy**

Compliance is about having a robust compliance policy in place that is kept under review as REMIT is a living' piece of legislation.

A robust REMIT Compliance Policy should give answers to the following questions:

- What is the scope of inside information?
- What parts of the business/activity could be impacted?
- What is price significant?
- What is precise information?
- What has not already been published?
- Who is best placed to publish?
- When to publish?
- Where to publish?
- How to publish and update information?

### **Assessment**

During the design and implementation phase we will at least make an assessment of the following issues:

- Definition of Roles
- Will the Compliance function be centralized or decentralized
- Internal and external reporting lines
- External interfaces: provision of resources
  - Human and Technical ( IT systems)
- Identification/ assessment compliance risks
- Phase 1: insider trading and market abuse
  - Use of insider information in trading
  - Infringement upon prohibitions
  - Non- wrong fulfilment of disclosure obligations



## Phase 2: Reporting

- Non/wrong fulfilment
- Reporting obligation
- Registration
- Definition of concrete actions to define admissibility and inadmissibility
- Implementation of processes to comply with regulations ( top – down)
  - Directives
  - Technical processes on data disclosure and reporting
- Registration
- Ensuring non use of insider information
- Process for the investigation
- Handling of infringements
- Communication of rules and the regulation to be observed
  - Internal communication and training concept
  - External communication to ACER and National regulators
  - Reporting Process
- Monitoring tools
  - Internal reports on compliance Internal controls
  - Audits
  - Reporting lines for monitoring results
  - Documentation of processes and actions
  - Reporting of infringements
  - Current status processes

## **Step 2: Design and implementation Insider Trading Policy**

### **2.1 Design Process**

The Insider Trading Policy will at least deal with the following issues:

- General information on REMIT and MAD/MAR
  - Description on primary obligations and prohibitions in relation to insider trading
- Who will be covered
  - Board, management, all employees?



- What will be covered
  - Power and gas, transport agreements and related derivatives and financial instruments?
- Establishment of Chinese Walls
  - Separation of production and trading
  - Physically, IT systems etc.
- Insider lists
  - All employees with inside information should be included in an insider list
- Procedures for handling of inside information
  - Inside information may not be shared with anyone until published and thus made available to the market
- Publication of inside information
  - Will insider information be published on Gen-i or special website (s), immediately or ASAP?
- Sanctions
  - Not yet known, but probably fines and imprisonment (+ bad publicity)

## **2.2. Implementation Process**

Although there still are several open issues that need to be clearly defined, such as the definition of inside information, the hedging exemption, you should already start the implementation process.

### **Phase 1**

- Deployment of overall Insider Trading Policy
- Preparation of Insider Trading Policy for external consultants
  - For external consultants such as external lawyers, accountants, etc.
- Link with your company's Compliance program for handling of inside information and market abuse rules
- Development of training programs
  - Short general case in overall compliance program and more detailed REMIT specific program for relevant employees
  - Publication channels
  - Own website(s), regulators or other channels
- Info meetings and educational sessions for relevant employees
- Establishment of Insider lists



## **Phase 2 ( many similar actions as Compliance Program)**

- Establishment of Insider lists
- Specific written procedures for handling of inside information etc.
- Establishment of Compliance Log

### **3. On going**

- Follow-up and monitoring of compliance
- Necessary adaptations of internal policies based on coming ACER Guidelines
- Level II – Reporting Obligation
  - Expected to come into force mid 2013
  - Details on the reporting obligation still lacking
  - Currently awaiting further details/guidelines

### **Contact**

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