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Stephen Jones
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6 September 2019

Dear Mr Jones,

Suspicious Activity Reports (SARs) and Suspicious Transaction and Order Reports (STORs)

On 26 July 2019, colleagues from the Financial Conduct Authority (FCA) and UK Finance attended a meeting of the *'SARs Collaboration Working Group'*. During the meeting, it was agreed that the FCA would provide you with information on the application of the SAR and STOR regimes to firms.

The information below sets out the FCA's expectations and we would be grateful if you would share this with your members and other interested trade associations.

Responsible authorities

The FCA is the EU competent authority for the Market Abuse Regulation (MAR) in the UK. As part of our remit, we receive STORs from firms that are required under MAR to notify us and supervise the regime in the UK.

The National Crime Agency (NCA) is responsible for receiving SARs.

Relevant offences

MAR sets out the regulatory framework on market abuse, i.e.: insider dealing, the unlawful disclosure of inside information and market manipulation. MAR prohibits all three behaviours and breaching MAR by engaging in, or attempting to engage in, any of these behaviours is a civil offence.

There is a significant overlap between MAR's definition of market abuse and certain financial crimes, notably the criminal offences of insider dealing set out in Part V of the Criminal Justice Act 1993 (which includes unlawful disclosure of inside information) and the criminal offences of misleading statements and misleading impressions, set out in sections 89, 90 and 91 of the Financial Services Act 2012.

It is therefore common that a firm becomes aware of, or reasonably suspects, both the civil offence of market abuse (as described by MAR) and financial crime through a single suspicious order or transaction.

Reporting requirements

Article 16(2) of MAR sets out that: *'Any person professionally arranging or executing transactions shall establish and maintain effective arrangements, systems and procedures to detect and report suspicious orders and transactions. Where such a person has a reasonable suspicion that an order or transaction in any financial instrument, whether placed or executed on or outside a trading venue, could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation, the person shall notify the [relevant] competent authority […] without delay'.*

The requirement to notify the FCA under Article 16(2) applies to firms which are registered or have their head office in the UK or, in the case of a branch, where the branch is in the UK and only applies to suspected breaches of MAR (civil offences). Firms which are registered or have their head office in another Member State must notify the competent authority in that Member State.

ESMA clarified in March 2019[1] that the obligation to detect and identify market abuse, or attempted market abuse, under Article 16(2) of MAR applies broadly, and a *"person professionally arranging or executing transactions"* thus includes buy side firms, such as investment management firms (AIFs and UCITS managers), as well as firms professionally engaged in trading on own account (proprietary traders). Article 16(2) can also apply to non-financial firms that, in addition to the production of goods and/or services, trade on own account in financial instruments as part of their business activities (e.g. industrial companies for hedging purposes). Having staff or a structure dedicated to systematically dealing on own account, such as a trading desk, or executing their own orders directly on a trading venue as defined under MiFID II, are indicators to consider a non-financial firm as a person professionally arranging or executing transactions.

ESMA has reminded market participants that Article 16(2) of MAR should be applied by persons "*professionally arranging or executing transactions"* through the implementation of arrangements, systems and procedures that are appropriate and proportionate to the scale, size and nature of their business activity. Further details about how to comply with Article 16(2) are set out in the Regulatory Technical Standard referenced in the footnote[2].

Firms that know or suspect that criminal offences may have also occurred will need to consider whether there is an obligation pursuant to Part VII of the Proceeds of Crime Act 2002 (POCA) and part III of the Terrorism Act 2000 to submit a SAR to the NCA.

While the FCA and NCA regularly share intelligence, filing a STOR with the FCA will not discharge a firm's obligations under POCA or the Terrorism Act. Likewise, a firm cannot discharge its notification obligation under Article 16 MAR by filing a SAR with the NCA. SARs and STORs serve different purposes and firms will have to consider, on a case by case basis, whether to submit a STOR, SAR or both.

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[1] Questions and Answers on the Market Abuse Regulation (MAR), ESMA70-145-11, Version 14, 29 March 2019 https://www.esma.europa.eu/sites/default/files/library/esma70-145-111_qa_on_mar.pdf

[2] Commission Delegated Regulation (EU) 2016/957 of 9 march 2016 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0957&from=EN"

Firms should consider, on a case by case basis, all their obligations in relation to both market abuse and financial crime (including those in SYSC 6.1.1R) and take appropriate steps in each case.

Guidance

Under SYSC 6.1.1R: *'A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime'.*

The FCA's Financial Crime Guide for firms contains guidance on SYSC 6.1.1R. In March 2018, we consulted on an update to the Financial Crime Guide and in response we have added a chapter on insider dealing and market manipulation. The chapter outlines observations of good and bad market practice around the requirement to detect, report and counter the risk of financial crime, as it relates to insider dealing and market manipulation.

The Financial Crime Guide consolidates our guidance on financial crime and aims to enhance firms' understanding of our expectations of systems and controls in this area. It gives practical help and information to firms of all sizes on actions they can take to counter the risk that they might be used to further financial crime.

You can access our Financial Crime Guide here:
https://www.handbook.fca.org.uk/handbook/FCG.pdf.

We also published in June 2019 a thematic review that looks at the money-laundering risks and vulnerabilities in the capital markets and, where possible, develops case studies to help inform the industry. While this is not formal FCA guidance, it may provide useful information to your members.

You can access our thematic review here:

https://www.fca.org.uk/publication/thematic-reviews/tr19-004.pdf

Yours Sincerely

Julia Hoggett,

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