

## Latest Views From the FCA on Market Abuse

### ***FCA speech contains some noteworthy statements and observations that firms should take into account.***

On 14 November 2017, the FCA published the [text of a speech](#) entitled “*Effective compliance with the Market Abuse Regulation – a state of mind*”, delivered by Julia Hoggett, Director of Market Oversight.

The overarching theme of the speech is that effective compliance, both with the provisions of the Market Abuse Regulation (MAR), and the market abuse regime more generally, is a state of mind that all involved “*would do well to understand, and seek to uphold*”. The regime should not be viewed as “*a series of systems and controls and sometimes frustrating components*”, but rather a necessary protection to the integrity of our markets. As Ms Hoggett states, “*our markets will be at their cleanest when the footfall of the regulator on this particular beat is amplified by a society of market participants who all share the same interest*”.

However, the speech also acts as the latest insight into the regulator’s state of mind in this important area, and contains some noteworthy statements and observations on MAR and the market abuse regime. These are summarised below (with some added commentary in red):

- FCA will continue to focus on all asset classes (and not just, as some may assume, equities) — “*the prevention of market abuse is a multi-asset exercise*”. **The FCA warns that “if compliance with the market abuse regime is a state of mind, then the state of mind that market abuse only takes place in equities, which still feels like an unreconstructed assumption in certain areas of the market, needs to be thoroughly broken”.** Accordingly, while we have not seen much enforcement action in non-equity asset classes since the seminal fixed income cases against *Morton and Parry* back in 2008, this may be about to change. Firms should ensure that staff are adequately trained to recognise market abuse in all its potential forms across all relevant asset classes.
- FCA has “significantly bolstered its resource” focused on market manipulation. **The FCA states that while the “poster-child” of market abuse may be insider dealing, the prevention of market manipulation is key to ensuring clean markets and appropriate price formation. The FCA has therefore “developed [its] capacity to collect and consolidate order book data from all equity venues along with equity derivatives into a single view”, and states that it is “now even more focused on seeking out evidence of market manipulation”.** Accordingly, more manipulation-based cases may be expected in the near future. Firms should consider whether systems and controls (both IT-related and

others) relating to market manipulation are fit-for-purpose. While the FCA previously showed an element of leniency in this area (specifically, relating to quote surveillance systems), it *“now expect[s] firms to be compliant with all the requirements under MAR”*.

- The FCA emphasises the importance of a full awareness of what constitutes “inside information” and how to deal with it accordingly. The FCA expects all relevant staff to be able to identify “inside information” in practice. As the FCA states: *“there is a risk...that systems and controls will only go so far if that critical thinking has not taken place”*.
- The FCA highlights an often insufficient interplay between systems and controls that exist to combat financial crime and those that are designed to combat market abuse — *“there have been times in the past where we have not necessarily connected fully in the minds of the regulated community all of the regulations that exist in the UK, which can act in service of market integrity”*. The FCA makes the point that a firm’s efforts to combat financial crime (such as criminal insider dealing) should be aligned with its efforts to combat market abuse on the basis that the two are “inextricably linked”. Firms should consider how far these two efforts are co-ordinated internally; a more “joined up” approach may be warranted in the future.
- The FCA emphasises that the FCA now has a greater focus on the quality of disclosures made by listed issuers. This is evidenced by a number of recent high-profile sanctions against issuers (there may well be others on the horizon), and the speech includes a relatively detailed consideration of the Primary Market Oversight function. The FCA emphasises that it views issuers as having *“an essential role to play in upholding the obligations of MAR”* and re-iterates a plea (we have heard before) for more engagement with the issuer community: *“obligations on issuers have increased...as part of our ongoing assessment of the implementation of MAR, we are seeking to understand the areas where issuers (and indeed any other parties captured by the regime), are finding compliance with the regime most complex. It is fair to say that of all the communities with whom we engage, often the issuers are the most disparate - and hardest therefore for the FCA to communicate with - so we would very much welcome more engagement with the issuer community on MAR”*.
- FCA makes clear that it will increasingly coordinate with other bodies such as the Financial Reporting Council and the Insolvency Service *“to ensure that the appropriate suite of powers available in the UK has been applied in those cases where institutions have not organised themselves in a fashion that means they are able to make accurate and timely market disclosures”*. This shows the FCA taking regulatory cooperation to heightened levels. It also makes clear that where listed institutions have not met their obligations, *“be that under the listing rules or indeed under MAR more broadly”*, it will seek to take action where appropriate.
- The FCA reminds firms that the introduction of MiFID II also introduces the second tranche of MAR — with new obligations crystallising regarding instruments listed on OTFs, and emission allowance products. This serves as a timely reminder that the scope of MAR will be extended from 3 January 2018.
- The FCA also makes a number of other important (but perhaps not new) points:
  - Awareness and vigilance across the firm is important. *As has always been the case, regular tailored training is an effective pre-requisite.*
  - Firms must ensure that their systems are in constant evolution to meet the changing nature and needs of the businesses within which they operate, *including evolving regulatory demands.* The

italicised phrase serves to reinforce the need to keep abreast of relevant regulatory pronouncements.

- An ignorance of the MAR requirements and/or absence of intent are not defences to offences under MAR. Policies and procedures will only get a firm so far; again, training and awareness are key.

It might be sceptical to view this speech as anything other than that which its title suggests — an observation that effective compliance with the market abuse regime is a state of mind. However, one cannot help but sense that there are some not too thinly veiled warnings underpinning this speech to the effect that the regulator continues to focus on market abuse.

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