

## FCA Consultation - Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation

<b>Background and next steps</b>	<p>In 2011, the European Commission published proposals for the Market Abuse Regulation (MAR). MAR was subsequently adopted by the European Parliament and Council and published in the Official Journal in 2014. MAR will apply from <b>3rd July 2016</b> and will replace the existing Market Abuse Directive.</p> <p>As Directive, MAD had to be transposed into national law. In England, this was done through the Financial Services Markets Act (2000) (FSMA) and the FCA Handbook. MAR, being a Regulation, will be directly applicable in Member States, without the need for national transposition.</p> <p>As a result, changes need to be made to the UK regulatory regime including the FCA Handbook and FSMA. The FCA Handbook will provide guidance on matters governed by MAR and will not take the form of binding rules. The structure and content of the FCA Handbook will be kept where it does not conflict with MAR.</p> <p>On <b>5<sup>th</sup> November</b>, the FCA published a consultation paper on <b>Policy Proposals and Handbook Changes Related to the Implementation of MAR</b>, setting out FCA's proposals for changes to the Handbook. The deadline to respond to the consultation is <b>4<sup>th</sup> February 2016</b>.</p> <p>On <b>3<sup>rd</sup> December 2015</b> the FCA is holding a briefing on the <b>MAR RTS and Delegated Acts</b>, followed by a <b>roundtable on the FCA Handbook consultation on 14<sup>th</sup> December</b>. <b>FIA Europe will attend both meetings. Please do let us know if you like us to raise any particular questions or concerns.</b></p>
<b>Discretion</b>	<p>The direct application of MAR in UK will significantly reduce the FCA's discretion regarding the implementation of MAR with the exception of:</p> <ul style="list-style-type: none"> <li>➤ <b>Public disclosure of inside information in Art 17; and</b></li> <li>➤ <b>Transactions by persons discharging managerial responsibilities in Art 19.</b></li> </ul>
<b>Public Disclosure of Inside Information Article 17</b>	<p>Article 17 of MAR requires issuers and emission allowance market participants (EAMPs) to publicly disclose any inside information.</p> <p>Where disclosure is likely to 'prejudice the legitimate interests of the issuer or EAMP', the issuer and EAMP will be permitted to delay the public disclosure provided certain conditions are met:</p> <ul style="list-style-type: none"> <li>➤ Immediate disclosure is likely to prejudice the legitimate interests of the issuer or EAMP</li> <li>➤ Delay of disclosure is not likely to mislead the public; and</li> <li>➤ The issuer or EAMP is able to ensure the confidentiality of that information.</li> </ul> <p>MAR provides national competent authorities (NCA) a choice of requiring the issuer of EAMP to provide a written explanation of its reason for delaying disclosure a) each time such delay occurs, or b) only upon request by the NCA. The FCA proposes to implement b), although issuers and EAMPs will still have to notify the FCA of the delay after the event.</p>
<b>Manager Transactions Article 19</b>	<p>Article 19 of MAR requires a person discharging managerial responsibilities (PDMRs) within an issuer or EAMP, and persons closely associated, to notify all transactions in specified <i>Financial Instruments</i> to the issuer or EAMP once a certain threshold has been passed within a calendar year</p> <p>MAR provides NCAs with discretion to set the threshold between EUR <b>5,000 and EUR 20,000</b> per calendar year above which transactions need to be notified and disclosed to the public.</p> <p>The FCA proposes to adopt the minimum threshold of EUR 5,000 as it believes there is no specific market conditions that adequately justifies increasing this figure.</p>
<b>Selection of Proposed Changes to the FCA Handbook</b>	
<b>Code of Market Conduct</b>	<p>The FCA believes Treasury will remove the requirement for the FCA to maintain the Code of Market Conduct (CoMC) but propose to retain those parts of it that remain relevant as guidance to market participants.</p>
<b>Market Abuse</b>	<p>The main test of what constitutes market abuse has been removed and replaced with a reference to Art. 14, 15 and 2 of MAR.</p> <p>Examples of behaviour in CoMC 1.6.15E that may amount to manipulating transactions has been deleted in favour of Annex 1, Art 12(5) of MAR, although the provisions in MAR are not very detailed. Equally, some</p>

	provisions providing examples of misleading behaviour or market distortion have been deleted (e.g. CoMC 1.9.2E, 1.9.4E and 1.9.5E). The FCA considers them incompatible with MAR.
<b>Behaviour prior to Admission to Trading</b>	MAR does not contain evidential rules around what constitutes market abuse in relation to behaviour prior to admission to trading. The FCA proposes to retain the relevant provisions in 1.2.5E of CoMC as they do not consider them being inconsistent with MAR.
<b>Insider Dealing</b>	<p>The CoMC stated that '<b>dealing on the basis of inside information which is not trading information</b>' is market abuse. This has now been removed along with the definition of trading information, as it is outside the scope of MAR.</p> <p>The CoMC also stated that the FCA did not consider inside information which was held behind an effective <b>Chinese wall</b>, or similarly effective arrangements as insider dealing. This has now been removed because it is not compatible with MAR.</p>
<b>Own Account Dealing</b>	Under CoMC 1.3.7, market makers and persons dealing lawfully on own account and pursuing legitimate business were not considered to be committing market abuse. This has been removed as not being consistent with MAR, along with CoMC 1.3.9.
<b>Disclosure Rules</b>	Where the current provisions overlap with provisions of EU MAR, these will be deleted and replaced with signposts to the relevant EU MAR provisions. In particular, CoMC 1.4.5E and 1.4.7G will be removed.
<b>Model Code</b>	<p>The Model code contains provisions regulating dealings by directors, senior's managers and certain employees (PDMRs).</p> <p>The existing provisions overlap and are incompatible with EU MAR. The FCA has stated that the Model Code cannot be retained in its current form and proposes to replace it with guidance for premium listed companies to use when developing processes to allow PDMRs to apply for clearance before dealing.</p>
<b>HM Treasury Legislation &amp; Further FCA Consultations</b>	<p>HM Treasury will prepare secondary legislation to repeal or modify UK law where it conflicts with MAR. This secondary legislation will cover the new MAR obligations which are not covered by the existing market abuse regime.</p> <p>The FCA will be consulting in the next few months on a modification to the current guidance in the <b>Disclosure Rules and Transparency Rules (DTR)</b> and on their approach to implementing <b>MIFID II</b>.</p>

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