



## FCA Market Abuse Regulation (MAR) Briefing

### Introduction

Europe's Market Abuse Regulation is due to come into force across the UK on 3rd July 2016. The aim of the regulation is to "increase market integrity and investor protection, while ensuring a single rulebook and level playing field across the EU; increasing the attractiveness of securities markets for capital raising."

Many elements of the Market Abuse Directive have been copied across and it is considered largely the same as the MAB regime that currently operates in the UK. However, the scope of MAR is wide, encompassing more instruments, venues and participants than the current regime. The key differences are:

- Broader scope;
- New obligations for Emissions Allowance Market Participants (EAMPs);
- Broadening of main offence to cover attempted benchmarks and spot commodity contracts;
- New territory for insider dealing offence;
- Extension of STOR (Suspicious Transaction and Order Reports) regime;
- New framework for market soundings; and
- Insider lists – specified formats and specific guidelines on how to maintain them.

The FCA has produced a one-minute guide to MAR and published a MAR briefing. Below is a link to the relevant page on the FCA's website and a key-point summary of this briefing.

<http://www.fca.org.uk/firms/markets/market-abuse>

### Key messages

- MAR relies on MiFID II for key definitions, e.g. financial instruments and trading venues. Therefore until MiFID II is in force, MAR will rely on MiFID definitions.
- MAR – requirement for procedures to detect MAB.
- Key changes - scope:
  - Increased scope of instruments traded on all Multilateral Trading Facilities (MTFs) and organised trading facilities (the latter introduced by MiFID II).
  - Also, financial instruments whose price depends on the above and other new financial instruments.
  - Behaviour in relation to benchmarks to be included, with a broad definition of benchmark.



- Key changes – offences and disclosure regime:
  - Widening of manipulation offence – to include orders and behaviours to manipulate market.
  - New offence of attempted market manipulation.
  - Manipulation of benchmarks – transmitting or inputting false/misleading information in relation to benchmarks.
  - Manipulation will apply to spot commodity contracts – in relation to either spot or derivative where there is an impact on the other.
- Inside information:
  - Classic definition remains the same and reasonable investor test included.
  - Commodities definition widened.
  - New definitions for emission allowances and auctioned products. MAR doesn't make reference to price sensitive information of the issuer but the instrument itself
- Insider dealing – new areas caught:
  - Submitting/modifying/withdrawing a bid in relation to auctions of emissions allowances; and
  - Cancelling/amending orders after being in possession of inside information.
- Public disclosure (article 17):
  - Now includes EAMPs above a certain threshold of emissions.
  - Possibility to delay for financial institutions where disclosure may risk financial stability but consent of regulator required beforehand. FCA needs consent from central bank to authorise delay.
- Market Soundings:
  - New framework provides for legitimate disclosures as long as certain steps followed:
    - Assess nature of information before being disclosed and retain written record of assessment;
    - Adviser will need to inform recipient of duties and obligations of receiving inside information;
    - Obtain consent from recipient to give inside information; and
    - Record keeping requirements for before and after disclosure.
  - ESMA is to provide script to be used in course of soundings.
- Prevention and detection of MAB (article 16):
  - Reporting of suspicious orders as well as transactions - STORs instead of STRs.
  - Those subject to reporting requirements extended to include operators of trading venues.
  - Increased scope in relation to financial instruments, venues and markets.
  - Firms should ensure surveillance systems take account of increased scope.
  - Insider lists: to enable the FCA to determine who had access to what information and when.
  - Issuer/EAMP required to make information notified public.
  - Reduction in timeframe to make information public.



- Where third party used to create list the issuer/EAMP retains full responsibility for compliance.
- Lists should be retained for 5 years since last update.
- Concession on growth markets included.
- Standard template for lists - all market participants to use prescribed data fields and guidelines on how it should be updated and maintained on an ongoing basis.
- Managers' transactions:
  - More managers captured, because all MTFs caught;
  - Reduction in timeframe to make information public from 5 business days to 3;
  - Contains threshold, only those > €5k in any year or in one transaction subject to rule.
  - ESMA to provide the exact details of those instruments caught and the standard template for how disclosure should be made.
- Investment recommendations:
  - Broadening of scope – from relevant persons to any person producing or disseminating investment recommendations.
  - Ensures information is objectively presented and any conflicts of interest are disclosed or indicated. More detail on this expected in level 2.
- Exemptions/safe harbours: protection from allegation:
  - Trading in own as part of buyback programs and stabilisations can be legitimate in certain circumstances but must meet certain criteria and trading conditions.
  - Includes disclosure and reporting obligations.
- Whistleblowing and sanctions:
  - Harmonised approach regarding whistleblowers to encourage them to come forward in relation to confidentiality of whistleblower and reported persons.
  - No major changes for the UK in this area.

### Next steps

MAR is currently undergoing finalisation of level 2 details, which is being led by ESMA and draft technical standards are due to be submitted by 3rd July 2015. In Q3 this year, the FCA will consult on changes to its Handbook, which may or may not involve the deletion of Code of Market Conduct - the FCA is currently ascertaining whether this will be necessary.

On 3rd July 2016, AMR and level 2 texts will apply across the UK and on 3 January 2017 MiFID II provisions within MAR will apply. The FCA urges firms to start preparing now and has said more FCA briefings and publications concerning MAR will be published in due course.

*This note is intended as a summary only. It is not full and/or firm specific advice and it is the responsibility of each regulated firm to ensure they fully consider relevant FCA publications.*

*For further information, please contact Gem Compliance Consulting Ltd.*