

Market Surveillance Guidelines

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Market Surveillance Guidelines

September 9, 2020 • ETD, Europe, Market Conduct, Regulation, FIA, Press Releases, Regulatory Guidance

FIA releases surveillance and market abuse guidelines

London, UK – FIA today released new guidelines to assist market participants in fulfilling obligations set by UK and European regulators in relation to surveillance and market abuse requirements.

[CONTINUE READING](#) →

- The ‘FIA Market Surveillance Guidelines’ can be accessed via [FIA.org/advocacy](https://www.fia.org/advocacy) or by using the search bar

The screenshot shows the FIA website's navigation bar with links for 'Our Work', 'Resources', 'Learn', and 'Get Involved', along with a search icon. The main content area features a dark blue header with the title 'FIA releases surveillance and market abuse guidelines' and the date '9 September 2020'. Below the header, there is a 'RESOURCES' section with a link to 'FIA Market Surveillance Guidelines (September 2020).pdf' and an 'EVENTS' section listing three upcoming events: a webinar on November 19, a meeting on December 08, and a tennis tournament on March 16. The main body of the page contains introductory text about the guidelines, a quote from FIA's Head of Europe, and details about the Market Abuse Regulation (MAR) and the Criminal Sanctions for Market Abuse Directive.

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9 September 2020

London, UK – FIA today released new guidelines to assist market participants in fulfilling obligations set by UK and European regulators in relation to surveillance and market abuse requirements.

"Market abuse is a global concern and global regulators consider market participants to be the 'first line of defence' in the identification and prevention of market abuse," said FIA's Head of Europe Bruce Savage. "Our goal is to help FIA members and other market participants meet their obligations under the Market Abuse Regulation."

Under the Market Abuse Regulation (MAR) and the Criminal Sanctions for Market Abuse Directive, market participants in Europe are subject to prescriptive requirements relating to monitoring, surveillance systems and the filing of suspicious transaction and order reports (STORs).

The guidelines released today aim to provide a useful implementation standard for these requirements, and in particular the surveillance systems and controls that are required under Article 16 of MAR. The guidelines are not meant to be one-size-fits-all but rather should be considered in conjunction with a market participant's size, scale and strategy.

The guidelines are primarily intended to assist market participants based in the UK and are based on both EU and UK regulations and regulatory guidance. The guidelines describe the requirements that apply to market participants and discuss in detail the specific elements of a compliance programme, including risk assessments, surveillance systems,

RESOURCES —

[FIA Market Surveillance Guidelines \(September 2020\).pdf](#) ↓

EVENTS —

NOV 19 Webinar • 9:30 AM BST
[Market surveillance guidelines](#)
[CONTINUE READING](#) →

DEC 08 Chicago, IL • 4:00 PM
[FIA PTG Members Meeting - Dec. 2020](#)
[CONTINUE READING](#) →

MAR 16 Boca Raton, FL • 8:45 AM ET
[FIA Boca Tennis Tournament](#)
[CONTINUE READING](#) →

- The document can be downloaded under the ‘Resources’ section



Agenda

- Lifecycle of market abuse
- Market Abuse Risk Assessment
- Surveillance system
- Surveillance individuals and surveillance team
- STOR processes and governance
- STOR filing
- Audit and review
- Training
- Documentation
- Oversight
- Client relationship management
- Record keeping

Legislative Framework

Main requirements stem from Article 16 of MAR



There are then supplementary requirements within level 2 of MAR, in particular Commission Delegated Regulation 2016/957.



ESMA Q&A on Market Abuse provides some additional colour on the scope of Article 16 and the scope of “persons professionally arranging and executing transactions”.



FCA guidance supplements the legislation, and includes the FCA Market Watches, the FCA Financial Crime Guide and the Market Conduct Sourcebook

Context of the Guidelines

The guidelines are designed to assist market participants in considering how they might discharge applicable obligations identified under Article 16 MAR and the related level 2 materials.

The guidelines do not constitute regulatory rules or formal regulatory guidance.

The guidelines are not exhaustive or comprehensive compliance framework and the guidelines can be applied in a proportionate manner, considering the size, scale and strategy of the market participant.

The guidelines are not prescriptive and market participants may choose to demonstrate compliance with the guidelines using alternative methods, policies or procedures.

Lifecycle of Market Abuse Systems

Try to consider the lifecycle of market abuse systems and controls as broadly being divided into the following:

1. Risk Assessment
 2. Surveillance system creation
 3. Escalation
 4. Governance and oversight
 5. Audit and review
- Whilst market participants are very successful at implementing one or two elements of the above, the industry generally struggles to bring the entire lifecycle together
 - Often market participants overlook the detailed requirements in level 2 of MAR



Market Abuse Risk Assessment

Risk assessments should take the following approach:

1. Identify the full range of hazards posed as a result of activities conducted
2. Evaluate the risk posed by all business activities whilst paying due attention to any controls implemented to reduce risk
3. Comprehensively document these findings, ready for approval by governing body
4. Review and update any risk assessment on a yearly basis - or after changes to the business are made or new products introduced

Market participants should consider the levels of market abuse risk assessment which are needed as well as who accesses and signs off such risk assessments.

Top Tip

Leveraging the market participant's existing risk assessment methodology may assist in ensuring the market abuse risk assessment is well understood by senior management.

Surveillance System

Market participants need to consider relevant factors when determining the level of automatic monitoring required within surveillance system:

- How many transactions and orders are being monitored?
- What is the frequency of transactions?
- How are the transactions occurring?
- What financial instruments are being traded?
- What risk profile does the market participant carry?



Top Tips

- Market participants sometimes fail to ensure all financial instruments are within scope of monitoring due to the mix of systems and not validating all instruments are covered.
- Market participants sometimes struggle to ensure all alerts are appropriately tailored.

Surveillance Individuals and Surveillance Team

Who are the surveillance team?

- Are they a compliance advisory team with a different hat on or a distinct surveillance team?

What is the composition of the surveillance team?

- Is there sufficient seniority within the team to close off alerts, as well as sufficient technical expertise in technology, trading and regulation?

Appropriate escalation channels?

- Are there appropriate escalation channels within the team itself?
- Consideration of appropriate escalation for size and scale of market participant?

Speed of escalation?

- Is the escalation channel streamlined enough to get suspicions to the relevant people in line with the requirement to report a STOR as soon as possible when a suspicion arises?



STOR Processes and Governance

Market participants should ensure the implementation of appropriate written surveillance procedures and STOR escalation framework

Other points to consider include:

- Is there a documented STOR process running from front office through to the Head of Compliance?
- At what point is an investigation opened?
- How is an investigation managed if one is opened, and who is privy to that information?
- How are past suspicions factored into current suspicions if related to similar activity?
- If closed, then how is information retained, considering the “near-miss” obligation?
- If escalated to a STOR how is managed?
- Are checks undertaken to ensure that alerts which are closed off are being done so appropriately?

STOR Filing Considerations

When considering the governance for filing of a STOR, market participants should consider:

1. Is the STOR filing performed by a member of Compliance with sufficient seniority and authority, such as the Head of Compliance?
2. Is the STOR is being made under a reasonable level of suspicion, rather than bulk reporting or defensive reporting?
3. Who should know about the STOR and what is the level of confidentiality around the STOR?
4. If a STOR isn't considered as appropriate, what other tools are in place? How will that decision be kept under review?

Top Tip

STORs and SARs may overlap and market participants should consider whether a SAR needs to be made when a STOR is made.

Audit and Review

- Market participants need to ensure that an annual review takes place in line with the requirement within the Commission Delegated Regulation 2016/957
- Whilst scope of the review is discretionary, most market participants include the review within their compliance monitoring programme rather than within the audit team

Market participants should consider the following:

- Review of the whole surveillance system including alert tagging?
- Review of policies and procedures, governance and escalation?
- Review of just the alerts generated and closures?



Top Tip

The annual review is a regulatory requirement within the Commission Delegated Regulation 2016/957. However, market participants have some discretion in respect of the scope of the review and how it is conducted.

Training Considerations



Training should be delivered regularly, and market participants need to consider an appropriate schedule:

1. Is the training appropriately tailored to the function and the risks that the function faces?
2. Have different forms been utilised to effectively deliver messages regarding risks?
3. Does the training cover practical processes as well as behaviour?
4. Are there effective case studies that can be used to drive messages home and provide illustrative examples?
5. What is the consequence of failing to complete training?

Top Tip

Training should be appropriately tailored to the business unit and trading desk, and real examples of situations that have occurred historically may be useful to illustrate training



Documentation

Relevant documentation reflecting regulatory requirements should be implemented and made accessible to staff within the market participant.

Try and consider:

1. Should this take the form of procedures, policies, manuals, processes?
2. Is the documentation effective and easy to understand?
3. Is there an annual review?
4. Is this review independent?
5. Are there controls in place to effectively review and update documentation?

Top Tip

Audit trails and records of previous versions of documents also need to be considered.



Oversight

Market participants consider whether appropriate MI has been provided to the governing body in order for it to effectively oversee risks posed from market abuse and any controls used to mitigate that risk

Market participants should consider how to convey the following in MI:

- Quantitative and qualitative analysis
- Training completion rates
- Alert statistics
- Number of false and true positives and ‘near misses’
- STOR reports
- Legal and regulatory developments regarding regulatory requirements and surveillance arrangements
- Any changes or updates relating to surveillance staff and surveillance software

Client Relationship Management

- Market participants should implement and follow an appropriate written procedure when investigating clients
- Market participants remember the 'tipping off' obligation during discussions with clients and mitigate against this risk, Compliance should be involved to help manage discussions

Who will make the decision to terminate the client?

Compliance team? Or alternative internal committee?

What determinations should be made?

What level of regulatory risk does the client pose?

What is the nature of the alerts? How often are they being made?

Has a balanced decision been made?

Has unfair consideration been given to commercial influences?



Record Keeping

Appropriate records of the market participants organisation in respect of market abuse, and should be kept for a five year period. Market participants need to consider how to retain the following:

- Risk assessment
 - Surveillance team procedures
 - STOR filings and escalation procedures
 - MI
 - Effective training records
-
- Market participants should ensure that appropriate arrangements are in place for the retrieval of documentation and data to comply quickly and effectively with regulatory demands.
 - Training should be provided to front office staff to ensure their complete understanding of the handling of regulatory demands



Next Steps

What should market participants be considering as a result of the guidelines?

- Understand the scope of the existing market abuse controls within the market participant
- Review the guidelines and understand where potential gaps may be within the market participant existing market abuse framework
- Consider the size and scale of the market participant's activities and therefore how the guidelines might be implemented in a proportionate manner
- Consider existing systems and controls that might demonstrate compliance with the regulatory requirements and the guidelines, albeit the systems and controls are different from the recommendations and points within the guidelines



Q&A



Q1: Can a robust Surveillance framework exist without a comprehensive risk assessment?

Is it possible to create common standards for the risk assessment?



Q&A



Q2. How can firms ensure they achieve a balance between in their investigative duties and reporting requirements?



Q&A



Q3. What impact has the pandemic had on market surveillance? How should firms manage these risks?



Q&A



Q4. Following the publication of the FIA Surveillance Guidelines, ESMA published the long-awaited final report following their review of the Market Abuse Regulation.

Are there any key takeaways from this review which firms should be aware of?



Q&A



Q5. Market Surveillance is continuously evolving.

How do you see this area developing over the coming years?

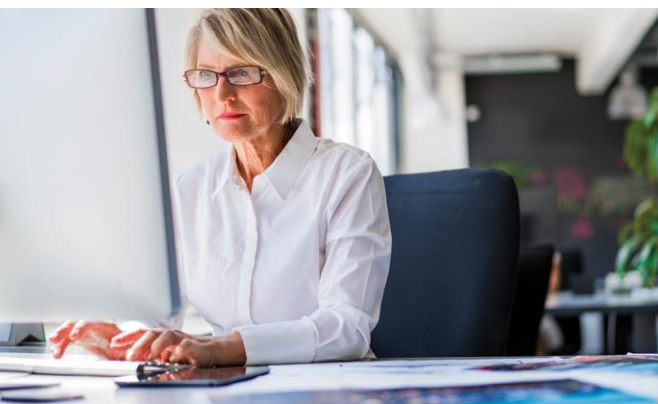
FIA Committee List

Visit [FIA.org/member-forums](https://www.fia.org/member-forums) to access FIA's member-based committees and working groups

The screenshot displays the FIA website's 'Member Forums' section. At the top, there is a navigation bar with the FIA logo and links for 'Our Work', 'Resources', 'Learn', and 'Get Involved'. A search bar is located on the right. Below the navigation is a large blue-tinted image of a group of people. The main heading is 'Member Forums'. Underneath is a 'Search & filter forums' section with three filter categories: 'by keyword' (with a text input field), 'by region' (with buttons for Americas, Asia-Pacific, Europe, and Global), and 'by type' (with buttons for Divisions, Committees, Working Groups, and Distribution Lists). Below these is a 'by theme' section with buttons for Capital, CCP Risk, Commodities, Compliance, Government Relations, Legal, Operations, Proprietary Trading, Regulatory, Strategic, and Technology. The main content area lists two committees:

- Associated Persons Issues Working Group**:
 - Associated with: Law & Compliance Executive Committee, Americas, Compliance
 - Description: Explores compliance challenges related to associated persons. (e.g., location of APs, maintenance of Series 3 certifications, etc.).
 - FIA CONTACT: Natalie Tynan
 - PARTICIPATION CRITERIA: Open to Law & Compliance Division Members
 - Request Information button
- Audit Trail Committee**:
 - Associated with: Law & Compliance Division, Americas, Legal/Compliance
 - Description: Pursues modifications to the CFTC and exchange rules and guidance that will streamline audit trail rules for industry -- focused on changes to regulations and technology that may be required to accommodate industry recommendations.
 - FIA CONTACT: Natalie Tynan
 - PARTICIPATION CRITERIA: Open to Law & Compliance Division members
 - Request Information button

FIA Training Courses



FIA TRAINING

Contact training@fia.org
for more information

AVAILABLE COURSES

- Exchange Trading & Regulatory Fundamentals for Electronic Traders
- Key Regulatory & Trading Requirements for Eurex
- Key Features & Regulatory Framework of the London Metal Exchange
- Market Conduct Fundamentals
- Rules & Regulatory Guidance for CME Group Markets
- Rules & Regulatory Guidance for ICE Futures U.S.
- Safeguarding Customer Funds
- Trade Surveillance & Regulatory Guidance for the Singapore Exchange

Learn more at FIA.org/training



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