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European Securities and Markets Authority (ESMA)
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15 October 2014

Dear Sirs,

ESMA – Draft Technical Advice on Possible Delegated Acts Concerning the Market Abuse Regulation

Introduction

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. Their individual market capitalisations tend to be below £500m.

The Quoted Companies Alliance is a founder member of European**Issuers**, which represents over 9,000 quoted companies in fourteen European countries.

The Quoted Companies Alliance Legal Expert Group has examined your proposals and advised on this response. A list of members of the Expert Group is at Appendix A.

Response

We welcome the opportunity to respond to this consultation.

Responses to specific questions

Managers' transactions

Q10: Do you agree with the types of transactions listed in the draft technical advice that trigger the duty to notify?

As indicated in our response to the Discussion Paper (DP), dated 28 January 2014, we welcome ESMA providing guidance on the transactions that are required to be notified. We do, however, have a number of concerns.

Whilst we recognise that Article 19 (7) (b) of MAR specifically extends the duty to notify to discretionary fund managers on behalf of a person discharging managerial responsibilities (PDMR), we see that there could be difficulties in extending this to the closed period dealing prohibition in Article 19 (11) as, in many cases, the PDMR will not have the necessary degree of control over the fund manager. This remains an area of significant concern for issuers and PDMRs.

We would recommend further investigation with fund managers as to how this would work in practice. We are concerned, as recognised by ESMA in paragraph 115, that notifications from (possibly) a series of

PDMRs, who may be from different issuers, to "discretionary" fund managers of closed periods (which may relate to specific transactional activity as well as routine results announcements) would: (a) increase the number of occasions fund managers are made aware of circumstances giving rise to potential 'inside information'; (b) extend the number of "insiders" (and here we refer to our submission on the proposed detailed requirements of Insider Lists); and (c) could significantly affect the ability of certain "discretionary" fund managers to conduct their normal day to day trading activities.

We also support the representations made by the Market Abuse Regulation Joint Working Party of the Company Law Committees of the City of London Law Society and the Law Society of England and Wales (MAR Working Party), who have kindly shared with us a draft of their submission, where a PDMR is a one of a number of trustees and decisions are taken by the other non-connected trustees or investment managers acting of their behalf.

We do not agree that the three working day notification requirement should be an absolute requirement where the PDMR is in receipt of an inheritance as indicated in our earlier submission on the DP. We agree with the MAR Working Party on this issue.

We also agree with, and support, the observations of the MAR Working Party on the UK practice of closed periods expiring on preliminary results' announcements (rather than the date of publication of interim or year-end reports). It is market practice in the UK for issuers to publish a preliminary announcement of annual results (containing information prescribed by the FCA's Listing Rules) before publishing the year-end report. In some cases, where the preliminary announcement contains inside information, the issuer is obliged to make the preliminary announcement before the year-end report is published. It may not be possible to publish the year-end report at the same time as it will normally contain significantly more information than the preliminary announcement.

Under the Model Code, the preliminary announcement triggers the end of the closed period as once the inside information has been published, there is no need to impose a prohibition on dealings. An inability to use a preliminary announcement as a trigger for the end of a closed period would mean that the 30 day prohibited period would not properly match the period prior to the release of the results to the market. This would not, therefore, reflect the purpose of the closed period.

Q11: Under paragraph 3 of the draft technical advice, do you consider the use of a "weighting approach" in relation to indices and baskets appropriate or alternatively, should the use of such approach be discarded? Please provide an explanation.

We would support the principle of a weighting approach being taken to baskets and indices and agree that this should be extended to investment funds. We would also support a 20% threshold. However, we question whether this could impose an impracticable burden on a PDMR where a fund's value (and interests within it) fluctuate on a regular basis (sometimes, daily). This burden would be exacerbated where the value of the fund and the constituent value of interests within it are not made publicly available on a regular basis. In these circumstances, it would be difficult for a PDMR to ascertain whether the 20% (or, indeed, any other percentage threshold) was applicable.

Q12: Do you support the ESMA approach to circumstances under which trading during a closed period may be permitted by <u>the issuer</u>? If not, please provide an explanation.

We agree with the MAR Working Party that the third bullet in paragraph 4) of the draft technical advice is not necessary as an additional restriction and reliance should be placed on the "exceptional circumstances" principle in Article 19(12) of MAR. In any event, the language used in paragraph 4) does not make sense in the context of paragraph 113.

If the wording in the draft technical advice is to be retained (which we do not support) it should be reworded to say"…. at another moment in time *other* than during the closed period" (our emphasis added).

Q13: Regarding transactions executed by a third party under a (full) discretionary portfolio or asset management mandate, do you foresee any issue with the proposed approach regarding the disclo-sure of such transactions or the need to ensure that the closed period prohibition is respected?

See our response to Question 10 above.

Q14: Do you consider the transactions included in the non-exhaustive list of transactions appropriate to justify the permission for trading during a closed period under Article 19(12)(b)?

We note the reference in paragraph 131 to the UK FCA's Model Code (the Model Code). We referred to the exemptions set out in paragraphs 12 to 26 of the Model Code in our submission on the DP[1] such as: undertakings to take up rights (or other pre-emptive offers (e.g. an open offer), the sale of nil paid rights in order to fund the balance of entitlements under rights issues, undertakings to accept a takeover offer, employee share schemes, and gifts to spouses or civil partners. In this respect, we also support the observations of the MAR Working Party and their particular observations on stock options in their submission. These exemptions have worked well, in a UK context, for many years and do not undermine the mischief against which market abuse legislation is designed. We see no reason why these exemptions should not be available. We would therefore request ESMA to reconsider and include these exemptions in an update of its technical advice.

If you would like to discuss any of our response in more detail, we would be happy to attend a meeting.

Yours faithfully,

Tim Ward
Chief Executive

[1] Available at:
http://www.theqca.com/article_assets/articledir_164/82467/QCAResponseESMAMarketAbuseRegulationJan14Final.pdf

APPENDIX A

Quoted Companies Alliance Legal Expert Group

Gary Thorpe (Chairman)	Clyde & Co LLP
Maegen Morrison (Deputy Chairman)	Hogan Lovells International LLP
David Davies	Bates Wells & Braithwaite LLP
Martin Kay	Blake Morgan
Richard Beavan	Boodle Hatfield LLP
David Fuller	CLS Holdings PLC
Mark Taylor	Dorsey & Whitney
Nick Jennings	Faegre Baker Daniels LLP
Anthony Turner	Farrer & Co
June Paddock	Fasken Martineau LLP
Ian Binnie	Hamlins LLP
Danette Antao	Hogan Lovells International LLP
Nicola Green Eleanor Kelly Jane Mayfield	LexisNexis
Mebs Dossa Gabriella Olson-Welsh	McguireWoods
Stephen Hamilton	Mills & Reeve LLP
Ross Bryson	Mishcon De Reya
Rizwan Rahman	Nabarro LLP
Jo Chattle Simon Cox Julie Keefe	Norton Rose Fulbright LLP
Naomi Bellingham Sarah Hassan Hilary Owens	Practical Law Company Limited
Donald Stewart	Progility plc
Paul Arathoon David Hicks Tom Shaw	Speechly Bircham LLP