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Submitted by Email: cp15-35@fca.org.uk

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Dear Sir

RE: Consultation Paper 15/35: Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation

The Investment Association welcomes the opportunity to respond to the joints FCA's consultation.

The Investment Association represents the UK asset management industry. Our members manage over £5 trillion in the UK of assets on behalf of UK, European and international clients, both retail and institutional. Collectively, our members make up the second-largest asset management industry in the world.

We note, with disappointment, that yet again, the industry is in the position of commenting on draft FCA rules which are proposed on the basis of non-final Level 2 legislation and in the absence of Level 3 Guidelines. While we recognise the reasons for this, it provides a degree of uncertainty that, this close to implementation of the rules, is extremely problematic for regulated firms.

Below, we have provided our responses to the questions raised in your paper.

Yours

Adrian Hood

Regulatory and Financial Crime Expert

Consultation Paper 15/35: Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation

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?

No. The IA considers that issuers should be required to disclose full reasons for all delayed disclosures to the FCA.

It is important that issuers carefully consider all delays in disclosing inside information before they delay disclosure. Issuers should ensure that they have, for every instance of such a delay, a fully worked through explanation of how all the necessary conditions were met. They should not, otherwise, allow such a delay to occur.

It is in the interest of investors that issuers make full disclosure of all inside information without delay. This enables investors to make fully informed decisions regarding the issuers stock. Given that information is only inside information if its disclosure is likely to have a significant effect on the price of the issuer's financial instruments it is important that non-disclosure is tightly controlled.

We would also suggest that if delays in disclosure were to be a common occurrence in an issuer, that this would be an issue of significant concern, not just to the regulator, but to investors in that issuer.

As an issuer would need to notify the delay to the FCA after the event, and they would have to have formally considered whether the delay met all the conditions before they allowed the delay to consider, there would be no extra burden on issuers to append the rationale to the notification.

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?

No comment.

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?

As stated in our answer to Q1 we consider that as an issuer would need to notify the delay to the FCA after the event, and they would have to have formally considered whether the delay

met all the conditions before they allowed the delay to consider, there would be no extra burden on issuers to append the rationale to the notification.

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

We would support the application of the lower threshold of €5,000 to this situation. Would PDMRs be expected to keep an eye on the exchange rate, so as to be aware of the sterling figure?

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.

No comment.

Chapter 4: Proposed changes to the Handbook

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

We agree with the FCA to retain as much as possible of the CoMC (MAR 1). As a general point, will the references to EU MAR be in the form of active hyperlinks?

The cross reference in the application note seems incorrect. Should it, perhaps, be directing people to MAR 1.1.6G?

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.

MAR 1.2.8G seems to go beyond the scope of EU MAR Article 8(4). Article 8(4) states that it applies to any person who possesses inside information where they ought to know that it is inside information. MAR 1.2.8G adds the condition that they know or ought to know that they received the inside information from an insider.

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.

We consider that MAR 1.3.5E could be retained if amended appropriately. This would help to clarify that Chinese walls are compatible with Article 9(1) of 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.

No comment

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.

We support the clarification provided by retaining a modified MAR 1.6.3G

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 Article 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.

As long as the signposts are accurate, sufficiently specific and comprehensive, then we agree with the proposed approach. Again we would suggest that it would be helpful if the signposts were active hyperlinks to the relevant legislation.

Would the signposts provided by the FCA be in the form of hyperlinks? This would make it easier, and thus more likely, for firms to follow the signpost through to the final rules that they are expected to follow. While this may entail some minor extra work for the FCA in maintaining these links it would increase the utility of the rulebook for regulated firms.

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.

EU MAR Article 12(5) and paragraph 4.51 refer to delegated acts providing further detail, but the signpost to MAR 1.7.2 refers to an RTS.

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.

The proposed amendments seem reasonable.

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.

No comment

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.

No comments

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.

No comments

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.

No comments

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.

No comments

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.

No comment

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.

Given that the scope of SYSC 18 is considerably narrower than that of the requirement under EU MAR Article 32(3) it would seem that the proposed amendment to the FCA Handbook would only apply to the narrower scope firms.

Was the FCA proposing the inclusion of any signpost where the other firms, not caught by SYSC 18, would be likely to see it?

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.

The new proposed text for COBS 12.4.11G has been attached to the old COBS 12.4.12G by mistake.

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.

We note that the application of SUP 15.10 is only set out by reference to 'persons subject to article 16'.

Article 16(2) applies to 'persons professionally arranging or executing transactions' and the draft RTS in Annex XI applies only to those persons subject to Article 16 of the Level 1 text. Referring to the definition of 'person professionally arranging or executing transactions' in MAR Article 3(1)(28) this is defined as 'a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, financial instruments'. Portfolio management is a separate MiFID activity to those named and caught by MAR Article 16, and is therefore not caught in the scope of the requirements to establish systems to detect and report suspicious orders or transactions.

The consistency with which the MAR text, ESMA in their Final Report, and the draft RTS uses the phrase 'persons professionally arranging or executing transactions' makes it clear that this is not an accidental oversight, but a deliberate intention of the legislators. It is disappointing that ESMA's Final Report did not specify that these requirements (with the need for onerous and expensive automated surveillance systems) would not, therefore, apply to the MiFID II service of portfolio management. It would be greatly appreciated if this oversight could be remedied by the FCA in their final text for SUP 15.10 or in its Policy Statement.

Even where the requirements for surveillance systems do apply, SUP 15.10 should state that the priority is that the system is effective and proportionate. There is no absolute requirement that it be automated, and for many smaller or simpler firms non-automated, but effective, systems will be compliant.

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.

Would not DTR 1.1.3G be a good place to draw the attention of those to whom it applies to MAR and the EU MAR?

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.

No comment

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.

We would support the retention, in some form, of DTR 1.3.4. It is important that issuers remain obliged not to make RIS announcement containing information which is misleading, false or deceptive.

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.

No comment

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.

No comment

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.

No comment

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.

No comment

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.

No comment

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.

No comment

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.

While we have no comment on the necessary changes proposed by the FCA to DTR 2.5 we would refer to our answer to Q1, stressing the need for all such delayed disclosures to be notified and justified to the FCA, and the expectation that these would be rare and exceptional events, rather than becoming normalised.

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.

We agree with the conversion of DTR 2.1.6 from a rule to guidance. It is important that this remains clear and on the face of the rulebook.

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.

The proposed text of DTR 2.7.3 does not seem consistent with EU MAR Article 17(7). The Regulation allows for delayed disclosure, in paragraphs 4 and 5, but in paragraph 7 it states that if the inside information seems to have leaked, as indicated by rumours, then it should 'disclose the inside information to the public as soon as possible'.

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.

No comment

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.

We have no comment on the proposed changes, but, as stated in our answer to Q4, we support the FCA's proposed use of the standard threshold. We would not support the FCA adopting the alternative, higher, threshold, as set out in EU MAR Article 19(9).

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?

For many years, the Model Code has provided an appropriate restrictions on persons discharging managerial responsibilities, so that they do not abuse or place themselves under suspicion of abusing inside information. The Model Code has been beneficial for directors, companies and investors, so that all market participants can understand the approach which is expected of directors. We therefore believe that the Model Code should be replaced by appropriate guidance on systems and procedures. Having a consistent system outlined in guidance means that all market participants know what is expected from directors and listed companies in terms of PDMR dealing.

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?

We believe that these rules are sufficient to provide that both new entrants and current issuers have effective systems and controls in place regarding PDMR dealing.

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?

There are some aspects of the Model Code which have been omitted from this Guidance. In particular, we have concerns that the guidance that the Model Code provides on the type of dealings that are covered by these clearance procedures (Point 1c) of the Model Code) is not included. This guidance is important to signal to issuers what types of dealings should be covered by the controls and procedures provided in the rest of the guidance to avoid any ambiguity.

We also feel that point 5d) of the proposed guidance does not give enough information for issuers on what "specific circumstances" would merit exceptional treatment. The Model Code provides extensive guidance on what exceptional circumstances would be permissible for exceptional treatment in points 9-26. It is important to investors that there is a consistent standard for what is acceptable as an exceptional circumstance so that it is clear what is expected of issuers.