
Implementation of the Market Abuse Regulation (2014/596/EU), including feedback on CP15/35 and CP15/38, and related amendments to the Handbook



April 2016

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1	List of non-confidential respondents to CP15/35	
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Appendix

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In this Policy Statement we report on the main issues arising from Consultation Paper 15/35 – Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation (2014/596/EU) – and Consultation Paper 15/38 – Provisions to delay disclosure of inside information with the FCA’s Disclosure and Transparency Rules – and publish the final rules.

Please send any comments or queries to:

Trading Conduct & Settlement Policy
Markets Policy & International Division
Financial Conduct Authority
25 The North Colonnade
Canary Wharf
London E14 5HS

Telephone: 020 7066 3878
Email: cp15-35@fca.org.uk

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Abbreviations used in this document

CA	Competent Authority
CBA	Cost Benefit Analysis
COBS	Conduct of Business Sourcebook
CoMC	Code of Market Conduct
Commission	European Commission
DTR	Disclosure Rules and Transparency Rules
DEPP	Decision Procedure and Penalties Manual
EAMP	Emission Allowance Market Participant
EG	Enforcement Guidance
ESMA	European Securities and Markets Authority
EU	European Union
ITS	Implementing Technical Standard
Level 1	The regulation published under reference 2014/596/EU in the Official Journal of the European Union
Level 2	Implementing or delegated measures made under EU MAR
LR	Listing Rules
EU MAD	EU Market Abuse Directive
EU MAR	EU Market Abuse Regulation
MAR 1	First chapter of the MAR sourcebook

MAR 8	Chapter 8 of the MAR sourcebook
MIFID II	Markets in Financial Instruments Directive II
MTF	Multilateral Trading Facility
OJEU	Official Journal of the European Union
OTF	Organised Trading Facility
PDMR	Persons Discharging Managerial Responsibilities
RAP	Recognised Auction Platforms Regulations
REC	Recognised Investment Exchanges Sourcebook
RTS	Regulatory Technical Standard
Statutory Instrument	The Statutory Instrument to be made by the Treasury under section 2(2) of the European Communities Act 1972
STOR	Suspicious Transaction and Order Report
SUP	Supervision Sourcebook
SYSC	Senior Management Arrangements, Systems & Controls Sourcebook
The Treasury	Her Majesty's Treasury

1. Overview

Introduction

- 1.1** In this Policy Statement (PS) we summarise the feedback we received to our Consultation Papers, CP15/35, which closed on 4 February 2016, and CP15/38, which closed on 20 February 2016. We have incorporated this feedback into the changes to the FCA Handbook that are required to implement the EU Market Abuse Regulation (EU MAR) from 3 July 2016. We explain these changes in this PS. The final changes to the Handbook are set out in Appendix 1.

Who does this affect?

- 1.2** This PS will be of interest to, among others:
- Any firm or individual who directly or indirectly deals in, or any firm who issues, any financial instrument (FI) that is:
 - admitted to trading on a regulated market or for which a request for admission to trading has been made
 - traded on a Multilateral Trading Facility (MTF), admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made
 - traded on an Organised Trading Facility (OTF) (from MiFID II's applicability)
 - not admitted to trading on one of those venues, but the price or value of which depends on or has an effect on the price or value of an FI.
- 1.3** This includes any transaction, order or behaviour concerning any FI referred to above irrespective of whether or not such transaction, order, or behaviour takes place on a trading venue.
- 1.4** This PS will also be of interest to emission allowance market participants (EAMPs), and any person discharging managerial responsibilities (PDMR) within issuers or EAMPs or any person closely associated with them.

Is this of interest to consumers?

- 1.5** This PS will be of interest to consumers who directly or indirectly deal and invest in any of the FIs indicated above.

Context

- 1.6** In our consultation CP15/35 we invited comments on implementing EU MAR relating to:
- alternative options for implementing two specific EU MAR requirements and how they may apply in the UK
 - the step-change in the legal status of the European market abuse regime from a Directive to a Regulation and the resulting changes to our Handbook. Whereas the EU Market Abuse Directive (EU MAD) had to be transposed via UK legislation (in the Financial Services Markets Act 2000 and FCA rules) EU MAR repeals EU MAD with effect from 3 July 2016 and will have direct application in the UK. So we need to make relevant changes to the UK's existing domestic regime to ensure that national law and guidance complies with EU MAR.
- 1.7** We consulted on these domestic changes in CP15/35. This PS summarises the responses we received and the changes to the Handbook having taken account of that feedback.
- 1.8** We are making the rule and guidance changes in light of the Treasury's Statutory Instrument that will make the necessary amendments to the legislation (FSMA) for it to be compatible with MAR.
- 1.9** We also received considerable feedback on areas outside the consultation where respondents felt further guidance on the new regime may be helpful. As these were outside the scope of CP15/35, we have not made any proposals in this PS but we will be considering how to progress these issues. See Chapter 4 for a list of these issues.
- 1.10** In addition, in CP15/38 we asked for comments on a specific amendment to Disclosure Rules and Transparency Rules (DTR) 2.5.5G to address recent developments on disclosing inside information by issuers with securities admitted to trading on regulated markets.

Summary of feedback and our response

- 1.11** CP15/35 covered changes to the following areas of the Handbook: MAR 1, MAR 2, MAR 8, SYSC 18, COBS 12.4, SUP 15.10, DTR 1-3 and LR 9. Several consequential amendments were required too.
- 1.12** We received 25 responses to CP15/35; eight from trade associations, five from firms, four from issuers, six from legal representatives and two from trading venues.
- 1.13** Responses were broadly supportive of our proposed approach to implementing MAR which seeks to maintain elements of guidance in the Handbook where possible, provided they do not overlap with or contradict EU legislation.
- 1.14** CP15/38 was published shortly after CP15/35 in November 2015 and specifically deals with DTR 2.5.5G relating to the delay of disclosure of inside information where the issuer has a legitimate interest. We received six responses.
- 1.15** Most respondents agreed with the suggested amendment in CP15/38. We have taken into account in our response that the European Securities and Markets Authority (ESMA) is due to publish Guidelines this summer that will very probably overlap with this provision.

- 1.16** In Chapter 3 we summarise the feedback received in respect of both CP 15/35 and CP 15/38 proposals and explain our responses. We have organised this by Sourcebook in the FCA Handbook.
- 1.17** We received some technical and drafting comments across various sections of the Handbook on which we consulted. Some of these have been incorporated into the new provisions which are detailed in this PS.
- 1.18** Below we provide an overview of the responses set out according to the Sourcebooks of the Handbook which are most affected by the implementation of MAR:
- 1.19** MAR 1: The areas that received the most input were in response to our proposals relating to legitimate behaviours, the removal of provisions which overlap with the indicators of manipulation under Art 12(5) of EU MAR, and the change of language across several provisions.
- 1.20** COBS 12.4: The main request from the respondents to our proposal in relation to this sourcebook was for guidance on the interpretation on the scope of Article 20 EU MAR. Other respondents were seeking copy out¹ of the European texts into the Handbook.
- 1.21** SUP 15.10: Many of the respondents on this sourcebook asked for additional interpretative guidance on the reporting of suspicious transactions, which is outside the scope of this consultation.
- 1.22** DTR 1-3: The responses mostly asked us for more cross references and copy outs of the European legislation in the Handbook. The responses also raise questions on the interpretation of measures made at level 1 and level 2 which are further detailed in Chapter 4 of this PS.
- 1.23** Annex 1 of LR9 (Model Code): We received several responses in relation to Annex 1 of LR9 (the Model Code) agreeing that the Model Code is no longer compatible with EU MAR. But most considered that, even though our proposal was intended to provide additional guidance for firms, it will result in an onerous two-tier system for clearance inside and outside EU MAR closed periods.

Relationship with other FCA consultations

- 1.24** This PS does not cover changes to the Decision Procedure and Penalties Manual (DEPP) and the Enforcement Guide (EG) as they were not included in CP15/35 for the reasons set in the consultation. We indicated the changes will be covered by a further consultation which has now been published on 20 April 2016. Please see our website for CP16/13 on Changes to the Decision Procedure and Penalties Manual and the Enforcement Guide for the implementation of the Market Abuse Regulation (2014/596/EU)².
- 1.25** There are provisions in the Handbook which are dependent on the finalisation of the Level 2 measures and ESMA Guidelines. We therefore may have to reassess some of our provisions in the Handbook. These provisions have been identified in Chapter 3 of the PS and may be subject to further consultation.

¹ Copy-out is an approach the FCA has taken to transposition in the past, typically to Directives which are not directly applicable. Copy-out means that the wording of the European legislation is followed as closely as possible in corresponding Handbook provisions.

² <http://www.fca.org.uk>

- 1.26** We may also consult in the future on guidance based on the questions and feedback raised on the interpretation of the level 1 and level 2 EU MAR legislation if we consider it is appropriate to provide guidance in these areas.

Equality and diversity considerations

- 1.27** We have considered the equality and diversity issues that may arise from this PS.
- 1.28** Overall, we do not consider that the policy in this PS adversely impact any of the groups with protected characteristics i.e. age, disability, sex, marriage or civil partnership, pregnancy and maternity, race, religion and belief, sexual orientation and gender reassignment.

Next steps

- 1.29** The revised provisions and guidance to the Handbook set out in Appendix 1 will come into force on 3 July 2016 at the same time as EU MAR will apply.
- 1.30** However, at the time of writing this PS, it is still unclear when all the final Level 2 texts of the Regulation will be published in the Official Journal of the European Union (OJEU). The Commission has endorsed several of the technical standards and at the time of finalising this PS, they still need to be notified by the EU Council and European Parliament before they can be published in the OJEU and confirmed final.
- 1.31** We anticipate that we will add further sign posts in the Handbook to provisions of implementing measures made under EU MAR at a later stage. These cannot be added now (April 2016) because the implementing measures made under EU MAR have not been published in the OJEU and we therefore do not yet have the specific reference numbers and dates for complete and accurate cross-references.
- 1.32** Please also note that the three sets of Guidelines ESMA has been mandated to draft under Articles 7(5), 11(11) and 17(11) EU MAR have not yet been finalised. We therefore may have to reassess some of our provisions in the Handbook depending on the outcome of these Guidelines. We have flagged the Sourcebooks where this may apply in our responses.

What do you need to do next?

- 1.33** We expect firms to comply with EU MAR and any directly applicable EU regulation made under EU MAR as of 3 July 2016.

What will we do?

- 1.34** We will monitor any changes in the Level 2 and Guidelines related to EU MAR legislation and ESMA Guidelines that are made during the process and will make any necessary consequential amendments to our Handbook.
- 1.35** We will also note or monitor guidance that the European Commission or ESMA may issue on any matters relating to EU MAR, which may require further consequential changes to our Handbook.
- 1.36** We will consider the appropriate approach to the areas set out in Chapter 4 where respondents have indicated that new guidance on EU MAR would be helpful.

2. Feedback on general issues raised in responses

2.1 Across the various Sourcebooks, several respondents queried five general issues on our approach. We address these general issues here rather than in the following chapter as they were not Sourcebook specific.

2.2 Respondents asked why:

- we were not copying out the EU MAR regulation rather than providing signposts to the texts
- we were not providing interactive hyperlinks to relevant articles in the European texts rather than just text signposts
- we had redrafted some of the language used in some of the remaining provisions
- recitals were not referenced

2.3 They also asked how the FCA would exercise its power to issue guidance.

Copy outs

2.4 With regard to copy outs (cutting and pasting articles from the Level 1, Level 2 or sections of ESMA Guidelines), we emphasise again that the principal legal requirements relating to market abuse will be set out in EU MAR and its implementing measures.

2.5 It is more accurate and more efficient to direct readers of the Handbook to this primary source³. Users can then read these requirements in context with other relevant articles, implementing measures and recitals to obtain a comprehensive understanding of the new regime.

2.6 We appreciate that some firms may find the convenience of copy out useful, but we believe the risk of misinterpretation of the regime outweighs this convenience. So we still favour signposts, where these are relevant, as these will be indicated in the final version of the instrument in Appendix 1.

Signposts

2.7 As outlined in CP15/35, where a current Handbook provision is sufficiently addressed by an equivalent provision in EU MAR, we propose to replace it with a signpost to the relevant Article in EU MAR.

2.8 Please note that signposts to Level 2 texts do not appear in the instrument in Appendix 1 given they are not yet published in the OJEU. We anticipate adding these to the Handbook in due

³ Level 1 and level 2 measures of the European legislation can be accessed on this website: <http://eur-lex.europa.eu/homepage.html>. ESMA Guidelines can be accessed on this website: <https://www.esma.europa.eu/>

course. We will not, in the interim, provide signposts to the Annexes of ESMA's Final Report (reference ESMA/2015/1455) which do not constitute the finalised technical standards on MAR.

Hyperlinks

- 2.9** Where signposts are provided, unfortunately due to technological constraints, we are unable to provide direct hyperlinks to the precise articles in EU MAR from our Handbook website. However, we are considering developments to enable this functionality.

Redrafting some provisions

- 2.10** We noted in CP15/35 that our approach to redrafting existing provisions is governed by the legal context in which we must operate. This includes in particular the UK's duty of sincere co-operation under article 4(3) of the Treaty on European Union, whereby Member States need to take appropriate measures to ensure fulfilment of the obligations arising from acts of the EU, and refrain from any measure which could jeopardise the attainment of EU objectives.
- 2.11** This has required us to re-evaluate some of the provisions in the Handbook, including where these are written as rules, evidential provisions or conclusive provisions. We have reassessed and redrafted these to ensure that they are compatible with EU law.
- 2.12** Where respondents have proposed alternative drafting, consistent with the legal constraints, we have considered how these can be incorporated in the market abuse framework. We give feedback on this in Chapter 3.

Recitals

- 2.13** Recitals provide context and allow clearer interpretation of the Articles of both the Level 1 text and the implementing measures, but they are not legally binding. Including them may create uncertainty and confusion about the legal requirements so we have decided not to provide signposts to recitals.

Issuing guidance under section 139A FSMA

- 2.14** Several respondents asked us to use our power under section 139A FSMA to provide guidance on possible clarifications to the interpretation of Level 1 and Level 2 measures. We will consider whether it is appropriate to exercise this power on a case-by-case basis. We have summarised the areas where respondents have noted that further guidance would be useful in Chapter 4. We will consider the appropriate approach in each of these areas.

3. Summary of feedback

- 3.1 The following chapter is broken down into the two areas where we have options on how to implement EU MAR, and then by Sourcebook. Within each section we summarise the feedback received, provide our analysis and our response to the feedback.
- 3.2 Where we have received no comments, we have assumed there is agreement with the proposals.
- 3.3 Where the feedback relates to one of the overarching issues described in Chapter 2 – namely the use of copy-out, hyperlinks, the EU MAR text, the redrafting of some provisions or the use of references to recitals – we direct readers to our comments in Chapter 2.

Areas with options for implementation

- Q1: Do respondents agree that the issuer/EAMP should provide a written explanation following notification of delayed disclosure to the FCA only upon its request?**
 - Q2: Are you able to provide information on the number of written notifications you anticipate that you would make a year under the proposed regime?**
 - Q3: Would it be too burdensome to automatically provide the explanation without waiting for a specific FCA request? Please could you provide data regarding the resources required?**
- 3.4 Out of the 25 responses, 13 related to these questions. Eleven respondents agreed with the proposal that issuers/EAMPs should only have to provide a written explanation following notification of delayed disclosure if the FCA requests it.
 - 3.5 Two respondents felt that issuers/EAMPs should automatically provide a written explanation, suggesting that delays should be at a minimum to ensure investors have relevant information quickly to make decisions.
 - 3.6 Two respondents indicated that an accurate response depended on the findings of the ESMA consultation paper and our consultation, CP15/38. One respondent noted that activities are not yet planned so the number of notifications may change.
 - 3.7 One respondent said it was difficult to provide a meaningful estimate but they expected 2-5 notifications per company with the caveat that notifiable events can happen every day. The same respondent added that small and mid-size quoted companies could have higher instances

of the delay of publication of inside information than larger companies due to the fact that they, by the nature of being growth companies, frequently are fundraising, issuing shares and/or participating in M&A activities. Another respondent said approximately 2-3 notifications per year would be made but this would depend on the activities of the company. A further respondent said notifications would be minimal.

- 3.8** Six respondents indicated it would be too burdensome for firms to supply information automatically. Of these, one firm said it would depend on the provision of clear guidance from the FCA as to the type and deadline of explanations. A second respondent stated it would impact small to mid-sized firms the most as they are high growth and therefore constantly fundraising, issuing shares or partaking in M&A activities.
- 3.9** Three respondents did not feel it would be burdensome to supply information automatically. One respondent felt that records would have to be kept in either instance.

Our response

The views of most respondents support the Treasury and the FCA's proposal and, while there were differences of opinion of the degree of burden it would impose, no significant benefits from imposing this additional requirement were identified. So the Treasury and the FCA are maintaining this as proposed and we anticipate that the Statutory Instrument will include that the issuer/EAMP should provide a written explanation of the delayed disclosure of inside information only upon the FCA's request.

Q4: Do you agree with our proposal to adopt the €5,000 threshold? If not, please specify the EU Market conditions that you consider would justify the decision to increase it to €20,000.

Q5: Please provide quantitative data on the number of transactions you would have to notify at a threshold at €5,000 and €20,000 respectively in a calendar year?

- 3.10** Ten out of 25 respondents agreed with our proposal to set the threshold at €5,000. Five of these respondents said they would need further guidance to convert these transactions from EUR to local currency.
- 3.11** Several respondents stated they would prefer no threshold, although one accepted this was already set in Level 1 text. One said disclosing all transactions would help retain accurate records of dealings by directors and their connected persons, and promotes transparency. Others said there is potential for operational risk should aggregate threshold reporting events be missed.
- 3.12** A further two respondents replied they would prefer a €20,000 threshold as a lower threshold can overwhelm the market with non-important information but did not provide further details on the specific market conditions needed to justify the higher threshold.
- 3.13** One respondent said there would be an extra 17 notifications out of 260 for the year between the two thresholds; another respondent mentioned an extra notification per year. Below is a breakdown of estimates provided by other respondents:

- 12 notifications per year with a €5,000 threshold and 11 notifications with a €20,000 threshold
- 156 notifications per year with a €5,000 threshold and 117 notifications with a €20,000 threshold
- 236 notifications per year with a €5,000 threshold and 219 notifications with a €20,000 threshold. The respondent estimates there would be 260 notifications with no threshold.

Our response

Most respondents supported the proposal for the €5,000 threshold. Although there are differences in the number of notifications that will be submitted between the two thresholds, evidence from respondents indicates this difference is not significant. We have not received evidence of market conditions that would be sufficient justification for setting the thresholds at €20,000. We are therefore maintaining our position of setting the threshold at €5,000 pursuant to Article 17(8) EU MAR and will not at this stage be increasing the threshold to €20,000.

We note the feedback made for issuers to disclose all transactions, on a voluntary basis, regardless of the €5,000 threshold. Issuers may do this if they wish.

We note the request for further guidance on how currency conversions from EUR to local currencies would work under the proposed threshold. ESMA is currently considering this issue.

The position has been reflected in the new DTR 3.2.1BG in Appendix 1.

MAR 1: Code of Market Conduct (CoMC)

- 3.14** We received some general comments in responses to MAR 1 about our approach including how we referenced EU MAR text, recitals and how some of the provisions have been redrafted. These comments were not specific to MAR 1 and arose for other Sourcebooks as well. Please see Chapter 2 for our response on these issues.

MAR 1.1 Application and interpretation

- 3.15** In our CP, we proposed several amendments to MAR 1.1 which largely reflected the change in status of the MAR 1 sourcebook as a whole.

Q6: Do you have any comments or suggestions with the proposed amendments to MAR 1.1? If yes, please provide rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.16** One respondent asked if we could change the name of MAR 1 to avoid confusion with EU MAR.
- 3.17** Two respondents agreed with our approach of seeking to maintain as much guidance as possible.
- 3.18** Two respondents raised concerns about the change of language of remaining provisions across the MAR 1 chapter.
- 3.19** One respondent disagreed with the overall approach of removing provisions and replacing them with signposts to EU law, and requested interactive hyperlinks to the EU legislation rather than static signposts.
- 3.20** Two respondents also suggested that the cross reference in the application note was incorrect.

Our response

As described in Chapter 2 we maintain our approach of removing Handbook provisions which overlap with provisions of EU MAR. Where possible, we still propose to identify the equivalent EU MAR provision and signpost readers to that provision.

Given that the MAR 1 chapter is part of the wider MAR sourcebook, we are not able to change the name of this particular sub-chapter.

Please see Chapter 2 for our position on hyperlinks.

We have amended the incorrect reference to MAR 1.6.6G in the application note.

MAR 1.2 Market abuse – general

- 3.21** In CP15/35, we proposed several amendments to MAR 1.2 which were largely the result of the overlap between provisions in MAR 1.2 and Articles 2, 7 and 8 EU MAR.

Q7: Do you have any comments or suggestions on the proposed amendments to MAR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.22** Five respondents provided comments on our proposals on MAR 1.2, including, but not limited to the following:
- One respondent suggested to add 'or OTF' after 'regulated market or MTF' in MAR 1.2.5G under both point (a) and (b) and suggested adding a note stating that EU MAR rules will become applicable to OTFs only on the date MiFID II will apply, and to replace 'prescribed market' with 'trading venue' in MAR 1.2.12G(1).
 - One respondent suggested that MAR 1.2.8G seems to go beyond the scope of EU

MAR Article 8(4), in that Article 8(4) states that it applies to any person who possesses inside information where they ought to know that it is inside information and that MAR 1.2.8G adds the condition that they know or ought to know that they received the inside information from an insider.

- Two respondents asked us to keep MAR 1.2.12G(5), suggesting it was consistent with Recital 28 of EU MAR.
- In relation to MAR 1.2.16G, one respondent requested further guidance on what would constitute a pending order.
- Respondents also commented more broadly on the change of language on remaining provisions within MAR 1.2.

Our response

MAR 1.2.5G provides guidance on behaviours prior to a request for admission to trading and the admission to or the commencement of trading. Such behaviour is not applicable to OTFs as the scope of EU MAR in Article 2(1) only covers financial instruments traded on an OTF, as opposed to financial instruments admitted to trading or for which a request for admission to trading has been made in the case for MTFs and regulated markets. So we do not believe any further amendments are required.

With regards to the request to refer to Recital 28 within MAR 1.2.12G(5) please see our response on the referencing of recitals in Chapter 2.

On the suggestion that MAR 1.2.8G goes beyond the scope of EU MAR Article 8(4) by elaborating on what 'ought to know' means, we maintain that an amended MAR 1.2.8G provides additional interpretative guidance on the final indent of Article 8(4) EU MAR on when a person who possesses inside information knows or ought to know that it is inside information. So we will conform and maintain this provision.

We have maintained MAR 1.2.16G in amended form. We did not consult to review and expand on existing guidance so we do not propose at this stage, any further guidance on the topic of what constitutes a 'pending order'.

Regarding the change of language used across several provisions in MAR 1.2, please see Chapter 2 for an explanation of why redrafting of some provisions is necessary.

With regard to MAR 1.2, we will not be amending the proposals set out in CP15/35.

MAR 1.3 Market abuse – insider dealing

3.23 In CP15/35, we proposed amendments to several provisions within MAR 1.3, which were largely the result of the overlap between the provisions within MAR 1.3 and Articles 7, 8 and 9, in light of Recital 30, of EU MAR.

Q8: Do you have any comments or suggestions on the proposed amendments to MAR 1.3? if yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- One respondent questioned removing the references to trading information across MAR 1.3, while one explicitly supported our approach to MAR 1.3.2G including the removal of the reference to trading information
- Two respondents asked why we wanted to remove MAR 1.3.3E dealing with when a person has not acted on the basis of inside information, suggesting this was not incompatible with EU MAR
- Two respondents questioned the removal of MAR 1.3.5E relating to Chinese Walls
- Three respondents questioned the removal of MAR 1.3.7C which elaborates on the legitimate business of market makers
- One respondent said we should keep MAR 1.3.11E, 1.3.12C and 1.3.13G
- One respondent questioned the removal of MAR 1.3.19G(2) which relates to determining whether a person's behaviour is for the purpose of proceeding with a merger or public takeover
- One respondent asked why we wanted to amend MAR 1.3.23G which relates to descriptions of inside information in the context of commodity derivatives, suggesting that the proposed wording was no longer sufficiently precise
- Two respondents commented more broadly on the change in language on remaining provisions within MAR 1.2

Our response

Article 7 EU MAR describes inside information. One argument put forward by respondents was that MAR 1.3.2G is a non-exhaustive list, providing an opportunity to opine further on what constitutes inside information. However MAR 1.3.2G relates to examples of behaviour that may amount to insider dealing rather than relating to what does and does not constitute inside information. We maintain that the concept of trading information is irreconcilable with EU MAR, so will not amend our approach. Although we do not intend to signpost to Recitals for the reasons explained in Chapter 2, please note that EU MAR Recital 30 provides useful colour on the topic of legitimate behaviour.

Article 9 EU MAR provides very similar provisions to what is currently in MAR 1.3.3E. Article 9 EU MAR describes what is legitimate, rather than what is not. MAR 1.3.3E describes both. We do not regard Article 9 EU MAR as ambiguous, so do not believe we need to make things clearer by issuing

guidance. MAR 1.3.3E (1) goes slightly further than its near-equivalent in Article 9(3)(a) EU MAR but the two provisions have the same purpose, negating the need to retain this domestic provision. As explained in Chapter 2, we have opted to not provide signposts to Recitals in the Handbook itself, but users may find helpful information in EU MAR Recital 30.

While the phrase ‘Chinese wall’ does not feature in EU MAR, the requirement to establish, implement and maintain internal arrangements in Article 9(1)(a) EU MAR mirrors MAR 1.3.5E. So we will not be reinstating MAR 1.3.5E, but we will add an appropriate signpost.

The content of MAR 1.3.7C is broadly mirrored in Article 9(2)(a) EU MAR, however we agree that the clarification that legitimate business includes ‘entering into an agreement for the underwriting of an issue of financial instruments’ would provide additional comfort and is compatible with EU MAR. So we will retain this provision in an amended form. We have also provided a note to Article 9(2)(a) EU MAR as we recognise there is significant overlap.

In relation to the removal of MAR 1.3.11E, 1.3.12C and 1.3.13G we maintain that none of these provisions are compatible with EU MAR and will not be reinstating them. We have amended the signposts following feedback that the ones proposed were not fully equivalent.

MAR 1.3.19G(2) states that if a transaction is for the sole purpose of gaining control or effecting a merger, this is a factor to be taken into account in determining whether a person’s behaviour is for the purpose of proceeding with a merger or takeover. We maintain that this is sufficiently covered in Article 9(4) EU MAR so will not reinstate this piece of guidance.

In response to the suggestion that our amendments to MAR 1.3.23G were insufficiently precise, we remind readers that changes proposed in CP15/35 were made to conform to EU MAR. This provision will have to be reviewed in light of the publication of ESMA’s Guidelines made under Article 7(5) EU MAR.

MAR 1.4 – market abuse (improper disclosure)

- 3.24** In our CP, we proposed several amendments to MAR 1.4, which largely reflected the overlap between the provisions within MAR 1.4 and Article 10 EU MAR.

Q9: Do you have any comments or suggestions on the proposed amendments to MAR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.25** Four respondents provided comments on our proposals to MAR 1.4. These broadly related to the change of language across various MAR 1.4 provisions, and the lack of copy-out or reference to the new Market Soundings regime in Article 11 EU MAR. One respondent also suggested that MAR 1.4.4G should refer to the disclosure requirements rather than Part 6 FSMA.

Our response

Please see Chapter 2 for our position on the adaptation of language across several Handbook provisions and our position on copy-out. We maintain that the reference to FSMA Part 6 rules is adequate. We shall not be amending our approach.

MAR 1.6 – market abuse (manipulating transactions)

3.26 In CP15/35, we proposed several amendments to MAR 1.6, which were largely as a result of the overlap between the provisions within MAR 1.6 and Annex 1 and the delegated acts under Article 12(5) EU MAR.

Q10: Do you have any comments or suggestions on the proposed amendments to MAR 1.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- Two respondents commented more broadly on the change of language across several retained MAR 1.6 provisions
- One respondent requested to maintain MAR 1.6.4E(2) suggesting this provision was not contrary to EU MAR
- One respondent supported our proposed amendments to MAR 1.6.3G
- One respondent requested to maintain MAR 1.6.10E suggesting this provision was not contrary to EU MAR
- Two respondents requested to maintain an amended MAR 1.6.15E, suggesting that the provision was not inconsistent with the delegated acts and was helpful to retain
- One respondent requested guidance on what could be deemed to be benchmark manipulation

Our response

We have considered the feedback provided by respondents. For the vast majority of provisions that we had proposed to remove in CP 15/35, we maintain that there is significant overlap with the provisions within the delegated acts under Article 12(5) EU MAR and will not be making any changes.

However, given that that the list of indicators provided in the EU texts are non-exhaustive, and recognising that certain aspects of MAR 1.6 are not fully duplicated in the EU texts, we have concluded to maintain MAR 1.6.10G, MAR 1.6.15G(3) and (4) in an amended form.

Regarding the request for further guidance on what constitutes benchmark manipulation, please see Chapter 4 for our position on matters outside the scope of CP 15/35.

Q11: As discussed in paragraph 4.49 above and also discussed in paragraphs 4.52, 4.55 and 4.86, we propose to delete some potential indicators of behaviour such as those included in MAR 1 and SUP 15.10 Annex 5 from the Handbook and, instead, direct the industry to the list of indicators provided under the delegated acts under Art 12(5). If you disagree with this approach, please suggest an alternative approach with rationale, and indicate, if relevant, whether there are particular indicators proposed for deletion which should be preserved and why.

3.27 Requests to maintain specific provisions have been covered under their respective areas i.e. MAR 1.6, 1.7 and 1.8. Comments that related to the broad approach taken towards indicators included:

- Two respondents requested that we copy out indicators in the EU texts directly into the Handbook
- One respondent supported the approach taken, but requested interactive hyperlinks to the relevant EU provisions
- One respondent requested specific guidance on ‘phishing’ and ‘smoking’, suggesting the EU text lacked clarity on this
- One respondent requested a statement in the Handbook on how the FCA will deal with evidence that such indicative behaviour has taken place
- One respondent suggested that the FCA re-consult on this issue once the draft delegated acts had been made final

Our response

As mentioned in our response to Q10, we maintain that the vast majority of indicative behaviours within MAR 1 are duplicated within the EU texts. So for most provisions, we will not be making any changes.

Please see Chapter 2 for our position on direct copy out and Chapter 4 for our position on requests for guidance that were outside the scope of CP15/35.

As explained in CP15/35, there is a dependency for our proposals on the finalisation of the Level 2 texts under EU MAR. The delegated regulation published in draft form by the Commission on 18 December 2015 was published in the Official Journal on 6 April 2016. We do not believe this requires any changes to our proposals.

Regarding the request for clarity on how the FCA will deal with evidence that such indicative behaviour has taken place, this is outside the scope of CP15/35 so we do not propose to provide guidance as part of this PS.

MAR 1.7 – market abuse (manipulating transactions)

3.28 In CP15/35 we proposed amendments to MAR 1.7 due to the overlap in provisions within MAR 1.7 and Annex 1(B), Article 12 and the delegated acts under Article 12(5) EU MAR.

Q12: Do you have any comments or suggestions on the proposed amendments to MAR 1.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

3.29 Three respondents provided comments on our proposals to MAR 1.7.

- One respondent suggested copying out the EU texts into the Handbook.
- One respondent noted a discrepancy in the draft instrument text which made reference to a technical standard instead of a delegated act.
- One respondent recognised that much of MAR 1.7 is duplicated in the EU texts but requested to maintain MAR 1.7.2E(2) in an amended form.

Our response

As mentioned in our response to Q10 and Q11, we maintain that the vast majority of provisions within MAR 1.7 are overlapped by the indicators of manipulation within the EU texts. In response to the request to maintain MAR 1.7.2E(1), we direct readers to Article 12(2)(d) EU MAR and have provided a signpost to this provision in the Instrument. Please see Chapter 2 for our position on copy out.

MAR 1.8 – market abuse (dissemination)

3.30 In CP15/35 we proposed amendments to MAR 1.8 which were largely due to the overlap in provisions within MAR 1.8 and Article 12 EU MAR.

Q13: Do you agree with the proposed amendments to MAR 1.8? If not, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

3.31 Four respondents provided comments on our proposals to MAR 1.8.

- One respondent agreed with the proposed approach.
- One respondent requested to copy out the relevant EU provisions into the chapter.

- Two respondents suggested that the wording 'could reasonably be expected to have known' was helpful in clarifying what is meant by 'ought' in Article 12(1)(d) and suggested it should be retained.
- One respondent requested to maintain MAR 1.8.6G in an amended form, suggesting it is not incompatible with EU MAR.

Our response

As mentioned in our response to previous questions, we maintain that some of the provisions within MAR 1.8 are overlapped by the indicators of manipulation under Article 12(5) EU MAR. We maintain that we are unable to retain the wording 'could reasonably be expected' as this does not align with EU MAR. However we have noted respondents' comments to retain as much guidance in this area as possible, and have concluded to retain MAR 1.8.6(1)E in an amended form, as this aligns with Article 12(1)(c) EU MAR and is not contradicted by the level 2 indicators. Please see Chapter 2 for our position on copy out.

MAR 1.9 – market abuse (misleading behaviours) and market abuse (distortion)

- 3.32** In CP15/35 we proposed amendments to MAR 1.9 which were largely due to the overlap in provisions within MAR 1.9 and Article 12 EU MAR.

Q14: Do you have any comments or suggestions on the proposed amendments to MAR 1.9? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.33** One respondent provided comments to our approach to MAR 1.9. The respondent requested to copy-out the provisions of Article 12(1)(c) EU MAR into this chapter of the Handbook.

Our response

Please see Chapter 2 for our position on copy out. We shall not be amending our proposals.

MAR 1.10: Statutory exemptions

- 3.34** In CP15/35 we proposed amendments to MAR 1.10 which were largely due to the overlap between the provisions in MAR 1.10 and Article 5 EU MAR and the delegated acts under Article 5(6) EU MAR.

Q15: Do you have any comments or suggestions on the proposed amendments to MAR 1.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.35** Two respondents provided comments on our approach to MAR 1.10. One respondent requested to copy out relevant provisions in the EU texts into the Handbook. Another respondent questioned the change in language in MAR 1.10.4G, 1.10.5G and 1.10.6G, and requested to maintain MAR 1.10.1G(3), suggesting that this provision provides helpful clarification for the market.

Our response

Please see Chapter 2 for our positions on copy out and the change in language across several provisions. Regarding the request for guidance that buyback programmes conducted outside the scope of the exemption not necessarily being considered abusive, this is not within the scope of our current consultation but rather a request for new guidance on EU MAR. We have listed areas where such guidance has been requested in Chapter 4.

We are aware that there have been some changes to the Takeover Code which have resulted in changes to the numbering of the provisions. We will update the table within 1.10.5G at a later date to reflect these changes.

MAR 1 Annex 1

Q16: Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.36** Two respondents provided comments on our approach to MAR 1 Annex 1. One respondent requested direct copy out of the relevant EU provisions into this chapter of the Handbook. Another respondent requested to maintain Annex 1.1.8G which clarifies that disclosure through a regulatory information services constitutes adequate public disclosure; and sought guidance on how issuers can fulfil the reporting requirement under the technical standards, and the application of the rules to purchases made on a riskless principal basis.

Our response

We will reinstate an amended Annex 1.1.8G which gives guidance on what we accept as adequate public disclosure. Please see Chapter 2 for our position on copy out. Please see Chapter 4 for our position on requests for guidance that were outside the scope of CP15/35. We still intend to amend the rest of MAR 1 Annex 1 on the basis of what was proposed in the consultation. There is a close relationship between the provisions on buy-back programmes and those on stabilisation. As a result, we are delaying these changes proposed for MAR

1 Annex 1. See below in the section relating to MAR 2, that we are waiting for the final EU legal text on which to base our changes.

MAR 1 Annex 2

Q17: Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

3.37 One respondent provided comments to our proposals to MAR 1 Annex 2. The respondent requested direct copy out of the relevant EU provisions into this chapter of the Handbook.

Our response

Please see Chapter 2 for our position on copy out. We will not be making any changes to our proposals.

MAR 2: Stabilisation

Q18: Do you have any comments or suggestions with the changes proposed to MAR 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

3.38 We received two responses on our proposals to MAR 2. One respondent commented on how our proposed changes to MAR 2, alongside changes in the Treasury's statutory instrument, presented uncertainty to the industry in terms of what protections are available to them for stabilisation activity from July 2016. Another respondent requested a copy out of the relevant EU MAR and Level 2 texts into this part of the Handbook.

Our response

We have considered the responses and have concluded that it is possible to retain a supplementary domestic safe harbour which protects against a criminal allegation under behaviour under Part 7 of the Financial Services Act 2012, as this is distinct from the civil safe harbour offered under Article 5 EU MAR. We intend to amend our Handbook text accordingly, but due to the heavy dependency of MAR 2 on the technical standards under Article 5(6) EU MAR, we will need to base our position on the final legal text. We hope that these will be published promptly so that we can make changes to our Handbook before 3 July 2016.

With regards to the issue of copy-out, we refer readers to our views set out in Chapter 2.

MAR 8: Benchmarks

Q19: Do you have any comments or suggestions on the proposed amendments to MAR 8.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.39** One respondent indicated that Articles 2(2), 12 and 15 EU MAR should be copied out in MAR 8.1 rather than signposted to make the Handbook a comprehensive standalone document.

Our response

We note the comment made to provide a copy of Articles 2(2), 12 and 15 MAR and we direct readers to Chapter 2 of this PS for our approach to copy outs.

SYSC 18: Reporting of infringements

Q20: Do you have any comments or suggestions on the changes proposed to SYSC 18? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.40** We received one response to our proposal for SYSC 18. The respondent comments that the scope of SYSC 18 seems narrower than that of the requirement under Article 32(3) EU MAR, and asks if the signpost is for firms not caught by SYSC 18.

Our response

We note the request to provide clarification to the scope of SYSC 18.

The purpose of the note under SYSC 18.2.2G is to clarify that firms caught by the requirement under Article 32(3) EU MAR to have in place appropriate internal procedures for their employees to report infringements of this Regulation, may choose to have as appropriate internal procedure the requirements set out in this provision SYSC 18.2.2G. As indicated in CP15/35, firms under EU MAR have discretion as to how the requirement in Article 32(3) EU MAR is implemented. If we believe providing guidance in this respect is appropriate, we will do so in due course.

Therefore we are going ahead with our proposal outlined in CP15/35 for SYSC 18.2.2G but with minor drafting amendments to include a precise reference to the relevant Article under EU MAR.

The current SYSC 18.2.2G will cease to exist on 7 September 2016 (please refer to PS15/24 for further information on these changes). We will assess the necessary changes to the new rules that will enter into effect from 7 September 2016 in light of EU MAR prior to these coming into force.

COBS 12.4 Research recommendations

3.41 In CP15/35, we proposed several amendments to COBS 12.4, which were largely due to overlap between provisions with COBS 12.4 and Article 20 and the technical standards under Article 20(5) EU MAR.

Q21: Do you have any comments or suggestions on the proposed amendments to COBS 12.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- One respondent requested copy-out of all technical standards made under Article 20(5) EU MAR into COBS 12.4
- Two respondents sought clarity on the extent to which requirements under the Takeover Code or Listing Rules (such as circulars) constitute investment recommendations
- One respondent suggested that the proposed amended definition in the glossary of 'non-independent research' raised the possibility that very brief sales notes would be described as non-independent research
- One respondent sought guidance on aspects covered by the technical standards under EU MAR such as whether informal short-term notes to clients originating from the sales department constitute investment recommendations and the extent to which shareholdings of a firm should be aggregated with those of natural persons producing recommendations in the name of the firm
- Two respondents noted two respective typographical errors.

Our response

As above, please refer to Chapter 2 with regards to our position on copy out.

We maintain our proposed amendment to the definition of 'non-independent research' as this conforms the existing terminology used in COBS 12.4 (research recommendations) to MAR terminology. Irrespective of this change, provided that short term sales notes objectively fall under the definition of an investment recommendation and do not constitute investment research, these have always been classified as non-independent research.

We have amended our proposals for the typographical errors.

All other responses are outside the scope of this consultation. However, in Chapter 4, we note the areas highlighted by respondents for further guidance. We are considering the appropriate approach in these areas.

SUP 15.10: Reporting Suspicious Transactions

Q22: Do you have any comments or suggestions on the changes proposed to SUP 15.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

3.42 Five respondents provided comments:

- One requested copy out of the relevant EU provisions into this chapter of the handbook.
- Two respondents sought guidance on the scope of ‘persons professionally arranging or executing transactions’ within Article 16 EU MAR, and specifically its application to portfolio management
- Two respondents also asked for guidance on the requirement under the technical standards to deploy surveillance on orders and quotes
- One respondent sought guidance on the extent to which automated surveillance is expected

Our response

We refer readers to the level 2 texts under Article 16(5) EU MAR which states the position on automated surveillance. Please see Chapter 2 for our position on copy out.

In chapter 4, we list the requests for guidance that were outside the scope of CP15/35. We will consider an appropriate approach for these issues.

DTR: Disclosure Rules and Transparency Rules

DTR 1.1 – application and purpose (Disclosure rules)

Q23: Do you have any comments or suggestions on our proposed amendments to DTR 1.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.43** Five respondents said providing cross reference to the all applicable legislation relevant to the DTR would help users of the Handbook.
- 3.44** A respondent said DTR 1.1.2G should include reference to ‘disclosure requirements’ rather than ‘disclosure obligations’ as the term ‘disclosure requirements’ is proposed as a defined term to refer to the provisions of Articles 17, 18 and 19 EU MAR.
- 3.45** Another respondent suggested DTR 1.1.3G should draw attention to the persons it applies to.

Our response

We understand that providing cross references to all the applicable legislation in DTR 1.1 would help Handbook users. However, it is not in line with the approach taken in the rest of the Handbook, therefore we have not made this change.

Please see Chapter 2 for our further views on cross-references to EU MAR.

We have reviewed the drafting of DTR 1.1.2G and we consider this change appropriate so we are updating it to replace the terms 'disclosure obligations' with 'disclosure requirements'.

In relation to the comment that DTR 1.1.3G should draw attention to the persons it applies to, although we acknowledge such information in the introductory chapter would be helpful, this would not be consistent with the approach outlined in the CP15/35. We instead invite readers to refer to EU MAR for the scope of the persons the disclosure requirements apply to.

DTR 1.2 – Modifying rules and consulting the FCA

Q24: Do you have any comments or suggestions on our proposed amendments to DTR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.46** One respondent agrees with maintaining the DTRs as they provide a useful source of guidance and assist companies in implementing the requirements of EU MAR.
- 3.47** Another respondent indicated it would be helpful to have guidance on the process an issuer should follow to apply for the dispensation or modification of disclosure guidance.
- 3.48** Four respondents indicated the FCA will be given the power under Regulation 6 and 7 FSMA to direct the manner and content of a notification. The same respondents suggested the wording of DTR 1.2.5G should refer to 'disclosure guidance' rather than 'disclosure requirement'.

Our response

For the guidance requested for the dispensation or modification of disclosure guidance, as indicated in CP15/35, DTR 1.2.1R, DTR 1.2.2R and DTR 1.2.3G will be removed as they are no longer compatible with EU MAR. So it would not be compatible with EU MAR to have dispensation or modification relating to rules or even in the form of guidance.

In view of comments received in relation to DTR 1.2.5G, we are adjusting this section by incorporating both 'disclosure requirement' and 'disclosure guidance' as both are relevant.

DTR 1.3 – information gathering and publication

Q25: Do you have any comments or suggestions on our proposed amendments to DTR 1.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.49** Four respondents indicated the relevant provisions of this section should include cross references to the relevant sections of FSMA.
- 3.50** Two respondents supported maintaining DTR 1.3.4R as it is important issuers are not permitted to make RIS announcements containing misleading information, false or deceptive information. Whilst another said this provision should remain as there is no direct provision in EU MAR.
- 3.51** Another respondent added that if this provision cannot be maintained, LR 1.3.3R could be considered an alternative to keeping DTR 1.3.4R.
- 3.52** The same four respondents indicated the wording in DTR 1.3.6R was changed from ‘must’ to ‘may’ and asks if this represents a change in policy. Another respondent would like further clarification on what to do outside RIS hours.
- 3.53** The same respondents indicated the note in DTR 1.3.8R should read ‘Implementing Technical Standard’ rather than ‘Regulatory Technical Standard’. Another respondent indicated that the technical standard under Article 17(10) EU MAR should be reproduced rather than having a signpost.

Our response

In response to the comment to maintain DTR 1.3.4R, we confirm this will be removed from the DTRs because the Treasury is repealing our power to make disclosure rules. We are, however, continuing to discuss with the Treasury how this power could be retained in domestic legislation. It should also be noted that elements of the obligation in DTR 1.3.4R are likely, in the context of EU MAR, to be covered under Articles 12 and 17.

In relation to the comment made on the similarity between LR 1.3.3R and DTR 1.3.4R, we consider we cannot use LR 1.3.3R in the same circumstance as DTR 1.3.4R because it was drafted specifically for purposes under the Listing Rules that are different to disclosure rules purposes.

Regarding the feedback on DTR 1.3.6R, we direct readers to Chapter 2 of this Policy Statement regarding redrafting of provisions.

For the cross reference to the level 2 in DTR 1.3.8R, we take note that the signpost should refer to ‘Regulatory Implementing Standards’ rather than ‘Regulatory Technical Standard’. However as outlined in Chapter 2, we will revisit including reference to the level 2 once it is published in the OJEU.

For the comment made on providing the copy out of Article 17(10) EU MAR, we direct readers to Chapter 2 of this PS.

DTR 1.4 – suspension of trading

Q26: Do you have any comments or suggestions on our proposed amendments to DTR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.54** One respondent suggested maintaining DTR 1.4.2R so issuers are clear about responsibilities following the suspension of trading because EU MAR does not provide an equivalent provision.
- 3.55** Five respondents said this section should provide a cross reference to the relevant section of FSMA and also added that DTR 1.4.4G(1) should refer to Article 17 EU MAR and not just the 'Market Abuse Regulation'.

Our response

In response to the comment to maintain DTR 1.4.2R, we confirm this will be removed because the Treasury is repealing our power to make disclosure rules. However, we accept that this provision provides clarity about responsibilities during a suspension so we propose to maintain it in the conformed form of guidance.

We note the request to provide the cross references to the relevant sections of FSMA. As indicated above, this is not consistent with the approach taken in the Handbook for other provisions stemming from FSMA. Therefore we do not propose to make this change.

We also note the request to provide in DTR 1.4.4G(1) a cross reference to Article 17 EU MAR and not just to the 'Market Abuse Regulation'. We consider this change appropriate and we are updating the drafting of this provision to include this request.

DTR 1.5 – Fees, market abuse safe harbours and sanctions

Q27: Do you have any comments or suggestions on our proposed amendments to DTR 1.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.56** One respondent raised the question if DTR 1.5.2R on safe harbours will be included in FSMA.
- 3.57** Four respondents suggested a cross reference to the relevant section of FSMA.

Our response

We note the comment made for DTR 1.5.2R on safe harbours and have referred this to the Treasury who will consider this suggestion.

We note the request to provide the cross references to the relevant sections of FSMA. As indicated above, this is not consistent with the approach taken in the

Handbook for other provisions stemming from FSMA and therefore we do not propose to make this change.

DTR 2 – Modifying rules and consulting the FCA

DTR 2.1 – introduction and purpose

Q28: Do you have any comments or suggestions on our proposed changes to DTR 2.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.58** One respondent agreed with the proposed changes. We did not receive any responses disagreeing with the proposal in Q28.

DTR 2.2 – disclosure of inside information

Q29: Do you have any comments or suggestions on our proposed changes to DTR 2.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.59** Three respondents suggested amending the note under DTR 2.2.1R to replace the cross reference Commission-adopted Regulatory Technical Standards under Article 17(10) of the Market Abuse Regulation with a reference to the final form of Article 2(1) of the draft Commission Implementing Regulation included in Annex XII of ESMA/2015/1455, in relation to the means for public disclosure of inside information, to make it easier for issuers to identify the relevant provisions. The same respondents indicate the reference should refer to ‘Implementing Technical Standard’ rather than ‘Regulatory Technical Standard’.
- 3.60** One respondent suggested maintaining DTR 2.2.4G(1) as it provides a definition of the reasonable investor and enables to better understand DTR2.25G and DTR2.2.6G.
- 3.61** Two other respondents referred to the change of wording in DTR 2.2.5G(2) asking if the introduction of the term ‘likelihood’ reflects a change in policy of the FCA.
- 3.62** One respondent recommends having a copy out of Article 17(1) EU MAR and the relevant Level 2 provision to make the Handbook a comprehensive standalone document.
- 3.63** Respondents also raised questions on the interpretation of the related Level 1 and Level 2 provisions.

Our response

We note that the signpost under DTR 2.2.1R, should refer to ‘Regulatory Implementing Standards’ rather than ‘Regulatory Technical Standard’. However as outlined in Chapter 2, we will revisit including references to the level 2 provisions once they are published in the OJEU.

The change in wording in DTR 2.2.4G(1) does not reflect a change in policy but is made pursuant to the approach outlined in CP 15/35. We have considered

the elements raised by the respondent but given the notion of 'reasonable investor' exists in EU MAR and the overlap more specifically with Article 7(4) EU MAR, we concluded this provision was no longer compatible to maintain. DTR 2.25G and DTR 2.2.6G should therefore be read in light of Article 7(4) EU MAR.

The redrafting of DTR 2.2.5G(2) does not reflect a change in policy but is made pursuant to the approach outlined in CP 15/35 and reiterated in Chapter 2 of this PS. To maintain this provision, we therefore need to amend its wording so it conforms with EU MAR.

For the comment made on providing the copy out of Article 17(1) EU MAR and the relevant Level 2, we direct readers to Chapter 2 of this PS.

In relation to the implementation of Level 1 and Level 2 provisions outside of CP15/35, these have been included in Chapter 4 where we list potential areas for further guidance raised by respondents. We will consider appropriate approaches in these areas.

DTR 2.3 – publication of information on internet site

Q30: Do you have any comments or suggestions on our proposed changes to DTR 2.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.64** Two respondents said this section should contain a cross-reference to the final form of Article 3 of the draft Commission Implementing Regulation included in Annex XII of ESMA/2015/1455, in relation to the posting of inside information on a website.
- 3.65** One respondent indicated DTR 2.3.3R and 2.3.4G should not be removed if there are no similar provisions in the Level 2.
- 3.66** One respondent recommended a copy out of Article 17(1) and 17(9) EU MAR rather than signposted under DTR 2.3.5R to make the Handbook a comprehensive standalone document.

Our response

We note the comment to provide a cross reference to the relevant Level 2 covering the publication of internet sites. However as outlined in Chapter 2, we will revisit including reference to the Level 2 once it is published in the OJEU.

For DTR 2.3.3R and 2.3.4G, we had reconsidered maintaining these in the form of guidance but they are being removed because, as outlined in CP 15/35, they are not compatible with EU MAR.

In respect of the request to provide a copy out of Article 17(1) and 17(9) EU MAR, please see Chapter 2 for our position regarding copy outs.

DTR 2.4 – equivalent information

Q31: Do you have any comments or suggestions on our proposed changes to DTR 2.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.67** Three respondents did not provide comments on the proposal but indicated the heading should be deleted if the whole section is being removed.
- 3.68** Another respondent said this section should remain because it covers public disclosure of inside information in other jurisdictions which is not covered in EU MAR.

Our response

We have considered the elements raised by the respondent not to delete this section. However, after further review, we consider that, given the overlap with Article 17 EU MAR and more specifically with Article 17(10), this section should be deleted.

We will as a consequence go ahead with the deletion of this section and as a consequence delete the title of this section.

DTR 2.5 – delaying disclosure of inside information

Q32: Do you have any comments or suggestions on our proposed changes to DTR 2.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.69** Respondents said the FCA should only consider changes to the Handbook once the Guidelines have been published and they added that if the Level 1 and Level 2 measures are insufficient we should ensure that appropriate guidance is provided so EU markets can function properly. They believe guidance included in DTR 2.5 should be maintained and we should consider a deletion only once the ESMA Guidelines under Article 17(11) EU MAR are produced. One of these respondents also provided some elements to clarify the application of the ESMA Guidelines based on the Draft ESMA Guidelines (ESMA/2016/102).
- 3.70** For DTR 2.5.1R, three respondents indicated it would be helpful to have a cross reference to the relevant Level 2 under Article 17(4) and 17(5) EU MAR. Another respondent said the element of confidentiality owed to the issuer by the person receiving the information does not appear to be covered by EU MAR. They recommended this clause should be retained to protect the issuer from a breach of confidentiality and unauthorised disclosure of inside information, especially as a duty of confidentiality is acknowledged under DTR 2.5.7(2)G and DTR 2.6.4G.
- 3.71** Several respondents also asked us to provide guidance on the method of notification of the written explanation to the FCA when there is, pursuant to Article 17(4) EU MAR, a delay in the disclosure of inside information.
- 3.72** For DTR 2.5.3R, four respondents indicated it would be helpful to have a cross reference to the relevant Level 2 under Article 17(4) EU MAR and added this provision should be amended in due course to reflect the content of the ESMA Guidelines under Article 17(11) once they are

finalised. According to these respondents, a copy out of the ESMA Guidelines would be more helpful than providing a cross reference to the ESMA Guidelines.

- 3.73** For DTR 2.5.5G, the same four respondents said they did not comment on the last sentence as they note its proposed deletion in CP15/38.
- 3.74** One respondent recommended having a copy out of Article 17(5) and 17(8) EU MAR to make the Handbook a comprehensive standalone document rather than to provide a signpost under DTR 2.5.5(A)R and DTR 2.5.6R.
- 3.75** For DTR 2.5.7G(2), four respondents note the addition of the word 'may' at the end of the first paragraph and ask if this reflects a change in policy.
- 3.76** Of the six responses received to CP15/38, five agreed with the proposal to delete the last sentence. Of those five respondents, one agreed that DTR 2.5.5G requires amendment but expressed concern that the deletion of the last sentence may create further uncertainty which could be addressed through further guidance. Another of the five respondents also supported the proposed amendment but only with further guidance in order for issuers to understand whether they have any greater latitude as a result of the deletion.
- 3.77** A different respondent considered that the proposed deletion should not be made as it would be interpreted as a relaxation of 'circumstances that can justify the legitimate delay of the disclosure of inside information beyond those that had previously been understood'.

Our response

We note the comments made by several respondents on the ESMA Guidelines under Article 17(11) EU MAR but because they have not yet been finalised, we are maintaining the elements outlined in our proposal in CP15/35. We will reassess the status and continuance of DTR 2.5 in due course once we have more certainty on the content of the ESMA Guidelines.

This also applies with respect to DTR 2.5.5G. In light of the requests for further guidance from respondents to CP15/38 and the probability that this provision will need to be amended once the ESMA Guidelines are available, for the time being, we will maintain this provision in the form set out in CP 15/35.

For the comment on ensuring the duty of confidentiality owed to the issuer in DTR 2.5.1G, we consider there is overlap with Article 17(4) and 17(5) EU MAR so we are maintaining our proposal. In the course of this review we however identified there was also overlap with Article 17(8) EU MAR. We will therefore update the cross reference under proposed DTR 2.5.1EU to also include a reference to Article 17(8) EU MAR.

In relation to the addition of the word 'may' in DTR 2.5.7G(2), this change is made to conform with EU MAR. Please see Chapter 2 for our approach on the redrafting of Handbook provisions.

In respect of the requests to provide a cross references under DTR 2.5.1R and DTR 2.5.3R as well as a copy out of Article 17(5) and 17(8) EU MAR, please see Chapter 2 for our position regarding cross references and copy outs.

Please see our response to Q1, 2 and 3 for our approach on the written explanation in cases of delayed disclosure only upon request of the FCA. The FCA will indicate on its website in due course the electronic means to submit the information.

DTR 2.6 – control of inside information

Q33: Do you have any comments or suggestions on our proposed changes to DTR 2.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.78** One respondent supported the proposed retention of guidance in DTR 2.6.
- 3.79** Two respondents agreed with the proposal to change DTR 2.6.1R from a rule to guidance.
- 3.80** Two other respondents indicated the same provision should have a cross reference to the ESMA draft text in its final report to the final form of Article 4(1)(c)(i) of the draft Commission Implementing Regulation included in Annex XII of ESMA/2015/1455. This is in relation to the requirement to record evidence of the information barriers put in place where disclosure of inside information is delayed in reliance on Article 17(4) EU MAR.
- 3.81** The same respondents said DTR 2.6.3G should also have a have a cross reference to the final form of Article 4(1)(c)(ii) of the draft Commission Implementing Regulation included in Annex XII of ESMA/2015/1455. This is in relation to the evidence required of information barriers and the arrangements put in place where confidentiality is no longer ensured.
- 3.82** One respondent recommends having a copy out of Article 17(7) EU MAR to make the Handbook a comprehensive standalone document.

Our response

In respect of the request to provide a cross reference and a copy out of Article 17(7) EU MAR, please see Chapter 2 for our position regarding cross references and copy outs.

DTR 2.7 – dealing with rumours

Q34: Do you have any comments or suggestions on our proposed changes to DTR 2.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.83** One respondent recommended having a copy out of Article 17(7) EU MAR to make the Handbook a comprehensive standalone document.
- 3.84** Another respondent noted the proposed text in DTR2.7.3G is not consistent with Article 17(7) EU MAR whilst three other respondents consider the language is weakened and is a significant change to the previous wording. The respondents ask the FCA to clarify whether this represents a change in expectations regarding issuers' comments on false rumours.

Our response

In respect of the request to provide a copy out of Article 17(7) EU MAR, please see Chapter 2 for our position regarding copy outs.

The change in wording in DTR 2.7.3G does not reflect a change in policy but is made pursuant to the approach outlined in CP 15/35. We have considered the elements raised by the respondent but in order to retain this provision, we are maintaining the wording set out in our proposal so it conforms with EU MAR.

DTR 2.8 – insider lists

Q35: Do you have any comments or suggestions on our proposed changes to DTR 2.8? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.85** Two respondents indicated the cross reference in DTR 2.8.3R should include a reference to the final form of Article 2 of the draft Commission Implementing Regulation included Annex XIII of ESMA/2015/1455, in relation to the format for drawing up and updating the insider list’.
- 3.86** Several respondents ask the FCA to specify the electronic means that issuers should use to submit insider lists referred to Article 2(5) of Commission Implementing Regulation included Annex XIII of ESMA/2015/1455.
- 3.87** Two other respondents ask the FCA to provide a copy out of Article 18 EU MAR and all the relevant level 2 provisions.
- 3.88** In relation to DTR 2.8.8G, one respondent does not consider it is incompatible with EU MAR and adds it should be maintained to clarify how issuers should deal with the part of the insider list maintained by advisors.
- 3.89** Respondents also raised several questions on the interpretation of the related Level 1 and Level 2 provisions which are included in Chapter 4 listing potential areas for further guidance raised by respondents. We will consider the appropriate approach in each of these areas.

Our response

We note the request to amend the cross reference to proposed DTR 2.8.3EU to include a reference to the Level 2. Please see Chapter 2 for our position regarding cross references.

For our approach to copy outs, please also refer to Chapter 2 for our general approach.

In relation to the electronic means to submit insider lists, the FCA will provide the relevant information on its website in due course.

Regarding the comment to maintain DTR 2.8.8G, we reviewed our proposal but we consider it would be incompatible with Article 18(1) EU MAR to maintain this provision, even in the form of guidance.

DTR 3 – Transactions by persons discharging managerial responsibilities and their connected persons

Q36: Do you have any comments or suggestions on our proposed changes to DTR 3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

- 3.90** Two respondents suggested including a copy out of the legislation rather than signposts to make the Handbook a comprehensive standalone document.
- 3.91** Three other respondents suggested including a cross-reference to the closed period provisions (in EU MAR Article 19(11) and 19(12) and the delegated acts to be adopted under Article 19(13) EU MAR) given they are key aspects of the disclosure requirements set out in Article 19 EU MAR.
- 3.92** The same three respondents indicated DTR 3.1.1G should be amended at the end to reflect the wider scope of Article 19 EU MAR, to refer not only to shares and derivatives and other financial instruments related to those shares, but also to debt instruments and derivatives and other financial instruments related to those shares. One of these respondents also added that to avoid confusion, the reference to ‘connected person’ should be replaced by ‘person closely associated’, with the Glossary definition being ‘as defined in Article 3(1)(26) of EU MAR’.
- 3.93** These respondents also suggest including a reference to Article 19(1) EU MAR (or possibly to Article 19(1) to 19(10)) EU MAR and not to the whole of Article 19 EU MAR as the prohibition on PDMR dealing in Article 19(11) EU MAR is separate. According to the respondents, this cross reference should be made to the list of notifiable transactions set out in Article 10(2) of the Draft Commission Delegated Regulation published on 17 December 2015 (Delegated Regulation).
- 3.94** One respondent indicated proposed DTR 3.1.2(A)G should have a reference to Article 3(1)(25) EU MAR whilst another indicated it should have a cross reference to Article 10 of the draft Commission Delegated Regulation of 17 December 2015 which sets out the types of notifiable managers’ transactions to be disclosed un Article 19(1) EU MAR.
- 3.95** In relation to the same provision, one respondent indicated it would be helpful to have the relevant threshold per calendar year in pounds sterling. If this is not possible, the respondent provides suggested wording to include in the Handbook to reduce uncertainty that the threshold is not increased under Article 19(9) EU MAR but remain the one under Article 19(8) EU MAR. Another respondent said the issuer should have discretion to implement a process to require PDMRs to disclose all dealings to the company regardless of the notification threshold. The respondent believes this helps retain accurate records of dealings by directors and their connected persons, and promotes transparency.
- 3.96** One respondent suggested DTR 3.1.3G should replace the cross reference ‘Commission-adopted Implementing Technical Standards under article 19(15) of the Market Abuse Regulation’ with a reference to the final form of Article 2 of and the Annex to the draft Commission Implementing Regulation included in Annex XIV of ESMA/2015/1455, in relation to the format and template for the notification. The same respondent asked if the FCA will make a UK version of a template for notifications available on its website with a cross reference in the Handbook to locate it. It added the template of the draft implementing regulation includes cross references to other EU legislation, including MiFID regulations, which have not yet been created. The template is not in

a form that is usable in practice by PDMRs and persons closely associated with them so there is a need for a template to be used in practice for notifications. Another two respondents asked if the FCA will be producing forms for PDMRs notifications to comply with Article 19(6) EU MAR and include a cross reference to where the form can be found.

- 3.97** For DTR 3.1.4R, three respondents indicated it would be helpful to include a cross reference to Article 19(3) EU MAR.
- 3.98** Three respondents indicated DTR 3.1.5R should reference Article 19(6) EU MAR or provide other helpful guidance on what the disclosures should contain. One of these respondents further added that DTR 3.1.7G should provide a link to the notification template once it is made available by the European Commission.
- 3.99** Respondents also raised several questions on the interpretation of the related Level 1 and Level 2 provisions which is included in Chapter 4 which lists potential areas for further guidance raised by respondents.

Our response

We note the request to provide cross references and copy outs of Article 19(3), 19(11) and 19(12) EU MAR, please see Chapter 2 for our position regarding cross references and copy outs.

We acknowledge that Article 19(11) and 19(12) EU MAR are key aspects of the disclosure requirements in EU MAR. However, because they do not have similar pre-existing provisions in the DTRs, it would not be compatible with the approach outlined in CP 15/35 to include cross references.

We have made the consequential change to DTR 3.1.1G so the provision refers to the wider scope of Article 19 of EU MAR to also include debt instruments and derivatives and other financial instruments related to shares.

We acknowledge the comments made to replace 'person closely associated' with 'connected person' however the change would result in having several variations of the same term as it also used in other parts of the Handbook. As the glossary definition has been updated to incorporate the EU MAR definition of Article 3(1)(26), we therefore do not consider appropriate to make the requested change.

As for providing a reference to the applicable threshold to report notifications, we would like to draw attention to the existing proposal with new DTR 3.1.2(B) G to include an indication that the applicable threshold is set under Article 19(8) EU MAR.

With regard to the disclosure of all dealings, we remind readers the threshold of Article 19(8) EU MAR applies to all subsequent transaction once a total amount of € 5000 has been reached within a calendar year. As per our response to Q1, 2 and 3 above, should issuers, PDMRs and their persons closely associated with them wish to disclose, on a voluntary basis, all transactions regardless of the threshold, they can do so. We are therefore going ahead with our proposal to include DTR 3.1.2(B)G.

In relation to the comment to provide a cross reference under deleted DTR 3.1.3R, we note such cross reference is already provided in our proposal. However, as already outlined in Chapter 2 of this PS, all cross references to Level 2 measures are uncertain until the finalised text exists.

In respect of the request to include a cross reference to Article 19(6) EU MAR under DTR 3.1.5R, we do not consider it would be appropriate and could lead to confusion considering that DTR 3.1.3R and DTR 3.1.4R are being deleted. We would also highlight that a cross reference will be provided under what was DTR 3.1.3R, now 3.1.3A EU.

For the request to provide a link to the notification template under DTR 3.1.7G, as indicated in Chapter 2, we have taken the approach not to provide cross references at this stage to specific provisions of level 2 provisions.

We note the feedback requesting the FCA to provide guidance on what the disclosures should contain and on a UK version of the template. However we do not consider appropriate to provide guidance at this stage. We will provide details in due course on our website on the forms to be used.

Article 19(3) paragraph 3 EU MAR provides that as an alternative to the issuer or emission allowance market participant making public the notification, the competent authority may itself make it public. Please note this is not an alternative we are providing and we therefore expect people to follow the requirements in Article 19(3) paragraphs 1 and 2 EU MAR.

In Chapter 4, we list the requests for guidance that were outside of the scope of CP15/35. We will consider the appropriate approach for these issues.

Listing Rules (LR) Chapter 9 and Annex 1

3.100 Out of the 25 responses received, 14 provided responses on the material relating to Qs 37-39.

Q37: Do you agree with the proposal to delete the provisions of the Model Code and replace it with rules and guidance on systems and procedures for companies to have clearance procedures regarding PDMR dealing?

3.101 Five respondents explicitly agreed with CP15/35 that the Model Code has provided a benchmark for premium listed companies to manage the reputational risk associated with PDMR trading so PDMRs do not place themselves or their connected persons under suspicion of abusing inside information. However most of these respondents accept the Model Code is incompatible with EU MAR and cannot continue in its current form.

3.102 Four respondents, some others tacitly by not expressing objection or concern, broadly agreed with the proposal to replace the Model Code with a new rule on systems and controls around clearance procedures for PDMR and associated guidance.

- 3.103** However, eight respondents, drawn from across the corporate sector and within the legal and advisory communities, expressed concerns with the proposals, including whether or to what extent additional FCA Rule book provisions would be appropriate in the EU MAR environment.
- 3.104** Some of these respondents were concerned that a two-tier dealing code was being introduced but with insufficient guidance from the FCA as to what the tier governing dealing outside the EU MAR closed periods should provide, what dealing it should cover and in particular, what exceptions should be available. Difficulty would arise in practice for companies and PDMRs alike as they need to navigate between two regimes with differing definitions of dealings and exemptions. Respondents felt this would cause confusion to both issuer and PDMR in expecting each to determine the transactions permissible, the permission needed and in which period the transactions could take place. Companies would face separate compliance risk for two complex systems.
- 3.105** One corporate sector respondent explicitly said that the same definition of dealing should not be used for non-EU MAR closed periods as for EU MAR periods. Another respondent indicated the FCA should only provide guidance for non-EU MAR closed periods where the Model Code provisions would continue to exist albeit in a modified and consolidated manner. Another respondent said issuers should have the flexibility outside EU MAR closed periods to set up their own systems and controls would be proportionate and appropriate. Another respondent added the relationship between both regimes should be very clear and further guidance should be provided to achieve this.
- 3.106** One respondent summarised that they did not think it correct or workable to put the burden on issuers to determine where it is appropriate to give clearance to deal without any express guidance from the FCA on the circumstances when it might be appropriate to give clearance and to require systems and controls to address this. They also pointed out the potential for inconsistency of enforcement with PDMR trading in a EU MAR closed period being subject to sanctions under section 123 FSMA, as proposed to amended by the Statutory Instrument, on the one hand and the FCA applying sanctions for breach of LR 6.1.29R and LR 9.2.8R only to premium listed companies, through enforcement of the Listing Rules, on the other.
- 3.107** Two respondents explicitly commented that the proposed non-EU MAR systems and controls requirement is more onerous than the existing Model Code.
- 3.108** Two respondents concluded that companies should be free to determine the systems they wish to implement to provide clearance to deal and there should be no mandatory requirement put in place by the FCA. They also commented that the Model Code was introduced over 30 years ago at a time when market abuse and insider dealing regimes were far less extensive than today and the need for a mandatory dealings code is no longer the same.
- 3.109** Two other respondents, who believed that the new Listing Rule proposed provisions should not be included in the Handbook, nevertheless recognised a need for some form of standard dealing code that applies to PDMR dealing outside the MAR closed periods to replace the Model Code. Although they considered the FCA could produce this, and its adoption perhaps made a requirement of the Listing Rules, there was a preference for such guidance to be produced by an industry body.

Q38: Do you have any suggestions on how the formulation of the rule (LR 6.1.29R and LR 9.2.8R) could be improved?

- 3.110** A few detailed suggestions were provided for modified formulation of the proposed rules (LR 6.1.29R and LR 9.2.8R). One respondent proposed amending the definition of 'deal' and

'dealing' to provide a signpost to Article 19(11) EU MAR. Two respondents deemed unclear the use of the terms 'effective' systems and controls where one of these respondents suggested replacing the term with 'appropriate'.

Q39: Do you have any suggestions for additions or deletions on the content of the proposed guidance in LR9 Annex 2G including on the areas noted above on which we have not included provisions? Please could you also justify your suggestions?

- 3.111** Some, but not all, respondents agreed that the guidance was broadly helpful.
- 3.112** Doubt was expressed by some respondents, though, about whether the provisions in Annex 2G create a workable basis for listed companies to comply with a systems and control requirement.
- 3.113** One respondent commented on the references in subparagraphs (c) and (d) of paragraph 5 of LR 9 Annex 2G to 'considerations of a short term nature', the 'specific nature of the dealing taking place' and the 'specific circumstances facing' the PDMR and that these references are not sufficiently specific to provide certainty to issuers as to when they can provide clearance. Three respondents said that if LR 9 Annex 2 G is retained, the FCA should include ESMA's advice on circumstances under which trading during a MAR closed period may be permitted under Article 19(12) EU MAR and all exceptions in the current Model Code.
- 3.114** Respondents also raised several questions on the interpretation of the related Level 1 and Level 2 provisions which is included in Chapter 4.

Our response

We note the feedback and we have carefully considered the complications that would arise with our proposal.

When considering the feedback we were also aware of the additional guidance that would be needed to provide the certainty requested by respondents to make the additional requirements related to the EU MAR closed period function appropriately.

As already outlined in CP15/35, there is a clear overlap between Model Code and EU MAR making its retention in its current form incompatible with our European legal obligations.

We have concluded that going ahead with our proposal for replacement rules and guidance would be unnecessarily onerous on issuers and PDMRs alike and would not provide the legal certainty needed by stakeholders. As a consequence we are deleting the Model Code (i.e. Annex 1 of LR 9) as proposed but will not introduce the proposed new rules (LR 6.1.29R and LR 9.2.8R), and the associated guidance.

This implies the removal of LR 9.2.7R, LR 9.2.8R, LR 9.2.8(A)G, LR 9.2.9G and LR 9.2.10R as they are not compatible with EU MAR. The removal of the Annex 1 of LR 9 also leads to various consequential changes (mainly to other parts of LR) laid out in Appendix 1.

We note the suggestion of an industry-led development of codes or best practice in this area and we would support such a development.

Areas outside the scope of CP15/35 are listed in Chapter 4. We will consider the appropriate approach to these issues.

4.

Summary of other elements raised by respondents

- 4.1** This chapter identifies some of the areas raised in responses which were not part of the original proposals in our CP.
- 4.2** We are considering the appropriate approach for each of these areas. If we consider it would be appropriate to address any of the matters with further guidance, we will endeavour to bring this forward, via either European level or domestic guidance. If we decide that FCA guidance is appropriate, we may consult on these issues in the future.

Requests for guidance outside the scope of CP 15/35

- 4.3** Areas for suggested guidance:
- Relating to MAR 1 / Article 12 EU MAR**
- 4.4** What constitutes benchmark manipulation.
- 4.5** Clarification what is understood by ‘phishing’ and ‘smoking’ in the context of the indicators of manipulation under Article 12(5) EU MAR.
- Relating to MAR 2 and MAR 1.10 / Article 5 of EU MAR**
- 4.6** Whether buyback programmes operating outside of the exemption are to be considered abusive.
- Relating to COBS 12.4 / Article 20 EU MAR**
- 4.7** The extent to which requirements under the Takeover Code or Listing Rules need to be treated as investment recommendations and subject to relevant EU MAR rules.
- 4.8** The scope of Article 20 EU MAR and whether informal communications between sales desks and clients constitute investment recommendations.
- 4.9** The extent to which shareholdings of a firm should be aggregated with those of natural persons producing recommendations in the name of the firm.
- Relating to SUP 15.10 / Article 16 EU MAR**
- 4.10** Whether the interpretation of ‘persons professionally arranging or executing’ exempts portfolio management.
- 4.11** What level of surveillance should be deployed against quotes.

Relating to DTR 2 / Article 17 EU MAR

- 4.12** The approach to comply with Article 2(1)(b)(i) of the technical standards under Article 17(10) EU MAR.
- 4.13** Whether the identity of the person making the notification under Article 2(1)(b)(iii) of the technical standards under Article 17(10) EU MAR refers to the individual arranging the release of the announcement.

Relating to DTR 2.8 / Article 18 MAR

- 4.14** The information to provide for UK nationals in to column of the insider lists requesting the 'National Identification Number'.
- 4.15** Whether the agreement in 18(2) EU MAR can be obtained in paper format and electronic means (including via click through acceptance of an email).
- 4.16** What happens if a person refuses to communicate personal information.
- 4.17** The expectations for SME Growth EU markets because of the delay in implementation of MiFID II.
- 4.18** Whether dealings that have taken place in the prior week before 3 July 2016 not yet announced should be disclosed in accordance with the current DTR 3 requirements.
- 4.19** Whether advisers acting on behalf of an issuer (e.g. an underwriter or financial adviser) do not need to keep on their insider lists information about employees of persons acting for them (e.g. the advisers' advisers, such as lawyers acting for an underwriter or financial adviser).
- 4.20** The issuer's responsibility when another person acting on behalf or on the account of the issuer assumes the task of drawing up and updating the insider list.
- 4.21** Confirmation that persons with general access to inside information may be considered permanent insiders, even if they do not have specific access to each piece of inside information.

Relating to DTR3 / Article 19 MAR

- 4.22** The reporting requirements under Article 19(1) and (3) EU MAR given they have a similar three day notification period.
- 4.23** Whether issuers notifying employee share plans can include additional explanatory information not required by the ESMA template.
- 4.24** How the aggregation of transactions is calculated to determine if the reporting threshold has been reached.
- 4.25** The exchange rate to use to determine if the € 5,000 threshold has been reached.
- 4.26** The difference in scope of notifiable transactions under Article 19(1) to 19(7) EU MAR and the scope of restrictions in Article 19(11) EU MAR for transactions during MAR closed periods.
- 4.27** How to interpret closed periods in Article 19(11) EU MAR in light of a preliminary announcement made pursuant to LR 9.7A.1R, voluntary quarterly reports and compulsory quarterly reports.
- 4.28** Instances when the issuer of which the person is a PDMR is not deemed to be a third party for the purposes of MAR 19(11) EU MAR.

- 4.29** Whether the issuer has to provide clearance to deal under Article 19 (11) EU MAR for unilateral acts such as gifts and inheritances where the PDMR has no control.
- 4.30** Whether savings schemes or dividend reinvestment plans in English law fall within the category of employee or savings scheme under Article 19(12) EU MAR.
- 4.31** Supplement the non-exhaustive list in Article 9 of the Delegated Act under Article 19(13) EU MAR when trading can be permitted.

Annex 1

List of non-confidential respondents

The Association of Investment Companies

AFME, BBA, FIA, ISDA (joint response)

BP

British Private Equity & Venture Capital Association

The City of London Law Society's Regulatory Law Committee

Complyport Ltd

Diageo

EPTA

FIA European Principal Traders Association

GC100

HSBC Holdings

ICSA: The Governance Institute

IG Markets Limited

The Law Society and City of London Law Society (joint response)

London Metal Exchange

Marks & Spencer

Quoted Companies Alliance

Rolls Royce

Royal Bank of Scotland

Share Plan Lawyers Group

The 100 Group

The Investment Association

Tradeweb

Virgin Money

Wealth Management Association

Appendix 1

FCA Handbook provisions (legal instrument)

MARKET ABUSE REGULATION INSTRUMENT 2016

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (the “Act”):
- (1) section 73A (Part 6 rules);
 - (2) section 96 (Obligations of issuers of listed securities);
 - (3) section 137A (General rule-making power);
 - (4) section 137Q (Price stabilising rules);
 - (5) section 137T (General supplementary powers);
 - (6) section 139A (Guidance); and
 - (7) paragraph 23 (Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 3 July 2016.

Amendments to the Handbook

- D. The modules of the FCA’s Handbook of rules and guidance listed in column (1) below are amended in accordance with the Annexes to this instrument listed in column (2).

(1)	(2)
Glossary of definitions	Annex A
Senior Management Arrangements, Systems and Controls (SYSC)	Annex B
Code of Conduct (COCON)	Annex C
Statements of Principle and Code of Practice for Approved Persons (APER)	Annex D
General Provisions (GEN)	Annex E
Fees manual (FEES)	Annex F
Conduct of Business sourcebook (COBS)	Annex G
Market Conduct sourcebook (MAR)	Annex H
Supervision manual (SUP)	Annex I
Recognised Investment Exchanges sourcebook (REC)	Annex J
Listing Rules sourcebook (LR)	Annex K
Disclosure Rules and Transparency Rules sourcebook (DTR)	Annex L
Service Companies Guide (SERV)	Annex M
General guidance on Benchmark Submission and Administration (BENCH)	Annex N

Renaming of sourcebook

- E. The Disclosure Rules and Transparency Rules sourcebook (DTR) is renamed the Disclosure Guidance and Transparency Rules sourcebook (DTR).

Amendments to material outside the Handbook

- F. The Financial Crime Guide (FC) is amended in accordance with Annex O to this instrument.

Notes

- G. In the Annexes to this instrument, the “notes” (indicated by “**Note:**”) are included for the convenience of readers but do not form part of the legislative text.

European Union Legislation

- H. Although European Union legislation is reproduced in this instrument, only European Union legislation reproduced in the Official Journal of the European Union is deemed authentic.

Citation

- I. This instrument may be cited as the Market Abuse Regulation Instrument 2016.

By order of the Board
21 April 2016

Annex A

Amendments to the Glossary of definitions

In this Annex, underlining indicates new text and striking through indicates deleted text.

Insert the following new definitions in the appropriate alphabetical position.

<u>disclosure guidance</u>	<u>the guidance contained in DTR 1 to 3.</u>
<u>investment recommendation</u>	as defined in article 3(1)(35) of the <u>Market Abuse Regulation.</u>
<u>Market Abuse Regulation</u>	<u>regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing the <i>Market Abuse Directive</i> and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.</u>
<u>unlawful disclosure</u>	<u>the behaviour described in article 10 of the <i>Market Abuse Regulation.</i></u>

Amend the following definitions as shown.

<i>breach</i>	...
	(4) behaviour amounting to <i>market abuse</i> , or to requiring or encouraging market abuse , in respect of which the <i>FCA</i> takes action pursuant to section 123 (Power to impose penalties in cases of market abuse) of the <i>Act</i> ;
	...
<i>competent authority</i>	...
	(6) (in COBS 13.4) the authority designated by each EEA State in accordance with Article 11 of the <i>Market Abuse Directive</i>. [Note: article 1(7) of the <i>Market Abuse Directive</i>] [deleted]
	...
<i>connected person</i>	...
	(5) (in <i>DTR</i> and <i>LR</i> in relation to a person discharging managerial responsibilities within an issuer) has the same meaning as in section 96B(2) of the <i>Act</i> meaning given to <u>“person closely associated”</u> in article 3(1)(26) of the <i>Market</i>

Abuse Regulation .

- dealing*
- (1) ~~(other than in MAR 1 (The Code of Market Conduct))~~ (in accordance with paragraph 2 of Schedule 2 to the *Act (Regulated activities)*) buying, selling, subscribing for or underwriting *investments* or offering or agreeing to do so, either as a *principal* or as an agent, including, in the case of an *investment* which is a *contract of insurance*, carrying out the contract.
- (2) ~~(in MAR 1) (as defined as in section 130A(3) of the Act), in relation to an investment, means acquiring or disposing of the investment whether as principal or agent or directly or indirectly, and includes agreeing to acquire or dispose of the investment, and entering into and bringing to an end a contract creating it.~~
- debt security*
- (1) (in ~~DTR 2, DTR 3 and LR~~) *debentures, alternative debentures, debenture stock, loan stock, bonds, certificates of deposit or any other instrument creating or acknowledging indebtedness.*
- ...
- disclosure rules requirements*
- ~~(in accordance with sections 73A(1) and 73A(3) of the Act) rules relating to the disclosure of information in respect of *financial instruments* which have been admitted to trading on a *regulated market* or for which a request for *admission to trading* on such a market has been made articles 17, 18 and 19 of the *Market Abuse Regulation*.~~
- DTR*
- the Disclosure Rules Guidance and Transparency Rules sourcebook containing the *disclosure rules guidance, transparency rules, corporate governance rules* and the *rules* relating to *primary information providers*.
- financial instrument*
- ...
- (2) ~~(in MAR 1 and MAR 2, DTR 1, 2 and 3 and otherwise where used in relation to the *Market Abuse Directive*) (as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*, and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*): *Market Abuse Regulation*, as defined in article 3(1)(1) of the *Market Abuse Regulation*.~~
- ...
- inside information*
- ~~(as defined in section 118C of the Act):~~
- (a) ~~in relation to *qualifying investments, or related investments,*~~

~~which are not commodity derivatives, inside information is information of a precise nature which:~~

- ~~(i) is not generally available,~~
 - ~~(ii) relates, directly or indirectly, to one or more issuers of the *qualifying investments* or to one or more of the *qualifying investments*, and~~
 - ~~(iii) would, if generally available, be likely to have a significant effect on the price of the *qualifying investments* or on the price of *related investments*.~~
- ~~(b) in relation to *qualifying investments*, or *related investments*, which are commodity derivatives, inside information is information of a precise nature which:~~
- ~~(i) is not generally available,~~
 - ~~(ii) relates, directly or indirectly, to one or more such derivatives, and~~
 - ~~(iii) users of markets in which the derivatives are traded would expect to receive in accordance with *accepted market practices* on those markets.~~
- ~~(c) in relation to a person charged with the execution of orders concerning any *qualifying investments* or *related investments*, inside information includes information conveyed by a client and related to the client's pending orders which:~~
- ~~(i) is of a precise nature;~~
 - ~~(ii) is not generally available;~~
 - ~~(iii) relates, directly or indirectly, to one or more issuers of *qualifying investments* or to one or more *qualifying investments*; and~~
 - ~~(iv) would, if generally available, be likely to have a significant effect on the price of those *qualifying investments* or the price of *related investments*;~~
- ~~(d) information is precise if it:~~
- ~~(i) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and~~
 - ~~(ii) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of *qualifying investments* or *related*~~

investments;

- (e) information would be likely to have a significant effect on price if and only if it is information of that kind which a reasonable investor would be likely to use as part of the basis of his investment decisions;
- (f) for the purposes of (b)(iii), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information relating directly or indirectly to one or more such derivatives in accordance with any *accepted market practices*, which is:
 - (i) routinely made available to the users of those markets; or
 - (ii) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market;
- (g) information which can be obtained by research or analysis conducted by, or on behalf of, users of a market is to be regarded, for the purposes of *market abuse*, as being generally available to them.

as described in article 7 of the *Market Abuse Regulation*.

insider

~~(as defined in section 118B of the Act) a person who has *inside information*:~~

- (a) as a result of his membership of the administrative, management or supervisory bodies of an *issuer of qualifying investments*;
- (b) as a result of his holding in the capital of an *issuer of qualifying investments*;
- (c) as a result of having access to the information through the exercise of his employment, profession or duties;
- (d) as a result of his criminal activities; or
- (e) which he has obtained by other means and which he knows, or could reasonably be expected to know, is *inside information*.

as described in article 8(4) of the *Market Abuse Regulation*.

insider dealing

- (1) (except in *MAR 1*) the activity described in section 52 of the Criminal Justice Act 1993, which is in summary:
 - (a) the offence of which an individual is guilty if he has

information as an insider and:

- (i) in the circumstances described in (b), he deals in securities that are price-affected securities in relation to the information;
- (ii) (A) he encourages another *person* to deal in securities that are (whether or not that other knows it) price-affected securities in relation to the information, knowing or having reasonable cause to believe that the dealing would take place in the circumstances mentioned in (b); or
 - (B) he discloses the information, otherwise than in the proper performance of the functions of his employment, office or profession, to another *person*;

(b) the circumstances referred to in (a) are that the acquisition or disposal in question occurs on a regulated market (identified in an Order made by the Treasury), or that the person dealing relies on a professional intermediary or is himself acting as a professional intermediary.

(2) (in MAR 1) the behaviour described in article 8 of the *Market Abuse Regulation*.

intermediaries offer ...

(2) ~~(for the purposes of the *Code of Market Conduct (MAR 1)*) a marketing of *securities* not yet in issue, by means of an *offer* by, or on behalf of, the *issuer* to intermediaries for them to allocate to their own clients. [deleted]~~

issuer ...

(2) (in MAR 1, chapters 1, 2 and 3 of *DTR* and *FEES* in relation to *DTR*) ~~any *company* or other legal person or undertaking (including a *public sector issuer*), any class of whose *financial instruments*:~~

- ~~(a) have been *admitted to trading on a regulated market*; or~~
- ~~(b) are the subject of an application for *admission to trading on a regulated market*;~~

~~other than *issuers* who have not requested or approved admission of their *financial instruments* to trading on a~~

	<i>regulated market</i>
	as defined in article 3(1)(21) of the <i>Market Abuse Regulation</i> .
	...
<i>market abuse</i>	<p>(1) (in accordance with section 118 of the Act (Market abuse)) <i>behaviour</i> (whether by one <i>person</i> alone or by two or more <i>persons</i> jointly or in concert) which:</p> <p>(a) occurs in relation to <i>qualifying investments</i> traded or admitted to trading on a <i>prescribed market</i> or in respect of which a request for admission to trading on such a market has been made; and</p> <p>(b) falls within any one or more of the types of <i>behaviour</i> set out in section 118(2) to (8) of the Act.</p> <p><u>behaviour prohibited by:</u></p> <p>(a) <u>articles 14 and 15 of the <i>Market Abuse Regulation</i>; or</u></p> <p>(b) <u>articles 38 to 42 of Regulation (EU) No 1031/2010.</u></p>
	...
<i>non-independent research</i>	<p>a <i>research</i> <u>an <i>investment recommendation</i></u> which:</p> <p>(a) relates to <i>financial instruments</i> (as specified in Section C of Annex 1 of <i>MiFID</i>, whether or not they are admitted to trading on a <i>regulated market</i>); and</p> <p>(b) does not constitute <i>investment research</i>.</p> <p>[Note: article 24(2) of the <i>MiFID implementing Directive</i>]</p>
<i>offer</i>	<p>(1) (in <i>MAR 1 (Code of market conduct <u>Market Abuse</u>)</i>) an offer as defined in the <i>Takeover Code</i>.</p> <p>(2) (in <i>MAR 2 (Buy-backs and Stabilisation)</i>) an offer or invitation to make an offer.</p>
	...
<i>offeror</i>	<p>(1) (in <i>MAR 1 (The Code of Market Conduct <u>Market Abuse</u>)</i>) and <i>LR 5.2.10R</i> to <i>LR 5.2.11DR</i>) an offeror as defined in the <i>Takeover Code</i>.</p> <p>(2) (in <i>MAR 2 (Buy-backs and Stabilisation)</i>) (as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) the prior holders of, or the entity issuing, the <i>relevant securities</i>.</p>
	...

<i>person discharging managerial responsibilities</i>	<p>(in accordance with section 96B(1) of the Act):</p> <p>(a) a director of an issuer:</p> <p style="padding-left: 2em;">(i) registered in the United Kingdom that has requested or approved admission of its shares to trading on a regulated market; or</p> <p style="padding-left: 2em;">(ii) not registered in the United Kingdom or any other EEA State but has requested or approved admission of its shares to trading on a regulated market and for whom the United Kingdom is its Home Member State; or</p> <p>(b) a senior executive of such an issuer who:</p> <p style="padding-left: 2em;">(i) has regular access to inside information relating, directly or indirectly, to the issuer; and</p> <p style="padding-left: 2em;">(ii) has power to make managerial decisions affecting the future development and business prospects of the issuer.</p> <p><u>as defined in article 3(1)(25) of the Market Abuse Regulation.</u></p>
<i>prescribed auction platform</i>	an <i>auction platform</i> which has had been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> <u>as it was in force on 2 July 2016.</u>
<i>prescribed market</i>	a market which has had been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> <u>as it was in force on 2 July 2016.</u>
<i>price stabilising rules</i>	the rules made under section 137Q of the Act, and appearing in MAR 2.1 to MAR 2.4, together with any other provisions available for their interpretation.
<i>regulated information</i>	<p>all information which an <i>issuer</i> or any other <i>person</i> who has applied for the admission of <i>financial instruments</i> to trading on a <i>regulated market</i> without the <i>issuer's</i> consent, is required to disclose under:</p> <p>(a) the Transparency Directive; or</p> <p>(b) article 6 of the Market Abuse Directive <u>articles 17 to 19 of the Market Abuse Regulation; or</u></p> <p>(c) <i>LR</i>, and <i>DTR</i>.</p>
<i>related investment</i>	(as defined in section 130A(3) of the Act) in relation to a <i>qualifying investment financial instrument</i> , means an <u>investment instrument</u> whose price or value depends on the price or value of the <u>qualifying investment financial instrument</u> .

<i>relevant articles</i>	(in <i>REC</i>): (1) <u>Article 6.1 to 6.4 of the <i>Market Abuse Directive</i>; Articles 17 and 19 of the <i>Market Abuse Regulation</i></u> ; ...
<i>relevant investment</i>	(1) (in <i>COBS 12.4</i>, in relation to a <i>research recommendation</i> or a public appearance), a <i>designated investment</i> that is the subject of that <i>research recommendation</i> or public appearance, [deleted] (2) (other than in <i>COBS 4</i> or <i>COBS 12.4</i>) (in accordance with article 3(1) of the <i>Regulated Activities Order</i> (Interpretation)): (a) a <i>contractually based investment</i> ; <u>or</u> (b) a <i>pure protection contract</i> ; <u>or</u> (c) a <i>general insurance contract</i> ; <u>or</u> (d) rights to or interests in an <i>investment</i> falling within (a). ...
<i>stabilisation</i>	(in <i>MAR 2</i>) (as defined in Article 2 of the <i>Buy back and Stabilisation Regulation</i>) any purchase or offer to purchase <i>relevant securities</i>, or any transaction in <i>associated instruments</i> equivalent thereto, by <i>investment firms</i> or <i>credit institutions</i>, which is undertaken in the context of a <i>significant distribution</i> of such <i>relevant securities</i> exclusively for supporting the market price of these <i>relevant securities</i> for a predetermined period of time, due to a selling pressure in such securities <u>article 3(2)(d) of the <i>Market Abuse Regulation</i></u>.
<i>trading venue</i>	(1) (except in <i>FINMAR</i> and <i>MAR</i>) a <i>regulated market</i> , <i>MTF</i> or <i>systematic internaliser</i> acting in its capacity as such, and, where appropriate, a system outside the <i>EU</i> with similar functions to a <i>regulated market</i> or <i>MTF</i> . [Note: article 2(8) of the <i>MIFID Regulation</i>] (2) (in <i>FINMAR</i>) (as defined in article 2(1)(1) of the <i>short selling regulation</i>) a <i>regulated market</i> or an <i>MTF</i> . (3) <u>(in <i>MAR</i>) a <i>regulated market</i> or an <i>MTF</i>.</u>

Delete the following definitions.

<i>accepted channel for dissemination of information</i>	(in relation to any <i>prescribed market</i>) an approved channel of communication by which information concerning <i>investments</i> traded on the market is formally disseminated to other market users on a structured and equitable basis.
<i>accepted market practice</i>	(as defined in section 130A(3) of the <i>Act</i>) practices that are reasonably expected in the financial market or markets in question and are accepted by the <i>FCA</i> or, in the case of a market situated in another <i>EEA State</i> , the competent authority of that <i>EEA State</i> within the meaning of the <i>Market Abuse Directive</i> .
<i>adequate public disclosure</i>	(as defined in Article 2 of the <i>Buy-back and Stabilisation Regulation</i>) disclosure made in accordance with the procedure laid down in Articles 102(1) and 103 of the <i>Consolidated Admissions and Reporting Directive</i> .
<i>associated call option</i>	a right to acquire a particular amount of the <i>relevant security</i> or of any <i>associated security</i> at a future date at a particular price.
<i>close period</i>	(in <i>LR</i>) as defined in paragraph 1(a) of the <i>Model Code</i> .
<i>Code of Market Conduct</i>	the provisions in <i>MAR</i> 1 indicated by an "E" or "C" in the margin or heading, issued by the <i>FCA</i> as required by section 119 of the <i>Act</i> (The Code).
<i>insider list</i>	a list, as required by <i>DTR</i> 2.8.1R, of <i>persons</i> with access to <i>inside information</i> .
<i>MAD Investment Recommendations Directive</i>	The Commission Directive of 22 December 2003 implementing the <i>Market Abuse Directive</i> as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (No. 2003/125/EC).
<i>market abuse (dissemination)</i>	the <i>behaviour</i> described in section 118(7) of the <i>Act</i> , which is the dissemination of information by any means which gives, or is likely to give, a false or misleading impression as to a <i>qualifying investment</i> by a <i>person</i> who knew or could reasonably be expected to have known that the information was false or misleading.
<i>market abuse (distortion)</i>	(1) (in accordance with section 118(8) of the <i>Act</i> (Market abuse)) the <i>behaviour</i> described in section 118(8) of the <i>Act</i> which satisfies the condition in section 118(8)(b) and is <i>behaviour</i> (not falling within sections 118(5), (6) or (7)) which: <ul style="list-style-type: none"> (a) would be, or would be likely to be, regarded by a <i>regular user</i> of the market as behaviour that would distort, or would be likely to distort, the market in a <i>qualifying investment</i>; and (b) is likely to be regarded by a <i>regular user</i> of the market as a

failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a *person* in his position in relation to the market.

~~(2) (in accordance with section 118(8) of the Act (Market abuse) as modified by the RAP Regulations) the *behaviour* described in section 118(8) of the Act as modified by the RAP Regulations which satisfies the condition in section 118(8)(b) and is *behaviour* (not falling within sections 118(5), (6) or (7)) which:~~

~~(a) would be, or would be likely to be, regarded by a *regular user* of the auction platform as *behaviour* that would distort, or would be likely to distort, the auction of such an investment,~~

~~(b) and is likely to be regarded by a *regular user* of the auction platform as a failure on the part of the *person* concerned to observe the standard of *behaviour* reasonably expected of a *person* in his position in relation to the market.~~

market abuse
(*improper disclosure*)

the *behaviour* described in section 118(3) of the Act, which is an *insider* disclosing *inside information* to another *person* otherwise than in the proper course of the exercise of employment, profession or duties.

market abuse
(*insider dealing*)

the *behaviour* described in section 118(2) of the Act, which is an *insider dealing*, or attempting to *deal*, in a *qualifying investment* or *related investment* on the basis of *inside information* relating to the *investment* in question.

market abuse
(*manipulating devices*)

~~(1) (in accordance with section 118(6) of the Act (Market abuse)) the *behaviour* described in section 118(6) of the Act, which is effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance.~~

~~(2) (in accordance with section 118(6) of the Act (Market abuse) as modified by the RAP Regulations) the *behaviour* described in section 118(6) of the Act, which is effecting transactions, bids or orders to trade which employ fictitious devices or any other form of deception or contrivance.~~

market abuse
(*manipulating transactions*)

(1) (in accordance with section 118(5) of the Act (Market abuse)) the *behaviour* described in section 118(5) of the Act, which is *behaviour* effecting transactions or orders to trade (otherwise than for legitimate reasons and in conformity with *accepted market practices* on the relevant market) which:

(a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more *qualifying investments*; or

(b) secure the price of one or more such investments at an abnormal or artificial level.

(2) (in accordance with section 118(5) of the Act (Market abuse) as modified by the RAP Regulations) the *behaviour* described in section

~~118(5) of the Act as modified by the RAP Regulations, which is behaviour effecting transactions, bids or orders to trade (otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant auction platform) which:~~

~~(a) give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments; or~~

~~(b) secure the price of one or more such investments at an abnormal or artificial level.~~

*market abuse
(misleading
behaviour)*

~~(1) (in accordance with section 118(8) of the Act (Market abuse)) the behaviour described in section 118(8) of the Act which satisfies the condition in section 118(8)(a) and is behaviour (not falling within sections 118(5), (6) or (7)) which:~~

~~(a) is likely to give a regular user of the market a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, and~~

~~(b) is likely to be regarded by a regular user of the market as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.~~

~~(2) (in accordance with section 118(8) of the Act (Market abuse) as modified by the RAP Regulations) the behaviour described in section 118(8) of the Act which satisfies the condition in section 118(8)(a) and is behaviour (not falling within sections 118(5), (6) or (7)) which:~~

~~(a) is likely to give a regular user of the auction platform a false or misleading impression as to the supply of, demand for or price or value of, qualifying investments, or~~

~~(b) and is likely to be regarded by a regular user of the auction platform as a failure on the part of the person concerned to observe the standard of behaviour reasonably expected of a person in his position in relation to the market.~~

*Market Abuse
Directive*

~~Directive of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (No 2003/6/EC).~~

Model Code

~~The Model Code of directors' dealings in securities set out in LR 9 Annex 1.~~

*PLC Safeguards
Directive*

~~the Second Council Directive of 13 December 1976 on coordination of safeguards for the protection of the interests of members and others in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (No 77/91/EEC).~~

<i>prohibited period</i>	(in <i>LR</i>) as defined by paragraph 1(e) of the <i>Model Code</i> .
<i>qualifying investment</i>	an <i>investment</i> which has been prescribed by the Treasury in the <i>Prescribed Markets and Qualifying Investments Order</i> .
<i>relevant issuer</i>	<p>(1) (in relation to a <i>designated investment</i> that is the subject of a <i>research recommendation</i> or a public appearance) the <i>issuer</i> of that <i>designated investment</i>; or</p> <p>(2) (in relation to a <i>related designated investment</i> that is the subject of a public appearance) either the <i>issuer</i> of the <i>related designated investment</i> or the <i>issuer</i> of a <i>designated investment</i> that might reasonably be expected directly to affect the value of the <i>related designated investment</i>.</p>
<i>requiring or encouraging</i>	taking or refraining from taking any action which requires or encourages another <i>person</i> to engage in <i>behaviour</i> which, if engaged in by the <i>person</i> requiring or encouraging, would amount to <i>market abuse</i> .
<i>research recommendation</i>	<p>research or other information:</p> <p>(a) concerning one or several <i>financial instruments</i> admitted to trading on <i>regulated markets</i>, or in relation to which an application for admission to trading has been made, or <i>issuers</i> of such <i>financial instruments</i>;</p> <p>(b) intended for distribution so that it is, or is likely to become, accessible by a large number of <i>persons</i>, or for the public, but not including:</p> <p style="padding-left: 2em;">(i) an informal short-term investment personal recommendation expressed to <i>clients</i>, which originates from inside the sales or trading department, and which is not likely to become publicly available or available to a large number of persons; or</p> <p style="padding-left: 2em;">(ii) advice given by a <i>firm</i> to a <i>body corporate</i> in the context of a <i>takeover bid</i> and disclosed only as a result of compliance with a legal or regulatory obligation, including rule 3 of the <i>Takeover Code</i> or its equivalents outside the <i>UK</i>; and</p> <p>(c) which:</p> <p style="padding-left: 2em;">(i) explicitly or implicitly, recommends or suggests an investment strategy; or</p> <p style="padding-left: 2em;">(ii) directly or indirectly, expresses a particular investment recommendation; or</p> <p style="padding-left: 2em;">(iii) expresses an opinion as to the present or future value or price of such instruments.</p>

In this definition, "financial instruments" means the following (as defined in Article 5 of the *Prescribed Markets and Qualifying Investments Order* and Article 1(3) of the *Market Abuse Directive*,,

and which consequently carries the same meaning in the *Buy-back and Stabilisation Regulation*):

- (a) ~~transferable securities~~;
- (b) ~~units in collective investment undertakings~~;
- (c) ~~money market instruments~~;
- (d) ~~financial futures contracts, including equivalent cash settled instruments~~;
- (e) ~~forward interest rate agreements~~;
- (f) ~~interest rate, currency and equity swaps~~;
- (g) ~~options to acquire or dispose of any instrument falling into these categories, including equivalent cash settled instruments. This category includes in particular options on currency and on interest rates~~;
- (h) ~~derivatives on commodities~~; and
- (i) ~~any other instrument admitted to trading on a regulated market in an EEA State or for which a request for admission to trading on such a market has been made.~~

securities derivative a ~~derivative instrument admitted to trading on a regulated market or prescribed market, the value of which is dependent on an underlying equity or debt instrument or index/basket of equity or debt instruments.~~

trading information information of the following kinds:

- (1) ~~that investments of a particular kind have been or are to be acquired or disposed of, or that their acquisition or disposal is under consideration or the subject of negotiation; or~~
- (2) ~~that investments of a particular kind have not been or are not to be acquired or disposed of; or~~
- (3) ~~the quantity of investments acquired or disposed of or to be acquired or disposed of or whose acquisition or disposal is under consideration or the subject of negotiation; or~~
- (4) ~~the price (or range of prices) at which investments have been or are to be acquired or disposed of or the price (or range of prices) at which investments whose acquisition or disposal is under consideration or the subject of negotiation may be acquired or disposed of; or~~
- (5) ~~the identity of the persons involved or likely to be involved in any capacity in an acquisition or disposal.~~

trading plan ~~(in LR) a written plan between a restricted person and an independent third party which sets out a strategy for the acquisition and/or disposal of securities by a specified person and:~~

- (a) ~~specifies the amount of securities to be dealt in and the price at~~

~~which and the date on which the *securities* are to be dealt in; or~~

~~(b) gives discretion to that independent third party to make trading decisions about the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in; or~~

~~(c) includes a written formula or algorithm, or computer program, for determining the amount of *securities* to be dealt in and the price at which and the date on which the *securities* are to be dealt in.~~

Annex B

Amendments to the Senior Management Arrangements, Systems and Controls sourcebook (SYSC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

10 Conflicts of interest

...

10.2 Chinese walls

...

10.2.2 R ...

- (4) ~~For the purposes of section 118A(5)(a) of the Act, behaviour conforming with paragraph (1) does not amount to market abuse.~~
[deleted]

Effect of rules

10.2.3 G ...

- (1) acting in conformity with SYSC 10.2.2.R(1) provides a defence against proceedings brought under sections 89(2), 90(1) and 91(1) of the Financial Services Act 2012 (Misleading statements, Misleading impressions and Misleading statements etc. in relation to benchmarks) – see sections 89(3)(b), 90(9)(c) and 91(3)(b); and
- (2) ~~behaviour in conformity with SYSC 10.2.2 R (1) does not amount to market abuse (see SYSC 10.2.2 R(4)); and [deleted]~~

...

...

18 Guidance on Public Interest Disclosure Act: Whistleblowing

...

18.2 Practical measures

...

Internal Procedures

- 18.2.2 G (1) *Firms* are encouraged to consider adopting (and encouraged to invite their *appointed representatives* or, where applicable, their *tied agents* to consider adopting) appropriate internal procedures which will

encourage workers with concerns to blow the whistle internally
about matters which are relevant to the functions of the *FCA* or *PRA*.

...

Insert note after SYSC 18.2.2G (3):

[**Note:** article 32 of the *Market Abuse Regulation*.]

Annex C

Code of Conduct (COCON)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 Specific guidance on individual conduct rules

...

4.1 Specific guidance on individual conduct rules

...

Rule 5: You must observe proper standards of market conduct.

- 4.1.15 G A general consideration about whether or not a *person's* conduct complies with the relevant requirements and standards of the market, is whether they, or the *firm*, ~~complies~~ comply with ~~the Code of Market Conduct (MAR 1)~~ or relevant market codes and exchange rules. Compliance with ~~the Code of Market Conduct (MAR 1)~~ or relevant market codes and exchange rules will tend to show compliance with *rule 5* in *COCON 2.1.5R*.

...

Annex D

Amendments to the Statements of Principle and Code of Practice for Approved Persons (APER)

In this Annex, underlining indicates new text and striking through indicates deleted text.

4 Code of Practice for Approved Persons: specific

...

4.3 Statement of Principle 3

...

- 4.3.3 G A factor to be taken into account in determining whether or not an *approved person's* conduct complies with this *Statement of Principle* is whether he, or his *firm*, has complied with the ~~*Code of Market Conduct (MAR 1)*~~ *Market Abuse Regulation* or relevant market codes and exchange rules.

Annex E

Amendments to the General Provisions (GEN)

In this Annex, underlining indicates new text and striking through indicates deleted text.

...

2.2 Interpreting the Handbook

...

2.2.4 G ...

- (2) Other provisions in the *Handbook*, although also identified by the status letter "E" in the margin or heading, are actually not *rules* but provisions in codes and *GEN 2.2.3R* does not apply to them. ~~These code provisions are those provisions in the *Code of Market Conduct (MAR 1)* with the status letter "E".~~

...

TP 2 Transitional Provisions applying across the FCA Handbook and the PRA Handbooks Rulebook

Table ÷ 1: Transitional Provisions applying across the FCA Handbook and the PRA Handbooks Rulebook

...

Table 2: Transitional Provisions applying across the FCA Handbook and the PRA Handbooks Rulebook

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision: dates in force	(6) Handbook provision: coming into force
...					
17	<i>Statements of Principle</i> , the Code of Practice for Approved Persons and Code of Market Conduct <u>MAR 1 (Market Abuse)</u> and directions and requirements and	P	The provisions in paragraphs 1 to 10 apply to every <i>person</i> to whom the provisions referred to in column (2) apply as if the <i>rules</i> in those paragraphs	From cutover	Cutover

<p>guidance and other provisions in the <i>FCA Handbook</i> and <i>PRA Handbook</i> (that is, provisions with the status letter "D" or "G" in the margin or heading) unless the context otherwise requires and subject to any more specific transitional provision relating to the matter</p>		<p>were part of those provisions.</p>		
---	--	---------------------------------------	--	--

...

Sch 4 Powers exercised

...

Sch 4.2G Powers to make rules

<p>The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the rules in <i>GEN</i>:</p>	
<p>...</p>	
	<p>Section 96A (Disclosure of information requirements)</p>
	<p>Section 96C (Suspension of trading)</p>
<p>...</p>	
	<p>Section 118(8) (Market abuse)</p>
<p>...</p>	

...

Sch 4.4G Powers to make codes

<p>The following powers and related provisions in the <i>Act</i> have been exercised by the <i>FCA</i> to issue the parts of the codes in <i>GEN</i>:</p>	
<p>...</p>	

	Section 119 (The code)
	Section 120 (Provisions included in the Authority's code by reference to the City Code)
	Section 121 (Codes: procedure)

Annex F

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Fees Manual

...

1.1 Application and Purpose

...

Application

1.1.2 R This manual applies in the following way:

...

(2) FEES 1, 2 and 4 apply to:

...

(i) under the Disclosure ~~Rules~~ Guidance and Transparency Rules (*DTR*) every *issuer* of *shares*, depositary receipts and securitised derivatives;

...

...

4 Periodic fees

...

4.2 Obligation to pay periodic fees

...

4.2.11 R Table of periodic fees payable to the *FCA*

1 Fee payer	2 Fee payable	3 Due date	4 Events occurring during the period leading to modified periodic fee
...			

All non-listed issuers (in DTR) of shares and certificates representing certain securities.	FEES 4 Annex 14R	Within 30 days of the date of the invoice	Non-listed issuer (in DTR) becomes subject to disclosure rules <u>disclosure requirements</u> and <u>transparency rules</u>
...			

4 Annex 1AR FCA Activity groups, tariff bases and valuation dates

Part 1

This table shows how the *FCA* links the *regulated activities* for which a *firm* has *permission* to activity groups (fee-blocks). A *firm* can use the table to identify which fee-blocks it falls into based on its *permission*.

Activity group	Fee payer falls in the activity group if
...	...
B. Market operators	<p>(1) <u>firms that have been were prescribed as an operator of a prescribed market <u>prescribed market</u> under the Financial Services and Markets Act 2000 (Prescribed Markets and Qualifying Investments) Order 2001 (SI 2001/996); and</u></p> <p>(2) <u>firms that are prescribed as a market operator, as defined in article 4(1)(13) of <i>MiFID</i>.</u></p>
...	

Annex G

Amendments to the Conduct of Business sourcebook (COBS)

In this Annex, underlining indicates new text and striking through indicates deleted text.

11 Dealing and managing

...

- 11.3.6 G Without prejudice to the ~~Market Abuse Directive~~, Market Abuse Regulation, for the purposes of the *rule* on the misuse of information (see COBS 11.3.5 R), any use by a *firm* of information relating to a pending *client* order in order to deal on own account in the *financial instruments* to which the *client* order relates, or in related *financial instruments*, should be considered a misuse of that information. However, the mere fact that *market makers* or bodies authorised to act as counterparties confine themselves to pursuing their legitimate business of buying and selling *financial instruments*, or that persons authorised to execute orders on behalf of third parties confine themselves to carrying out an order dutifully, should not in itself be deemed to constitute a misuse of information.

...

...

11.7 Personal account dealing

Rule on personal account dealing

- 11.7.1 R A *firm* that conducts *designated investment business* must establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any *relevant person* who is involved in activities that may give rise to a conflict of interest, or who has access to inside information as defined in the ~~Market Abuse Directive~~ Regulation or to other confidential information relating to *clients* or transactions with or for *clients* by virtue of an activity carried out by him on behalf of the *firm*:
- (1) entering into a *personal transaction* which meets at least one of the following criteria:
 - (a) that *person* is prohibited from entering into it under the ~~Market Abuse Directive~~ Regulation;

...

...

...

- 11.7.2A G The requirements of this section are without prejudice to the prohibition under article 3(a) 14(c) of the Market Abuse Directive Regulation which prohibits any person who possesses inside information under article 2 of that directive from disclosing that information to any other person unless that disclosure is made in the normal course of the exercise of his employment, profession or duties.

...

11.8 Recording telephone conversations and electronic communications

Application - Who?

- 11.8.1 R This section applies to a *firm*:

...

- (2) to the extent that the activities referred to in (1) relate to:

- (a) ~~qualifying investments~~ financial instruments admitted to trading on a prescribed market; or
- (b) ~~qualifying investments~~ financial instruments in respect of which a request for admission to trading on such a market has been made; or
- (c) ~~investments~~ instruments which are *related investments* in relation to such ~~qualifying investments~~ financial instruments.

...

12 Investment research

12.1 Purpose and application

Purpose

- 12.1.1 G The purpose of this chapter is to:

...

- (2) ~~implementing the provisions of~~ provide guidance on matters in the Market Abuse Directive Regulation relating to the disclosures to be made in, and about, ~~research~~ investment recommendations.

...

12.4 ~~Research~~ Investment recommendations: ~~required disclosures~~

Application

- 12.4.1 R (1) ~~This section applies to a firm that prepares or disseminates research recommendations.~~

- (2) ~~This section does not apply to the extent that the Investment Recommendation (Media) Regulations 2005 apply to a firm.~~
- (3) ~~If a firm is a media firm subject to equivalent appropriate regulation, only COBS 12.4.2G, COBS 12.4.4R, COBS 12.4.15R and COBS 12.4.16R apply.~~

~~[Note: articles 2(4), 3(4), 5(5) of the MAD Investment Recommendations Directive] [deleted]~~

12.4.1A EU [article 20 of the Market Abuse Regulation]

~~[Note: This section applies to a person that prepares or disseminates research recommendations.]~~

- 12.4.2 G ~~Appropriate regulatory or self-regulatory arrangements are sufficient to meet the condition in COBS 12.4.1R(3). Examples include those listed in regulation 3(5) of the Investment Recommendation (Media) Regulations 2005, that is the Code of Practice issued by the Press Complaints Commission, the Producers' Guidelines issued by the British Broadcasting Corporation, and any code published by the Office of Communications pursuant to section 324 of the Communications Act 2003. [deleted]~~

~~Use of information barriers~~

- 12.4.3 G ~~Obligations to disclose information do not require those producing research recommendations to breach effective information barriers put in place to prevent and avoid conflicts of interest.~~

~~[Note: recital 7 of the MAD Investment Recommendations Directive] [deleted]~~

~~Fair presentation and disclosure~~

- 12.4.4 R ~~A firm must take reasonable care:~~
- (1) ~~to ensure that a research recommendation produced or disseminated by it is fairly presented; and~~
- (2) ~~to disclose its interests or indicate conflicts of interest concerning relevant investments.~~

~~[Note: article 6(5) of the Market Abuse Directive] [deleted]~~

12.4.4A EU [article 20(1) of the Market Abuse Regulation]

~~Identity of producers of recommendations~~

- 12.4.5 R (1) ~~A firm must, in a research recommendation produced by it:~~
- (a) ~~disclose clearly and prominently the identity of the person responsible for its production, and in particular:~~

- (i) ~~the name and job title of the individual who prepared the *research recommendation*; and~~
- (ii) ~~the name of the *firm*; and~~
- (b) ~~(where the *firm* is an *investment firm* or a *credit institution*) disclose the identity of the *competent authority* of the *firm*.~~
- (2) ~~The requirements in (1) may be met for non-written *research recommendations* by referring to a place where the disclosures can be directly and easily accessed by the public, such as an appropriate internet site of the *firm*.~~

~~[Note: article 2 of the *MAD Investment Recommendations Directive*] [deleted]~~

~~General standard for fair presentation of recommendations~~

- 12.4.6 R (1) ~~A *firm* must take reasonable care to ensure that:~~
- (a) ~~facts in a *research recommendation* are clearly distinguished from interpretations, estimates, opinions and other types of non-factual information;~~
 - (b) ~~its sources for a *research recommendation* are reliable or if there is any doubt as to whether a source is reliable, this is clearly indicated;~~
 - (c) ~~all projections, forecasts and price targets in a *research recommendation* are clearly labelled as such and the material assumptions made in producing or using them are indicated; and~~
 - (d) ~~the substance of its *research recommendations* can be substantiated as reasonable, upon request by the *FCA*.~~
- (2) ~~The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they would be disproportionate.~~
- (3) ~~A *firm* must make and retain sufficient records to disclose the basis of the substantiation required in (1)(d).~~

~~[Note: article 3 of the *MAD Investment Recommendations Directive*] [deleted]~~

~~Additional obligations in relation to fair presentation of recommendations~~

- 12.4.7 R (1) ~~In addition a *firm* must take reasonable care to ensure that, in a *research recommendation*, at least:~~
- (a) ~~all substantially material sources are indicated, including, if appropriate, the *issuer*, and in particular the *research recommendation* indicates whether the *research recommendation* has been disclosed to that *issuer*~~

and amended following this disclosure before its dissemination;

- (b) any basis of valuation or methodology used to evaluate a *security*, a *derivative* or an *issuer*, or to set a price target for a *security* or a *derivative*, is adequately summarised;
 - (c) the meaning of any recommendation made, such as "buy", "sell" or "hold", which may include the time horizon of the *security* or *derivative* to which the *research recommendation* relates, is adequately explained and any appropriate risk warning, including a sensitivity analysis of the relevant assumptions, indicated;
 - (d) reference is made to the planned frequency, if any, of updates of the *research recommendation* and to any major changes in the coverage policy previously announced;
 - (e) the date at which the *research recommendation* was first released for distribution is indicated clearly and prominently, as well as the relevant date and time for any *security* or *derivative* price mentioned; and
 - (f) if the substance of a *research recommendation* differs from the substance of an earlier *research recommendation*, concerning the same *security*, *derivative* or *issuer* issued during the 12-month period immediately preceding its release, this change and the date of the earlier *research recommendation* are indicated clearly and prominently.
- (2) If the requirements in (1)(a), (b) or (c) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where the required information can be directly and easily accessed by the public (such as a hyperlink to that information on an appropriate internet site of the *firm*) provided that there has been no change in the methodology or basis of valuation used.
- (3) In the case of a non-written *research recommendation*, the requirements of (1) do not apply to the extent that they would be disproportionate.

~~[Note: article 4 of the MAD Investment Recommendations Directive] [deleted]~~

- 12.4.8 G The disclosures required under ~~COBS 12.4.7R(1)(e) and COBS 12.4.7R(1)(f)~~ article 20(3) of the Market Abuse Regulation may, if the *firm person* so chooses, be made by graphical means (for example by use of a line graph).

~~General standard for disclosure of interests and conflicts of interest~~

- 12.4.9 R (1) ~~A *firm* must disclose, in a *research recommendation*:~~
- (a) ~~all of its relationships and circumstances that may reasonably be expected to impair the objectivity of the *research recommendation*, in particular a significant financial interest in any *relevant investment* which is the subject of the *research recommendation*, or a significant~~

conflict of interest with respect to a *relevant issuer*; and

- (b) ~~relationships and circumstances, of the sort referred to in (a), of each legal or natural person working for the *firm* who was involved in preparing the substance of the *research recommendation*, including, in particular, for a *firm* which is an *investment firm*, disclosure of whether his remuneration is tied to investment banking transactions performed by the *firm* or any *affiliated company*.~~
- (2) ~~If the *firm* is a legal person, the information to be disclosed in accordance with (1) must at least include the following:~~
- (a) ~~any interests or conflicts of interest of the *firm* or of an *affiliated company* that are accessible, or reasonably expected to be accessible, to the *persons* involved in the preparation of the substance of the *research recommendation*; and~~
 - (b) ~~any interests or conflicts of interest of the *firm* or of *affiliated companies* known to *persons* who, although not involved in the preparation of the substance of the *research recommendation*, had or could reasonably be expected to have access to the substance of the *research recommendation* prior to its dissemination, other than *persons* whose only access to the *research recommendation* is to ensure compliance with relevant regulatory or statutory obligations, including the disclosures required under this section.~~
- (3) ~~If the disclosures required under (1) and (2) would be disproportionate in relation to the length of the *research recommendation* distributed, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosures can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*).~~
- (4) ~~The requirements in (1) do not apply, in the case of non-written *research recommendations*, to the extent that they are disproportionate.~~

~~[Note: article 5 of the MAD *Investment Recommendations Directive*] [deleted]~~

Additional obligations for producers of research investment recommendations in relation to disclosure of interests or conflicts of interest

- 12.4.10 R (1) ~~A *research recommendation* produced by a *firm* must disclose clearly and prominently the following information on its interests and conflicts of interest:~~
- (a) ~~major shareholdings that exist between it or any *affiliated company* on the one hand and the *relevant issuer* on the other hand, including at least:~~
 - (i) ~~shareholdings exceeding 5% of the total issued share capital in the~~

- relevant issuer* held by the *firm* or any *affiliated company*; or
- (ii) ~~shareholdings exceeding 5% of the total issued share capital of the *firm* or any *affiliated company* held by the *relevant issuer*;~~
 - (b) ~~any other financial interests held by the *firm* or any *affiliated company* in relation to the *relevant issuer* which are significant in relation to the *research recommendation*;~~
 - (c) ~~if applicable, a statement that the *firm* or any *affiliated company* is a *market maker* or liquidity provider in the securities of the *relevant issuer* or in any related *derivatives*;~~
 - (d) ~~if applicable, a statement that the *firm* or any *affiliated company* has been lead manager or co-lead manager over the previous 12 months of any publicly disclosed offer of securities of the *relevant issuer* or in any related *derivatives*;~~
 - (e) ~~if applicable, a statement that the *firm* or any *affiliated company* is party to any other agreement with the *relevant issuer* relating to the provision of investment banking services, provided that:

 - (i) ~~this would not entail the disclosure of any confidential commercial information; and~~
 - (ii) ~~the agreement has been in effect over the previous 12 months or has given rise during the same period to a payment or to the promise of payment; and~~~~
 - (f) ~~if applicable, a statement that the *firm* or any *affiliated company* is party to an agreement with the *relevant issuer* relating to the production of the *research recommendation*.~~
- (2) ~~A *firm* must disclose, in general terms, in the *research recommendation* the effective organisational and administrative arrangements set up within the *firm* for the prevention and avoidance of conflicts of interest with respect to *research recommendations*, including information barriers.~~
- (3) ~~In the case of an *investment firm* or a *credit institution*, if a legal or natural *person* working for the *firm* who is involved in the preparation of a *research recommendation*, receives or purchases *shares* of the *relevant issuer* prior to a public offering of those *shares*, the price at which the *shares* were acquired and the date of acquisition must also be disclosed in the *research recommendation*.~~
- (4) ~~A *firm*, which is an *investment firm* or a *credit institution*, must publish the following information on a quarterly basis, and must disclose it in its *research recommendations*:~~
- (a) ~~the proportion of all *research recommendations* published during the relevant quarter that are "buy", "hold", "sell" or equivalent terms; and~~

- (b) ~~the proportion of *relevant investments* in each of these categories, issued by *issuers* to which the *firm* supplied material investment banking services during the previous 12 months.~~
- (5) ~~If the requirements under (1) to (4) would be disproportionate in relation to the length of the *research recommendation*, a *firm* may, instead, make clear and prominent reference in the *research recommendation* to the place where such disclosure can be directly and easily accessed by the public (such as a hyperlink to the disclosure on an appropriate internet site of the *firm*, or, if relevant, to the *firm's conflicts of interest policy*).~~
- (6) ~~In the case of non-written *research recommendations*, the requirements of (1) do not apply to the extent that they are disproportionate.~~

~~[Note: article 6 of the *MAD Investment Recommendations Directive*] [deleted]~~

- 12.4.11 G ~~Nothing in *COBS 12.4.10R(1)(a)* prevents a *firm* from choosing to disclose significant shareholdings above a lower threshold (for example, 1%) than is required by *COBS 12.4.10R(1)(a)*. A person may choose to disclose significant shareholdings above a lower threshold than is required by article 20(3) of the *Market Abuse Regulation*.~~
- 12.4.12 G ~~*COBS 12.4.10R(1)(a)* and *COBS 12.4.10R(1)(b)* only require a *firm* to aggregate its shareholdings with those of *affiliated companies* if they act in concert in relation to those shareholdings. [deleted]~~
- ...
- 12.4.14 G ~~The *FCA* considers that it is important for the proportions published in compliance with *COBS 12.4.10R(4)* to be consistent and meaningful to the recipients of the *research recommendations*. Accordingly for non-equity material, the relevant categories should be meaningful to the recipients in terms of the course of action being recommended. Where article 20(3) of the *Market Abuse Regulation* requires a disclosure of the proportions of all *investment recommendations* published that are “buy”, “hold”, “sell” or equivalent terms, the *FCA* considers it important for these equivalent terms to be consistent and meaningful to the recipients in terms of the course of actions being recommended, particularly for non-equity material.~~

~~Identity of disseminators of recommendations~~

- 12.4.15 R ~~If a *firm* disseminates a *research recommendation* produced by a third party, the *research recommendation* must identify the *firm* clearly and prominently.~~

~~[Note: article 7 of the *MAD Investment Recommendations Directive*] [deleted]~~

~~General standard for dissemination of third party recommendations~~

- 12.4.16 R (1) ~~If a *research recommendation* produced by a third party is substantially altered before dissemination by a *firm*:~~
- (a) ~~the disseminated material must clearly describe that alteration in detail;~~

and

- (b) if the substantial alteration consists of a change of the direction of the recommendation (such as changing a "buy" recommendation into a "hold" or "sell" recommendation or vice versa), the requirements laid down in *COBS 12.4.5R* to *COBS 12.4.11G* on producers must be met by the *firm*, to the extent of the substantial alteration.
- (2) A *firm* which disseminates a substantially altered *research recommendation* must have a formal written policy so that the *persons* receiving the information may be directed to where they can have access to the identity of the producer of the *research recommendation*, the *research recommendation* itself and the disclosure of the producer's interests or conflicts of interest, provided that these elements are publicly available.
 - (3) If a *firm* disseminates a summary of a *research recommendation* produced by a third party, it must:
 - (a) ensure that the summary is fair, clear and not misleading;
 - (b) identify the source *research recommendation*; and
 - (c) identify where (to the extent that they are publicly available) the third party's disclosures relating to the source *research recommendation* can be directly and easily accessed by the public.
 - (4) Paragraphs (1) and (2) do not apply to news reporting on *research recommendations* produced by a third party where the substance of the *research recommendation* is not altered.

~~[Note: article 8 of the *MAD Investment Recommendations Directive*] [deleted]~~

~~Additional obligations for investment firms and credit institutions disseminating third party recommendations~~

- 12.4.17 R If a *firm*, which is an *investment firm* or a *credit institution*, disseminates a *research recommendation* produced by a third party:
- (1) the name of the *competent authority* of the *firm* must be clearly and prominently indicated on the disseminated material;
 - (2) if the producer of the *research recommendation* has not already disseminated it, the requirements in *COBS 12.4.10R* must be met by the *firm* as if it had produced the *research recommendation* itself; and
 - (3) if the *firm* has substantially altered the *research recommendation*, the requirements laid down in *COBS 12.4.4R* to *COBS 12.4.10R* must be met by the *firm* as if it had produced the *research recommendation* itself.

~~[Note: article 9 of the *MAD Investment Recommendations Directive*] [deleted]~~

...

18 Specialist Regimes

...

18.10 UCITS qualifiers, AIFM qualifiers and service companies

18.10.1 R The *COBS* provisions in the table apply to a *UCITS qualifier* and a *service company*:

COBS	Description
...	
12.4	Investment Research recommendations: required disclosures

...

Sch 1 Record keeping requirements

...

Sch 1.3 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
...
<i>COBS</i> 12.4.6R	<i>Research recommendations</i>	Basis of substantiation of <i>research recommendation</i>	Date of recommendation	5 years
...

Annex H

Amendments to the Market Conduct sourcebook (MAR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 ~~The Code of Market Conduct~~ Market Abuse

1.1 Application and interpretation

Application and purpose

~~[Note: ESMA has also issued guidelines under article 16(3) of the ESMA Regulation covering various topics relating to automated trading and direct electronic access.~~

See ~~www.esma.europa.eu/system/files/esma_2012_122_en.pdf~~

- 1.1.1 G This chapter ~~(which contains the Code of Market Conduct)~~ applies is relevant to all persons seeking guidance on the market abuse regime.
- 1.1.1A G ~~References in MAR 1 to the Act should be read to mean the Act as modified by the RAP regulations where the relevant behaviour occurs in relation to qualifying investments which are offered for sale on a prescribed auction platform. [deleted]~~
- 1.1.2 G This chapter provides ~~assistance in determining whether or not behaviour amounts to market abuse. It also forms part of the UK's implementation of the Market Abuse Directive (including its EU implementing legislation, that is Directive 2003/124/EC, Directive 2003/125/EC, Regulation 2273/2003 and Directive 2004/72/EC) and the auction regulation guidance on the Market Abuse Regulation.~~ It is therefore likely to be helpful to persons who:
- (1) ~~want to avoid engaging in market abuse or to avoid requiring or encouraging another to do so; or~~
 - (2) ~~want to determine whether they are required by SUP 15.10 (Reporting suspicious transactions (market abuse))~~ article 16 of the Market Abuse Regulation to report a transaction or order to the FCA as a suspicious one.
- 1.1.3 G The FCA's statement of policy about the imposition, duration and amount of penalties in cases of *market abuse* (required by section 124 of the Act) is in *DEPP 6*.

Using MAR 1

- 1.1.4 G (1) Assistance in the interpretation of MAR 1 (and the remainder of the Handbook) is given in the Readers' Guide to the Handbook and in GEN 2 (Interpreting the Handbook). This includes an explanation of the status of the types of provision used (see in particular chapter six

of the Readers' Guide to the *Handbook*).

- (2) ~~Provisions designated with "C" indicate *behaviour* which conclusively, for the purposes of the *Act*, does not amount to *market abuse* (see section 122(1) of the *Act*). [deleted]~~

- 1.1.5 G ~~Part VIII of the *Act*, and in particular section 118, specifies types of *behaviour* which can amount to *market abuse*. This chapter considers the general concepts relevant to *market abuse*, then each type of *behaviour* in turn and then describes exceptions to *market abuse* which are of general application. In doing so, it sets out the relevant provisions of the *Code of Market Conduct*, that is:~~
- (1) ~~*descriptions of behaviour* that, in the opinion of the *FCA*, do or do not amount to *market abuse* (see section 119(2)(a) and (b) and section 122 of the *Act*);~~
- (2) ~~*descriptions of behaviour* that are or are not *accepted market practices* in relation to one or more identified markets (see section 119(2)(d) and (e) and section 122(1) of the *Act* (subject to the *behaviour* being for legitimate reasons)); and~~
- (3) ~~factors that, in the opinion of the *FCA*, are to be taken into account in determining whether or not *behaviour* amounts to *market abuse* (see section 119(2)(e) and section 122(2) of the *Act*). [deleted]~~
- 1.1.6 G ~~The *Code* This chapter does not exhaustively describe all types of *behaviour* behaviour that may ~~or may not amount to~~ indicate *market abuse*. In particular, the descriptions of *behaviour* behaviour which, in the opinion of the *FCA*, amount to *market abuse* should be read in the light of:~~
- (1) ~~the elements specified by ~~the *Act*~~ the *Market Abuse Regulation* as making up the relevant type of *market abuse*; and~~
- (2) ~~any relevant descriptions of *behaviour* behaviour specified by the *Market Abuse Regulation* which, ~~in the opinion of the *FCA*~~, do not amount to *market abuse*; and~~
- (3) ~~any provisions specified in any Commission legislative text made pursuant to the *Market Abuse Regulation*, and any applicable guidelines made by *ESMA*.~~
- 1.1.7 G ~~Likewise, the *Code* This chapter~~ does not exhaustively describe all the factors to be taken into account in determining whether *behaviour* behaviour amounts to *market abuse*. ~~If factors are described, they are not to be taken as conclusive indications, unless specified as such, and the~~ The absence of a factor mentioned does not, of itself, amount to a contrary indication.
- 1.1.8 G For the avoidance of doubt, it should be noted that any reference in ~~the *Code*~~ this chapter to "profit" refers also to potential profits, avoidance of loss or potential avoidance of loss.

- 1.1.9 G References are made in this chapter to provisions in the *Market Abuse Regulation* and other *EU* legislation made pursuant to the *Market Abuse Regulation* to assist readers. The fact that other provisions of the *Market Abuse Regulation* and other *EU* legislation made pursuant to the *Market Abuse Regulation* have not been referred to does not mean that they would not also assist readers or that they have a different status.

1.2 Market Abuse: general

- 1.2.1 G Provisions in this section are relevant to more than one of the types of ~~behaviour~~ behaviour which may amount to *market abuse*.

- 1.2.2 UK ~~Table: section 118(1) of the Act~~

"For the purposes of this Act, [<i>market abuse</i>] is [<i>behaviour</i>] (whether by one person alone or by two or more persons jointly or in concert) which –	
(a)	occurs in relation to:
	(i) [<i>qualifying investments</i>] admitted to trading on a [<i>prescribed market</i>], or
	(ii) [<i>qualifying investments</i>] in respect of which a request for admission to trading on such a market has been made, or
	(iii) in the case of subsections (2) and (3), investments which are [<i>related investments</i>] in relation to such [<i>qualifying investments</i>], and
(b)	falls within any one or more of the types of [<i>behaviour</i>] set out in subsections (2) to (8).

[deleted]

- 1.2.2-A EU [article 2, article 14 and article 15 of the *Market Abuse Regulation*]

- 1.2.2A UK ~~Table: section 118(1) of the Act as modified by the RAP Regulations~~

For the purposes of this Act, [<i>market abuse</i>] is [<i>behaviour</i>] (whether by one person alone or by two or more persons jointly or in concert) which –	
(a)	occurs in relation to:
	(i) [<i>qualifying investments</i>] which are offered for sale on a [<i>prescribed auction platform</i>], or
	(ii) in the case of subsection (2) or (3), investments which are [<i>related investments</i>] in relation to such [<i>qualifying investments</i>], and

(b)	falls within any one or more of the types of [<i>behaviour</i>] set out in subsections (2) to (8A).
-----	---

[deleted]

- 1.2.3 G ~~Section 118(1)(a) of the Act~~ The *Market Abuse Regulation* does not require the *person* engaging in the ~~*behaviour*~~ behaviour in question to have intended to commit *market abuse*.
- 1.2.4 G ~~Statements in this chapter to the effect that *behaviour* will amount to *market abuse* assume that the test in section 118(1)(a) of the Act has also been met.~~
[deleted]

Prescribed markets and qualifying investments: "in relation to": factors to be taken into account Factors that may be taken into account in relation to behaviour prior to either a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a prescribed auction platform

- 1.2.5 E ~~In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken into account in determining whether or not ~~*behaviour*~~ behaviour prior to a request for admission to trading, the admission to or the commencement of trading, or the offer for sale on a *prescribed auction platform* ~~satisfies section 118(1)(a) of the Act,~~ contravenes prohibitions and obligations in the *Market Abuse Regulation* and are indications that it does:
- (1) if it is in relation to ~~*qualifying investments*~~ *financial instruments*:
- (a) in respect of which a request for admission to trading on a ~~*prescribed market*~~ *regulated market* or *MTF* is subsequently made; and
- (b) if it continues to have an effect once an application has been made for the ~~*qualifying investment*~~ *financial instrument* to be admitted for trading, or it has been admitted to trading on a ~~*prescribed market*~~ *regulated market* or *MTF*, respectively; or
- (2) if it is in relation to ~~*qualifying investments*~~ *financial instruments*:
- (a) which are subsequently offered for sale on a *prescribed auction platform*; and
- (b) if it continues to have an effect once the ~~*qualifying investments*~~ *financial instruments* are offered for sale on a *prescribed auction platform*.
- 1.2.6 E ~~In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken into account in determining whether or not refraining from action ~~amounts to *behaviour*~~ indicates behaviour which ~~satisfies section 118(1)(a) of the Act~~ falls under the scope of the *Market Abuse Regulation*, and are indications that it does:

- (1) if the *person* concerned has failed to discharge a legal or regulatory obligation (for example to make a particular disclosure) by refraining from acting; or
- (2) if the *person* concerned has created a reasonable expectation of him acting in a particular manner, as a result of his representations (by word or conduct), in circumstances which give rise to a duty or obligation to inform those to whom he made the representations that they have ceased to be correct, and he has not done so.

Insiders: factors to be taken into account

1.2.7 UK ~~Table: section 118B of the Act~~

"For the purposes of [market abuse] an [insider] is any person who has [inside information]—	
(a)	as a result of his membership of the administrative, management or supervisory bodies of an [issuer] of [qualifying investments],
(b)	as a result of his holding in the capital of an [issuer] of [qualifying investments],
(c)	as a result of having access to the information through the exercise of his employment, profession or duties,
(d)	as a result of his criminal activities, or
(e)	which he has obtained by other means and which he knows, or could reasonably be expected to know, is [inside information]."

[deleted]

1.2.7-A EU [article 8(4) of the Market Abuse Regulation]

1.2.7A UK ~~Table: section 118B of the Act as modified by the RAP Regulations~~

"For the purposes of [market abuse] an [insider] is any person who has [inside information]:	
(a)	as a result of his membership of an administrative, management or supervisory body of an [auction platform] or its operator, an auctioneer or auction monitor,
(b)	as a result of his holding in the capital of an [auction platform] or its operator, an auctioneer or auction monitor,
(c)	as a result of having access to the information through the exercise of his employment, profession or duties,
(d)	as a result of his criminal activities, or

(e)	which he has obtained by other means and which he knows, or could reasonably be expected to know, is [inside information]."
-----	--

[deleted]

1.2.8 ~~E~~ G ~~In the opinion of the FCA, the~~ The following factors are to ~~may~~ may be taken into account in determining whether or not a *person* ~~could reasonably be expected to know that information in his possession is inside information and therefore whether he is an insider under section 118B(e) of the Act, and indicate that the person is an insider who possesses inside information ought to know that it is inside information for the purposes of the final indent of article 8(4) of the Market Abuse Regulation:~~

- (1) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that the *person* from whom he received it is an *insider*; and
- (2) if a normal and reasonable *person* in the position of the *person* who has *inside information* would know or should have known that it is *inside information*.

1.2.9 ~~G~~ G ~~For the purposes of the other categories of insider specified by section 118B(a) to (d) being categorised as an insider in article 8(4) of the Market Abuse Regulation, the person concerned does not need to know that the information concerned is inside information.~~

Inside information: factors to be taken into account

1.2.10 ~~UK~~ UK ~~Table: section 118C(2) and (3) of the Act~~

"... [inside information] is information of a precise nature which –	
(a)	is not generally available; ..."

[deleted]

1.2.10A ~~EU~~ EU ~~[article 7 of the Market Abuse Regulation]~~

1.2.11 ~~G~~ G ~~The phrase "precise nature" is defined in section 118C(5) of the Act. This phrase is also relevant to section 118C(4) of the Act. [deleted]~~

1.2.12 ~~E~~ G ~~In the opinion of the FCA, the~~ The following factors are to ~~may~~ may be taken into account in determining whether or not information ~~is generally available~~ has been made public, and are indications that it is has (and therefore is not *inside information*):

- (1) whether the information has been disclosed to a *prescribed market* or a *prescribed auction platform* through a *regulatory information service* or *RIS* or otherwise in accordance with the rules of that market;

- (2) whether the information is contained in records which are open to inspection by the public;
- (3) whether the information is otherwise generally available, including through the Internet, or some other publication (including if it is only available on payment of a fee), or is derived from information which has been made public; and
- (4) whether the information can be obtained by observation by members of the public without infringing rights or obligations of privacy, property or confidentiality; and,
- (5) ~~the extent to which the information can be obtained by analysing or developing other information which is generally available. [Note: Recital 31 *Market Abuse Directive*] [deleted]~~
- 1.2.13 ~~E~~
G (1) In relation to the factors in ~~MAR 1.2.12E~~ MAR 1.2.12G it is not relevant that the information is only generally available outside the UK.
- (2) In relation to the factors in ~~MAR 1.2.12E(1), (3), (4) and (5)~~ MAR 1.2.12G it is not relevant that the observation or analysis is only achievable by a *person* with above average financial resources, expertise or competence.
- 1.2.14 G For example, if a passenger on a train passing a burning factory calls his broker and tells him to *sell shares* in the factory's owner, the passenger will be acting on using information which is generally available has been made public, since it is information which has been obtained by legitimate means through observation of a public event.
- 1.2.15 UK ~~Table: section 118C(4) of the Act~~
- ~~"In relation to a person charged with the execution of orders ... [*inside information*] includes information conveyed by a client and related to the client's pending orders ..."~~
- [deleted]
- 1.2.15A UK ~~Table: section 118C(4) of the Act as modified by the RAP Regulations~~
- ~~In relation to a person charged with the execution of bids ... [*inside information*] includes information conveyed by a client and related to the client's pending bids ...~~
- [deleted]
- 1.2.15B EU [article 7(1)(d) of the *Market Abuse Regulation*]
- 1.2.16 ~~E~~
G ~~In the opinion of the FCA, a factor which indicates that~~ In determining whether there is a pending order or bid for a client in relation to article

7(1)(d) of the Market Abuse Regulation, a factor that may be taken into account is ; if a *person* is approached by another in relation to a transaction, and:

- (1) the transaction is not immediately executed on an arm's length basis in response to a price quoted by that *person*; and
- (2) the *person* concerned has taken on a legal or regulatory obligation relating to the manner or timing of the execution of the transaction.

Inside information: commodity derivatives

- 1.2.17 G ~~The Act (and the Market Abuse Directive) recognises that there are differences in the nature of information which is important to commodity derivatives markets and that which is important to other markets. In particular, inside information is limited by reference to what the market participants expect to receive information about. [deleted]~~

[Note: article 7(1)(b) of the Market Abuse Regulation]

- 1.2.18 UK ~~Table: section 118C(3) of the Act~~

~~"In relation to [qualifying investments] or [related investments] which are commodity derivatives, [inside information] is information of a precise nature which ... (c) users of markets in which the derivatives are traded would expect to receive in accordance with any accepted market practices on those markets."~~

~~[deleted]~~

- 1.2.18A EU [article 7(1)(b) of the Market Abuse Regulation]

- 1.2.19 UK ~~Table: section 118C(7) of the Act~~

~~"For the purposes of subsection (3)(c), users of markets on which investments in commodity derivatives are traded are to be treated as expecting to receive information ... which is —~~

~~(i) routinely made available to the users of those markets, or~~

~~(ii) required to be disclosed in accordance with any statutory provision, market rules, or contracts or customs on the relevant underlying commodity market or commodity derivatives market."~~

~~[deleted]~~

The regular user

- 1.2.20 G ~~In section 118 of the Act, the regular user decides:~~

~~(2) whether behaviour:~~

~~(b) creates or is likely to create a false or misleading impression or~~

distorts the market or the auction of investments of the kind in question (section 118(8)); or

- (e) which creates or is likely to create a false or misleading impression or distorts the market or the auction of investments of the kind in question is below the expected standard (section 118(8)). [deleted]

1.2.21 G The *regular user* is a hypothetical reasonable *person* who regularly deals on the market and in the investments of the kind in question or bids on the auction platform in relation to investments of the kind in question. The presence of the *regular user* imports an objective element into the elements listed in MAR 1.2.15UK while retaining some subjective features of the markets for, or the auction of, the investments in question. [deleted]

Requiring or encouraging Recommending or inducing

1.2.22 UK Table: section 123(1)(b) of the Act

"If [the FCA] is satisfied that a person ("A") —...
(b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in [<i>behaviour</i>], which if engaged in by A, would amount to [<i>market abuse</i>];
it may impose on him a penalty of such amount as it considers appropriate.

[deleted]

1.2.23 G The following are examples of *behaviour* behaviour that might fall within the scope of section 123(1)(b) article 14(b) of the Market Abuse Regulation:

- (1) a director of a company, while in possession of *inside information*, instructs an employee of that company to ~~deal in qualifying investments or related investments~~ sell a financial instrument in respect of which the information is *inside information*;
- (2) a *person* recommends or advises a friend to engage in *behaviour* behaviour which, if he himself engaged in it, would amount to *market abuse*.

1.3 **Market abuse (insider Insider dealing)**

1.3.1 UK Table: section 118(2) of the Act

"The first type of [<i>behaviour</i>] is where
an [<i>insider</i>]
[<i>deals</i>], or attempts to [<i>deal</i>];

in a [qualifying investment] or [related investment]
on the basis of
[inside information]
relating to the investment in question."

~~[deleted]~~

1.3.1A EU [article 8 of the *Market Abuse Regulation*]

Descriptions of behaviour that amount to ~~market abuse~~ (insider dealing)

1.3.2 E G ~~The following *behaviours* are, in the opinion of the *FCA*, *market abuse* (*insider dealing*):~~

The following are examples of behaviour that may amount to *insider dealing* under the *Market Abuse Regulation*, but are not intended to form an exhaustive list:

- (1) ~~*dealing on the basis of inside information which is not trading information*; [deleted]~~
- (2) front running/pre-positioning - that is, a transaction for a *person's* own benefit, on the basis of and ahead of an order (including an order relating to a bid) which he is to carry out with or for another (in respect of which information concerning the order is *inside information*), which takes advantage of the anticipated impact of the order on the market or auction clearing price;
- (3) in the context of a takeover, an *offeror* or potential *offeror* entering into a transaction in a *qualifying investment financial instrument*, ~~on the basis of using *inside information* concerning the proposed bid, that provides merely an economic exposure to movements in the price of the target *company's shares* (for example, a *spread bet* on the target *company's share price*); and~~
- (4) in the context of a takeover, a *person* who acts for the *offeror* or potential *offeror* *dealing* for his own benefit in a *qualifying investment or related investments financial instrument* ~~on the basis of using information concerning the proposed bid which is *inside information*.~~

Factors to be taken into account: "on the basis of"

1.3.3 E ~~In the opinion of the *FCA*, the following factors are to be taken into account in determining whether or not a *person's behaviour* is "on the basis of" *inside information*, and are each indications that it is not:~~

- (1) ~~if the decision to *deal* or attempt to *deal* was made before the *person* possessed the relevant *inside information*; or~~

- (2) ~~if the person concerned is dealing to satisfy a legal or regulatory obligation which came into being before he possessed the relevant inside information; or~~
- (3) ~~if a person is an organisation, if none of the individuals in possession of the inside information:~~
- ~~(a) had any involvement in the decision to deal; or~~
 - ~~(b) behaved in such a way as to influence, directly or indirectly, the decision to engage in the dealing; or~~
 - ~~(c) had any contact with those who were involved in the decision to engage in the dealing whereby the information could have been transmitted. [deleted]~~

[Note: article 9 of the Market Abuse Regulation]

- 1.3.5 E ~~In the opinion of the FCA, if the inside information is held behind an effective Chinese wall, or similarly effective arrangements, from the individuals who are involved in or who influence the decision to deal, that indicates that the decision to deal by an organisation is not "on the basis of" inside information. [deleted]~~

[Note: article 9(1)(a) of the Market Abuse Regulation]

Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant Relevant factors: legitimate business of market makers etc:

- 1.3.6 C ~~A person will form an intention to buy or sell, or submit or withdraw a bid for, a qualifying investment or a related investment before doing so. His carrying out of his own intention is not in itself market abuse (insider dealing). [Note: Recital 30 Market Abuse Directive and article 36(1) of the auction regulation] [deleted]~~

[Note: article 9(5) of the Market Abuse Regulation]

- 1.3.7 C For market makers and persons that may lawfully deal in *qualifying investments or related investments financial instruments* on their own account, pursuing their legitimate business of such dealing (including entering into an agreement for the underwriting of an issue of *financial instruments*) will may not in itself amount to market abuse, (*insider dealing*). [Note: Recital 18 Market Abuse Directive]
- G
- 1.3.8 G ~~MAR 1.3.7C applies even if the person concerned in fact possesses trading information which is inside information. [deleted]~~
- 1.3.9 E ~~In the opinion of the FCA, if the inside information is not limited to trading information, (except in relation to an agreement for the underwriting of an issue of financial instruments) that indicates that the behaviour is not in pursuit of legitimate business. [deleted]~~

- 1.3.10 ~~E~~ ~~In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken into account in determining whether or not a ~~person's behaviour~~ behaviour is in pursuit of legitimate business, and are indications that it is:

...

- (2) whether, in the case of a transaction on the basis of *inside information* about a client's transaction which has been executed, the reason for it being *inside information* is that information about the transaction is not, or is not yet, required to be published under any relevant regulatory or ~~exchange~~ trading venue obligations; or

...

- (4) the extent to which the ~~person's behaviour~~ behaviour was reasonable by the proper standards of conduct of the market concerned, taking into account any relevant regulatory or legal obligations and whether the transaction is executed in a way which takes into account the need for the market as a whole to operate fairly and efficiently.

- 1.3.11 ~~E~~ ~~In the opinion of the FCA, if the person acted in contravention of a relevant legal, regulatory or exchange obligation, that is a factor to be taken into account in determining whether or not a person's behaviour is in pursuit of legitimate business, and is an indication that it is not. [deleted]~~

[Note: article 9 of the Market Abuse Regulation]

~~Descriptions of behaviour that do not amount to market abuse (insider dealing) and relevant~~ Relevant factors: execution of client orders

- 1.3.12 ~~C~~ ~~The dutiful carrying out of, or arranging for the dutiful carrying out of, an order (including an order relating to a bid) on behalf of another (including as portfolio manager) will not in itself amount to market abuse (insider dealing) by the person carrying out that order. [Note: Recital 18 Market Abuse Directive and article 36(1) of the auction regulation] [deleted]~~

[Note: article 9 of the Market Abuse Regulation]

- 1.3.13 ~~G~~ ~~MAR 1.3.12C applies whether or not the person carrying out the order (including an order relating to a bid) or the person for whom he is acting, in fact possesses inside information. Also, a person that carries out an order on behalf of another will not, merely as a result of that action, be considered to have any inside information held by that other person. [deleted]~~

[Note: article 9 of the Market Abuse Regulation]

- 1.3.14 ~~E~~ ~~In the opinion of the FCA, if the inside information is not limited to trading information, that indicates that the behaviour is not dutiful carrying out of an order on behalf of a client. [deleted]~~

- 1.3.15 ~~E~~ ~~In the opinion of the FCA, the~~ The following factors ~~are to~~ may be taken into

G account in determining whether or not a *person's behaviour* is ~~dutiful execution of behaviour in executing~~ an order (including an order relating to a bid) on behalf of another is carried out legitimately in the normal course of exercise of that person's employment, profession or duties, and are indications that it is:

- (1) whether the *person* has complied with the applicable provisions of *COBS*, or their equivalents in the relevant jurisdiction; or
- (2) whether the *person* has agreed with its client it will act in a particular way when carrying out, or arranging the carrying out of, the order; or
- (3) whether the *person's behaviour* ~~behaviour~~ was with a view to facilitating or ensuring the effective carrying out of the order; or
- (4) the extent to which the *person's behaviour* ~~behaviour~~ was reasonable by the proper standards of conduct of the market or auction platform concerned and (if relevant) proportional to the risk undertaken by him; or
- (5) whether, if the relevant trading or bidding (including the withdrawal of a bid) by that *person* is connected with a transaction entered into or to be entered into with a client (including a potential client), the trading or bidding either has no impact on the price or there has been adequate disclosure to that client that trading or bidding will take place and he has not objected to it.

1.3.16 G ~~Some steps which a *person* takes as a result of carrying out a client transaction may be within the scope of *MAR* 1.3.6C to *MAR* 1.3.11E rather than being part of dutiful execution. [deleted]~~

~~Descriptions of behaviour that do not amount to market abuse (insider dealing) indicate insider dealing and relevant factors: takeover and merger activity~~

1.3.17 C ~~*Behaviour*, based on *inside information* relating to another *company*, in the context of a public takeover bid or merger for the purpose of gaining control of that *company* or proposing a merger with that *company*, does not of itself amount to *market abuse (insider dealing)* [Note: see Recital 29 *Market Abuse Directive*], including With reference to article 9(4) of the *Market Abuse Regulation*, examples of using *inside information* solely for the purpose of proceeding with a merger or public takeover may include:~~

...

1.3.18 G ~~There are two categories~~ Categories of *inside information* relevant to ~~*MAR* 1.3.17C~~ *MAR* 1.3.17G:

- (1) information that an *offeror* or potential *offeror* is going to make, or is considering making, an offer for the target; and
- (2) information that an *offeror* or potential *offeror* may obtain through due

diligence.

1.3.19 E ~~In the opinion of the FCA, the~~ The following factors are to factor may be
 G ~~taken into account in determining whether or not a *person's behaviour*~~
~~behaviour~~ is for the purpose of him ~~gaining control of the target company or~~
~~him proposing proceeding with~~ a merger with ~~that the target company or a~~
public takeover of the target company, and ~~are indications~~ is an indication
 that it is:

- (1) whether the transactions concerned are in the target *company's*
~~shares;~~ ~~or~~
- (2) ~~whether the transactions concerned are for the sole purpose of gaining~~
~~that control or effecting that merger.~~ [deleted]

Examples of ~~market abuse~~ (insider dealing)

1.3.20 G ~~The following examples of *market abuse (insider dealing)*~~ descriptions are
intended to assist in understanding certain behaviours which may constitute
insider dealing under the *Market Abuse Regulation* and concern the
definition of *inside information* relating to *financial instruments* other than
~~commodity derivatives.~~ *commodity derivatives* or *emissions allowances* or
auctioned products based thereon:

- (1) X, a director at B PLC has lunch with a friend, Y. X tells Y that his
 company has received a takeover offer that is at a premium to the
 current share price at which it is trading. Y enters into a spread bet
 priced or valued by reference to the share price of B PLC based on his
 expectation that the price in B PLC will increase once the ~~take over~~
takeover offer is announced.
- (2) An employee at B PLC obtains the information that B PLC has just
 lost a significant contract with its main customer. Before the
 information is announced over the *regulatory information service* the
 employee, whilst being under no obligation to do so, sells his shares in
 B PLC based on the information about the loss of the contract.

1.3.21 G ~~The following example of *market abuse (insider dealing)*~~ description is
intended to assist in understanding certain behaviours which may constitute
insider dealing under the *Market Abuse Regulation* and concerns the
definition of *inside information* relating to commodity derivatives.

Before the official publication of LME stock levels, a metals trader learns
 (from an *insider*) that there has been a significant decrease in the level of
 LME aluminium stocks. This information is routinely made available to
 users of that ~~*prescribed market trading venue*~~. The trader buys a substantial
 number of *futures* in that metal on the LME, based upon his knowledge of
 the significant decrease in aluminium stock levels.

1.3.22 G ~~The following example of *market abuse (insider dealing)*~~ description is
intended to assist in understanding certain behaviours which may constitute

insider dealing under the Market Abuse Regulation and concerns the definition of *inside information* relating to pending client orders.

A dealer on the trading desk of a *firm* dealing in oil derivatives accepts a very large order from a *client* to acquire a long position in oil futures deliverable in a particular *month*. Before executing the order, the dealer trades for the *firm* and on his personal account by taking a long position in those oil futures, based on the expectation that he will be able to sell them at profit due to the significant price increase that will result from the execution of his *client's* order. Both trades ~~will be market abuse (insider dealing)~~ could constitute insider dealing.

1.3.23 G The following connected ~~examples of market abuse (insider dealing)~~ concerns descriptions are intended to assist in understanding certain behaviours which may constitute insider dealing under the Market Abuse Regulation and concern the differences in the definition of *inside information* for commodity derivatives and for other *financial instruments*.

- (1) A person deals, on a ~~prescribed market trading venue~~, in the equities of XYZ plc, a commodity producer, based on *inside information* concerning that company.
- (2) A person deals, in a commodity futures contract traded on a ~~prescribed market trading venue~~, based on the same information, provided that the information is required to be disclosed under the rules of the relevant commodity futures market.

1.4 ~~Market abuse (improper Unlawful disclosure)~~

1.4.1 UK ~~Table: section 118(3) of the Act~~

~~"The second type of [behaviour] is where
an [insider]
discloses
[inside information]
to another person
[inside information]
otherwise than in the proper course of the exercise of his employment,
profession or duties."~~

~~[deleted]~~

1.4.1A EU [article 10 of the Market Abuse Regulation]

Descriptions of behaviour that ~~amount to market abuse (improper indicate unlawful disclosure)~~

- 1.4.2 ~~E~~ G The following ~~behaviours~~ behaviours are, ~~in the opinion of the FCA, market abuse (improper disclosure)~~ indications of unlawful disclosure:
- (1) disclosure of *inside information* by the *director* of an *issuer* to another in a social context; and
 - (2) selective briefing of analysts by *directors* of *issuers* or others who are *persons discharging managerial responsibilities*.

Descriptions of behaviour that does not ~~amount to market abuse (improper indicate unlawful disclosure)~~

- 1.4.3 ~~E~~ G ~~Disclosure of inside information will not amount to market abuse (improper disclosure), if it is made~~
- The following behaviour indicates that a person is acting in the normal exercise of their employment, profession or duties, if a person makes a disclosure of inside information:
- (1) to a government department, the Bank of England, the Competition Commission, the *Takeover Panel* or any other *regulatory body* or authority for the purposes of fulfilling a legal or regulatory obligation; or
 - (2) otherwise to such a body in connection with the performance of the functions of that body.
- 1.4.4 ~~E~~ G Disclosure of *inside information* which is required or permitted by *Part 6 rules* (or any similar regulatory obligation) ~~will~~ may not amount to ~~market abuse (improper disclosure)~~ unlawful disclosure.
- 1.4.4A ~~E~~ G Disclosure of *inside information* by a *broker* to a potential buyer regarding the fact that the seller of *qualifying investments* financial instruments is a *person discharging managerial responsibilities* or the identity of the *person discharging managerial responsibilities* or the purpose of the sale by the *person discharging managerial responsibilities* where:
- (1) the disclosure is made only to the extent necessary, and solely in order to dispose of the investment;
 - (2) the illiquidity of the stock is such that the transaction could not otherwise be completed; and
 - (3) the transaction could not be otherwise completed without creating a disorderly market;
- ~~will~~ may not, of itself, amount to ~~market abuse (improper disclosure)~~ unlawful disclosure.

Factors to be taken into account in determining whether or not behaviour amounts to ~~market abuse (improper disclosure)~~ unlawful disclosure

- 1.4.5 ~~E~~ G ~~In the opinion of the FCA, the~~ The following factors are to be taken into account in determining whether or not the disclosure was made by a *person* in the proper course of the exercise of his employment, profession or duties, and are indications that it was:
- (1) whether the disclosure is permitted by the rules of a ~~prescribed market trading venue~~, a *prescribed auction platform*, of the *FCA* or the *Takeover Code*; or
 - (2) whether the disclosure is accompanied by the imposition of confidentiality requirements upon the *person* to whom the disclosure is made and is:
 - (a) reasonable and is to enable a *person* to perform the proper functions of his employment, profession or duties; or
 - (b) reasonable and is (for example, to a professional adviser) for the purposes of facilitating or seeking or giving advice about a transaction or *takeover bid*; or
 - (c) reasonable and is for the purpose of facilitating any commercial, financial or *investment* transaction (including prospective underwriters or placees of *securities*); or
 - (d) reasonable and is for the purpose of obtaining a commitment or expression of support in relation to an *offer* which is subject to the *Takeover Code*; or
 - (e) in fulfilment of a legal obligation, including to *employee* representatives or trade unions acting on their behalf; ~~or~~
 - (3) ~~whether:~~
 - (a) ~~the information disclosed is trading information;~~
 - (b) ~~the disclosure is made by a person ("A") only to the extent necessary, and solely in order, to offer to dispose of the investment to, or acquire the investment from, the person receiving the information; and~~
 - (e) ~~it is reasonable for A to make the disclosure to enable him to perform the proper functions of his employment, profession or duties.~~ [deleted]
- 1.4.5A ~~G~~ G ~~MAR 1.4.5E(3) is intended only to apply to an actual offer of the investment. It is not intended to apply to a disclosure of trading information to gauge potential interest in the investments to be offered or to help establish the likely price that will be obtained.~~ [deleted]

Examples of ~~market abuse (improper unlawful disclosure)~~

1.4.6 G The following ~~are examples of market abuse (improper disclosure).~~ descriptions are intended to assist in understanding certain behaviours which may constitute unlawful disclosure under the Market Abuse Regulation:

- (1) X, a director at B PLC has lunch with a friend, Y, who has no connection with B PLC or its advisers. X tells Y that his company has received a takeover offer that is at a premium to the current share price at which it is trading.
- (2) A, a *person discharging managerial responsibilities* in B PLC, asks C, a *broker*, to sell some or all of As shares in B PLC. C discloses to a potential buyer that A is a *person discharging managerial responsibilities* or discloses the identity of A, in circumstances where the fact that A is a *person discharging managerial responsibilities* or the identity of A, is *inside information*, ~~other than in the circumstances set out in MAR 1.4.4AC.~~

1.4.7 G The following is an example of encouraging another to engage in *market abuse (improper disclosure)*:

~~X, an analyst employed by an investment bank, telephones the finance director at B PLC and presses for details of the profit and loss account from the latest unpublished management accounts of B PLC. [deleted]~~

...

1.6 ~~Market abuse (manipulating Manipulating transactions)~~

1.6.1 UK ~~Table: section 118(5) of the Act~~

"The fourth [type of <i>behaviour</i>] ... consists of effecting transactions or orders to trade	
(otherwise than for legitimate reasons and in conformity with [<i>accepted market practices</i>] on the relevant market)	
which—	
(a)	give, or are likely to give a false or misleading impression as to the supply of, or demand for, or as to the price of one or more [<i>qualifying investments</i>] or
(b)	secure the price of one or more such investments at an abnormal or artificial level."

~~[deleted]~~

1.6.1-A EU [article 12(1)(b) of the Market Abuse Regulation]

1.6.1A UK ~~Table: section 118(5) of the Act as modified by the RAP Regulations~~

The fourth [type of <i>behaviour</i>] ... consists of effecting transactions, bids or orders to trade	
(otherwise than for legitimate reasons and in conformity with accepted market practices on the relevant auction platform)	
which:	
(a)	give, or are likely to give, a false or misleading impression as to the supply of, or demand for, or as to the price of, one or more qualifying investments, or
(b)	secure the price of one or more such investments at an abnormal or artificial level.

~~[deleted]~~

~~Descriptions of behaviour that amount to market abuse (manipulating transactions): Giving false or misleading impressions~~

1.6.2 E ~~The following *behaviours* are, in the opinion of the FCA, *market abuse (manipulating transactions)* of a type involving false or misleading impressions:~~

- ~~(1) *buying or selling qualifying investments* at the close of the market with the effect of misleading investors who act on the basis of closing prices, other than for legitimate reasons; [Note: Article 1.2(c) *Market Abuse Directive*]~~
- ~~(2) wash trades—that is, a sale or purchase of a *qualifying investment* where there is no change in beneficial interest or market risk, or where the transfer of beneficial interest or market risk is only between parties acting in concert or collusion, other than for legitimate reasons;~~
- ~~(3) painting the tape—that is, entering into a series of transactions that are shown on a public display for the purpose of giving the impression of activity or price movement in a *qualifying investment*;~~
- ~~(4) entering orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, and withdrawing them before they are executed, in order to give a misleading impression that there is demand for or supply of the *qualifying investment* at that price, and~~
- ~~(5) buying or selling on the secondary market of *qualifying investments* or related derivatives prior to the auction with the effect of fixing the auction clearing price for the auctioned products at an abnormal or artificial level or misleading bidders in the auctions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and~~

~~Article 36(1) and Article 37(b) *auction regulation*] [deleted]~~

[**Note:** Annex 1A of the *Market Abuse Regulation*.]

- 1.6.3 G ~~For the avoidance of doubt Entering into a stock lending/borrowing or repo/reverse repo transaction, or another transaction involving the provision of collateral, do not constitute a wash trade under MAR 1.6.2E(2) does not of itself indicate behaviour described in Annex IA(c) of the *Market Abuse Regulation*.~~

~~Descriptions of behaviour that amount to market abuse (manipulating transactions): price positioning~~

- 1.6.4 E ~~The following behaviours are, in the opinion of the *FCA*, *market abuse (manipulating transactions)* involving securing the price of a *qualifying investment*:~~
- ~~(1) transactions or orders to trade by a *person*, or *persons* acting in collusion, that secure a dominant position over the supply of or demand for a *qualifying investment* and which have the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions, other than for legitimate reasons; [**Note:** Article 1.2(c) *Market Abuse Directive*]~~
 - ~~(2) transactions where both buy and sell orders are entered at, or nearly at, the same time, with the same price and quantity by the same party, or different but colluding parties, other than for legitimate reasons, unless the transactions are legitimate trades carried out in accordance with the rules of the relevant trading platform (such as crossing trades);~~
 - ~~(3) entering small orders into an electronic trading system, at prices which are higher than the previous bid or lower than the previous offer, in order to move the price of the *qualifying investment*, other than for legitimate reasons;~~
 - ~~(4) an abusive squeeze—that is, a situation in which a *person*:~~
 - ~~(a) has a significant influence over the supply of, or demand for, or delivery mechanisms for a *qualifying investment* or *related investment* or the underlying product of a derivative contract;~~
 - ~~(b) has a position (directly or indirectly) in an *investment* under which quantities of the *qualifying investment*, *related investment*, or product in question are deliverable; and~~
 - ~~(c) engages in behaviour with the purpose of positioning at a distorted level the price at which others have to deliver, take delivery or defer delivery to satisfy their obligations in relation to a *qualifying investment* (the purpose need not be the sole purpose of entering into the transaction or transactions, but must be an actuating purpose);~~

- (5) ~~parties, who have been allocated *qualifying investments* in a primary offering, colluding to purchase further tranches of those *qualifying investments* trading begins, in order to force the price of the *qualifying investments* to an artificial level and generate interest from other investors, and then sell the *qualifying investments*;~~
- (6) ~~transactions or orders to trade employed so as to create obstacles to the price falling below a certain level, in order to avoid negative consequences for the *issuer*, for example a downgrading of its credit rating;~~
- (7) ~~trading on one market or trading platform with a view to improperly influencing the price of the same or a related *qualifying investment* is traded on another *prescribed market*, and~~
- (8) ~~conduct by a *person*, or *persons* acting in collusion, that secure a dominant position over the demand for a *qualifying investment* which has the effect of fixing, directly or indirectly, auction clearing prices or creating other unfair trading conditions, other than for legitimate reasons. [Note: Article 1.2(c) *Market Abuse Directive* and Article 36(1) and Article 37(b) *auction regulation*] [deleted]~~

[Note: Annex 1A of the *Market Abuse Regulation*.]

Factors to be taken into account: " legitimate reasons "

- 1.6.5 ~~E~~ G ~~In the opinion of the FCA the~~ The following factors are to be taken into account when considering whether ~~*behaviour*~~ behaviour is for " legitimate reasons " in relation to article 12(1)(a) of the *Market Abuse Regulation*, and are indications that it is not:
- (1) if the *person* has an actuating purpose behind the transaction to induce others to trade in, bid for or to position or move the price of, a *qualifying investment* *financial instrument*;
 - (2) if the *person* has another, illegitimate, reason behind the transactions, bid or order to trade; [~~Note: Recital 20 *Market Abuse Directive*~~] and
 - (3) if the transaction was executed in a particular way with the purpose of creating a false or misleading impression.
- 1.6.6 ~~E~~ G ~~In the opinion of the FCA the~~ The following factors are to be taken into account when considering whether ~~*behaviour*~~ behaviour is for " legitimate reasons " in relation to article 12(1)(a) of the *Market Abuse Regulation*, and are indications that it is:
- (1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;
 - (2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly

and efficiently;

- (3) the extent to which the transaction generally opens a new position, so creating an exposure to market risk, rather than closes out a position and so removes market risk; and
- (4) if the transaction complied with the rules of the relevant *prescribed markets or prescribed auction platform trading venue* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions).

1.6.7 G It is unlikely that the ~~behaviour~~ behaviour of ~~market or auction platform trading venue~~ users when dealing at times and in sizes most beneficial to them (whether for the purpose of long term investment objectives, risk management or short term speculation) and seeking the maximum profit from their dealings will of itself amount to ~~distortion~~ manipulation. Such ~~behaviour~~ behaviour, generally speaking, improves the liquidity and efficiency of ~~markets or auction platforms~~ trading venues.

1.6.8 G It is unlikely that prices in the market which are trading outside their normal range will necessarily be indicative that someone has engaged in behaviour with the purpose of positioning prices at a distorted level. High or low prices relative to a trading range can be the result of the proper interplay of supply and demand.

Factors to be taken into account: behaviour giving a false or misleading impression

1.6.9 E ~~In the opinion of the FCA, the following factors are to be taken into account in determining whether or not a person's behaviour amounts to market abuse (manipulating transactions): [Note: Article 4 2003/124/EC and Article 36(1) auction regulation]~~

- ~~(1) the extent to which orders to trade given, bids submitted or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* or *prescribed auction platform* concerned, in particular when these activities lead to a significant change in the price of the *qualifying investment*;~~
- ~~(2) the extent to which orders to trade given, bids submitted or transactions undertaken by persons with a significant buying or selling position in a *qualifying investment* lead to significant changes in the price of the *qualifying investment* or related derivative or underlying asset admitted to trading on a regulated market;~~
- ~~(3) whether transactions undertaken lead to no change in beneficial ownership of a *qualifying investment* admitted to trading on a *regulated market*;~~
- ~~(4) the extent to which orders to trade given or transactions undertaken~~

~~include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant *qualifying investment* on the *regulated market* concerned, and might be associated with significant changes in the price of a *qualifying investment* admitted to trading on a *regulated market*;~~

- ~~(5) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;~~
- ~~(6) the extent to which orders to trade given change the representation of the best bid or offer prices in a *financial instrument* admitted to trading on a *regulated market*, or more generally the representation of the order book available to market participants, and are removed before they are executed; and~~
- ~~(7) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations. [deleted]~~

[Note: Annex 1A of the *Market Abuse Regulation*]

Factors to be taken into account: behaviour securing an abnormal or artificial price level

- 1.6.10 E ~~In the opinion of the FCA, the~~ The following factors are to be taken into
 G account in determining whether or not a *person's behaviour* behaviour amounts to ~~*market abuse (manipulating transactions)*~~ manipulating transactions as described in article 12(1)(a)(ii) of the *Market Abuse Regulation*:
- (1) the extent to which the *person* had a direct or indirect interest in the price or value of the ~~*qualifying investment or related investment*~~ *financial instrument*;
 - (2) the extent to which price, rate or *option* volatility movements, and the volatility of these factors for the *investment* in question, are outside their normal intra-day, daily, weekly or monthly range; and
 - (3) whether a *person* has successively and consistently increased or decreased his bid, offer or the price he has paid for a ~~*qualifying investment or related investment*~~ *financial instrument*.

Factors to be taken into account: abusive squeezes

- 1.6.11 E ~~In the opinion of the FCA, the~~ The following factors are to be taken into
 G account when determining whether a *person* has engaged in an ~~abusive squeeze~~ behaviour referred to in Annex IA(a) or (b) of the *Market Abuse Regulation*, commonly known as an “abusive squeeze”:

- (1) the extent to which a *person* is willing to relax his control or other influence in order to help maintain an orderly market, and the price at which he is willing to do so; for example, ~~behaviour~~ behaviour is less likely to amount to an abusive squeeze if a *person* is willing to lend the *investment* in question;
- (2) the extent to which the *person's* activity causes, or risks causing, settlement default by other market users on a multilateral basis and not just a bilateral basis. The more widespread the risk of multilateral settlement default, the more likely that an abusive squeeze has been effected;
- (3) the extent to which prices under the delivery mechanisms of the market diverge from the prices for delivery of the *investment* or its equivalent outside those mechanisms. The greater the divergence beyond that to be reasonably expected, the more likely that an abusive squeeze has been effected; and
- (4) the extent to which the spot or immediate market compared to the forward market is unusually expensive or inexpensive or the extent to which borrowing rates are unusually expensive or inexpensive.

1.6.12 G Squeezes occur relatively frequently when the proper interaction of supply and demand leads to market tightness, but this is not of itself likely to be abusive. In addition, having a significant influence over the supply of, or demand for, or delivery mechanisms for an investment, for example, through ownership, borrowing or reserving the investment in question, is not of itself likely to be abusive.

...

Examples of ~~market abuse~~ (manipulating transactions)

1.6.15 E The following are examples of behaviour that may amount to ~~market abuse~~
 G ~~(manipulating transactions)~~ manipulating transactions as described in article 12(1)(a)(ii) of the Market Abuse Regulation:

- (1) ~~a trader simultaneously buys and sells the same qualifying investment (that is, trades with himself) to give the appearance of a legitimate transfer of title or risk (or both) at a price outside the normal trading range for the qualifying investment. The price of the qualifying investment is relevant to the calculation of the settlement value of an option. He does this while holding a position in the option. His purpose is to position the price of the qualifying investment at a false, misleading, abnormal or artificial level, making him a profit or avoiding a loss from the option; [deleted]~~
- (2) ~~a trader buys a large volume of commodity futures, which are qualifying investments, (whose price will be relevant to the calculation of the settlement value of a derivatives position he holds) just before the close of trading. His purpose is to position the price of the~~

~~commodity futures at a false, misleading, abnormal or artificial level so as to make a profit from his derivatives position; [deleted]~~

- (3) a trader holds a short position that will show a profit if a particular ~~qualifying investment financial instrument~~, which is currently a component of an index, falls out of that index. The question of whether the ~~qualifying investment financial instrument~~ will fall out of the index depends on the closing price of the ~~qualifying investment financial instrument~~. He places a large *sell* order in this ~~qualifying investment financial instrument~~ just before the close of trading. His purpose is to position the price of the ~~qualifying investment financial instrument~~ at a false, misleading, abnormal or artificial level so that the ~~qualifying investment financial instrument~~ will drop out of the index so as to make a profit; and
- (4) a fund manager's quarterly performance will improve if the valuation of his portfolio at the end of the quarter in question is higher rather than lower. He places a large order to *buy* relatively illiquid *shares*, which are also components of his portfolio, to be executed at or just before the close. His purpose is to position the price of the *shares* at a false, misleading, abnormal or artificial level.

1.6.16 EG The following is an example of an abusive squeeze:

A trader with a long position in bond *futures* *buys* or borrows a large amount of the cheapest to deliver bonds and either refuses to re-lend these bonds or will only lend them to parties he believes will not re-lend to the market. His purpose is to position the price at which those with short positions have to deliver to satisfy their obligations at a materially higher level, making him a profit from his original position.

1.7 ~~Market abuse (manipulating Manipulating devices)~~

1.7.1 UK ~~Table: section 118(6) of the Act~~

"The fifth [type of behaviour] ... consists of effecting transactions or orders to trade
which employ fictitious devices or any other form of deception or contrivance."

~~[deleted]~~

1.7.1-A EU [article 12(1)(b) of the *Market Abuse Regulation*]

1.7.1A UK ~~Table: section 118(6) of the Act as modified by the RAP Regulations~~

The fifth [type of behaviour] ... consists of effecting transactions, bids or orders to trade which employ fictitious devices or any other form of

deception or contrivance.

[deleted]

Descriptions of behaviour that amount to ~~market abuse~~ (manipulating devices)

- 1.7.2 E ~~The following behaviours are, in the opinion of the FCA, market abuse (manipulating devices):~~
- (1) ~~taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a *qualifying investment financial instrument* (or indirectly about its *issuer*, if applicable) while having previously taken positions on, or submitted bids in relation to, that *qualifying investment financial instrument* and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way;~~
~~[Note: Article 1.2 Market Abuse Directive]~~
 - (2) ~~a transaction or series of transactions that are designed to conceal the ownership of a *qualifying investment*, so that disclosure requirements are circumvented by the holding of the *qualifying investment* in the name of a colluding party, such that disclosures are misleading in respect of the true underlying holding. These transactions are often structured so that market risk remains with the seller. This does not include nominee holdings;~~
 - (3) ~~pump and dump—that is, taking a long position in a *qualifying investment* and then disseminating misleading positive information about the *qualifying investment* with a view to increasing its price;~~
 - (4) ~~trash and cash—that is, taking a short position in a *qualifying investment* and then disseminating misleading negative information about the *qualifying investment*, with a view to driving down its price.~~
~~[deleted]~~

~~[Note: Article 12(2)(d) Market Abuse Regulation]~~

Factors to be taken into account in determining whether or not behaviour amounts to ~~market abuse~~ (manipulating devices)

- 1.7.3 E ~~In the opinion of the FCA, the following factors are to be taken into account in determining whether or not a fictitious device or other form of deception or contrivance has been used, and are indications that it has:~~
- (1) ~~if orders to trade given, bids submitted or transactions undertaken in *qualifying investments* by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;~~

- (2) ~~if orders to trade are given, bids submitted or transactions are undertaken in *qualifying investments* by *persons* before or after the same *persons* or *persons* linked to them produce or disseminate research or investment recommendations which are erroneous or biased or demonstrably influenced by material interest. [Note: Article 5-2003/124/EC] [deleted]~~

[Note: Annex 1B of the *Market Abuse Regulation*]

1.8 ~~Market abuse (dissemination)~~ Dissemination

- 1.8.1 UK Table: section 118(7) of the Act

"The sixth [type of <i>behaviour</i>] ... consists of the dissemination of information by any means
which gives, or is likely to give, a false or misleading impression as to a [qualifying investment]
by a person who knew or could reasonably be expected to have known that the information was false or misleading."

[deleted]

- 1.8.1A EU [article 12(1)(c) of the *Market Abuse Regulation*]

- 1.8.2 UK Table: section 118A(4) of the Act

"For the purposes of section 118(7), the dissemination of information by a person acting in the capacity of a journalist
is to be assessed taking into account the codes governing their profession
unless he derives, directly or indirectly, any advantage or profits from the dissemination of the information."

[deleted]

Descriptions of behaviour that amount to ~~market abuse (dissemination)~~

- 1.8.3 E The following *behaviours* are, in the opinion of the *FCA*, ~~market abuse (dissemination)~~:

- (1) ~~knowingly or recklessly spreading false or misleading information about a *qualifying investment* through the media, including in particular through an *RIS* or similar information channel;~~
- (2) ~~undertaking a course of conduct in order to give a false or misleading impression about a *qualifying investment*. [deleted]~~

[Note: article 12(1)(c) of the Market Abuse Regulation]

Factors to be taken into account in determining whether or not behaviour amounts to ~~market abuse~~ (dissemination)

- 1.8.4 ~~E~~ G ~~In the opinion of the FCA, if~~ If a normal and reasonable *person* would know or ~~should~~ ought to have known in all the circumstances that the information was false or misleading, that indicates that the *person* disseminating the information knew or ~~could reasonably be expected~~ ought to have known that it was false or misleading.
- 1.8.5 ~~E~~ G ~~In the opinion of the FCA, if~~ If the individuals responsible for dissemination of information within an organisation could only know that the information was false or misleading if they had access to other information that was being held behind a *Chinese wall* or similarly effective arrangements, that indicates that the *person* disseminating did not know and could not reasonably be expected to have known that the information was false or misleading.

Examples Example of ~~market abuse~~ (dissemination)

- 1.8.6 ~~G~~ G The following ~~are examples~~ is an example of ~~behaviour~~ behaviour which may amount to ~~market abuse (dissemination)~~ a contravention of article 12(1)(c) of the Market Abuse Regulation:
 - (1) a *person* posts information on an Internet bulletin board or chat room which contains false or misleading statements about the takeover of a *company* whose *shares* are qualifying investments financial instruments and the *person* knows that the information is false or misleading;
 - (2) a *person* responsible for the content of information submitted to a *regulatory information service* submits information which is false or misleading as to qualifying investments and that *person* is reckless as to whether the information is false or misleading.

[Note: article 12(1)(c) of the Market Abuse Regulation.]

1.9 Market abuse (misleading Misleading behaviour) & market abuse (distortion)

1.9.1 UK ~~Table: section 118(8) of the Act~~

"The seventh [type of <i>behaviour</i>] is where the [<i>behaviour</i>] (not [amounting to <i>market abuse</i> (<i>manipulating transactions</i>), <i>market abuse</i> (<i>manipulating devices</i>), or <i>market abuse</i> (<i>dissemination</i>)])	
(a)	is likely to give, a [<i>regular user</i>] of the market a false or misleading impression as to the supply of, demand for or price or value of,

	[qualifying investments] [market abuse (misleading behaviour)]; or
(b)	would be, or would be likely to be, regarded by a [regular user] of the market as [behaviour] that would distort, or would be likely to distort, the market in such an investment [market abuse (distortion)]
and ... is likely to be regarded by a [regular user] of the market as a failure on the part of the person concerned to observe the standard of [behaviour] reasonably expected of a person in his position in relation to the market	

~~[deleted]~~

1.9.1-A EU ~~[article 12(1)(c) of the Market Abuse Regulation]~~

1.9.1A UK ~~**Table: section 118(8) of the Act as modified by the RAP Regulations**~~

"The seventh [type of behaviour] is where the [behaviour] (not [amounting to market abuse (manipulating transactions), market abuse (manipulating devices) or market abuse (dissemination)]	
(a)	is likely to give a [regular user] of the auction platform a false or misleading impression as to the supply of, demand for or price or value of, [qualifying investments] [market abuse (misleading behaviour)], or
(b)	would be, or would be likely to be, regarded by a [regular user] of the auction platform as [behaviour] that would distort, or would be likely to distort, the auction of such an investment [market abuse (distortion)]
and the behaviour is likely to be regarded by a [regular user] of the auction platform as a failure on the part of the [person] concerned to observe the standard of [behaviour] reasonably expected of a [person] in his position in relation to the market."	

~~[deleted]~~

~~Descriptions of behaviour that amount to market abuse (misleading behaviour) under section 118(8)(a) or market abuse (distortion) under section 118(8)(b)~~

1.9.2 E ~~The following behaviours are, in the opinion of the FCA, market abuse (misleading behaviour) if they give, or are likely to give, a regular user of the market a false or misleading impression:~~

- ~~(1) the movement of physical commodity stocks, which might create a misleading impression as to the supply of, or demand for, or price or value of, a commodity or the deliverable into a commodity futures contract; and~~
- ~~(2) the movement of an empty cargo ship, which might create a false or misleading impression as to the supply of, or the demand for, or the price or value of a commodity or the deliverable into a commodity~~

~~futures contract. [deleted]~~

~~Factors to be taken into account: false or misleading impressions~~

- 1.9.4 E ~~In the opinion of the FCA, the following factors are to be taken into account in determining whether or not *behaviour* is likely to give a *regular user* a false or misleading impression as to the supply of or the demand for or as to the price or value of one or more *qualifying investments* or *related investments*:~~
- ~~(1) the experience and knowledge of the users of the market or auction platform in question;~~
 - ~~(2) the structure of the market or auction platform, including its reporting, notification and transparency requirements;~~
 - ~~(3) the legal and regulatory requirements of the market or auction platform concerned;~~
 - ~~(4) the identity and position of the *person* responsible for the *behaviour* which has been observed (if known); and~~
 - ~~(5) the extent and nature of the visibility or disclosure of the *person's* activity. [deleted]~~

~~Factors to be taken into account: standards of behaviour~~

- 1.9.5 E ~~In the opinion of the FCA, the following factors are to be taken into account in determining whether or not *behaviour* that creates a false or misleading impression as to, or distorts the market or auction platform for, a *qualifying investment*, has also failed to meet the standard expected by a *regular user*:~~
- ~~(1) if the transaction is pursuant to a prior legal or regulatory obligation owed to a third party;~~
 - ~~(2) if the transaction is executed in a way which takes into account the need for the market or auction platform as a whole to operate fairly and efficiently; or~~
 - ~~(3) the characteristics of the market or auction platform in question, including the users and applicable rules and codes of conduct (including, if relevant, any statutory or regulatory obligation to disclose a holding or position, such as under *DTR 5*);~~
 - ~~(4) the position of the *person* in question and the standards reasonably to be expected of him in light of his experience, skill and knowledge;~~
 - ~~(5) if the transaction complied with the rules of the relevant *prescribed markets* or *prescribed auction platform* about how transactions are to be executed in a proper way (for example, rules on reporting and executing cross-transactions); and~~

- (6) ~~if an organisation has created a false or misleading impression, whether the individuals responsible could only know they were likely to create a false or misleading impression if they had access to other information that was being held behind a Chinese wall or similarly effective arrangements. [deleted]~~

1.10 Statutory exceptions

Behaviour that does not amount to market abuse (general): ~~buy-back programmes and stabilisation~~

- 1.10.1 G (1) *Behaviour* which conforms with articles 3 to 6 of the *Buy-back and Stabilisation Regulation* (see MAR 1 Annex 1) will not amount to market abuse.
- (2) See MAR 2 in relation to *stabilisation*.
- (3) *Buy-back programmes* which are not within the scope of the *Buy-back and Stabilisation Regulation* are not, in themselves, market abuse.

FCA rules

- 1.10.2 G There are no *rules* which permit or require a *person* to behave in a way which amounts to *market abuse*. ~~Some rules contain a provision to the effect that *behaviour* conforming with that *rule* does not amount to *market abuse*:~~
- (1) ~~the control of information rule (SYSC 10.2.2R(1) (see SYSC 10.2.2R (4))); and [deleted]~~
- (2) ~~those parts of the *Part 6 rules* which relate to the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information (see in particular the *Disclosure Rules* and *Transparency Rules*). [deleted]~~

Takeover Code

- 1.10.3 G There are no rules in the *Takeover Code*, which permit or require a *person* to behave in a way which amounts to *market abuse*.
- 1.10.4 € ~~*Behaviour*~~ Behaviour conforming with any of the rules of the *Takeover Code* about the timing, dissemination or availability, content and standard of care applicable to a disclosure, announcement, communication or release of information, ~~does not~~ is unlikely to, of itself, amount to *market abuse*, if:
- (1) the rule is one of those specified in the table in MAR ~~1.10.5C~~ 1.10.5G;
- (2) the ~~*behaviour*~~ behaviour is expressly required or expressly permitted by the rule in question (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the relevant

rule for these purposes); and

- (3) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to that rule.

1.10.5 C Table: Provisions of the Takeover Code conformity with which will ~~not be~~ unlikely to, of itself, amount to market abuse (This table belongs to ~~MAR~~ MAR 1.10.4G):

<i>Takeover Code</i> provisions:	
Disclosure of information which is not generally available	1(a) 2.1 plus notes, 2.5, 2.6, 2.9 plus notes 8 19.7 20.1, 20.2, 20.3 28.4 37.3(b) and 37.4(a)
Standards of care	2.8 first sentence and note 4 19.1, 19.5 second sentence and note 2, 19.8 23 plus notes 28.1
Timing of announcements, documentation and dealings	2.2, 2.4(b) 5.4 6.2(b) 7.1 11.1 note 6 only 17.1 21.2 30 31.6(c), 31.9 33 (in so far as it refers 31.6(c) and 31.9 only) 38.5
Content of announcements	2.4 (a) and (b) 19.3

1.10.6 C ~~*Behaviour*~~ Behaviour conforming with Rule 4.2 of the *Takeover Code* (in relation to restrictions on *dealings* by *offerors* and concert parties) ~~does not~~ will be unlikely to, of itself, amount to *market abuse*, if:

- (1) the *behaviour* is expressly required or expressly permitted by that rule (the notes for the time being associated with the rules identified in the *Takeover Code* are treated as part of the rule for these purposes); and
- (2) it conforms to any General Principle set out at Section B of the *Takeover Code* relevant to the rule.

1 Annex 1 Provisions of the Buy-back and Stabilisation Regulation relating to buy-back programmes

Annex 1.1

...

1.1.8 G ~~The FCA accepts disclosure through a *regulatory information service* as *adequate public disclosure*.~~

The FCA accepts as “adequate public disclosure”:

- (1) disclosure through a *regulatory information service* or otherwise in accordance with *Part 6 rules*; or
- (2) the equivalent disclosure mechanism required to be used in relation to the relevant *trading venue*.

[Note: article 5 of the *Market Abuse Regulation*.]

...

MAR 1 Annex 2 is deleted in its entirety and replaced with the newly inserted provision. The deleted text is not shown.

1 Annex 2 Accepted Market Practices

Annex 2 G [article 13 of the *Market Abuse Regulation*.]
EU

...

8 Benchmarks

8.1 Application and purpose

...

Purpose

8.1.2 G The purpose of this chapter is to set out the requirements applying to *firms* who are *benchmark submitters* or *benchmark administrators* when carrying out the activities of *providing information in relation to a specified benchmark* or *administering a specified benchmark*.

[Note: article 2(2) of the *Market Abuse Regulation*; article 12 of the *Market Abuse Regulation*; article 15 of the *Market Abuse Regulation*.]

regarding the ongoing *market abuse* provisions applicable to *firms* carrying out the activities specified in *MAR* 8.1.2G.]

...

TP 1 Transitional Provisions

TP 1.1 *GEN* contains some technical transitional provisions that apply throughout the *Handbook* and which are designed to ensure a smooth transition at *commencement*. These include transitional provisions relevant to record keeping and *notification rules*.

1) Transitional Provisions for ~~The Code of Market Conduct~~ (MAR 1) MAR 1 (Market abuse) (known previously as the Code of Market Conduct)

There are no transitional provisions for ~~The Code of Market Conduct~~ (The Code of Market Conduct) MAR 1 (Market Abuse).

2) Transitional Provisions for Price stabilising rules (Price Stabilising Rules)

SUP contains transitional provisions which carry forward into *MAR* 2 (Price stabilising rules) written concessions relating to pre-commencement provisions.

...

...

Sch 1 Record Keeping requirements

Sch 1.1 G

Handbook reference	Subject of record	Contents of record	When record must be made	Retention period
MAR 2.7R	Price stabilising action	Full details as noted in MAR 2.7.2R	On initiation of stabilising action	3 years
...				

Annex I

Amendments to the Supervision manual (SUP)

In this Annex, underlining indicates new text and striking through indicates deleted text.

9 Individual guidance

...

9.2 Making a request for individual guidance

...

Who to address a request to

9.2.2 G *A firm* and its professional advisers should address requests for individual *guidance* to the *firm's* usual supervisory contact at the *FCA*, with the exception of requests for *guidance* on ~~the Code of Market Conduct (MAR 1)~~ which should be addressed to the specialist team within the Enforcement and Markets Oversight Division. A *firm* may wish to discuss a request for *guidance* with the relevant contact before making a written request.

...

13A Qualifying for authorisation under the Act

...

13A Application of the Handbook to Incoming EEA Firms

**Annex
1G**

...

(1) Module of Handbook	(2) Potential application to an incoming EEA firm with respect to activities carried on from an establishment of the firm (or its appointed representative) in the United Kingdom	(3) Potential application to an incoming EEA firm with respect to activities carried on other than from an establishment of the firm (or its appointed representative) in the United Kingdom
...		

MAR	<p>MAR 1 (Code of market conduct)</p> <p>Applies if the <i>firm</i> is seeking guidance as to whether or not <i>behaviour</i> amounts to <i>market abuse</i> (MAR 1.1.1G). [deleted]</p>	<p>MAR 1 (Code of market conduct)</p> <p>As column (2). [deleted]</p>
	<p>MAR 2 (Price stabilising rules) <u>Stabilisation</u></p> <p>Applies if the <i>firm</i> undertakes <i>stabilising action</i> and wishes to show that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (MAR 2.1 Application).</p>	<p>MAR 2 (Price stabilising rules) <u>Stabilisation</u></p> <p>Only applies in so far as the <i>firm</i> undertakes <i>stabilising action</i> and wishes to rely on a defence that it has acted in conformity with <i>price stabilising rules</i>, or that its <i>behaviour</i> conforms with <i>rules</i> in accordance with section 118A(5)(a) of the <i>Act</i> (Market abuse) (MAR 2.1 and in particular MAR 2.1.3R).</p>
...		
DTR	<p>DTR (Disclosure Rules <u>Guidance</u> and Transparency Rules)</p> <p>May apply if the <i>firm</i> is an <i>issuer</i>, any class of whose <i>financial instruments</i> have been <i>admitted to trading</i> on a <i>regulated market</i>, or are the subject of an application for <i>admission to trading</i> on a <i>regulated market</i>, other than <i>issuers</i> who have not requested or approved admission of their <i>financial instruments</i> to trading on a <i>regulated market</i>.</p>	<p>DTR (Disclosure Rules <u>Guidance</u> and Transparency Rules)</p> <p>As column (2).</p>
...		

...

15 Notifications to the FCA

...

15.2 Purpose

...

15.2.2 G This chapter sets out:

...

- (5) material (in *SUP* 15.10 (Notification of suspicious transactions or orders (market abuse))) ~~to implement which makes reference to the provisions of the *Market Abuse Directive* for *Regulation* that detail requirements on the reporting of transactions or orders about which there is reasonable suspicion of *market abuse*.~~

...

15.10 Reporting suspicious transactions or orders (market abuse)

~~Application: where~~

15.10.1 R ~~This section applies in relation to activities carried on from an establishment maintained by the *firm* or its *appointed representative* in the *United Kingdom*. [Note: Article 7 2004/72/EC] [deleted]~~

~~Notification of suspicious transactions or orders: general~~

15.10.2 R ~~A *firm* which *arranges* or *executes* a transaction with or for a client and which has reasonable grounds to suspect that the transaction might constitute *market abuse* must notify the *FCA* without delay. [Note: Article 6(9) *Market Abuse Directive*] [deleted]~~

15.10.2A EU [article 16 of the *Market Abuse Regulation*.]

~~Notification of suspicious transactions: investment firms and credit institutions~~

15.10.3 R ~~A *firm*, that is an *investment firm* or a *credit institution*, must decide on a case-by-case basis whether there are reasonable grounds for suspecting that a transaction involves *market abuse*, taking into account the elements constituting *market abuse*. [Note: Articles 1(3) and 7 2004/72/EC] [deleted]~~

15.10.4 G (1) Notification of suspicious transactions or orders to the *FCA* requires sufficient indications (which may not be apparent until after the transaction has taken place) that the transaction or order might constitute *market abuse*. In particular a *firm person* subject to article 16 of the *Market Abuse Regulation* will need to be able to explain the basis for ~~its~~ the suspicion when notifying the *FCA* (see *SUP* 15.10). Certain transactions or orders by themselves may seem completely

devoid of anything suspicious, but might deliver such indications of possible *market abuse*, when seen in perspective with other transactions, certain behaviour or other information (though *firms persons* subject to article 16 of the *Market Abuse Regulation* are not expected to breach effective information barriers put in place to prevent and avoid conflicts of interest so as actively to seek to detect suspicious transactions). [~~Note: Recital 9 2004/72/EC~~]

- (2) Assistance in identifying the elements constituting *market abuse* may be derived from the *Code of Market Conduct (MAR I)*, and some example indications of *market abuse* are set out in *SUP 15 Ann 5 G*. A fuller set of example indications is published by the Committee of European Securities Regulators (*CESR*) can be found within the *Market Abuse Regulation*.

Timeframe for notification: ~~investment firms and credit institutions~~

- 15.10.5 R ~~If an *investment firm* or a *credit institution* becomes aware of a fact or information that gives reasonable ground for suspicion concerning a transaction, it must make its notification under this section without delay. [~~Note: Article 8 2004/72/EC~~] [~~deleted~~]~~

Content of notification: ~~investment firms and credit institutions~~

- 15.10.6 R (1) ~~If an *investment firm* or a *credit institution* is obliged to make a notification to the *FCA* under this section, it must transmit to the *FCA* the following information:~~
- ~~(a) a description of the transaction, including the type of order (such as limit order, market order or other characteristics of the order) and the type of trading market (such as block trade); and~~
 - ~~(b) the reasons for suspicion that the transaction might constitute *market abuse*.~~
- (2) ~~In addition the following information must be provided to the *FCA* as soon as it becomes available:~~
- ~~(a) the means for identification of the *persons* on behalf of whom the transaction has been carried out, and of other *persons* involved in the relevant transaction;~~
 - ~~(b) the capacity in which the *firm* operates (such as for own account or on behalf of third parties); and~~
 - ~~(c) any other information which may have significance in reviewing the suspicious transaction. [~~Note: Article 9 2004/72/EC~~] [~~deleted~~]~~

Means of notification: ~~investment firms and credit institutions~~

- 15.10.7 **R** ~~An investment firm or a credit institution~~ A person subject to article 16 of the Market Abuse Regulation making a notification to the *FCA* under this section may do so: using the system indicated on the *FCA*'s website.
- G**
- (1) ~~by mail to:~~
Market Conduct Team
25 The North Colonnade
Canary Wharf London E14 5HS; or
 - (2) ~~by electronic mail to market.abuse@fca.org.uk;~~
 - (3) ~~by facsimile to the Market Conduct Team on 020 7066 4091 ; or~~
 - (4) ~~by telephone to the market abuse helpline 020 7066 4900 .~~ **[Note: Article 10 2004/72/EC]**
- 15.10.8 **G**
- (1) ~~If a notification is made by telephone, the *FCA* may subsequently request confirmation of the notification in writing. [Note: Article 10 2004/72/EC]~~
 - (2) ~~When making a notification in writing it may be convenient to use the form for suspicious transaction reports provided on the *FCA*'s website. This form follows the common standard approved by *ESMA* (formerly known as *CESR*). [deleted]~~

~~Liability and professional secrecy: investment firms and credit institutions~~

- 15.10.9 **R**
- (1) ~~An investment firm or a credit institution which notifies the *FCA* under this section must not inform any other person, in particular the persons on behalf of whom the transaction has been carried out or parties related to those persons, of this notification, except in accordance with an obligation imposed by or under statute.~~
 - (2) ~~Notwithstanding any other provision of the *Handbook* a notification in good faith under this section to the *FCA* does not constitute a breach of any restriction on disclosure of information imposed by the *Handbook*. [Note: Article 11 2004/72/EC]~~

~~**Note:** Section 131A of the *Act* sets out additional protections from liability for a person who makes a notification to the *FCA* under this section (or who passes the relevant information to someone designated by his employer to do so). [deleted]~~

...

15 Annex 1R Application of SUP 15 to incoming EEA firms and incoming Treaty firms

1. ***SUP 15* applies in full to an incoming EEA firm, or incoming Treaty firm, which has a top-up permission.**

...

3. For any other *incoming EEA firm or incoming Treaty firm*, SUP 15 applies as set out in the following table.

Applicable sections		Application
...		
SUP 15.10	Reporting suspicious transactions <u>or orders</u> (market abuse)	Applies in relation to activities carried on from an establishment maintained by the firm or its appointed representative in the United Kingdom. [Note: Article 7 2004/72/EC] <u>Applies in full subject to article 16 of the Market Abuse Regulation</u>
...		

...

15 Annex 5

Indications of Possible Suspicious Transactions or Orders

1.	The following examples of indications are intended to be a starting point for consideration of whether a transaction <u>or order</u> is suspicious. They are neither conclusive nor comprehensive.
Possible Signals of Insider Dealing	
2.	A client opens an account and immediately gives an order to conduct a significant transaction or, in the case of a wholesale client, an unexpectedly large or unusual order, in a particular security - especially if the client is insistent that the order is carried out very urgently or must be conducted before a particular time specified by the client.
3.	A transaction <u>or order</u> is significantly out of line with the client's previous investment behaviour (e.g. type of security; amount invested; size of order; time security held).
...	
Possible signals of Market Manipulation	
7.	An order will, because of its size in relation to the market in that security, clearly have a significant impact on the supply of or demand for or the price or value of the security, especially an order of this kind to be executed near to a reference point during the

	trading day – e.g. near the close. [deleted]
8.	A transaction appears to be seeking to modify the valuation of a position while not decreasing/increasing the size of that position. [deleted]
9.	A transaction appears to be seeking to bypass the trading safeguards of the market (e.g. as regards volume limits; bid/offer spread parameters; etc). [deleted]

Sch 4

...

Sch 4.1G

	Powers exercised
	The following powers and related provisions in or under the <i>Act</i> have been exercised by the <i>FCA</i> to make the rules in <i>SUP</i> :
	...
	Section 118 (8) (Market abuse)
	...

Annex J

Amendments to the Recognised Investment Exchanges sourcebook (REC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Recognition requirements

...

2.6 General safeguards for investors, provision of pre and post-trade information about share trading and suspension and removal of financial instruments from trading

...

Orderly markets

2.6.28 G In determining whether a *UK RIE* is ensuring that business conducted by means of its *facilities* is conducted in an orderly manner (and so as to afford proper protection to investors), the *FCA* may have regard to the extent to which the *UK RIE's* rules and procedures:

- (1) are consistent with the ~~*Code of Market Conduct (see MAR 1)*~~ *Market Abuse Regulation*;

...

...

2.12 Availability of relevant information and admission of financial instruments to trading (UK RIEs only)

...

Proper information

2.12.11 G In determining whether appropriate arrangements have been made to make *relevant information* available to *persons* engaged in *dealing in specified investments admitted to trading* on the *UK RIE*, the *FCA* may have regard to:

...

- (3) whether *relevant information* is or can be kept to restricted groups of *persons* in such a way as to facilitate or encourage *dealing* in contravention of the ~~*Code of Market Conduct (see MAR 1)*~~ *Market Abuse Regulation*.

...

2.13 Promotion and maintenance of standards

...

- 2.13.3 G In determining whether a *UK recognised body* is able and willing to promote and maintain high standards of integrity and fair dealing in the carrying on of *regulated activities*, the *FCA* may have regard to the extent to which the *UK recognised body* seeks to promote and encourage, through its rules, practices and procedures, conduct in *regulated activities* which is consistent with the ~~Code of Market Conduct (see MAR 1)~~ Market Abuse Regulation and with any ~~other~~ codes of conduct, rules or principles relating to behaviour in *regulated activities* which users of the *UK financial system* would normally expect to apply to the *regulated activity* and the conduct in question.

...

Annex K

Amendments to the Listing Rules sourcebook (LR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Preliminary: All securities

...

Application

1.1.1 R ...

[**Note:** Other parts of the *Handbook* that may also be relevant to *issuers* or *sponsors* include *DTR* (the Disclosure ~~Rules~~ Guidance and Transparency Rules sourcebook), *PR* (the Prospectus Rules sourcebook), *COBS* (the Conduct of Business sourcebook), *DEPP* (Decision Procedure and Penalties Manual), Chapter 9 of *SUP* (the Supervision manual) and *GEN* (General Provisions).]

...

...

1.4 Miscellaneous

Appointment of sponsor

1.4.1 R (1) If it appears to the *FCA* that there is, or there may be, a breach of the *listing rules* or the *disclosure ~~rules~~ requirements* and *transparency rules* by an *issuer* with a *premium listing*, the *FCA* may in writing require the *issuer* to appoint a *sponsor* to advise the *issuer* on the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

(2) If required to do so under (1), an *issuer* must, as soon as practicable, appoint a *sponsor* to advise it on the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

...

...

Market abuse safe harbours

1.4.7 R Pursuant to section 118A(5) of the *Act*, behaviour conforming with the *listing rules* specified in LR 1 Annex 1RR does not amount to market abuse under section 118(1) of the *Act*. [deleted]

...

Use of an RIS

...

- 1.4.12 R Where a *listing rule* requires an *issuer* who is not subject to *DTR* 6.3.1R to use the services of an *RIS*, the *issuer* must comply with the provisions of *DTR* 6.3, except in relation to information which is required to be disclosed under the *Transparency Directive*, ~~Article 6~~ articles 17 and 19 of the *Market Abuse Directive Regulation* or the *DTR*.

...

1 Annex 1R Market abuse safe harbours

The *listing rules* referred to in *LR* 1.4.7R are:

- (1) ~~*LR* 1.3.3R (Misleading information not to be published);~~
- (2) ~~*LR* 1.3.4R (Notification when a *RIS* is not open for business);~~
- (3) ~~Paragraphs 20, 21 and 22 of the Annex to *LR* 9 (The Model Code)(Dealings by connected persons and investment managers);~~
- (4) ~~*LR* 9.6.6R (Notifications relating to capital);~~
- (5) ~~*LR* 9.6.7R, *LR* 9.6.8R, and *LR* 9.6.10G (Notifications of major interests in shares);~~
- (6) ~~*LR* 9.7.1R and *LR* 9.7.2R (Preliminary statement of annual results and dividends);~~
- (7) ~~*LR* 9.9.3R~~
- (8) ~~*LR* 12.2.1R(4) (Prohibition on purchase of own securities);~~
- (9) ~~*LR* 12.4.6R (Notification of purchases);~~
- (10) ~~*LR* 12.5.2R and *LR* 12.5.3R (Notifications of purchases, early redemptions and cancellations);~~
- (11) ~~*LR* 13.3.1R(1) and *LR* 13.3.1R(2) (Contents of all circulars);~~
- (12) ~~*LR* 14.3.19R and *LR* 14.3.21R (Notification of major interests in shares);~~
- (13) ~~*LR* 14.4.10R; and~~
- (14) ~~*LR* 17.3.4R (Annual accounts).~~

[deleted]

...

5 Suspending, cancelling and restoring listing and reverse takeovers: All securities

...

5.6 Reverse takeovers

...

Target not subject to a public disclosure regime

...

- 5.6.18 R Where the *FCA* has agreed that a suspension is not necessary as a result of an announcement made for the purpose of *LR 5.6.15G* the *issuer* must comply with ~~*DTR 2.2.1R*~~ the obligation under article 17(1) of the *Market Abuse Regulation* on the basis that the *target* already forms part of the enlarged *group*.

...

7 Listing Principles and Premium Listing Principles

7.1 Application and purpose

Application

- 7.1.1 R (1) The Listing Principles in *LR 7.2.1R* apply to every *listed company* in respect of all its obligations arising from the *listing rules*, *disclosure ~~rules~~ requirements*, *transparency rules* and *corporate governance rules*.
- (2) In addition to the Listing Principles referred to in (1), the Premium Listing Principles in *LR 7.2.1AR* apply to every *listed company* with a *premium listing* of *equity shares* in respect of all its obligations arising from the *listing rules*, *disclosure ~~rules~~ requirements*, *transparency rules* and *corporate governance rules*.

Purpose

...

- 7.1.3 G The Listing Principles and, if applicable, the Premium Listing Principles

are designed to assist *listed companies* in identifying their obligations and responsibilities under the *listing rules*, *disclosure ~~rules~~ requirements*, *transparency rules* and *corporate governance rules*. The Listing Principles and Premium Listing Principles should be interpreted together with relevant *rules* and *guidance* which underpin the Listing Principles and the Premium Listing Principles.

...

7.2 The Listing and Premium Listing Principles

...

Guidance on the Listing and Premium Listing Principles

- 7.2.2 G Listing Principle 1 is intended to ensure that *listed companies* have adequate procedures, systems and controls to enable them to comply with their obligations under the *listing rules*, *disclosure ~~rules~~ requirements*, *transparency rules* and *corporate governance rules*. In particular, the *FCA* considers that *listed companies* should place particular emphasis on ensuring that they have adequate procedures, systems and controls in relation to, where applicable:

...

- 7.2.3 G Timely and accurate disclosure of information to the market is a key obligation of *listed companies*. For the purposes of Listing Principle 1, a *listed company* should have adequate systems and controls to be able to:
- (1) ensure that it can properly identify information which requires disclosure under the *listing rules*, *disclosure ~~rules~~ requirements*, *transparency rules* or *corporate governance rules* in a timely manner; and

...

...

8 Sponsors: Premium listing

...

8.2 When a sponsor must be appointed or its guidance obtained

When a sponsor must be appointed

- 8.2.1 R A *company* with, or applying for, a *premium listing* of its *equity shares* must appoint a *sponsor* on each occasion that it:

...

- (5) is required to do so by the *FCA* because it appears to the *FCA* that there is, or there may be, a breach of the *listing rules*, the *disclosure ~~rules~~ requirements* or the *transparency rules* by the *listed company*; or

...

...

Other transactions where a company with a premium listing must obtain a sponsor's guidance

- 8.2.2 R If a *company* with a *premium listing* is proposing to enter into a transaction which due to its size or nature could amount to a *class 1 transaction* or a *reverse takeover* it must obtain the guidance of a *sponsor* to assess the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.
- 8.2.3 R If a company with a *premium listing* is proposing to enter into a transaction which is, or may be, a *related party transaction* it must obtain the guidance of a *sponsor* in order to assess the application of the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

...

8.3 Role of a sponsor: general

Responsibilities of a sponsor

- 8.3.1 R A *sponsor* must in relation to a *sponsor service*:

...

- (2) guide the *company* with or applying for a *premium listing* of its *equity shares* in understanding and meeting its responsibilities under the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

...

Principles for sponsors: duty regarding directors of listed companies

- 8.3.4 R Where, in relation to a *sponsor service*, a *sponsor* gives any guidance or advice to a *listed company* or *applicant* on the application or interpretation of the *listing rules* or *disclosure ~~rules~~ requirements* and *transparency rules*, the *sponsor* must take reasonable steps to satisfy itself that the *director* or *directors* of the *listed company* understand their responsibilities and obligations under the *listing rules* and *disclosure ~~rules~~ requirements* and *transparency rules*.

Principles for sponsors: relations with the FCA

...

- 8.3.5A R If, in connection with the provision of a *sponsor service*, a *sponsor* becomes aware that it, or a *company* with or applying for a *premium listing* of its *equity shares* is failing or has failed to comply with its obligations under the *listing rules*, the *disclosure ~~rules~~ requirements* or the *transparency rules*, the *sponsor* must promptly notify the *FCA*.

...

8.4 Role of a sponsor: transactions

Application for admission: new applicants

...

- 8.4.2 R A *sponsor* must not submit to the *FCA* an application on behalf of an *applicant*, in accordance with *LR 3*, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (3) the *directors* of the *applicant* have established procedures which enable the *applicant* to comply with the *listing rules* and the *disclosure ~~rules~~ requirements* and *transparency rules* on an ongoing basis;

...

...

Class 1 circulars, refinancing and purchase of own equity shares

...

- 8.4.12 R A *sponsor* must not submit to the *FCA*, on behalf of a *listed company*, a *circular* regarding a transaction set out in *LR 8.4.11R* for approval, unless the *sponsor* has come to a reasonable opinion, after having made due and careful enquiry, that:

...

- (2) the transaction will not have an adverse impact on the *listed company's* ability to comply with the *listing rules* or the *disclosure ~~rules~~ requirements* and *transparency rules*; and

...

...

Applying for transfer between listing categories

...

8.4.15 R A *sponsor* must not submit to the *FCA* on behalf of an *issuer* a final *circular* or announcement for approval or a Sponsor's Declaration for a Transfer of Listing, unless it has come to a reasonable opinion, after having made due and careful enquiry, that:

...

(3) the *directors* of the *issuer* have established procedures which enable the *issuer* to comply with the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules* on an ongoing basis;

...

...

8.6 Criteria for approval as a sponsor

...

Competence of a sponsor

...

8.6.9B G In assessing whether a *sponsor* or a *person* applying for approval as a *sponsor* can demonstrate it is competent in the areas required under *LR 8.6.7R(2)*, the *FCA* may also take into account, where relevant, the guidance or advice on the *listing rules* or *disclosure ~~rules~~ requirements* and *transparency rules* the *sponsor* or *person* has given in circumstances other than in providing *sponsor services*.

...

Systems and controls: record management

...

8.6.16B G Records should:

...

(2) include material communications which relate to the provision of *sponsor services*, including any advice or guidance given to a *company* with or applying for a *premium listing* in relation to their responsibilities under the *listing rules*, the *disclosure ~~rules~~ requirements* and the *transparency rules*.

...

9 Continuing obligations

...

9.2 Requirements with continuing application

...

Compliance with the disclosure ~~rules~~ requirements and transparency rules

9.2.5 G A *listed company*, whose *equity shares* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider its the obligations under *DTR 2* (*Disclosure and control of inside information by issuers*) *the disclosure requirements*.

9.2.6 R A *listed company* that is not already required to comply with *DTR 2* (*Disclosure and control of inside information by issuers*) the obligations referred to under article 17 of the *Market Abuse Regulation* must comply with *DTR 2* those obligations as if it were an *issuer* for the purposes of the disclosure ~~rules~~ requirements and transparency rules subject to article 22 of the *Market Abuse Regulation*.

...

~~Compliance with the Model Code~~

9.2.7 R ~~No dealings in any *securities* may be effected by or on behalf of a *listed company* or any other member in its *group* at a time when, under the provisions of the *Model Code*, a *director* of the *company* would be prohibited from dealing in its *securities*, unless such dealings are entered into:~~

(1) ~~in the ordinary course of business by a securities dealing business; or~~

(2) ~~on behalf of third parties by the *company* or any other member of its *group*. [deleted]~~

9.2.8 R ~~A *listed company* must require every *person discharging managerial responsibilities*, including *directors* to comply with the *Model Code* and to take all proper and reasonable steps to secure their compliance [deleted]~~

9.2.8A G (1) ~~The *Act* provides that an individual who is not a *director* can still be a *person discharging managerial responsibilities* in relation to an issuer if they are a "senior executive" of such an issuer" and they meet the criteria set out in the *Act*.~~

(2) ~~An individual may be a "senior executive of such an issuer"² irrespective of the nature of any contractual arrangements between the individual and the *issuer* and notwithstanding the absence of a contractual arrangement between the individual and the *issuer*,~~

~~provided the individual has regular access to inside information relating, directly or indirectly, to the issuer and has power to make managerial decisions affecting the future development and business prospects of the issuer. [deleted]~~

- 9.2.9 G ~~A listed company may impose more rigorous dealing obligations than those required by the Model Code. [deleted]~~
- 9.2.10 R ~~Where clearance is given to a person to deal in exceptional circumstances (pursuant to paragraph 9 of the Model Code) in a close period, the notification to a RIS required by DTR 3.1.4R must also include a statement of the exceptional circumstances. [deleted]~~

Contact details

- 9.2.11 R A listed company must ensure that the FCA is provided with up to date contact details of at least one appropriate person nominated by it to act as the first point of contact with the FCA in relation to the company's compliance with the listing rules and the disclosure ~~rules~~ requirements and transparency rules.

...

9.6 Notifications

...

Notifications relating to capital

...

- 9.6.6 R Where the securities are subject to an underwriting agreement a listed company may, at its discretion and subject to ~~DTR 2 (Disclosure and control of inside information by issuers)~~ the obligations in article 17 of the Market Abuse Regulation, delay notifying a RIS as required by LR 9.6.4R(6) for up to two business days until the obligation by the underwriter to take or procure others to take securities is finally determined or lapses. In the case of an issue or offer of securities which is not underwritten, notification of the result must be made as soon as it is known.

...

9.8 Annual financial report

...

Additional information

- 9.8.6 R In the case of a listed company incorporated in the United Kingdom, the following additional items must be included in its annual financial report:

- (1) a statement setting out all the interests (in respect of which transactions are notifiable to the company under ~~DTR 3.1.2R~~ article 19 of the Market Abuse Regulation) of each *person* who is a *director* of the *listed company* as at the end of the period under review including:

...

...

- 9.8.6A G (1) The effect of LR 9.8.6R(1) is that a *listed company* is required to set out a 'snapshot' of the total interests of a *director* and his or her *connected persons*, as at the end of the period under review (including certain information to update it as at a date not more than a month before the date of the notice of the annual general meeting). The interests that need to be set out are limited to those in respect of which transactions fall to be notified under the notification requirement for PDMRs in ~~DTR 3.1.2R~~ article 19 of the Market Abuse Regulation. *Persons* who are *directors* during, but not at the end of, the period under review need not be included.

...

9 Annex 1 Annex 1 THE MODEL CODE (R)

~~This annex is referred to in 9.2 (Requirements with continuing application) and LR 15 (Investment entities).~~

R Table: The Model Code [deleted]

9 Annex 1 Table: The Model Code is deleted in its entirety. The deleted text is not shown.

10 Significant transactions: Premium listing

...

10.8 Miscellaneous

Class 1 disposals by companies in severe financial difficulty

...

- 10.8.5 G The announcement should contain any further information that the *company* and its *sponsors* consider necessary. This should incorporate historical price sensitive information, which has already been published in

relation to the disposal along with any further information required to be disclosed under ~~*DTR 2 (disclosure of inside information)*~~ articles 17 and 18 of the *Market Abuse Regulation*.

...

- 10.8.7 G In relation to the *listed company's* financial position, ~~*DTR 2 (disclosure of inside information)*~~ continues articles 17 and 18 of the *Market Abuse Regulation* ~~continue~~ to apply while the *company* is seeking a modification.

...

12 Dealing in own securities and treasury shares: Premium listing

12.1 Application

Application

...

- 12.1.2 R This chapter contains *rules* applicable to a *listed company* that:

...

- (4) ~~purchases or redeems its own securities during a prohibited period; or~~ [deleted]

...

...

12.2 Prohibition on purchase of own securities

- 12.2.1 R ~~A listed company must not purchase or redeem (or make any early redemptions of) its own securities and must ensure that no purchases in its securities are effected on its behalf or by any member of its group during a prohibited period unless:~~

- (1) ~~prior to the commencement of the prohibited period the company has put in place a buy-back programme in which the dates and quantities of securities to be traded during the relevant period are fixed and have been disclosed in a notification made in accordance with LR 12.4.4 R; or~~

- (2) ~~prior to the commencement of the prohibited period the company has put in place a buy-back programme managed by an independent third party which makes its trading decisions in relation to the company's securities independently of, and uninfluenced by, the company; or~~

- (3) ~~the company is purchasing or redeeming securities other than shares or securities whose price or value would be likely to be significantly affected by the publication of the information giving rise to the prohibited period; or~~
- (4) ~~the company is redeeming securities (other than equity shares) which, at the time of issue, set out:~~
 - (a) ~~the date of redemption;~~
 - (b) ~~the number of securities to be redeemed or the formula used to determine that number; and~~
 - (c) ~~the redemption price or the formula used to determine the price.] [deleted]~~

...

12.4 Purchase of own equity shares

Purchases of less than 15%

- 12.4.1 R Unless a *tender offer* is made to all holders of the *class*, purchases by a *listed company* of less than 15% of any *class* of its *equity shares* (excluding *treasury shares*) pursuant to a general authority granted by shareholders, may only be made if the price to be paid is not more than the higher of:

...

- (2) that stipulated by ~~Article 5(1) of the Buy-back and Stabilisation Regulation~~ **[Note: This Article is reproduced at MAR 1 Ann 1]** article 5(6) of the Market Abuse Regulation.

...

12.6 Treasury shares

~~Prohibition on sales or transfers of treasury shares~~

- 12.6.1 R Subject to *LR 12.6.2R*, sales for cash, or transfers for the purposes of, or pursuant to, ~~an employees' share scheme, of treasury shares~~ must not be made during a *prohibited period*. [deleted]

Exemptions

- 12.6.2 R *LR 12.6.1R* does not apply to the following sales or transfers by a *listed company* of *treasury shares*:
- (1) ~~transfers of treasury shares in connection with the operation of an employees' share scheme where the transfer facilitates dealings~~

~~that do not fall within the provisions of the *Model Code*; or~~

- (2) ~~sales or transfers by the *company* of *treasury shares* (other than *equity shares*) of a class whose price or value would not be likely to be significantly affected by the publication of the information giving rise to the *prohibited period*.] [deleted]~~

...

14 Standard listing (shares)

...

14.3 Continuing obligations

...

Contact details

- 14.3.8 R A *company* must ensure that the *FCA* is provided with up to date contact details of appropriate *persons* nominated by it to act as the first point of contact with the *FCA* in relation to the *company's* compliance with the *listing rules* and the *disclosure ~~rules~~ requirements* and *transparency rules*, as applicable.

...

Disclosure Requirements and Transparency Rules

- 14.3.11 G A *company* whose *shares* are admitted to trading on a *regulated market* in the *United Kingdom*, should consider its obligations under the *disclosure ~~rules~~ requirements* and *transparency rules*.

...

15 Closed-Ended Investment Funds: Premium Listing

...

15.5 Transactions

~~Compliance with the Model Code~~

- 15.5.1 R (1) ~~A closed-ended investment fund must comply with the provisions of the *Model Code*.~~
- (2) ~~*LR 9.2.7R to LR 9.2.10R* do not apply to a closed-ended investment fund.~~

(3) Paragraph (1) does not apply to:

~~dealings by persons discharging managerial responsibilities in the closed-ended investment fund;~~

~~purchases by the closed-ended investment fund of its own securities; and~~

~~sales of treasury shares for cash or transfers (except for sales and transfers by the closed-ended investment fund of treasury shares in the circumstances set out in LR 12.6.2R);~~

~~if the closed-ended investment fund satisfies the requirements of (4).~~

(4) The transactions described in (3) may be entered into during a close period if:

(a) the closed-ended investment fund is satisfied that all inside information which the directors and the entity may have in periods leading up to an announcement of results has previously been notified to a RIS; and

(b) the closed-ended investment fund notifies a RIS that it is satisfied that all inside information has previously been notified. [deleted]

...

17 Debt and specialist securities: Standard listing

...

17.3 Requirements with continuing application

...

~~Disclosure Rules and Transparency Rules~~ requirements and transparency rules

17.3.8 G An issuer, whose securities are admitted to trading on a regulated market in the United Kingdom, should consider ~~its~~ the obligations referred to under ~~DTR 2 (Disclosure and control of inside information by issuers)~~ articles 17 and 18 of the Market Abuse Regulation.

17.3.9 R An issuer that is not already required to comply with ~~DTR 2~~ the obligations under articles 17 and 18 of the Market Abuse Regulation must comply with ~~DTR 2~~ those obligations as if it were an issuer for the purposes of ~~the disclosure rules~~ articles 17 and 18 of the Market Abuse

Regulation and the transparency rules, subject to article 22 of the Market Abuse Regulation.

...

18 Certificates representing certain securities: Standard listing

...

18.4 Continuing obligations

...

18.4.3 R An *overseas company* that is the *issuer* of the *equity shares* which the certificates represent must comply with:

...

- (3) ~~DTR 2 (Disclosure and control of inside information by issuers),~~ the obligations in articles 17 and 18 of the Market Abuse Regulation as if it were an issuer for the purposes of those obligations and the disclosure rules and transparency rules, subject to article 22 of the Market Abuse Regulation.

...

19 Securitised derivatives: Standard listing

...

19.4 Continuing obligations

...

Disclosure ~~rules~~ requirements and transparency rules

19.4.11 R An *issuer* must comply with ~~DTR 2.1 to DTR 2.7~~ the obligations referred to under articles 17 and 18 of the Market Abuse Regulation as if it were an issuer for the purposes of those obligations and the disclosure rules and transparency rules, subject to article 22 of the Market Abuse Regulation.

...

20 Miscellaneous Securities: Standard listing

...

20.4 Continuing obligations

...

Disclosure ~~rules~~ requirements and transparency rules

20.4.5 R An *issuer* must comply with ~~DTR 2.1 to DTR 2.7~~ the obligations referred to under articles 17 and 18 of the *Market Abuse Regulation* as if it were an *issuer* for the purposes of those obligations and the ~~disclosure rules and transparency rules~~, subject to article 22 of the *Market Abuse Regulation*.

...

App 1 Relevant definitions

App 1.1 Relevant definitions

...

...	
<i>close period</i>	as defined in paragraph 1(a) of the <i>Model Code</i> .
...	
<i>connected person</i>	...
	as defined in section 96B(2) of the <i>Act</i> . (in <i>DTR</i> and <i>LR</i> in relation to a <i>person discharging managerial responsibilities within an issuer</i>) has the meaning given to “person closely associated” in article 3(1)(26) of the <i>Market Abuse Regulation</i> .
...	
<i>dealing</i>	(in accordance with paragraph 2 of Schedule 2 to the <i>Act (Regulated activities)</i>) buying, selling, subscribing for or underwriting <i>investments</i> or offering or agreeing to do so, either as a <i>principal</i> or as an <u>agent</u> , including, in the case of an <i>investment</i> which is a <i>contract of insurance</i> , carrying out the contract.
...	
<u>disclosure guidance</u>	<u>the guidance contained in DTR 1 to 3</u>

<i>disclosure rules requirements</i>	(in accordance with sections 73A(1) and 73A(3) of the Act) rules relating to the disclosure of information in respect of <i>financial instruments</i> which have been admitted to trading on a <i>regulated market</i> or for which a request for <i>admission to trading</i> on such a market has been made <u>articles 17, 18 and 19 of the <i>Market Abuse Regulation</i></u> .
...	
<i>DTR</i>	the Disclosure Rules <u>Guidance</u> and Transparency Rules sourcebook containing the <i>disclosure rules guidance</i> , <i>transparency rules</i> , <i>corporate governance rules</i> and the rules relating to <i>primary information providers</i> .
...	
<i>insider list</i>	a list of persons with access to <i>inside information</i> as required by <i>DTR 2.8.1R</i> .
...	
<u><i>Market Abuse Regulation</i></u>	<u>Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing the <i>Market Abuse Directive</i> and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.</u>
...	
<i>Model Code</i>	the Model Code of <i>directors' dealings in securities</i> set out in LR 9 Annex 1.
...	
<i>prohibited period</i>	as defined by paragraph 1(e) of the <i>Model Code</i> .
...	
<i>trading plan</i>	a written plan between a restricted person and an independent third party which sets out a strategy for the acquisition and/or disposal of <i>securities</i> by a specified person and: (a) specifies the amount of <i>securities</i> to be dealt in and the price at which and the date on which the <i>securities</i> are to be dealt in; or (b) gives discretion to that independent third party to make trading decisions about the amount of

	<p>securities to be dealt in and the price at which and the date on which the securities are to be dealt in; or (c) includes a written formula or algorithm, or computer program, for determining the amount of securities to be dealt in and the price at which and the date on which the securities are to be dealt in.</p>
...	

...

App 2 Annual Financial Report for certain listed companies

App 2.1

...

App 2.1.2

9.8	Annual financial report		
...			
	Additional information		
9.8.6	R	In the case of a <i>listed company</i> incorporated in the <i>United Kingdom</i> , the following additional items must be included in its annual financial report:	
		(1)	a statement setting out all the interests (in respect of which transactions are notifiable to the company under DTR 3.1.2R article 19 of the <i>Market Abuse Regulation</i>) of each <i>person</i> who is a <i>director</i> of the <i>listed company</i> as at the end of the period under review including:
		...	
9.8.6A	G	(1)	The effect of <i>LR 9.8.6R(1)</i> is that a <i>listed company</i> is required to set out a 'snapshot' of the total interests of a <i>director</i> and his or her <i>connected persons</i> , as at the end of the period under review (including certain information to update it as at a date not more than a month before the date of the notice of the annual general meeting). The interests that need to be set out are limited to those in respect of which transactions fall to be notified under the notification requirement for PDMRs in DTR 3.1.2R article 19 of the <i>Market Abuse Regulation</i> . <i>Persons</i> who are <i>directors</i> during, but not at the end of, the period under review need not be included.

		...	
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Annex L

Amendments to the Disclosure Guidance and Transparency Rules sourcebook (DTR)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Introduction

1.1 Application and purpose (Disclosure rules guidance)

...

1.1.1 R ~~The disclosure rules~~ apply as follows:

- (1) ~~DTR 1 and DTR 2 apply to an issuer whose financial instruments are admitted to trading on a regulated market in the United Kingdom or for which a request for admission to trading on a regulated market in the United Kingdom has been made;~~
- (2) ~~DTR 3 applies to an issuer that is incorporated in the United Kingdom:~~
 - (a) ~~whose financial instruments are admitted to trading on a regulated market; or~~
 - (b) ~~for whose financial instruments a request for admission to trading on a regulated market in the United Kingdom has been made;~~
- (3) ~~the following apply to person discharging managerial responsibility, including directors, and connected persons:~~
 - (a) ~~DTR 1.1 and DTR 1.2;~~
 - (b) ~~DTR 1.3.1R—DTR 1.3.2G and DTR 1.3.8R;~~
 - (c) ~~DTR 1.4;~~
 - (d) ~~DTR 1.5.3G; and~~
 - (e) ~~DTR 3; and~~
- (4) ~~DTR 3 applies to a non-EEA state issuer with the United Kingdom as its Home Member State.~~

The disclosure requirements and the disclosure guidance apply to all persons to whom the FCA is obliged to apply the provisions of the Market Abuse Regulation relating to disclosure under article 22 of that Regulation.

Purpose

- 1.1.2 G The purpose of ~~the *disclosure rules* DTR 1, DTR 2 and DTR 3~~ is to implement: provide guidance on aspects of the *disclosure requirements*.
- (1) ~~Article 6 of the *Market Abuse Directive*;~~
 - (2) ~~Articles 2 and 3 of Commission Directive 2003/124/EC; and~~
 - (3) ~~Articles 5 and 6 of Commission Directive 2004/72/EC.~~

FCA performing functions as competent authority

- 1.1.3 G Other relevant parts of Handbook
- [**Note:** Other parts of the *Handbook* that may also be relevant to *persons* to whom ~~the *disclosure rules*~~ the *disclosure requirements* and the *disclosure guidance* apply include *DEPP* (Decision Procedure and Penalties manual) and Chapter 9 of *SUP* (the Supervision manual).]

The following Regulatory Guides are also relevant:

1. The Enforcement Guide (*EG*)
2. [intentionally blank]

[**Note:** A list of *regulated markets* can be found on the *FCA* website.]

1.2 Modifying rules and consulting the FCA

~~Modifying or dispensing with rules~~

- 1.2.1 R (1) ~~The *FCA* may dispense with, or modify, *disclosure rules* in such cases and by reference to such circumstances as it considers appropriate (subject to the terms of directives and the Act).~~
- (2) ~~A dispensation or modification may be either unconditional or subject to specified conditions.~~
- (3) ~~If an issuer, person discharging managerial responsibilities or a connected person has applied for, or been granted, a dispensation or modification, it must notify the *FCA* immediately it becomes aware of any matter which is material to the relevance or appropriateness of the dispensation or modification.~~
- (4) ~~The *FCA* may revoke or modify a dispensation or modification.~~
[deleted]

- 1.2.2 R (1) ~~An application to the FCA to dispense with or modify, a *disclosure rule* must be in writing.~~
- (2) ~~The application must:~~
- (a) ~~contain a clear explanation of why the dispensation or modification is requested;~~
 - (b) ~~include details of any special requirement, for example, the date by which the dispensation or modification is required;~~
 - (c) ~~contain all relevant information that should reasonably be brought to the FCA's attention;~~
 - (d) ~~contain any statement or information that is required by the *disclosure rule* to be included for a specific type of dispensation or modification; and~~
 - (e) ~~include copies of all documents relevant to the application. [deleted]~~

- 1.2.3 G ~~An application to dispense with or modify a *disclosure rule* should ordinarily be made at least five *business days* before the proposed dispensation or modification is to take effect. [deleted]~~

Early consultation with the FCA

- 1.2.4 G ~~An issuer, person discharging managerial responsibilities or connected person should consult with the FCA at the earliest possible stage if they:~~
- (1) ~~are in doubt about how the *disclosure rules requirements* apply in a particular situation; or,~~
 - (2) ~~consider that it may be necessary for the FCA to dispense with or modify a rule within the *disclosure rules*. [deleted]~~

- 1.2.5 G ~~Where a *disclosure rule* refers requirement or the *disclosure guidance* refer to consultation with the FCA, submissions should be made in writing other than in circumstances of exceptional urgency.~~

Address for correspondence

Note: The FCA's address for correspondence in relation to the *disclosure rules requirements* and the *disclosure guidance* is:

Primary Market Monitoring
Enforcement and Markets Oversight Division
 The Financial Conduct Authority
 Canary Wharf
 London E14 5HS

1.3 Information gathering and publication

Information gathering

- 1.3.1 R ~~An issuer, person discharging managerial responsibilities or connected person must provide to the FCA as soon as possible following a request:~~
- (1) ~~any information that the FCA considers appropriate to protect investors or ensure the smooth operation of the market; and~~
 - (2) ~~any other information or explanation that the FCA may require to verify whether the disclosure rules are being and have been complied with. [deleted]~~
- 1.3.2 G ~~In gathering information under DTR 1.3.1R, the FCA may contact the issuer, person discharging managerial responsibilities, connected person or their adviser directly. Telephone calls to and from the FCA may be recorded for regulatory purposes. The FCA may also require the issuer, person discharging managerial responsibilities, connected person or their advisers to provide information in writing.~~

~~FCA may require the publication of information~~

- 1.3.3 R (1) ~~The FCA may, at any time, require an issuer to publish such information in such form and within such time limits as it considers appropriate to protect investors or to ensure the smooth operation of the market.~~
- (2) ~~If an issuer fails to comply with a requirement under paragraph (1) the FCA may itself publish the information (after giving the issuer an opportunity to make representations as to why it should not be published). [deleted]~~

~~Misleading information not to be published~~

- 1.3.4 R ~~An issuer must take all reasonable care to ensure that any information it notifies to a RIS is not misleading, false or deceptive and does not omit anything likely to affect the import of the information. [deleted]~~
- 1.3.5 R ~~An issuer must not combine, in a manner likely to be misleading, a RIS announcement with the marketing of its activities. [Note: Article 2(1) 2003/124/EC] [deleted]~~

Notification when a RIS is not open for business

- 1.3.6 R If an issuer is required to notify information to a RIS at a time when a RIS is not open for business, it ~~must~~ may distribute the information as soon as possible to:
- G
- (1) not less than two national newspapers in the *United Kingdom*;

- (2) two newswire services operating in the *United Kingdom*; and
- (3) a *RIS* for release as soon as it opens.

...

English language

- 1.3.8 R ~~A notification to a *RIS* that is required under the *disclosure rules* must be in English. [deleted]~~

1.4 Suspension of trading

- 1.4.1 R ~~The *FCA* may require the suspension of trading of a *financial instrument* with effect from such time as it may determine if there are reasonable grounds to suspect non-compliance with the *disclosure rules*. [deleted]~~

[Note: article 23(2)(j) of the *Market Abuse Regulation*]

- 1.4.2 R If trading of an *issuer's financial instruments* is suspended, the *issuer*, any G *persons discharging managerial responsibilities* and any *connected person* must continue to comply with all applicable *disclosure rules requirements*.

- 1.4.3 R ~~If the *FCA* has required the suspension of trading of any *financial instruments*, it may impose such conditions on the procedure for lifting the suspension as it considers appropriate. [deleted]~~

- 1.4.4 G Examples of when the *FCA* may require the suspension of trading of a *financial instrument* include:
- (1) if an *issuer* fails to make a ~~*RIS*~~ an announcement as required by the *disclosure rules* *Market Abuse Regulation* within the applicable time-limits which the *FCA* considers could affect the interests of investors or affect the smooth operation of the market; or
 - (2) if there is or there may be a leak of *inside information* and the *issuer* is unwilling or unable to issue an appropriate *RIS* announcement required by article 17 of the *Market Abuse Regulation* within a reasonable period of time.

- 1.4.5 G The decision-making procedures to be followed by the *FCA* when it:
- (1) requires the suspension of trading of a *financial instrument*; or
 - (2) refuses an application by an *issuer* to lift a suspension ~~made under section 96C~~ of trading of a *financial instrument*;

are set out in *DEPP*.

1.5 Fees, ~~market abuse safe harbours~~ and sanctions

...

~~Market abuse safe harbours~~

1.5.2 R Pursuant to section 118A(5) of the *Act*, behaviour conforming with the *disclosure rules* specified below does not amount to market abuse under section 118(1) of the *Act*:

- (1) ~~DTR 1.3.4R (Misleading information not to be published);~~
- (2) ~~DTR 1.3.6R (Notification when a RIS is not open for business);~~
- (3) ~~DTR 2.2.1R (Requirement to disclose *inside information*); and~~
- (4) ~~DTR 2.5.1R (Delaying disclosure). [deleted]~~

Sanctions

1.5.3 G (1) If the *FCA* considers that an *issuer*, a *person discharging managerial responsibilities* or a *connected person* has breached any of the *disclosure rules requirements* it may, subject to the provisions of the *Act*, impose on that *person* a financial penalty or publish a statement censuring that *person*.

...

1A Introduction (Transparency rules)

...

1A.2 Modifying rules and consulting the FCA

...

1A.2.5 G Where a *transparency rule* refers to consultation with the *FCA*, submissions should be made in writing other than in circumstances of exceptional urgency.

Address for correspondence

Note: The *FCA's* address for correspondence in relation to the *disclosure transparency rules* is:

Primary Market Monitoring
Enforcement and Markets Oversight Division
 The Financial Conduct Authority
 Canary Wharf

London E14 5HS

...

2 Disclosure and control of inside information by issuers

2.1 Introduction and purpose

Introduction

2.1.1 G An *issuer* should be aware that matters that fall within the scope of this chapter may also fall within the scope of:

- (1) the market abuse regime set out in ~~section 118 of the Act~~ the *Market Abuse Regulation*;

...

2.1.2 R ~~If an~~ An *issuer* that is involved in a matter which also falls within the scope of the *Takeover Code* ~~it must nevertheless comply with~~ should be mindful of its obligations under ~~this chapter~~ the *Market Abuse Regulation*.

Purpose

2.1.3 G The purpose of this chapter is to:

- (1) promote prompt and fair disclosure of relevant information to the market; and ~~[Note: Recital 24 *Market Abuse Directive*]~~
- (2) ~~set out specific~~ give guidance on circumstances ~~aspects relating to disclosure of such information, including the circumstances allowing delayed disclosure, when an *issuer* can delay public disclosure of *inside information* and requirements to ensure that such information is kept confidential in order to protect investors and prevent insider dealing.~~ ~~[Note: Recital 5 2003/124/EC]~~

2.2 Disclosure of inside information

Requirement to disclose inside information

2.2.1 R ~~An *issuer* must notify a *RIS* as soon as possible of any *inside information* which directly concerns the *issuer* unless *DTR* 2.5.1R applies.~~ ~~[Note: Article 6(1) *Market Abuse Directive*]~~

[Note: see *DTR* 6.3.2R, regarding the disclosure of *inside information*]

2.2.1A EU [article 17(1) of the *Market Abuse Regulation*]

2.2.2 R ~~An *issuer* will be deemed to have complied with *DTR* 2.2.1R where, upon the coming into existence of a set of circumstances or the occurrence of an~~

event, albeit not yet formalised, the *issuer* notified a *RIS* as soon as was possible. [~~Note: Article 2(2) 2003/124/EC~~] [~~deleted~~]

Identifying inside information

...

- 2.2.4 G (1) ~~In determining the likely price significance of the information an *issuer* should assess whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions and would therefore be likely to have a significant effect on the price of the *issuer's financial instruments* (the reasonable investor test). [~~Note: Article 1(2) 2003/124/EC~~] [~~Note: article 7(4) of the *Market Abuse Regulation*~~]~~
- (2) In determining whether information would be likely to have a significant effect on the price of *financial instruments*, an *issuer* should be mindful that there is no figure (percentage change or otherwise) that can be set for any *issuer* when determining what constitutes a significant effect on the price of the *financial instruments* as this will vary from *issuer* to *issuer*.
- 2.2.5 G ~~The reasonable investor test requires an~~ An *issuer* may wish to take account of the following factors when considering whether the information in question would be likely to be used by a reasonable investor as part of the basis of his investment decisions:
- (1) ~~to take into account that~~ the significance of the information in question will vary widely from *issuer* to *issuer*, depending on a variety of factors such as the *issuer's* size, recent developments and the market sentiment about the *issuer* and the sector in which it operates; and
- (2) ~~to assume~~ the likelihood that a reasonable investor will make investment decisions relating to the relevant *financial instrument* to maximise his economic self interest.
- 2.2.6 G It is not possible to prescribe how the reasonable investor test will apply in all possible situations. Any assessment ~~should~~ may need to take into consideration the anticipated impact of the information in light of the totality of the *issuer's* activities, the reliability of the source of the information and other market variables likely to affect the relevant *financial instrument* in the given circumstances. However, information which is likely to be considered relevant to a reasonable investor's decision includes information which affects:
- (1) the assets and liabilities of the *issuer*;
- (2) the performance, or the expectation of the performance, of the *issuer's* business;

- (3) the financial condition of the *issuer*;
- (4) the course of the *issuer's* business;
- (5) major new developments in the business of the *issuer*; or
- (6) information previously disclosed to the market. [~~Note: Recital 1 2003/124/EC~~]

...

- 2.2.8 G The *directors* of the *issuer* should carefully and continuously monitor whether changes in the circumstances of the *issuer* are such that an announcement obligation has arisen under ~~this chapter~~ article 17 of the *Market Abuse Regulation*.

When to disclose inside information

- 2.2.9 G (1) ~~Subject to the limited ability to delay release of *inside information* to the public provided by DTR 2.5.1R, an *issuer* is required to notify, via a *RIS*, all *inside information* in its possession as soon as possible. [deleted]~~

...

- (4) An *issuer* that is in any doubt as to the timing of announcements required by ~~this chapter~~ under the *Market Abuse Regulation* should consult the *FCA* at the earliest opportunity.

Communication with third parties

- 2.2.10 G The *FCA* is aware that many *issuers* provide unpublished information to third parties such as analysts, employees, credit rating agencies, finance providers and major shareholders, often in response to queries from such parties. The fact that information is unpublished does not in itself make it *inside information*. However, unpublished information which amounts to *inside information* is only permitted to be disclosed in accordance with ~~the *disclosure rules* and an *issuer* must ensure that at all times it acts in compliance with this chapter~~ the requirements of the *Market Abuse Regulation*.

2.3 Publication of information on internet site

[~~Note: article 17(1) of the *Market Abuse Regulation*, in relation to the period for which an *issuer* must maintain on its website *inside information* which it is required to disclose publicly; article 17(9) of the *Market Abuse Regulation*, in relation to the maintenance of such information by *issuers* with *financial instruments admitted to trading on a SME Growth Market*.]~~

- 2.3.1 R ~~*DTR 2.3.2R–DTR 2.3.5R* apply to an *issuer* that has an internet site. [deleted]~~
- 2.3.2 R ~~*Inside information* announced via a *RIS* must be available on the *issuer's* internet site by the close of the *business day* following the day of the *RIS* announcement. [deleted]~~
- 2.3.3 R ~~An *issuer* must ensure that *inside information* is notified to a *RIS* before, or simultaneously with, publication of such *inside information* on its internet site. [deleted]~~
- 2.3.4 G ~~To ensure fast access and correct and timely assessment of the information by the public, an *issuer* should not publish *inside information* on its internet site as an alternative to its disclosure via a *RIS*. [deleted]~~
- 2.3.5 R ~~An *issuer* must, for a period of one year following publication, post on its internet sites all *inside information* that it is required to disclose via a *RIS*. [Note: Article 6(1) Market Abuse Directive] [deleted]~~

2.4 Equivalent information

- 2.4.1 R ~~Without prejudice to its obligations under *DTR 2.2.1R*, an *issuer* must take reasonable care to ensure that the disclosure of *inside information* to the public is synchronised as closely as possible in all jurisdictions in which it has:~~
- ~~(1) *financial instruments admitted to trading on a regulated market;*~~
 - ~~(2) *requested admission to trading of its financial instruments on a regulated market; or*~~
 - ~~(3) *financial instruments listed on any other overseas stock exchange.* [Note: Article 2(4) 2003/124/EC] [deleted]~~
- 2.4.2 R ~~If the rules of another *regulated market* or *overseas* stock exchange require an *issuer* to disclose *inside information* at a time when a *RIS* is not open for business it should disclose the information in accordance with *DTR 1.3.6R* at the same time as it is released to the public in the other jurisdiction. [deleted]~~

2.5 Delaying disclosure of inside information

Delaying disclosure

- 2.5.1 R ~~An *issuer* may, under its own responsibility, delay the public disclosure of *inside information*, such as not to prejudice its legitimate interests provided that:~~

- (1) ~~such omission would not be likely to mislead the public;~~
- (2) ~~any person receiving the information owes the issuer a duty of confidentiality, regardless of whether such duty is based on law, regulations, articles of association or contract; and~~
- (3) ~~the issuer is able to ensure the confidentiality of that information.~~
~~[Note: Article 6(2) and (3) Market Abuse Directive] [deleted]~~

2.5.1A EU [article 17(4), (5) and (8) of the Market Abuse Regulation]

Legitimate interests and when delay will not mislead the public

...

2.5.3 R For the purposes of ~~applying DTR 2.5.1R~~, article 17 of the Market Abuse
G Regulation, legitimate interests may, in particular, relate to the following
non-exhaustive circumstances:

...

- (2) decisions taken or contracts made by the management body of an *issuer* which need the approval of another body of the *issuer* in order to become effective, where the organisation of such an *issuer* requires the separation between these bodies, provided that a public disclosure of the information before such approval together with the simultaneous announcement that this approval is still pending would jeopardise the correct assessment of the information by the public. ~~[Note: Article 3(1) 2003/124/EC]~~

2.5.4 G (1) ~~DTR 2.5.3R(1)~~ DTR 2.5.3G(1) does not ~~allow~~ envisage that an
issuer to will:

- (a) delay public disclosure of the fact that it is in financial difficulty or of its worsening financial condition and is limited to the fact or substance of the negotiations to deal with such a situation. ~~An issuer cannot; or~~
- (b) delay disclosure of inside information on the basis that its position in subsequent negotiations to deal with the situation will be jeopardised by the disclosure of its financial condition.
- (2) The legitimate interest described in ~~DTR 2.5.3R(2)~~ DTR 2.5.3G(2) refers to an *issuer* with a dual board structure (e.g. a management board and supervisory board if and to the extent that decisions of the management board require ratification by the supervisory board). An *issuer* with a unitary board structure would be unable to take advantage of ~~DTR 2.5.3R(2)~~ DTR 2.5.3G(2) and, therefore, ~~DTR 2.5.3R(2)~~ DTR 2.5.3G(2) should only be available to a very limited number of *issuers* in the

United Kingdom.

2.5.5 G An *issuer* should not be obliged to disclose impending developments that could be jeopardised by premature disclosure. Whether or not an *issuer* has a legitimate interest which would be prejudiced by the disclosure of certain *inside information* is an assessment which must be made by the *issuer* in the first instance. However, the *FCA* considers that, other than in relation to impending developments or matters described in ~~*DTR 2.5.3R*~~ *DTR 2.5.3G* or ~~*DTR 2.5.5AR*~~ article 17(5) of the *Market Abuse Regulation*, there are unlikely to be other circumstances where delay would be justified.

2.5.5A R ~~An *issuer* may have a legitimate interest to delay disclosing *inside information* concerning the provision of liquidity support by the Bank of England or by another central bank to it or to a member of the same group as the *issuer*.~~ ~~[deleted]~~

[**Note:** article 17(5) of the *Market Abuse Regulation*]

Selective disclosure

2.5.6 R ~~Whenever an *issuer* or a person acting on his behalf or for his account discloses any *inside information* to any third party in the normal exercise of his employment, profession or duties, the *issuer* must make complete and effective public disclosure of that information via a *RIS*, simultaneously in the case of an intentional disclosure and as soon as possible in the case of a non-intentional disclosure, unless *DTR 2.5.1R* applies.~~ [**Note:** Article 6(3) *Market Abuse Directive*] ~~[deleted]~~

2.5.6A EU [article 17(8) of the *Market Abuse Regulation*]

2.5.7 G (1) ~~When an *issuer* is permitted to delay public disclosure of *inside information* in accordance with *DTR 2.5.1R* it may selectively disclose that information to persons owing it a duty of confidentiality.~~ ~~[deleted]~~

(2) ~~Such selective disclosure may be made to another person if it is in the normal course of the exercise of his employment, profession or duties. However, selective~~ Selective disclosure cannot be made to any person simply because they owe the *issuer* a duty of confidentiality. For example, an *issuer* contemplating a major transaction which requires shareholder support or which could significantly impact its lending arrangements or credit-rating may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency as long as the recipients are bound by a duty of confidentiality. An *issuer* may, depending on the circumstances, be justified in disclosing *inside information* to certain categories of recipient in addition to those employees of the *issuer* who require the information to perform their functions. The categories of recipient may include, but are not limited to, the following:

...

- 2.5.8 G Selective disclosure to any or all of the *persons* referred to in *DTR 2.5.7G* may not be justified in every circumstance where an *issuer* delays disclosure in accordance with ~~*DTR 2.5.1R*~~ article 17(4) and (5) of the *Market Abuse Regulation*.
- 2.5.9 G An *issuer* should bear in mind that the wider the group of recipients of *inside information* the greater the likelihood of a leak which will trigger full public disclosure of the information ~~via a *RIS* under *DTR 2.6.2R*~~ article 17(8) of the *Market Abuse Regulation*.

2.6 Control of inside information

Denying access to inside information

- 2.6.1 ~~R~~ G An *issuer* ~~must~~ should establish effective arrangements to deny access to *inside information* to *persons* other than those who require it for the exercise of their functions within the *issuer*. [~~Note: Article 3(2) 2003/124/EC~~]

Breach of confidentiality

- 2.6.2 R ~~An *issuer* must have in place measures which enable public disclosure to be made via a *RIS* as soon as possible in case the *issuer* is not able to ensure the confidentiality of the relevant *inside information*. [Note: Article 3(2) 2003/124/EC] [deleted]~~
- 2.6.2A EU [article 17(7) of the *Market Abuse Regulation*]
- 2.6.3 G If an *issuer* is relying on ~~*DTR 2.5.1R*~~ article 17(4) or 17(5) of the *Market Abuse Regulation* to delay the disclosure of *inside information* it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence. Such a holding announcement should include the details set out in *DTR 2.2.9G(2)*.
- 2.6.4 G We recognise that an *issuer* may not be responsible for breach of ~~*DTR 2.5.1R*~~ article 17(4) or 17(5) of the *Market Abuse Regulation* if a recipient of *inside information* under ~~*DTR 2.5.1R*~~ article 17 of the *Market Abuse Regulation* breaches his duty of confidentiality.

2.7 Dealing with rumours

- 2.7.1 G Where there is press speculation or market rumour regarding an *issuer*, the *issuer* should assess whether a disclosure obligation arises under ~~*DTR 2.2.1R*~~ article 17(1) of the *Market Abuse Regulation*. To do this an *issuer* will need to carefully assess whether the speculation or rumour has given

rise to a situation where the *issuer* has *inside information*.

- 2.7.2 G (1) ~~Where press speculation or a market rumour is largely accurate and the information underlying the rumour is *inside information* then it is likely that the *issuer* can no longer delay disclosure in accordance with *DTR 2.5.1R* as it is no longer able to ensure the confidentiality of the *inside information*.~~
- (2) ~~An *issuer* that finds itself in the circumstances described in paragraph (1) should disclose the *inside information* in accordance with *DTR 2.6.2R* as soon as possible. [deleted]~~

[Note: article 17(7) of the *Market Abuse Regulation*]

- 2.7.3 G The knowledge that press speculation or market rumour is false ~~is not likely to~~ may not amount to *inside information*. ~~Even if~~ If it does amount to *inside information*, the *FCA* expects that ~~in most of those~~ there may be cases ~~where~~ an *issuer* would be able to delay disclosure ~~(often indefinitely)~~ in accordance with ~~*DTR 2.5.1R*~~ article 17(4) or 17(5) of the *Market Abuse Regulation*.

2.8 Insider lists

Requirement to draw up insider lists

- 2.8.1 R ~~An *issuer* must ensure that it and *persons* acting on its behalf or on its account draw up a list of those *persons* working for them, under a contract of employment or otherwise, who have access to *inside information* relating directly or indirectly to the *issuer*, whether on a regular or occasional basis. [Note: Article 6(3) *Market Abuse Directive*] [deleted]~~

2.8.1A EU [article 18(1) of the *Market Abuse Regulation*]

Providing insider lists to the *FCA* on request

- 2.8.2 R ~~If so requested, an *issuer* must provide to the *FCA* as soon as possible an *insider list* that has been drawn up in accordance with *DTR 2.8.1R*. [Note: Article 6(3) *Market Abuse Directive*] [deleted]~~

2.8.2A EU [article 18(1)(c) of the *Market Abuse Regulation*]

Contents of insider lists

- 2.8.3 R ~~Every *insider list* must contain the following information:~~
- ~~(1) the identity of each *person* having access to *inside information*;~~
 - ~~(2) the reason why such *person* is on the *insider list*; and~~
 - ~~(3) the date on which the *insider list* was created and updated. [Note:~~

Article 5(2) 2004/72/EC [deleted]

2.8.3A EU [article 18(3) of the *Market Abuse Regulation*]

Maintenance of insider lists

2.8.4 R ~~An *insider list* must be promptly updated:~~

- (1) ~~when there is a change in the reason why a *person* is already on the list;~~
- (2) ~~when any *person* who is not already on the list is provided with access to *inside information*; and~~
- (3) ~~to indicate the date on which a *person* already on the list no longer has access to *inside information*. [Note: Article 5(3) 2004/72/EC] [deleted]~~

2.8.4A EU [article 18(4) of the *Market Abuse Regulation*]

2.8.5 R ~~An *issuer* must ensure that every *insider list* prepared by it or by *persons* acting on its account or on its behalf is kept for at least five years from the date on which it is drawn up or updated, whichever is the latest. [Note: Article 5(4) 2004/72/EC] [deleted]~~

2.8.5A EU [article 18(5) of the *Market Abuse Regulation*]

2.8.6 G ~~An *issuer* and not its advisers or agents is ultimately responsible for the maintenance of *insider lists*. [deleted]~~

[Note: article 18(2) of the *Market Abuse Regulation*]

2.8.7 G ~~For the purposes of *DTR 2.8.1R* an *issuer* should maintain a list of:~~

- (1) ~~its own employees that have access to *inside information*;~~
- (2) ~~its principal contacts at any other firm or *company* acting on its behalf or on its account with whom it has had direct contact and who also have access to *inside information* about it. [deleted]~~

[Note: article 18(1)(a) of the *Market Abuse Regulation*; article 18(2) of the *Market Abuse Regulation*]

2.8.8 G ~~For the purposes of *DTR 2.8.1R* it is not necessary for an *issuer* to maintain a list of all the individuals working for another firm or *company* acting on its behalf or its account where it has:~~

- (1) ~~recorded the name of the principal contact(s) at that firm or *company*;~~
- (2) ~~made effective arrangements, which are likely to be based in contract, for that firm or *company* to maintain (as set out in *DTR*~~

~~2.8.1R, DTR 2.8.3R – DTR 2.8.5R and DTR 2.8.10R) its own list of persons both acting on behalf of the issuer and with access to inside information on the issuer; and~~

- ~~(3) made effective arrangements for that firm or company to provide a copy of its list to the issuer as soon as possible upon request. [deleted]~~

Acknowledgement of legal and regulatory duties

- 2.8.9 R ~~An issuer must take the necessary measures to ensure that its employees with access to inside information acknowledge the legal and regulatory duties entailed (including dealing restrictions in relation to the issuer's financial instruments) and are aware of the sanctions attaching to the misuse or improper circulation of such information. [Note: Article 5(5) 2004/72/EC and Article 3(2) 2003/124/EC] [deleted]~~
- 2.8.9A EU [article 18(2) of the Market Abuse Regulation]
- 2.8.10 R ~~An issuer must ensure that any person that:~~
- ~~(1) is acting on its behalf or on its account; and~~
- ~~(2) has drawn up an insider list in accordance with DTR 2.8.1R;~~
- ~~has taken the necessary measures to ensure that every person whose name is on the insider list acknowledges the legal and regulatory duties entailed and is aware of the sanctions attaching to the misuse or improper circulation of such information. [Note: Article 5(5) 2004/72/EC] [deleted]~~
- 2.8.10A EU [article 18(2) of the Market Abuse Regulation]

3 Transactions by persons discharging managerial responsibilities and their connected persons

3.1

Purpose

- 3.1.1 G This chapter ~~sets out~~ contains guidance on certain of the notification obligations of *issuers, persons discharging managerial responsibilities and their connected persons* under article 19 of the Market Abuse Regulation, in respect of transactions conducted on their own account in shares or debt instruments of the issuer, or derivatives or any other *financial instrument* relating to those *shares*.

Notification of transactions by persons discharging managerial responsibilities

- 3.1.2 R ~~Persons discharging managerial responsibilities and their connected persons, must notify the issuer in writing of the occurrence of all~~

~~transactions conducted on their own account in the *shares* of the *issuer*, or derivatives or any other *financial instruments* relating to those *shares* within four *business days* of the day on which the transaction occurred. [Note: Article 6(4) *Market Abuse Directive* and Article 6(1) 2004/72/EC] [deleted]~~

3.1.2-A EU [article 19(1) of the *Market Abuse Regulation*]

3.1.2A G (1) ~~The Act provides that an individual who is not a *director* can still be a *person discharging managerial responsibilities* in relation to an issuer if they are a "senior executive of such an issuer" and they meet the criteria set out in the Act. [deleted]~~

(2) An individual may be a "senior executive of such an issuer", as defined in article 3(1)(25)(b) of the *Market Abuse Regulation*, irrespective of the nature of any contractual arrangements between the individual and the *issuer* and notwithstanding the absence of a contractual arrangement between the individual and the *issuer*, provided the individual has regular access to inside information relating, directly or indirectly, to the *issuer* and has power to make managerial decisions affecting the future development and business prospects of the *issuer*.

3.1.2B G The threshold above which the obligations under article 19(1) of the *Market Abuse Regulation* will apply to the transactions of a particular *person discharging managerial responsibilities* or *connected person* is set out in article 19(8) of the *Market Abuse Regulation*.

3.1.3 R The notification required by ~~DTR 3.1.2R~~ must contain the following information:

- (1) ~~the name of the *person discharging managerial responsibilities* within the *issuer*, or, where applicable, the name of the *person connected with such a person*;~~
- (2) ~~the reason for responsibility to notify;~~
- (3) ~~the name of the relevant *issuer*;~~
- (4) ~~a description of the *financial instrument*;~~
- (5) ~~the nature of the transaction (e.g. acquisition or disposal);~~
- (6) ~~the date and place of the transaction; and~~
- (7) ~~the price and volume of the transaction. [Note: Article 6(3) 2004/72/EC] [deleted]~~

3.1.3A EU [article 19(6) of the *Market Abuse Regulation*]

Notification of transactions by issuers to a RIS

- 3.1.4 R (1) ~~An issuer must notify a RIS of any information notified to it in accordance with:~~
- (a) ~~DTR 3.1.2R (Notification of transactions by persons discharging managerial responsibilities);~~
 - (b) ~~[deleted]~~
 - (c) ~~section 793 of the Companies Act 2006 (Notice requiring information about interests in shares) to the extent that it relates to the interests of a director or, as far as the issuer is aware, any connected person ; and~~
 - (d) ~~paragraph 26 of the Model Code.~~
- (2) ~~The notification to a RIS described in paragraph (1) must be made as soon as possible, and in any event by no later than the end of the business day following the receipt of the information by the issuer. [deleted]~~

[Note: article 19 (3) of the Market Abuse Regulation]

- 3.1.5 R ~~The notification required by DTR 3.1.4R must include the information required by DTR 3.1.3R together with the date on which the notification was made to the issuer. [deleted]~~

[Note: article 19 (6) of the Market Abuse Regulation]

- 3.1.6 R ~~If an issuer makes the appropriate notification to the RIS under DTR 3.1.4R(1)(a), a further notification to an RIS is not required in the event of it receiving information regarding the same dealing in a notification under section 793 of the Companies Act 2006. [deleted]~~
- 3.1.7 G ~~An issuer may use the form entitled Notification of Transactions of Directors, Persons Discharging Managerial Responsibility or Connected Persons to make the notification required by DTR 3.1.4R. [deleted]~~
- 3.1.8 R ~~An issuer with financial instruments admitted to trading on a regulated market in the United Kingdom that does not fall within DTR 1.1.1R(2) or DTR 1.1.1R(4), must notify equivalent information to that required by DTR 3.1.4R and DTR 3.1.5R to a RIS as soon as possible after the issuer becomes aware of the information. [deleted]~~

Annex M

Amendments to the Service Companies Guide (SERV)

In this Annex, underlining indicates new text and striking through indicates deleted text.

1 Handbook requirements for service companies

...

1.2 Part of the Handbook applicable to service companies

...

1.2.2 G Parts of the Handbook applicable to service companies

This table belongs to *SERV 1.2.1G*

	Part of Handbook	Applicability to service companies
...		
Business standards	...	
	Market Conduct sourcebook (<i>MAR</i>)	<i>MAR 1</i> (Code of market conduct <u>Market Abuse</u>), <i>MAR 2</i> (price stabilising rules) (<u>Stabilisation</u>) and <i>MAR 4</i> (Endorsement of the Takeover Code) apply to <i>service companies</i> . <i>MAR 5</i> (Multilateral Trading Facilities), <i>MAR 6</i> (Systematic Internalisers) and <i>MAR 7</i> (Disclosure of information on certain trades undertaken outside a regulated market or <i>MTF</i>) do not apply to <i>service companies</i> .
	...	
...		

Annex N

Amendments to the General guidance on Benchmark Submission and Administration (BENCH)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Parts of the Handbook applicable to benchmark submission activity and benchmark administration activity

...

- 2.1.2 G Parts of the Handbook applicable to the *regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark*.

	Part of the Handbook	Applicability to the <i>regulated activities of providing information in relation to a specified benchmark and administering a specified benchmark</i>
...		
Business Standards	Market Conduct Sourcebook (MAR)	MAR 1 (Code of Market Conduct) <u>(Market Abuse)</u> , MAR 2 (Stabilisation) and MAR 8 (Benchmarks) apply.
...		

Annex O

Amendments to the Financial Crime Guide (FC)

In this Annex, underlining indicates new text and striking through indicates deleted text.

Annex 1:

Common terms

This annex provides a list of common and useful terms related to financial crime. It also includes references to some key legal provisions. It is for reference purposes and is not a list of ‘defined terms’ used in the Guide. This annex does not provide guidance on rules or amend corresponding references in the Handbook’s Glossary of definitions.

Term	Meaning
...	
Suspicious Transaction Report (STR)	When applied to money laundering reporting, the term ‘Suspicious Transaction Report’ is used commonly outside of the UK in place of ‘Suspicious Activity Report’. Both terms have substantially the same meaning. In the UK, the term ‘Suspicious Transaction Report’ (STR) tends to be used in connection with market abuse reporting.
<u>Suspicious Transaction and Order Report (STOR)</u>	<u>Following implementation of the <i>Market Abuse Regulation</i>, in the EU the term ‘Suspicious Transaction and Order Report’ (STOR) is used in connection with market abuse reporting.</u>
...	

Financial Conduct Authority



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© Financial Conduct Authority 2013
25 The North Colonnade Canary Wharf
London E14 5HS
Telephone: +44 (0)20 7066 1000
Website: www.fca.org.uk
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