

# QCA: results of a members' poll on the Market Abuse Regulation

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Articles | [Published on 16-May-2019](#) | United Kingdom

This article summarises the results of a poll carried out among QCA members to find out how small and mid-size quoted companies, predominantly admitted to AIM, and their advisers have dealt with some of the requirements of the Market Abuse Regulation (*Regulation 596/2014*) since it came into effect on 3 July 2016.

## MAR: QCA members' poll

During March and April 2019, the Quoted Companies Alliance (QCA) conducted a poll among its members to find out how small and mid-size quoted companies, predominantly admitted to AIM, and their advisers have dealt with some of the requirements of the *Market Abuse Regulation* (MAR) since it came into effect on 3 July 2016.

44 QCA members responded to the poll, of which 23 are issuers and 21 are advisers, although not every question was answered by each of these members.

The poll focussed on the following areas:

- Inside information.
- Insider lists.
- Closed periods.
- Dealings by persons discharging managerial responsibilities (PDMRs).
- Market soundings and fundraisings.

This article summarises the results of the poll.

QCA is an independent membership organisation that champions the interests of small to mid-size quoted companies. For further information, see the [QCA website](#).

## Key findings

The results of the poll show the following key findings since MAR came into effect:

- **Delaying disclosure of inside information.** 57% have delayed disclosure of inside information, of which one issuer was subsequently requested by the FCA to provide a written explanation of how the conditions in Article 17(4) of MAR had been met.
- **Results announcements.** 62% have labelled financial/results information as containing inside information.

- **Permanent insiders.** 48% have a supplementary section in their insider list with permanent insiders.
- **Identity of permanent insiders.** In the case of issuers, permanent insiders may be just the directors but may also include operations, project and marketing managers, certain advisers, the company secretary, the company secretariat team, PAs, communications personnel and financial personnel. In the case of advisers, permanent insiders may include staff from corporate finance, corporate broking, M&A and/or compliance teams, as well as support staff.
- **Copy of insider list to FCA.** 14% have been asked by the FCA for a copy of their insider list.
- **Other lists.** 64% maintain confidential/project and dealing lists, in addition to a regulatory insider list.
- **Closed periods.** 50% implement a 30-day closed period, being the minimum period required by Article 19(11) of MAR.
- **Number of PDMRs.** 79% have between five and ten PDMRs in their organisation.
- **Dealing code.** 79% have adopted a code that is largely based on or is similar to the ICOSA/GC100/QCA code or have adopted such code pretty much wholesale, with minimal amendments, and 21% have adopted a completely bespoke code.
- **Market soundings.** 62% have not carried out any market soundings in accordance with the regime in Article 11 of MAR.
- **Fundraisings.** 68% have not changed their approach to fundraisings, in terms of timings and process.

## Inside information

Inside information is information of a precise nature, that:

- Has not been made public.
- Relates, directly or indirectly, to one or more issuers or to one or more financial instruments.
- If it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments (that is, it is information that a reasonable investor would be likely to use as part of the basis of their investment decisions).

*(Article 7(1)(a) and 7(4), MAR.)*

## Assessment of information

**Have you changed the way you (i) assess whether information is inside information and/or (ii) deal with inside or potential inside information, in each case since MAR came into effect?**

In response to this question:

- 64% have changed the way that they both assess information and deal with inside (or potential inside) information.
- 4% have changed the way that they assess information.

- 8% have changed the way that they deal with inside (or potential inside) information.
- 24% have not changed the way that they either assess information or deal with inside (or potential inside) information.

Of the 76% that responded in the affirmative to either one or both parts of the question, respondents generally observed that:

- The process is now far more formal, including the creation of lists and registers.
- There is a closer scrutiny of information to assess whether or not it is inside information.
- Existing procedures have been tightened, disclaimers in announcements have been changed and there has been more training to ensure awareness across the organisation.

One respondent stated that, as a result of MAR and the onerous obligations placed on issuers and advisers once a piece of information is determined to be inside information, it believed that a narrower range of information was being treated as inside information, compared to the wider, more blanket approach before MAR came into effect.

**Have you come across the situation where "price sensitive information" under the AIM Rules for Companies has NOT amounted to "inside information" under MAR, or can you envisage a situation where that may be the case?**

In response to this question:

- 96% have not come across and/or cannot envisage the situation where price sensitive information would not amount to inside information.
- 4% have come across and/or can envisage a situation where price sensitive information would not necessarily amount to inside information.

#### **Delaying disclosure of inside information**

An issuer must inform the public as soon as possible of inside information which directly concerns that issuer (*Article 17(1), MAR*). An issuer may (on its own responsibility) delay disclosure to the public of inside information provided that all of the following conditions are met:

- Immediate disclosure is likely to prejudice the issuer's legitimate interests.
- Delay of disclosure is not likely to mislead the public.
- The issuer is able to ensure the confidentiality of the information.

(*Article 17(4), MAR*.)

**As an issuer, have you delayed disclosure of inside information or, as an adviser, are you aware that any of your clients have delayed disclosure of inside information?**

In response to this question:

- 57% had (or were aware that their clients had) delayed disclosure of inside information.
- 43% had not (and were not aware that their clients had) delayed disclosure of inside information.

Of the 57% that had, or were aware that their clients had, delayed disclosure, only one issuer had subsequently been requested by the FCA to provide a written explanation of how the conditions in Article 17(4) of MAR (permitting delayed disclosure) had been met.

## Financial results

### **Have you (or any of your clients) labelled any financial/results information as containing inside information since MAR came into effect?**

In response to this question:

- 62% have labelled financial/results information as containing inside information.
- 38% have not labelled any financial/results information as containing inside information.

Of the 62% that responded in the affirmative:

- 69% were not certain whether the results contained inside information and therefore adopted a cautious approach.
- 25% genuinely believed that the results contained inside information.
- 6% confirmed that the relevant results announcement included another piece of information that was inside information (for example, a redundancy programme or change in strategic direction).

## Insider lists and other dealing/project lists

### **Producing an insider list**

Issuers, or any person acting on their behalf or on their account, must draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information (such as advisers, accountants or credit rating agencies) (*Article 18(1), MAR*).

### **Have you (whether as an issuer or adviser) produced an insider list since MAR came into effect?**

In response to this question:

- 88% had produced an insider list.
- 12% had not produced an insider list.

### **Permanent insiders**

To avoid multiple entries for the same individuals in different sections of an insider list, issuers may decide to draw up and keep up-to-date a separate and supplementary section that includes permanent insiders only. This supplementary section covers persons who have access to all types of inside information at all times (*Article 2(2), Commission Implementing Regulation (EU) 2016/347*).

### **Do you have a supplementary section in your insider list of permanent insiders?**

In response to this question:

- 52% do not have a supplementary section with permanent insiders.
- 48% do have such supplementary section.

Of the 48% that have permanent insiders, the identity of the permanent insiders varies, ranging from, in the case of issuers, just the members of the board to including operations, project and marketing managers, certain advisers, the company secretary, the company secretariat team, PAs, communications personnel and financial personnel. One respondent, which is a very small company, confirmed that all of its employees are permanent insiders.

In the case of advisers, the identity of the permanent insiders varies but may include staff from corporate finance, corporate broking, M&A and/or compliance teams, as well as support staff.

### **Disclosure to the FCA**

Where requested, an issuer (or any person acting on their behalf or on their account) must provide an insider list to the competent authority as soon as possible (*Article 18(1)(c), MAR*).

### **Have you been asked by the FCA to supply it with a copy of your insider list?**

In response to this question:

- 86% have not been asked by the FCA for a copy of their insider list.
- 14% have been asked by the FCA for a copy of their insider list.

### **Other dealing/project lists produced by issuers**

**Apart from regulatory insider lists, does your organisation maintain (i) any confidential/project lists in respect of information that may, or may not, become inside information; and/or (ii) a separate dealing list of persons that must seek clearance before they wish to deal (effectively a standing list of persons who, in the ordinary course, must always seek clearance before any dealings)?**

In response to this question:

- 64% maintain both confidential/project and dealing lists.
- 27% maintain confidential/project lists only.
- 9% maintain a dealing list only.

## Closed periods

The questions in this section were answered by issuers only.

### Length of closed periods

A PDMR shall not conduct any transactions in the issuer's securities during the period of 30 calendar days before the announcement of an interim financial report or a year-end report that an issuer is obliged to make public according to the rules of the trading venue where the issuer's shares are admitted to trading or national law (*Article 19(11), MAR*).

ESMA has confirmed that the announcement of preliminary financial results agreed by the management body of the issuer will constitute the announcement marking the end date of the closed period under MAR where those preliminary financial results contain all of the key information relating to the financial figures expected to be included in the year-end report (see Question 7.2 of [ESMA: Questions and Answers on the Market Abuse Regulation](#)).

### What closed period do you implement in advance of publishing preliminary/annual results?

In response to this question:

- 50% implement a 30-day closed period, being the minimum required by Article 19(11) of MAR.
- 29% implement a closed period from the end of the financial year until publication of preliminary results/annual results.
- 21% implement another closed period. Of this 21%, two issuers implement a 60-day closed period.

### What closed period do you implement in advance of publishing interim results?

In response to this question:

- 50% implement a 30-day closed period, being the minimum required by Article 19(11) of MAR.
- 29% implement a closed period from the end of the financial year until publication of interim results.
- 21% implement another closed period. Of this 21%, two issuers implement a 60-day closed period.

## Dealings by PDMRs

The questions in this section were answered by issuers only.

### Number of PDMRs

A PDMR is a person within an issuer, an emission allowance market participant or another entity referred to in Article 19(10) of MAR who is either of the following:

- Member of the administrative, management or supervisory body of that entity (that is, a director).
- Senior executive who is not a member of the bodies referred to above but who has regular access to inside information relating directly or indirectly to that entity and has power to take managerial decisions affecting the future developments and business prospects of that entity.

(Article 3(1)(25), MAR.)

### How many PDMRs does your organisation have?

In response to this question:

- 79% have between five and ten PDMRs.
- 7% have fewer than five PDMRs.
- 14% have more than ten PDMRs.

### Notifications to the FCA

Subject to the EUR5,000 *de minimis* threshold, PDMRs and their persons closely associated (PCAs) must notify the issuer and the FCA of every transaction conducted on their own account relating to the shares or debt instruments of that issuer, or to derivatives or other financial instruments linked thereto. Such notifications shall be made promptly and no later than three business days after the date of the transaction (Article 19(1), MAR).

### Do you submit notification forms to the FCA on behalf of (i) PDMRs and (ii) their Persons Closely Associated (PCAs)?

In response to this question:

- 67% submit notifications on behalf of both PDMRs and their PCAs.
- 13% submit notifications on behalf of PDMRs only.
- 13% submit notifications on behalf of PCAs only.
- 7% do not submit any notifications on behalf of PDMRs or PCAs.

Of the 93% that submit notifications on behalf of PDMRs and/or PCAs:

- 93% notify all transactions to the FCA, even those under the EUR5,000 threshold.
- 7% only notify transactions to the FCA that are above the EUR5,000 threshold.

### **Share dealing code**

The *Market Abuse Regulation Instrument 2016*, which came into force on 3 July 2016, deleted the *Model Code* and there is no longer a requirement for companies to adopt a share dealing code. In advance of MAR coming into effect, however, ICSA, GC100 and QCA jointly published a dealing code and policy. For more information, see [MAR Dealing code and policy documents](#).

### **Have you adopted the ICSA/GC100/QCA dealing code?**

In response to this question:

- 58% have adopted the code pretty much wholesale, with minimal amendments.
- 21% have adopted a code that is largely based on or is similar to the ICSA/GC100/QCA code.
- 21% have adopted a completely bespoke code.

### **Dealings outside closed periods**

#### **Do you request that PDMRs and/or their PCAs seek clearance (from the company secretary or another person) to deal outside a closed period?**

In response to this question:

- 93% require their PDMRs and/or their PCAs to seek such clearance.
- 7% do not require their PDMRs and/or their PCAs to seek such clearance.

## **Market soundings and fundraisings**

### **Market soundings safe harbour**

In order to fall within the safe harbour set out in Article 11 of MAR (that is, for the disclosure of inside information made in the course of a market sounding to be deemed to be made in the normal exercise of a person's employment, profession or duties), the disclosing market participant must:

- Prior to conducting a market sounding, specifically consider whether the market sounding will involve the disclosure of inside information.

- Make a written record of its conclusions and the reasons for it, and provide such written records to the competent authority upon request.
- Obtain the consent of the person receiving the market sounding to receive inside information and inform such person of the restrictions it must comply with.
- Make and maintain a record of all information given to the person receiving the market sounding and the identity of the potential investors to whom the information has been disclosed and the date and time of each disclosure. The disclosing market participant shall provide that record to the competent authority upon request.

*(Article 11(3) to 11(5), MAR.)*

**Have you (whether as an issuer or adviser) carried out any market soundings in accordance with the market soundings regime in Article 11 of MAR?**

In response to this question:

- 62% have not carried out any market soundings in accordance with Article 11.
- 38% have carried out market soundings in accordance with Article 11.

While one respondent commented that the requirements for the safe harbour are relatively straightforward, another believes that it is extremely complicated and has had the effect of freezing the market.

**Has your approach to fundraisings (whether as an issuer or adviser) changed since MAR came into effect, in terms of timings and process?**

In response to this question:

- 68% have not changed their approach to fundraisings.
- 32% have changed their approach to fundraisings.

Of the 32% that have changed their approach, one respondent noted that placings are being completed much more quickly, with investors being brought inside for a much shorter period of time, than before MAR came into effect.

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