



MRS Guidance Note on Polling and Insider Dealing

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Polling deals with information derived from measuring views of a particular group of people. Among other things, people and firms who compile, disseminate and trade on the basis of polling data need to consider whether their activities are compliant with relevant regulatory requirements, including the Market Abuse Regulation (MAR) and the parallel criminal legislation.

MAR prohibits insider dealing, unlawful disclosure of inside information and market manipulation and breaching these prohibitions may result in unlimited financial penalties.

A key risk in relation to polling data is the risk that the information obtained may amount to inside information. It is therefore important for persons who compile, disseminate and use such data that they are able to assess whether it meets the definition of inside information set out in MAR and, where it does, the restrictions that apply.

See the FCA's note on Polling and Market Abuse Regulation

We have outlined the requirements under MAR which is the civil regime in the accompanying factsheet, but broadly the key points are that:

- inside information can only lawfully be disclosed to a person where that disclosure is necessary within the normal exercise of a person's employment, profession or duties; and
- trading activity must not be based on inside information.

There is also a parallel criminal regime for market abuse. Insider dealing is a criminal offence under section 52 of the Criminal Justice Act 1993, and sections 89-91 of the Financial Services Act 2012 set out a range of behaviours which amount to criminal offences of market manipulation. Criminal sanctions for insider dealing and market manipulation can incur custodial sentences of up to seven years and unlimited fines.

What is Inside Information?

Inside information is defined in the Market Abuse Regulation (MAR) as: "information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, 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."¹

Determining whether information meets the definition requires careful judgement. Below are some questions which may help in determining if the definition is met.

Not been made public – has this information already been disclosed publicly or made available to the public by the issuer or somebody else? (See MAR 1.2 of the FCA Handbook for more detail on this.)

Relating to one or more issuers or to one or more financial instruments – does it relate to, for example, a company that has debt or equity instruments admitted to trading? Or do the firms affected by a piece of work include issuers that are publicly traded?

Precise does not mean 'exact' – does the information indicate a set of circumstances which exist or which may reasonably be expected to come into existence? Also, can a conclusion be drawn as to the possible effect of those circumstances on the prices of financial instruments?

Significant effect on the price – could the disclosure of the information move the price of the relevant instruments (either up or down)? Would the information be used by a reasonable investor as part of the basis of their investment decision?

¹ The definition and all the rules we refer to can be found in the EU Market Abuse Regulation.

Why does this concern me?

Inside information can be received from an external party, created internally through the entity's own action or as a result of the entity combining information from different sources. If you mishandle inside information, you can be fined under the civil regime. There is also a criminal insider dealing offence under Part V of the Criminal Justice Act 1993, which can result in imprisonment and unlimited fines.

What can't you do?

MAR sets out two prohibitions with respect to the handling of inside information: insider dealing, and unlawful disclosure of inside information.

Insider dealing is where you use inside information as to acquire or dispose of financial instruments to which the information relates. Unlawful disclosure of inside information is where you possess inside information and disclose that information to any other person, except where the disclosure is necessary in the "normal exercise of an employment, a profession or duties."

If I have inside information, what do I need to do?

Any entity that may be handling inside information may wish to consider, in advance, how it could ensure that these prohibitions are not breached. For instance, by putting in place procedures that ensure individuals coming into contact with inside information are made aware of the fact that they are "insiders" and of the restrictions on dealing on the information with regard to which they have been made an insider.

If I have inside information, when can inside information be lawfully disclosed?

Inside information can only be disclosed where it is necessary in the normal exercise of an employment, a profession or duties. To disclose inside information in any other circumstances is unlawful under MAR.

Therefore, you need to think very carefully about whether the information is inside information, and if it is, whether disclosing it is necessary in the normal exercise of your employment, profession or duties.

The recipient should be made aware that they are receiving inside information and the related prohibitions.

Case study: Two individuals (Fabiana Abdel-Malek and Walid Choucair) were found guilty of insider dealing in June 2019. Abdel-Malek was a compliance officer at UBS and searched UBS' compliance system and obtained inside information relating to the proposed takeovers of five companies. Abdel-Malek repeatedly accessed inside information, across a number of transactions, over a sustained period. She created and printed documents containing inside information copied from the UBS compliance system. She then disclosed the inside information to Choucair, who traded in the shares of the target companies. Both were sentenced to 3 years' imprisonment.