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4 February 2016

Dear Sirs,

Financial Conduct Authority (FCA) Consultation CP15/35 – Policy proposals and Handbook changes related to the implementation of the Market Abuse Regulation (2014/596/EU)

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 and Corporate Finance Expert Groups have examined your proposals and advised on this response. A list of members of the Expert Groups is at Appendix A.

Response

We welcome the opportunity to respond to this consultation and provide input to the FCA on the necessary changes to the Handbook required in implementing new EU MAR obligations.

We have responded in detail below to questions regarding the issues most likely to affect our members, small and mid-size quoted companies. Notwithstanding, we have a few overarching comments on the implementation of MAR. Our members have raised concerns regarding:

- **The provisions relating to dealings by persons discharging managerial responsibilities** – These rules could negatively affect all quoted companies significantly. We urge the FCA to ensure that MAR rules will allow for preliminary announcements to trigger the end of the closed period (explained in detail in Q37);

- **The interaction between the application of MAR rules for SME Growth Markets and the entry into force of MiFID II** – Issuers on growth markets should be able to take advantage of MAR's more proportionate rules regarding insider lists from the date MAR enters into force (as mentioned in our response to Q35); and

- **The implementation of other periphery Model Code issues not covered by this consultation** – It is important to understand how other issues will be addressed, such as the definition of dealing, clearance or the non-exhaustive list of the delay of disclosure of inside information.

Responses to specific questions

Q1 Do respondents agree that the issuer/EAMP should provide a written explanation following notification of delayed disclosure to the FCA only upon its request?

Yes, we agree that the issuer/EAMP should provide a written explanation following notification of delayed disclosure to the FCA only upon its request.

We note that small and mid-size quoted companies could have higher instances of the delay of publication of inside information than larger companies due to the fact that they, by the nature of being growth companies, frequently are fundraising, issuing shares and/or participating in M&A activity. Therefore, requiring issuers to provide written notification for every delay would disproportionately impact on small and mid-size quoted companies.

Q2 Are you able to provide information on the number of written notifications you anticipate that you would make a year under the proposed regime?

As noted in our response to Q1, small and mid-size quoted companies could have higher instances of the delay of publication of inside information than larger companies due to the fact that they, by the nature of being growth companies, frequently are fundraising, issuing shares and/or participating in M&A activity.

The average number of notifications per company would be in the region of two to five per year (assuming one or two fundraises, one transaction and other notifiable events). However, we must stress that in some cases, notifiable events can come up every day and companies could end up making constant disclosures. It is very difficult to provide a meaningful estimate of the average number of circumstances that a small and mid-size quoted company would choose to delay the disclosure of inside information. That said, because of their size and aspirations to grow, we would expect a general obligation to provide a written explanation each time a small and mid size company did so would have a disproportionate effect on such companies and would be unwelcome.

The number of written notifications that are anticipated is somewhat dependent on the result of the FCA's other consultation (CP 15/38) on provisions to delay disclosure of inside information. This consultation could broaden the circumstances in which a company can choose to delay the disclosure of inside information, and so we expect that the number of written notifications could increase from our estimate provided above.

Q3 Would it be too burdensome to automatically provide the explanation without waiting for a specific FCA request? Please could you provide data regarding the resources required?

Yes. We believe that this would be disproportionately burdensome for small and mid-size quoted companies, which tend to be high-growth companies that are undertaking share issues, fundraisings and acquisitions more regularly than larger companies on the market. Whilst companies will still have to keep records of the reason why they have decided to delay the disclosure of inside information, it would add

more administrative burden on them to have to routinely submit these to the FCA. Companies should only have to provide written notification if requested by the FCA.

Q4 Do you agree with our proposal to adopt the €5,000 threshold? If not, please specify the market conditions that you consider would justify the decision to increase it to €20,000.

No, we do not agree with the FCA's proposal to adopt the €5,000 threshold. As we argued in our response to the European Commission's review of the Market Abuse Directive in 2010, we believe that the notification limit for manager transactions should increase from €5,000 to €20,000. The €5,000 threshold has remained unchanged since the Market Abuse Directive came into force and can cause the markets to be overwhelmed with information on transactions, which does not increase transparency or assist in detecting market abuse. In a practical sense, adopting the €5,000 threshold means that companies will continue to disclose all transactions to avoid any errors.

Q5 Please provide quantitative data on the number of transactions you would have to notify at a threshold at €5,000 and €20,000 respectively in a calendar year.

We are unable to provide an estimate number of transactions.

Q6 Do you have any comments or suggestions with the proposed amendments to MAR 1.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1.1.

Q7 Do you have any comments or suggestions on the proposed amendments to MAR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1.2.

Q8 Do you have any comments or suggestions on the proposed amendments to MAR 1.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We agree with the FCA's analysis on MAR 1.3.2E and welcome the guidance on behaviours constituting insider dealing.

Q9 Do you have any comments or suggestions on the proposed amendments to MAR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1.4.

Q10 Do you have any comments or suggestions on the proposed amendments to MAR 1.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1.6.

We believe that, so long as the FCA is clear that its position remains unchanged and believe that the previous guidance remains appropriate and consistent with MAR, this should not be problematic.

Q11 As discussed in paragraph 4.49 above and also discussed in paragraphs 4.52, 4.55 and 4.86, we propose to delete some potential indicators of behaviour such as those included in MAR 1 and Sup 15.10 Annex 5 from the Handbook and, instead, direct the industry to the list of indicators provided under the delegated acts under Article 12(5). If you disagree with this approach, please suggest an alternative approach with rationale and indicate, if relevant, whether there are particular indicators proposed for deletion which should be preserved and why.

It is difficult to evaluate whether the deletion of potential indicators of behaviour is necessary, as the Commission has yet to publish the delegated acts referred to in the consultation paper. Depending on what is included in the delegated acts, it may be helpful (or in fact necessary) for the FCA to produce some guidance on this. Therefore, we suggest that the FCA re-consults on this issue once the delegated acts have been published.

Q12 Do you have any comments or suggestions on the proposed amendments to MAR 1.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

As noted above, please see our response to Q11, which is also applicable to this question.

Q13 Do you agree with the proposed amendments to MAR 1.8? If not, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

As noted above, please see our response to Q11, which is also applicable to this question.

Q14 Do you have any comments or suggestions on the proposed amendments to MAR 1.9? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1.9.

Q15 Do you have any comments or suggestions on the proposed amendments to MAR 1.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1.10, as it will not affect directly our membership, small and mid-size quoted companies.

Q16 Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1 Annex 1, as it will not affect directly our membership, small and mid-size quoted companies.

Q17 Do you have any comments or suggestions on the proposed amendments to MAR 1 Annex 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 1 Annex 2.

Q18 Do you have any comments or suggestions with the changes proposed to MAR 2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 2, as it will not affect directly our membership, small and mid-size quoted companies.

Q19 Do you have any comments or suggestions on the proposed amendments to MAR 8.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to MAR 8.1, as it will not affect directly our membership, small and mid-size quoted companies.

Q20 Do you have any comments or suggestions on the changes proposed to SYSC 18? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to SYSC 18, as it will not affect most of our small and mid-size quoted company members.

Q21 Do you have any comments or suggestions on the proposed amendments to COBS 12.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to COBS 12.4. Nevertheless, we question whether Directors' recommendations required by Listing Rules or the Takeover Code are "investment recommendations" for Article 20 of MAR.

Q22 Do you have any comments or suggestions on the changes proposed to SUP 15.10? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to SUP 15.10, as it will not affect directly our membership, small and mid-size quoted companies.

Q23 Do you have any comments or suggestions on our proposed amendments to DTR 1.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 1.1.

Q24 Do you have any comments or suggestions on our proposed amendments to DTR 1.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 1.2.

Q25 Do you have any comments or suggestions on our proposed amendments to DTR 1.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We agree with the FCA's analysis in paragraph 4.100 in the consultation paper that some form of DTR 1.3.4R should remain, as there is no direct equivalent provision within MAR.

Q26 Do you have any comments or suggestions on our proposed amendments to DTR 1.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 1.4.

Q27 Do you have any comments or suggestions on our proposed amendments to DTR 1.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 1.5.

Q28 Do you have any comments or suggestions on our proposed changes to DTR 2.1? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 2.1.

Q29 Do you have any comments or suggestions on our proposed changes to DTR 2.2? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 2.2.

Q30 Do you have any comments or suggestions on our proposed changes to DTR 2.3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 2.3.

Q31 Do you have any comments or suggestions on our proposed changes to DTR 2.4? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 2.4.

Q32 Do you have any comments or suggestions on our proposed changes to DTR 2.5? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We believe that the FCA should only consider changes to DTR 2.5 once ESMA's guidelines have been published, especially if there is going to be a gap in between the date that MAR comes into effect and the publication of ESMA's guidelines.

We understand the FCA's position that it is unable to have super-equivalent rules or rules that duplicate provisions of MAR. However, if the Level 1 and Level 2 texts are insufficient in providing companies with appropriate guidance on how to apply the new rules, then the FCA must take a proactive role to ensure that there is appropriate guidance so that markets are able to function properly.

Therefore, we believe that the FCA should keep its guidance included in DTR 2.5 and then re-consider a deletion once ESMA's Level 3 guidance has been produced. We would urge the FCA to insist that as much clarity as possible is included in ESMA's guidance.

Q33 Do you have any comments or suggestions on our proposed changes to DTR 2.6? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 2.6.

Q34 Do you have any comments or suggestions on our proposed changes to DTR 2.7? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 2.7.

Q35 Do you have any comments or suggestions on our proposed changes to DTR 2.8? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 2.8.

However, we are concerned about the interaction of MAR with MiFID II and the possible delay in its implementation. Article 18(6) of the Market Abuse Regulation (MAR) exempts issuers on SME Growth Markets from producing an insider list. This is a measure that we welcome since we believe the requirements to produce and keep insider lists are too onerous for small and mid-size quoted companies.

However, "SME Growth Markets" are defined in MiFID II (Directive 2014/65/EU), which does not come into effect until 3 January 2017 – and which may even be delayed beyond that.

The direct consequence of this is that where reference is made in MAR to SME Growth Markets, the relevant provisions will not apply until 3 January 2017. Since MAR will come into force on 3 July 2016, this means that companies quoted on markets which will potentially become SME Growth Markets will have to start keeping full insider lists as outlined in ESMA's technical standards from 3 July 2016 until the point at which MiFID II comes into force and these markets become a designated SME Growth Market.

Until MIFID II applies and the application of the SME growth market definition comes into effect, the full insider list provisions will need to be met by all relevant issuers. When MIFID II comes into force, the specific provisions for the issuers on an SME growth market set out by MAR would then apply.

By having the MiFID II requirements come into force after the entry into force of MAR, the EU has effectively removed the exemption for companies on SME Growth Markets, which means that from July this year, small and mid-size quoted companies will have to put in place systems for insider lists and be subject to rules that require the same level of information from larger companies with different resources.

We have raised this issue with the FCA and the Commission. We continue to urge the FCA and the Commission to assess how this issue can be solved through an exceptional derogation. Issuers quoted on markets which will potentially become SME Growth Markets should benefit from the more proportionate rules set out by MAR from the entry into force of this regulation in July 2016.

Q36 Do you have any comments or suggestions on our proposed changes to DTR 3? If yes, please provide your rationale, ideally on a per-provision basis, suggesting a different approach.

We have no comments on the proposed amendments to DTR 3.

We highlight that there is still uncertainty regarding the rules that will be applicable to transactions by persons discharging managerial responsibilities, since the Commission has not yet published its delegated acts or implementing technical standards in this regard. Therefore, it is difficult to adequately assess and comment on the proposed amendments.

Q37 Do you agree with the proposal to delete the provisions of the Model Code and replace it with rules and guidance on systems and procedures for companies to have clearance procedures regarding PDMR

We are concerned with the MAR provisions relating to dealings by persons discharging managerial responsibilities (PDMR).

Article 19 (11) prohibits a PDMR from trading "during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public according to: (a) the rules of the trading venue where the issuer's shares are admitted to trading; or (b) national law."

For listed companies traded on the UK Main Market, it is market practice (but not mandatory) 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. A similar practice is observed by companies traded on UK growth market MTFs, such as AIM. Issuers publish preliminary announcements before the year-end report is published in order to provide timely information to the market. The preliminary results will, by their nature, include inside information, as they represent the first release to the market of the company's results and year-end position. It is typically not possible to publish the year-end report at the same time as it will normally contain significantly more non-price sensitive information than the preliminary announcement and is generally printed before being despatched to shareholders.

Under the UK Model Code, preliminary announcements trigger the end of the closed period as, once the inside information has been published, there is no need to impose a prohibition on dealings. UK growth market MTFs, such as AIM, routinely adopt a similar approach. An inability to use a preliminary announcement as a trigger for the end of a closed period would mean that the 30 day closed period would not properly match the period prior to the initial release of the results to the market. This would not, therefore, reflect the purpose of the closed period, which should link to when such information becomes publicly available, and would negatively affect investors and issuers, particularly small and mid-size quoted companies.

We have communicated our concern to the FCA and the European Commission, proposing that the wording "*obliged to make public*" in Article 19 (11) of MAR should be interpreted as being satisfied where an issuer voluntarily publishes a preliminary announcement. An alternative, which would achieve the same end, would be to interpret the publication of the preliminary announcement as the year-end report. We strongly believe that Article 19 (11) should not be interpreted as mandating preliminary announcements for issuers.

It should be ensured that, if a preliminary statement is produced, closed periods expire on preliminary results' announcements (rather than the date of publication of interim or year-end reports). This would avoid the potential practical difficulty arising of having two closed periods (one running prior to publication of the prelims and one running prior to the publication of the results), which we believe would be very unhelpful and contrary to MAR's policy intention.

Therefore, we highlight the need for certainty and guidance on this issue for the market to function properly and for companies, particularly small and mid-size quoted companies, to continue to do business without being overly burdened.

The Model Code has been reasonably well thought through and worked up over the years. We understand that it is not possible for the FCA to keep the Model Code as it stands and we understand the FCA's position is that it is unable to have super-equivalent rules or rules that duplicate provisions of MAR. Nevertheless, it

would not seem helpful to move backwards to having to revert through the regulations, directives and various levels of guidance to try to work thorough issues. We would therefore not support a FCA proposal which would remove all FCA guidance and relied only on that in the Level 1, 2 and 3 texts/guidance from the Commission and ESMA.

Q38 Do you have any suggestions on how the formulation of the rule (LR 6.1.29R and LR 9.2.8R) could be improved?

We believe that 9.2.8B and Annex 2G are unhelpful as the FCA gives no indication as to what weight is to be given to the factors.

Q39 Do you have any suggestions for additions or deletions on the content of the proposed guidance in LR9 Annex2G including on the areas noted above on which we have not included provisions? Please could you also justify your suggestions?

We generally agree with the clearance procedure and need to records (paragraphs 1,2,3,4 and 6).

We believe that the same definition of dealing should not be used for non-MAR closed periods; in the situation where the MAR definition and the MAR exceptions were to apply throughout the year, there would be very few times when PDMRs could deal.

We would suggest having a two-tier dealing code, one using the MAR definition and the MAR closed periods and a second, based on the Model Code, using the Model Code definitions of dealing and exceptions. We believe it would be preferable to have this developed by an industry body rather than prescribed by the FCA.

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

Yours faithfully,

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 Andrew Collins David Hicks Tom Shaw	Charles Russell Speechlys LLP
David Fuller	CLS Holdings PLC
Mark Taylor	Dorsey & Whitney
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Ian Binnie	Hamlins LLP
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Tara Hogg Jane Mayfield	LexisNexis
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Philippa Chatterton	Nabarro LLP
Jo Chattle Simon Cox Julie Keefe	Norton Rose Fulbright LLP
Naomi Bellingham Sarah Hassan Hilary Owens Gray	Practical Law Company Limited
Ben Warth	PricewaterhouseCoopers LLP

Quoted Companies Alliance Corporate Finance Expert Group

Richard Evans (Chairman)	**Strand Hanson Limited**
Nick Naylor	Allenby Capital Ltd
Chris Hardie	Arden Partners PLC
Chris Searle	BDO LLP
David Foreman Amerjit Kalirai	Cantor Fitzgerald Europe
Martin Finnegan	Causeway Law
Stephen Keys	Cenkos Securities PLC
Sean Geraghty	Dechert
Stuart Andrews	finnCap
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Colin Aaronson	Grant Thornton UK LLP
Nicholas Narraway	Hewitson Moorhead
Robert Darwin Maegen Morrison	Hogan Lovells International LLP
Richard Crawley	Liberum Capital Ltd
Simon Charles	Marriott Harrison
Richard Metcalfe	Mazars LLP
Lesley Gregory	Memery Crystal LLP
Kristy Duane	Nabarro LLP
Richard Thomas	Numis Securities Ltd
Jonathan King	Osborne Clarke
Leighton Thomas	PricewaterhouseCoopers LLP
Niraj Patel	Saffery Champness
Bidhi Bhoma Mark Percy	Shore Capital Group Ltd
Azhic Basirov	Smith & Williamson LLP
Neil Baldwin Mark Brady	SPARK Advisory Partners Limited
Dalia Joseph	Stifel
Laurence Sacker	UHY Hacker Young
Paul Shackleton	W H Ireland Group PLC
Michael Conway	Western Selection Plc
Ross Andrews	Zeus Capital Limited