Quoted Companies Alliance

6 Kinghorn Street
London EC1A 7HW

T +44 (0)20 7600 3745
F +44 (0)20 7600 8288
mail@theqca.com

www.theqca.com

Ms Helen Boyd
Financial Conduct Authority
25 The North Colonnade
London E14 5HS

3 July 2017

Dear Helen,

Market Abuse Regulation – interpretation issues

We are the Quoted Companies Alliance, the independent membership organisation that champions the interests of small to mid-size quoted companies. We write to highlight our concerns regarding the interpretation of the Market Abuse Regulation.

The Quoted Companies Alliance Legal Expert Group has contributed to drafting this letter. A list of members of the Expert Group is at Appendix A.

Background

The Market Abuse Regulation, which came into force on 3 July 2016, has created several issues for market participants. Below, we pinpoint a number of concerns that are most relevant to small and mid-size quoted companies.

Our members' concerns

1. **Insider Lists**

   There is concern that the information requirements in respect of insider lists remain disproportionate in relation to their purpose. ESMA addressed this concern to a limited extent in its final report on draft technical standards on the Market Abuse Regulation, in which it slightly revised the content of the template for an insider list. The draft technical standards nevertheless go too far in our view, particularly by providing that the list of information to be recorded in the insider list should include date of birth, telephone numbers and full personal home address. We believe this is disproportionate given that the purpose of an insider list is to enable the regulator to identify an individual. Indeed article 18(3) of MAR, which sets out the minimum requirements for an insider list, does not deem such information to be necessary. With an appreciation that this is the *minimum* requirement, our view is that it was clearly not the legislators' intent that most of the information mandated by the draft technical standards should be collected, as the only personal information mandated by article 18(3) of MAR is the insider's identity.

   We have stated before that we welcome the exemption contained in article 18(6) of MAR for companies on SME Growth Markets from the requirement to produce insider lists on an ongoing basis. However, as before, we are concerned that SME Growth Markets are not due to be defined

until 3 January 2018, when MiFID II becomes effective. Until this date, those on SME Growth Markets are faced with the burden of producing an insider list. These issuers are disproportionately affected by this requirement due to their lower level of resources. We would appreciate clarification on what the position is during this interim period so SME Growth Market issuers do not unnecessarily incur expenses and time.

2. **Delayed disclosure of inside information**

There is concern that the proposed guidelines from ESMA on the legitimate interests for delaying disclosure of information remain overly restrictive. The removal of the language 'impending developments that could be jeopardised by premature disclosure' is unhelpful as it has made the position more unclear. The provision was helpful as a statement of principle and its exclusion could confuse issuers. We would like greater clarity over what will constitute a legitimate interest in delaying disclosure.

3. **PDMR notification threshold**

There is concern that the €5,000 threshold for disclosing PDMR transactions under the DTR is unclear as a result of currency fluctuations. We recommend that a sterling threshold be adopted.

4. **PDMR notification timing**

The requirement contained in article 19(1) of MAR for the PDMR to notify the issuer or the emission allowance market participant and the competent authority within three business days after the date of the transaction is problematic in certain circumstances, such as the receipt of a testamentary gift which the PDMR may not be immediately aware of. We suggest that the three business day period for disclosure should begin when the PDMR becomes aware of the gift.

Additionally, the requirement in article 19(3) of MAR for the issuer or emission allowance market participant to ensure that the notification of the PDMR dealing is made public within three business days after the transaction may also be problematic in practice, given that this is the same time period required for the PDMR to notify the issuer or emission allowance market participant. Many issuers have adopted a provision in their share dealing code requiring PDMRs to notify them of dealings within one or two business days to give the issuer sufficient time to notify the FCA and disclose to the market. Accordingly, we would recommend that PDMRs are required to notify issuers within one or two working days to ensure the issuer has sufficient time to meet the three working day deadline.

5. **PDMR notification of PCAs**

Under article 19(5) of MAR, PDMRs shall notify the persons closely associated with them ("**PCA**") of their obligations under article 19 of MAR in writing and shall keep a copy of this notification. Under MAR, PCAs include dependent children with no specification as to age. As a result, children who may not yet be able to read or comprehend the notification are to receive this notification. We recommend that this rule is modified to take into account issues of legal capacity, literacy and comprehension for infants.

6. **Dealings by PDMRs during a closed period**

In a situation where the expiration date of assigned options, warrants or convertible bonds under an employee scheme falls within a closed period, there is concern that the requirement by PDMRs to notify issuers of their desire to exercise the options/warrants or convert the convertible bonds and

dispose of the shares acquired by exercising such rights four months in advance of the expiration date is too restrictive, as it requires the PDMR to make an investment decision significantly in advance of the instrument's expiration date. We would recommend that this notice period is shortened to two months.

Generally, we would welcome any detailed guidance on the circumstances where an issuer will be justified in permitting PDMRs to deal during a closed period.

7. <u>Market soundings</u>

There is concern that the requirement to maintain internal procedures to deal with market soundings may be overly burdensome for some market sounding recipients ("**MSRs**"). Whilst many MSRs will be regulated entities who frequently receive market soundings and have appropriate measures in place, others will be individuals or small companies that rarely receive such information. Current ESMA guidelines stipulate that an MSR's internal procedures should be "*appropriate and proportionate to the scale, size and nature of their business activity*"; however, no practical guidance is given. We would welcome further clarification as to the steps that should be taken by these 'smaller' MSRs.

We note ESMA's proposed requirement to specifically note discrepancies of opinion between disclosing market participants ("**DMPs**") and MSRs. We consider this to be excessively onerous for DMPs and suggest that any discrepancy is recorded as a subsidiary matter in the MSR's assessment of whether it has received inside information.

8. <u>Inside information/Price sensitive information</u>

Under article 17 of MAR and AIM Rule 11, AIM companies' nominated advisers are required to consult with both the FCA and the AIM Regulation of the London Stock Exchange simultaneously, where there is confusion as to whether information amounts to inside information and/or price sensitive information. There is a concern that this is administratively burdensome for the AIM companies in question and also has the potential to cause confusion and/or duplication. We recommend that the process is simplified by requiring AIM companies to consult with one regulatory body only or alternatively, that the definitions of "inside information" and "price sensitive information" are harmonised.

In particular, we would welcome clarification on the definition of "inside information". While the case of *Hannam v FCA* has provided some insight, we would appreciate clarification as to whether the correct approach to be taken in determining whether information will have a "significant effect" on price for the purposes of the definition of "inside information" in the UK is as follows:

(1) Is the information likely to be used as part of the basis of a reasonable investor's investment decision?

(2) Is the information which passes limb 1 likely to have a significant effect on price?

If the FCA could amend DTR guidance in this area or, alternatively, if ESMA could provide guidance, that would be greatly appreciated.

As set out above, there continue to be a number of concerns stemming from the implementation of the Market Abuse Regulation which are putting unnecessary administrative and cost burdens on small and mid-

size quoted companies. We urge the FCA to take action to address these issues and are happy to attend a meeting to discuss these points in more detail.

Yours sincerely,

Tim Ward
Chief Executive

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
Paul Arathoon David Hicks	Charles Russell Speechlys LLP
Philippa Chatterton	CMS
Mark Taylor	Dorsey & Whitney
Jane Wang	Fasken Martineau LLP
Richard Pull	Hamlins LLP
Danette Antao	Hogan Lovells International LLP
Donald Stewart	Kepstorn
Nicola Mallett David Wilbe	Lewis Silkin
Tara Hogg	LexisNexis
Stephen Hamilton	Mills & Reeve LLP
Nicholas McVeigh	Mishcon De Reya
Simon Cox Julie Keefe	Norton Rose Fulbright LLP
Ashmi Bhagani	Pillsbury Winthrop Shaw Pittman LLP
Sarah Hassan	Practical Law Company Limited
Kieran Rayani	Stifel
Catherine Moss	Winckworth Sherwood LLP