

The incoming Market Abuse Regulation (MAR)

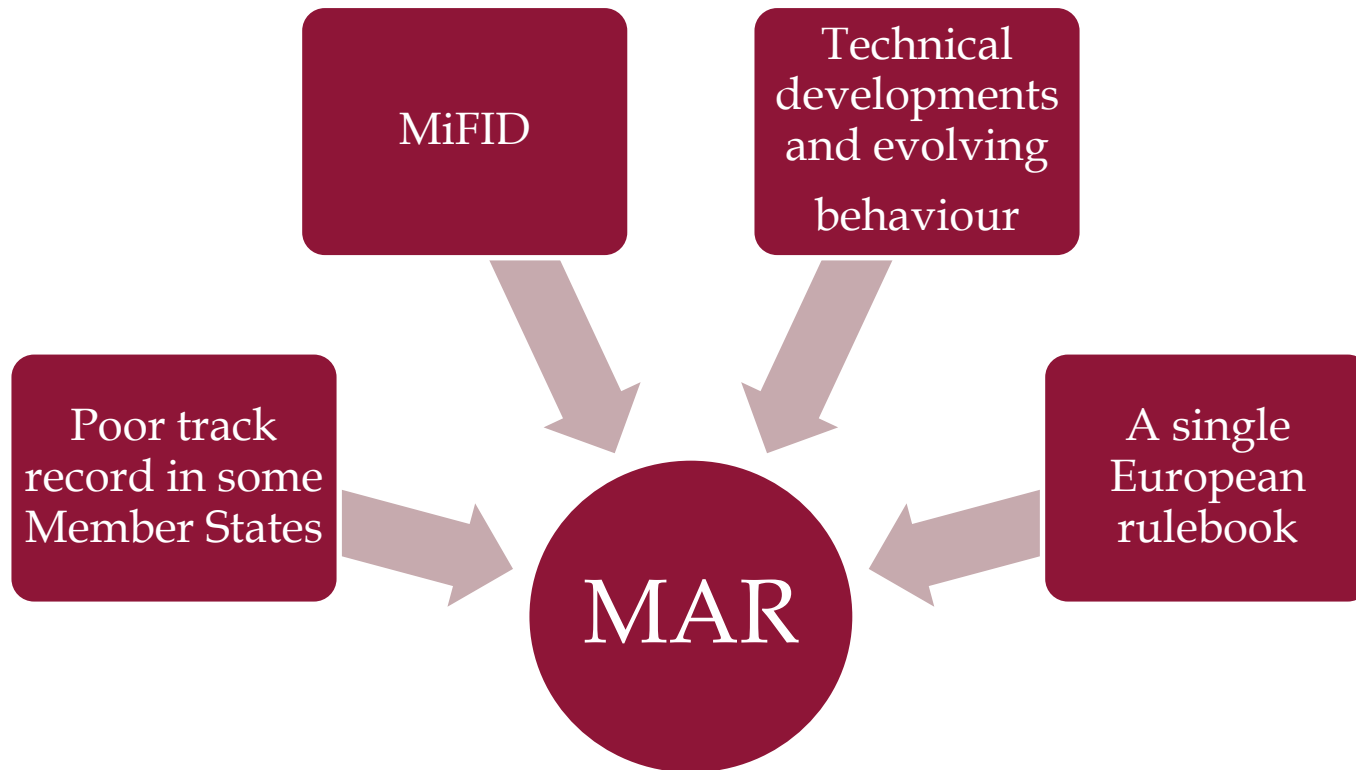
Helen Boyd
Monica Rodriguez-Sanchez
Amy Smith
Marianne Webber

Trading Conduct & Settlement Policy Team, Markets Policy

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)

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

- **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)

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

- 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

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

- 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

MAR policy:

Monica Rodriguez-Sanchez

020 7066 3862

Monica.rodriquez-sanchez@fca.org.uk

Amy Smith

020 7066 3872

Amy.smith@fca.org.uk

Marianne Webber

020 7066 9138

Marianne.webber@fca.org.uk

Helen Boyd – *Manager, Trading Conduct and Settlement Policy Team*

020 7066 3878

Helen.boyd@fca.org.uk