

# The incoming Market Abuse Regulation (MAR)

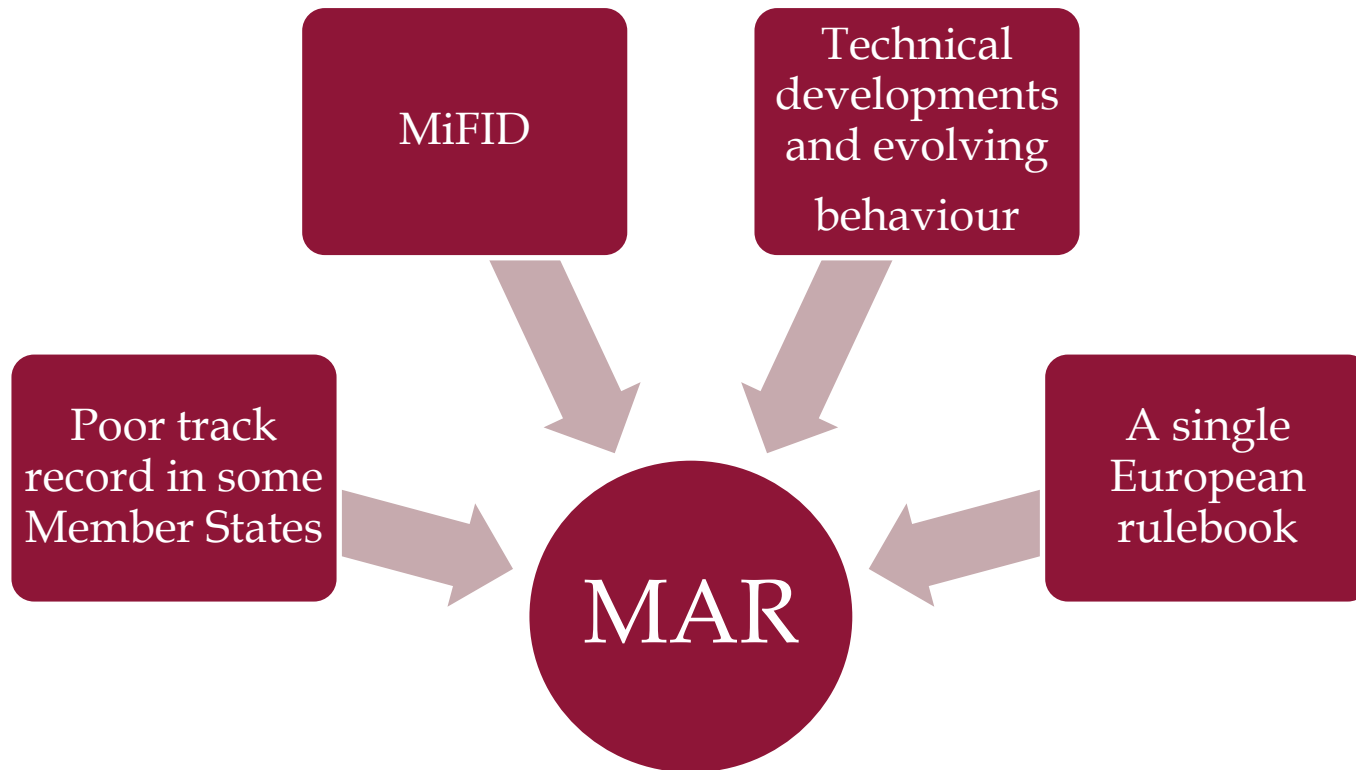
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# Introduction

## Why MAR?

The current UK market abuse regime is based on the European Market Abuse Directive



# Introduction

## What's been happening in Europe?

- October 2011: Commission adopts proposal for new Regulation on market abuse
- September 2013: MAR final text agreed
- June 2014: MAR published in the Official Journal of the EU
- Now: Finalisation of “level 2” following ESMA consultation
- **3 July 2016**: MAR will apply as law – *dependency on MiFID2*

# Scope of MAR

## Article 2

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- Transactions, orders or behaviours relating to a financial instrument traded on a regulated market, **MTF** or **OTF**
- Financial instruments whose price depends on or has an effect on the above
- Emission allowances now a financial instrument
- Interaction between **spot commodity contracts** and financial instruments
- Behaviour in relation to **benchmarks**

# Offences

## Market manipulation (Articles 12 & 15)

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- Widening of manipulation offence
- New offence of attempted market manipulation
- Manipulation of benchmarks
- Manipulation offences will apply to spot commodity contracts where:
  - The derivative is manipulated and has an impact on the underlying spot; or
  - The underlying spot is manipulated and there is an impact on derivatives

*Level 2: Delegated acts on the specification of the indicators of market manipulation*

# Offences

## Insider dealing & unlawful disclosure (Articles 7,8,9,10 &14)

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

### Definition of inside information

- The definition is largely unchanged- reasonable investor test included
- Definition for commodities
  - extends to cover price sensitive information relating to spot commodity contracts
  - In addition “information which is reasonably expected to be disclosed or required”
- New definition for emission allowances and auctioned products (not “issuers”)

*ESMA to issue guidelines to establish a non-exhaustive indicative list of inside information for commodities*

# Offences

## Insider dealing & unlawful disclosure (Articles 7,8,9,10 &14)

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- **Insider dealing** - offence broadly in line with MAD.
- New areas caught:
  - Submitting/ modifying /withdrawing a bid in relation to auctions of emission allowances
  - Cancelling /amending orders after being in possession of Inside information
- **Unlawful disclosure** - disclosing inside information without a legitimate reason (normal exercise of employment, profession or duties)

# Disclosure

## Public disclosure of inside information (Article 17)

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- Obligation on issuers to disclose “as soon as possible” remains
- EAMPs with emissions above a certain threshold now caught
- Possibility to delay where disclosure would prejudice legitimate interests, provided:
  - delay does not mislead the public
  - confidentiality is maintained
- CA must be notified of the delay **ex post facto**
- New possibility to delay for financial institutions where disclosure entails risk to financial stability. Consent of regulator required **ex ante**.

*Level 2: Delegated acts to specify the threshold for EAMPs and to specify the competent authority for the notification of delays. Technical standards for the technical means for disclosure and delays.*

*ESMA to develop guidelines on 'legitimate interest' for delay and 'not misleading public'*



# Market soundings

## Article 11

1. Scope 2. Offences 3. Disclosure 4. **Soundings** 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- New regime provides a framework for disclosures of inside information in the course of market soundings
- Providing “disclosing market participants” comply with provisions, they are protected against the allegation of improper disclosure.
- Requirements include:
  - assessing whether inside information will disclosed
  - informing the recipient of their obligations
  - obtaining consent from the recipient to receive inside information
  - record-keeping

*Level 2: Technical standards to determine arrangements, procedures and record-keeping obligations and to specify the precise format of records and technical means for communication.*

*ESMA to develop guidelines for recipients of soundings*

# Prevention and detection of market abuse

## Article 16

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- Suspicious transaction and order reports – STORs
- Persons professionally arranging or executing transactions required to detect and report suspicious behaviour
- Operators of trading venues will now be required to report suspicious behaviour as well as prevent and detect it
- **Increased scope of financial instruments, venues, markets and offences**

*Level 2: Technical standards to specify arrangements, systems, procedures and notification templates.*

# Insider lists

## Article 18

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. **Insider lists** 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- EAMPs now caught
- Issuer (or EAMP) retains ultimate responsibility where the list is maintained by a third party
- Insider lists to be retained for 5 years
- Exemption from ongoing maintenance for "SME growth market" issuers providing certain conditions met
- More detailed requirements for the format and content of insider lists – a harmonised template

*Level 2: Technical standards to determine the precise format of the insider lists and the format for updating them*

# Managers' transactions

## Article 19

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- PDMRs and persons closely associated to notify issuer and the FCA, of transactions in the issuer's instruments
- Issuer/EAMP required to make the information notified public
- Reduction in timeframe to make information public
- Notification required once a EUR 5,000 per year threshold reached

*Level 2: Delegated acts to specify circumstances when trading during a closed period may be permitted and transactions covered, and technical standards on the format and template in which the information is to be notified and made public.*

# Investment recommendations

## Article 20

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- Broadening of scope – rules apply to **any** person producing or disseminating investment recommendations
- Producers or disseminators of investment recommendations must take care:
  - To ensure such information is objectively presented
  - To disclose or indicate conflicts of interest concerning the financial instruments to which the information relates

*Level 2: Technical standards specifying arrangements for the objective presentation of investment recommendations and for disclosure of conflicts of interest for different categories of persons producing recommendations*

# Exemption for Buybacks and Stabilisation

## Article 5

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- Trading in own shares as part of a buyback programme or as part of stabilisation can be legitimate in certain circumstances and under certain conditions
- Buyback programmes and stabilisation must meet certain criteria to be protected from the allegation of market manipulation

*Level 2: Technical standards to specify in more detail the conditions that buybacks and stabilisation must meet, including conditions for trading, disclosure and reporting obligations and price conditions*

# Whistleblowing and Sanctions

## Article 32 and Article 30

1. Scope 2. Offences 3. Disclosure 4. Soundings 5. STORs 6. Insider lists 7. Managers' transactions 8. Investment recommendations 9. Exemptions 10. Whistleblowing and sanctions

- Competent authorities and firms to establish mechanisms to enable whistleblowing
- Bar raised across EU for administrative sanctions for market abuse

*Member states can have powers in addition to those in MAR and may impose higher levels of sanctions*

# Conclusion

## What are the key changes?

1. New instruments, venues and markets now covered by MAR
  - New obligations for EAMPs
2. Broadening of the manipulation offence
  - Attempted manipulation
  - Benchmarks
  - Spot commodity contracts
3. New territory covered by the insider dealing offence
4. Extension of the STOR regime
  - Now includes orders
  - Operators of trading venues now required to report
5. New framework for market soundings
6. Insider lists – precise format to be specified



# What do you need to do to be ready?

- Assess current processes, systems and arrangements – and their governance
- Plan
- Budget
- Set up working groups

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