**Market Abuse Regulation Handbook**

**SYNERGIA ENERGY LIMITED**

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# MARKET ABUSE REGULATION HANDBOOK
**Adopted JUNE 2023**

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# INTRODUCTION TO THE MARKET ABUSE REGULATION

## Introduction

This Handbook has been produced to assist the directors of SYNERGIA ENERGY LIMITED (the "**Company**") to satisfy their obligations under the Market Abuse Regulation ("**MAR**") as the Company is admitted to trading on AIM, the market of that name operated by the London Stock Exchange plc ("**AIM**").

## Overview

MAR imposes a range of obligations in respect of inside information and other related areas. In this document we focus on the requirements imposed on listed issuers in relation to:

- the disclosure of inside information;
- insider lists;
- dealings in securities by PDMRs;
- share buy-backs; and
- market soundings.

We explain the different obligations and offer practical recommendations for satisfying the obligations imposed by MAR.

## Legislation

MAR repeals and replaces the existing Market Abuse Directive ("**MAD**") and its implementing legislation and is directly applicable and effective in the UK. MAR is supplemented by various delegated acts and regulations and guidance from the European Securities and Markets Authority ("**ESMA**"), which set out the detailed framework with which UK listed companies will need to comply.

This document does not cover market abuse offences under MAR or other related offences, such as criminal insider dealing and misleading statements.

This document takes into account points that have been discussed in the run up to the implementation of MAR and the limited ESMA and Financial Conduct Authority ("**FCA**") commentary on those issues, and guidance that has been published since MAR took effect on 3 July 2016.

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## Part 1 – Disclosure of Inside Information

This Part 1 sets out the key requirements that the Company must follow in relation to the disclosure of inside information.

### 1.1 Obligations in relation to inside information

The Company must:

- inform the public as soon as possible of inside information which directly concerns the Company, except in certain very limited circumstances that justify a delay in making that disclosure;
- not disclose inside information selectively, except in very limited circumstances or leak inside information; and
- restrict access to inside information to those who need to access it within the Company.

The Company must also have procedures:

- to identify information that may be inside information;
- to report potential inside information promptly so a decision can be taken about whether an announcement is needed; and
- to make sure any announcements are correct and complete.

### 1.2 Identification of inside information

Inside information is information:

- of a precise nature;
- which has not been made public;
- that relates, directly or indirectly, to the Company 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 (e.g. the Company's share price or the price of its bonds) or on the price of related derivative financial instruments (i.e. ones the price or value of which depends on, or is affected by, the price or value of the shares or other financial instruments).

In some instances, identifying the dates and times at which inside information first existed within the Company will be a straightforward matter. For example, when a director of the Company receives a phone call approach from a hostile potential bidder that is credible and well resourced, that will be inside information. The time of the phone call will be when the inside information first existed within the Company.

In other instances, where information develops over time, the position will be more complicated. For example, when the Company first considers a possible acquisition, its plans may well be at too early a stage to amount to inside information. However, at some point between the initial consideration and signing of the acquisition agreement or announcement of a takeover, information about the potential transaction will become inside information (and the Company will need to rely on the ability to delay disclosure of that inside information if it does not make an immediate announcement at that time).

### 1.3 When is information 'precise'?

Information is precise if it:

- indicates a set of circumstances which exists or which may reasonably be expected to come into existence, or an event which has occurred or which may reasonably be expected to occur; and

- is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the Company's share price (or the price of other financial instruments or related derivative financial instruments).

This could include both a future circumstance or event and any intermediate steps of the process that are connected with bringing about the future circumstance or event, so an intermediate step in a protracted process can be inside information if, by itself, it satisfies the criteria of inside information.

Examples of specific information include the size of a transaction, and its main terms. Other examples include breaches of banking covenants, the loss of a key supplier or customer and trading results being below (or above) market consensus. In general, the more specific the information, the more likely it will be considered to be precise. However, in determining whether a piece of information relating to future events or circumstances is 'precise' enough to require announcement, a judgement needs to be made as to whether there is a 'realistic prospect' of the circumstances or event happening and whether there is enough certainty about what will happen that its effect on price, in any direction can be assessed or measured.

### 1.4 When is information 'likely' to have a 'significant effect' on price?

MAR defines information that would be likely to have a significant effect on price as being information a reasonable investor would be likely to use as part of the basis for his or her investment decision.

#### *(a) Reasonable investor test*

FCA guidance suggests that the Company may wish to take account of the following factors when considering whether information would be likely to be used by a reasonable investor as part of the basis of his investment decisions:

- the significance of information will vary widely from company to company depending on a variety of factors such as the company's size, recent developments and market sentiment about the company and its sector; and

- the likelihood that a reasonable investor will make investment decisions to maximise his economic self-interest.

Any assessment of the test may need to consider the anticipated impact of the information in the light of the totality of the company's activities, the reliability of the information source and other market variables likely to affect the relevant financial investment in the given circumstances.

Information that is likely to be relevant to a reasonable investor includes information that affects: (i) the company's assets and liabilities; (ii) the performance or the expectation of performance of the company's business; (iii) its financial condition; (iv) the course of its business; (v) major new developments in its business; or (vi) information previously disclosed to the market.

#### *(b) Price impact*

In relation to any possible impact on the share price, FCA guidance states that there is no figure (percentage or change or otherwise) that can be set for any issuer when determining what constitutes a significant effect on price, as this will vary from company to company . Companies and their advisers

are best placed to make an assessment of the potential price effect of information. Generally, information which may have a 'non-trivial' effect on price should be considered 'significant' for these purposes.

### 1.5 How should inside information be disclosed?

Inside information should be disclosed through a Regulatory Information Service ("**RNS**"). The fact that a RNS is not open is not a reason to delay an announcement.

The announcement must clearly identify the following:

- that the announcement contains inside information;
- company name;
- person making the notification;
- subject matter;
- date and time of the announcement.

If there is failure or disruption in transmission of an announcement, the Company must take steps to remedy it as soon as possible.

### 1.6 Posting inside information on the Company's website

The Company must post all inside information (after it has been announced) on its website and keep it there for at least five years.

Announcements containing inside information must be kept in an easily identifiable and freely accessible section, of the Company's website, organised in chronological order with the date and time of disclosure clearly indicated. There is no need for a separate section; the announcements can be included with other regulatory announcement with the rubric:

***'Where regulatory announcements include inside information this is indicated [in the announcement itself]/[by an asterisk].'*** at the top of the regulatory announcement page.

### 1.7 Does the Company's financial results announcement constitute inside information?

Broadly, where the Company's interim or end of year financial results are in line with market expectations, the approach should be taken that those results do not constitute inside information. However, if the Company wishes to err on the side of caution, it should treat its results as inside information, even if they are consistent with expectations, and include the information set out in paragraph 1.5 above.

### 1.8 Obligation to disclose 'as soon as possible'

The Company's obligation is only to disclose inside information 'as soon as possible'. ESMA has suggested that this means the Company is not required to announce before it has, for example, clarified an unexpected and significant event or verified information provided to it by a subsidiary. Although this is a helpful view, it is unlikely that the Company would want to rely on this for more than a relatively short period.

### 1.9 When can the Company delay disclosure of inside information?

The Company may, on its own responsibility, delay disclosure to the public of inside information provided that all of the following conditions are met:

- **legitimate interest**: immediate disclosure is likely to prejudice the legitimate interests of the Company;

- **not misleading**: delay of disclosure is not likely to mislead the public; and

- **confidentiality**: the Company is able to ensure the confidentiality of that information.

Provided the conditions above are and continue to be met, disclosure of a protracted process that occurs in stages and that is intended to bring about, or that results in, a particular circumstance or a particular event, may be delayed in this way.

Where the Company has delayed the disclosure of inside information, it must:

- keep an internal record of specified information;

- as soon as it announces the information following the period of delay, inform the FCA that there was a delay in disclosure; and

- if requested by the FCA, provide the FCA with a written explanation of how the conditions for delay were met.

**1.10 What is a 'legitimate interest'?**

In October 2016, ESMA published guidelines that provide some detail on what could constitute a 'legitimate interest' justifying the delay of disclosure, although ESMA notes that this is not an exhaustive list. Where the Company wishes to delay disclosure it will be important to assess each situation on its own merits, typically in conjunction with external advisers. The ESMA examples include:

- the issuer is conducting negotiations, where the outcome of such negotiations would likely be jeopardised by immediate public disclosure. Examples of such negotiations may be those related to mergers, acquisitions, splits and spin-offs, purchases or disposals of major assets or branches of corporate activity, restructurings and reorganisations.

- the financial viability of the issuer is in grave and imminent danger, although not within the scope of the applicable insolvency law, and immediate public disclosure of the inside information would seriously prejudice the interests of existing and potential shareholders by jeopardising the conclusion of the negotiations designed to ensure the financial recovery of the issuer;

- the inside information relates to decisions taken or contracts entered into by the management body of an issuer which need, pursuant to national law or the issuer's bylaws, the approval of another body of the issuer, other than the shareholders' general assembly, in order to become effective, provided that:

    I. immediate public disclosure of that information before such a definitive decision would jeopardise the correct assessment of the information by the public; and

    II. the issuer arranged for the definitive decision to be taken as soon as possible.

- the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the intellectual property rights of the issuer;

- the issuer is planning to buy or sell a major holding in another entity and the disclosure of such an information would likely jeopardise the implementation of such plan;

- a transaction previously announced is subject to a public authority's approval, and such

approval is conditional upon additional requirements, where the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction.

**1.11 When will delay 'mislead the public'?**

In its guidelines, ESMA provided a non-exhaustive list of situations where the delay of disclosure of inside information is likely to mislead the public, including where the inside information whose disclosure the Company intends to delay:

- is materially different from a previous public announcement by the Company on the matter to which the inside information refers to; or

- regards the fact that its financial objectives are not likely to be met, where such objectives were previously publicly announced; or

  is in contrast with the market's expectations, where such expectations are based on signals that the Company has previously sent to the market, such as interviews, roadshows or any other type of communication organised by the Company or with its approval

The final limb outlined above, means the Company will need to monitor closely whether that inside information contrasts with previous communications.

If one of these situations applies, the Company will need to disclose the inside information as soon as possible, whether or not doing so would prejudice its legitimate interests. As the list is non-exhaustive the Company should always consider whether other circumstances might mean that delay is likely to mislead the public.

It is also important to remember two other points:

- even if the Company is able to delay disclosure of inside information to protect its legitimate interests, this does not allow it to omit required information from its annual or half-yearly financial report. If a scheduled reporting date falls during the period of delay, delayed information might need to be disclosed as, for example, part of the principal risks and uncertainties facing the Company; and

- the publication of results might mean that the Company would no longer be able to conclude that delay in disclosing the inside information would not mislead the market, and that the information therefore needs to be included in the results. For example, the market may expect that at the time of publication of its preliminary results, the Company does not expect imminently to announce a major transaction, meaning that failure to announce the transaction, or the possibility of the transaction, at the same time as the results might be misleading.

**1.12 What records must the Company keep if it is delaying the disclosure of inside information?**

When delaying the disclosure of inside information, the Company must maintain an internal record of the matters set out below for each piece of inside information:

- Relevant dates and times when:

  - the inside information first existed within the Company;

  - the decision to delay the disclosure of inside information was made; and

  - the Company is likely to disclose the inside information. (It may be appropriate to include a narrative description of the expected trigger for announcement and a date

and time based on the current timetable (or if none is available, update the record with that information when possible)).

- The identity of the persons within the Company responsible for:
    - deciding about the start of the delay;
    - deciding about the likely end of the delay;
    - ensuring the on-going monitoring of the conditions for the delay;
    - deciding about the public disclosure of the inside information; and
    - providing the requested information about the delay and the written explanation to the competent authority.

  For each include full name and position within the Company.

- Evidence of conditions for the delay:
    - how the conditions allowing for delay have been met; and
    - evidence of any change in how they were met during the period of delay.
- For the confidentiality of information, this should include details of:
    - the internal information barriers that have been put in place; and
    - the arrangements put in place in cases where the confidentiality is no longer ensured.

Your lawyer can provide an example template for these records, if required.

### 1.13 What should the notification to the FCA contain?

**As soon as it announces inside information following a delay, the Company must inform the FCA that there was a delay. There is no such requirement to notify the FCA any other time the Company announces inside information where there was no delay and the Company announced the information 'as soon as possible'**.

The notification should be made to the FCA through an online form available on the FCA's website, immediately after the relevant inside information is disclosed to the public.

It is clearly important that the details that go to the FCA are consistent with the record required to be kept by the Company in relation to the delay referred to above.

*If requested, what should the explanation to the FCA contain?*

If the FCA requests it, the Company must provide the FCA with a written explanation of the delay in the disclosure of inside information. This must include the information set out below.

- Full legal name of the Company
- Identity of the full name and position within the Company of the person making the notification.
- Work email address and work phone number of the person making the notification.

- Details to identify the delayed inside information:
    - Title of the announcement when the delayed information was disclosed
    - Reference number of that announcement (if available)
    - Date and time of the announcement
- Date and time (including time zone) of the decision to delay the disclosure of inside information;
- The full name and position within the Company of all person(s) responsible for the decision to delay.
- A description of the legitimate interest at stake
- The reasons the delay was not likely to mislead the public
- How confidentiality was ensured during the period of delay

Your lawyer can provide an example template for an FCA delay explanation, if required.

**1.14 When is selective disclosure permitted?**

The Company may disclose inside information to a third party in the normal course of the exercise of an employment, profession or duties if the recipient owes the Company a duty of confidentiality (whether that duty is based on law, regulations, articles of association or contract). This allows the Company to disclose inside information to those of its employees who require the information to perform their functions.

Disclosure can also be made in limited circumstances to third parties, although it is important to note that selective disclosure cannot be made to any person simply because they owe the Company a duty of confidentiality: the Company must still also be justified in making the disclosure. For example, if the Company is contemplating a major transaction which requires shareholder support or which could significantly impact its lending arrangements or credit-rating, it may selectively disclose details of the proposed transaction to major shareholders, its lenders and/or credit-rating agency (as long as the recipients are bound by a duty of confidentiality).

FCA guidance suggests that the categories of recipient may include (but are not limited to), the following:

- the Company's advisers and advisers of any other persons involved in the matter in question;
- persons with whom the Company is negotiating, or intends to negotiate, any commercial financial or investment transaction (including prospective underwriters or placees of the financial instruments of the Company);
- employee representatives or trade unions acting on their behalf;
- any government department, the Bank of England, the Competition Commission or any other statutory or regulatory body or authority;
- major shareholders of the Company;
- the Company's lenders; and

- credit-rating agencies.

Selective disclosure to any or all of the persons in the categories noted above may not be justified in every circumstance where the Company delays disclosure. It is also important to bear in mind that the wider the group of recipients of inside information, the greater the likelihood of a leak which will trigger full public disclosure of the information.

**1.15 Inadvertent disclosure of inside information**

Where disclosure of inside information has been delayed and its confidentiality is no longer ensured (i.e. where it is inadvertently disclosed or leaked by any person), the Company is required to disclose the inside information to the public as soon as possible.

Whenever the Company is delaying the disclosure of inside information it should prepare a holding announcement to be disclosed in the event of an actual or likely breach of confidence.

Where a rumour explicitly relates to inside information that has been delayed and the rumour is sufficiently accurate to indicate that the confidentiality of that information is no longer ensured, the Company should make an announcement to the market as soon as possible should conduct an enquiry into the leak.

Where press speculation or market rumour is false, the Company's knowledge that this is the case may not amount to inside information although, the FCA expects that there may be cases where the Company would be able to delay disclosure.

**1.16 Control of inside information**

The Company should establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the Company. *See Part 2 for further information.*

**1.17 Disclosure of Price-sensitive Information**

In addition to its obligations to disclose inside information, the Company has a further obligation under the AIM Rules to disclose price sensitive information. This obligation is separate from and in addition to the disclosure requirements regarding inside information. The Company's board must consider whether they are in possession of any inside information and/or price sensitive information and should seek the advice of their nominated adviser.

The Company must issue a notification, without delay, of any new developments which are not public which, if made public, would be likely to lead to a significant movement in the price of its securities. This may include matters concerning a change in:

- the Company's financial condition
- the Company's sphere of activity
- the performance of the Company's business; or
- the Company's expectation of its performance.

Under the AIM Rules, the Company is required to provide prompt and fair disclosure of price sensitive information to the market.

Whether information is price sensitive can be assessed using the "reasonable investor" test discussed in 1.4 above, where information that would be likely to lead to a significant movement in the price of the AIM securities includes but is not limited to information that a reasonable investor would be likely

to use as part of the basis of his investment decision.

Unless the Company is obliged to disclose the price-sensitive information under MAR (as detailed in 1.1 to 1.8 above), the Company may delay notifying the market of the price sensitive information, if it concerns an impending development or a matter in the course of negotiation, provided that the information is kept confidential.

The Company must have suitable and effective procedures and controls in place to ensure that price sensitive information remains confidential.

Where disclosure of price sensitive information is delayed in the course of negotiations, the Company may give the information to the following (provided the recipients are bound by a duty of confidentiality):

- the Company's advisers and the advisers of those involved in the matter in question;
- persons with whom the Company is negotiating, or intends to negotiate with in any commercial, financial or investment transaction (including prospective underwriters or places);
- representatives of the Company's employees or trade unions acting on their behalf;
- any government department, the Bank of England, the Competition and Markets Authority or any statutory or regulatory body or authority; and
- the Company's lenders.

Recipients of the price sensitive information must also be made aware that they must not trade in the Company's securities before the information has been disclosed to the market.

If the Company suspects that there has been, or is likely to be, a breach of confidence relating to price sensitive information whose disclosure has been delayed, the Company must issue at least a warning notification to the market without delay.

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## Part 2 – Insider Lists

### 1.18 Obligation to keep insider lists

With effect from 3 January 2018, companies listed on AIM are no longer required to keep insider lists under MAR. However the Company may be required to provide an insider list in certain circumstances at a later date if requested by the FCA. It would therefore be sensible for the Company to implement systems in order to take a record of who might be considered an insider on each project or transaction undertaken by the Company in the event that an insider list is requested by the FCA.

If an insider list is requested by the FCA, it will only contain personal information about the insiders, including their telephone number, date of birth, and address, if the information is available to the Company at the time of the FCA's request without tipping off the insiders about the request.

*Insider lists must be in a prescribed format and must be provided to the FCA as soon as possible on request.*

**Whilst the requirement to maintain an insider list does not apply to the Company, it is a condition of this exemption that the Company takes all reasonable steps to ensure that each person with access to inside information:**

- **acknowledges in writing the legal and regulatory duties entailed in having access to inside information; and**

- **is made aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.**

The Company may send its memorandum on inside information out in email format, and receive acknowledgements back electronically.

### 1.19 Data protection

The MAR regime means that the Company will be processing more personal data in order to create, and disclose to the FCA, insider lists. The Company should ensure that the additional processing is compliant with data protection laws. Where potential insiders are based outside the EU, the Company may need to seek local law advice on how to comply with relevant data protection laws.

Although the Company is under a legal obligation to create and disclose its insider lists, it must make sure that the personal data that it processes in this regard is actually necessary for compliance with the relevant obligation (i.e. it is not merely useful or desirable).

The Company is likely, as a minimum, to need to check that the fair processing notice given to potential insiders when their personal information is collected clearly sets out what the information will be used for, who will hold it, where it will be held and whether any third parties will be involved in storage or transfer. From an EU perspective it is most straightforward if personal data is held within the EU as this avoids the restrictions on exporting data outside the EU. Personal data can be exported outside the EU with appropriate legal arrangements in place.

## Part 3 – Share Dealings by PDMRs and Employees

### 1.20 Overview

This Part 3 describes the share dealing restrictions and notification obligations imposed by MAR that apply to persons discharging managerial responsibilities (PDMRs). It also considers what additional share dealing restrictions a Company may wish to adopt.

**Persons discharging managerial responsibilities, as well as persons closely associated with them, must notify the Company of every transaction conducted on their own account relating to the shares or debt instruments of the Company, or to derivatives or other financial instruments linked to those shares or debt instruments. This is dealt with in Part A below.**

In addition to the market abuse regime more generally – in particular, the prohibition on insider dealing – persons discharging managerial responsibilities are also prohibited from dealing in a closed period, whether or not they have inside information. This is dealt with in Part B below.

MAR does not impose closed period dealing restrictions on persons closely associated with PDMRs or on employees other than persons discharging managerial responsibilities. To manage the reputational risks associated with such dealings in prohibited periods, the Company may choose to adopt a wider Share Dealing Code for all employees. This is dealt with in Part C below.

## Part A Notification obligations

### 1.21 Who is covered?

Persons discharging managerial responsibilities and persons closely associated with them are covered by the MAR notification obligations.

A person discharging managerial responsibilities means a person within the Company who is either:

- a member of the administrative, management or supervisory body of that entity; or
- a senior executive who is not a member of the administrative, management or supervisory body of that entity, who has regular access to inside information relating directly or indirectly to that entity and power to take managerial decisions affecting the future developments and business prospects of that entity.

All directors of the Company will accordingly be PDMRs given the first limb of this test. As regards the second limb, not all senior executives (a term which is not defined) of the Company will be PDMRs: it is a much narrower test. Companies should consider only individuals whose decision-making powers extend to matters which can affect the development or prospects of the Company's business to be PDMRs.

There is a distinction to be drawn between senior executives who take management decisions and those who are tasked with the important job of implementing them (including making significant and difficult decisions around implementation). Companies should therefore look beyond any job title to consider the substance of the role. Clearly, those with the power to take managerial decisions that affect the future development and business prospects of the issuer are PDMRs. On the other hand, those that offer analysis or information to enable others to ultimately make a managerial decision may not be PDMRs, even where they give informed recommendations. FCA guidance gives the example that General Counsel offering legal advice only are not classified as PDMRs.

Whilst it is not necessary for a PDMR to make decisions alone, companies must consider how much influence or responsibility an individual in, for example, an executive committee has in managerial decision making. In cases where the ultimate decision is clearly made by the board members and not senior management, a non-board member is unlikely to be a PDMR.

### 1.22 Persons closely associated

A person closely associated (PCA) with a PDMR means any of the following:

- a spouse or civil partner;
- a dependent child, meaning a child or stepchild under the age of 18 years, who is unmarried and does not have a civil partner;
- a relative who has shared the same household for at least one year on the date of the transaction concerned; or
- a legal person, trust or partnership:
    - the managerial responsibilities of which are discharged by a PDMR or by a person referred to in any of the three bullet points above; or
    - which is directly or indirectly controlled by such a person; or
    - which is set up for the benefit of such a person; or
    - the economic interests of which are substantially equivalent to those of such a person.

In the absence of any guidance on the meaning of control, it is suggested that the Company uses a test of whether the PDMR and/or PCA has over 50% of the voting power or board control of the relevant entity to determine whether there is control over that entity. In addition, it is suggested that the positions of the PDMR and any PCA are considered jointly in determining whether that threshold has been met.

### 1.23 What transactions need to be notified?

**PDMRs, as well as their PCAs, must notify the Company of every transaction conducted on their own account relating to the shares or debt instruments of the Company, or to derivatives or other financial instruments linked to those shares or debt instruments.**

There is no definition of 'transaction conducted on their own account' and it is very wide in scope. There are no express carve-outs for accepting a takeover offer or taking up rights issue entitlements, for example. The secondary regulation states that the transactions listed below must be notified to the Company. Note that this is a non-exhaustive list – there may be other types of transaction that are notifiable and specific advice should be taken if there is any concern.

### 1.24 Provisions applicable to funds or portfolios of assets

The notification obligations described above do not apply to transactions in financial instruments linked to shares or to debt instruments of the Company where at the time of the transaction either:

- the financial instrument is a unit or share in a collective investment undertaking in which the exposure to the Company's shares or debt instruments does not exceed 20% of the assets held by the collective investment undertaking; or
- the financial instrument provides exposure to a portfolio of assets in which the exposure to the Company's shares or debt instruments does not exceed 20% of the portfolio's assets.

The notification obligation also does not apply if the transaction is in a financial instrument which comprises a unit or share in a collective investment undertaking or provides exposure to a portfolio of assets and the PDMR or PCA does not know, and could not know, the investment composition or exposure of that collective investment undertaking or portfolio of assets in relation to the Company's shares or debt instruments, and there is no reason for it to believe that the Company's shares or debt

instruments exceed the 20% thresholds described above. If information regarding the investment composition of the collective investment undertaking or exposure to the portfolio of assets is available, then the PDMR or PCA should make all reasonable efforts to avail themselves of that information.

Transactions by managers of a collective investment undertaking in which the PDMR or PCA has invested do not need to be notified where the manager of the collective investment undertaking operates with full discretion, which excludes the manager receiving any instructions or suggestions on portfolio composition directly or indirectly from investors in that collective investment undertaking.

### 1.25 Threshold for transaction notifications

**Under MAR, no notification of a transaction needs to be made by a PDMR or PCA until transactions in a calendar year by that PDMR or PCA exceed a threshold of €5,000 (without netting).** Once the threshold has been reached, all transactions will need to be notified, regardless of amount and wherever concluded (on- or off-market).

However, to avoid issues around when the threshold has been reached (for example which exchange rate to use and at what date), the Company may decide as a policy matter that all transactions must be notified regardless of size. The FCA has confirmed that this is acceptable.

### 1.26 Deadline for notification

**MAR requires a PDMR or PCA to notify the Company and the FCA of a relevant transaction promptly and no later than three working days after the date of the transaction, but also requires the Company to make public the information within the same period.** Clearly, if the Company receives a notification at the end of the third working day, it is likely to encounter practical difficulties in complying with its own obligation.

**For this reason, the Company should require that notifications are made to it with sufficient time for onward publication within three working days of the transaction. A period of one working day is suggested.**

Companies generally make notifications to the FCA on a PDMR's behalf. However, the PDMR remains ultimately responsible for complying with its obligations.

### 1.27 Content of notification

PDMRs and their PCAs must ensure that the mandatory EU template is used for making the notification. The notification template requires information on the name of the person and the Company, the reason for the notification, a description and the identifier of the financial instrument, the nature of the transaction and its date and place, and the price and volume of the transaction.

Notification to the FCA should be made on the online form, available on the FCA's website.

http://www.fca.org.uk/static/documents/forms/pdmr-notification-form.pdf

### 1.28 Company notification obligations

When it has received a notification, the Company must ensure that the information that has been notified is made public promptly and in any event no later than three business days after the transaction date. Notifications should be made via a Regulatory Information Service.

### 1.29 Notification of obligations

The Company must:

- inform PDMRs of their notification obligations in writing; and

- maintain a list of PDMRS and their PCAs. This will mean that the Company will need its PDMRs to inform the Company of details of all of their PCAs and any changes in their details.

PDMRs must:

- inform their PCAs of their notification obligations in writing; and
- keep a copy of that notification.

Your lawyer can provide pro forma notification letters if required.

**Part B Prohibition on transactions during closed periods**

**1.30 Basic prohibition**

**A PDMR must not conduct any transactions on its own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the Company, or to derivatives or other financial instruments linked to them, during a 'closed period' of 30 calendar days before the announcement of a half yearly report or a year-end report.** As the prohibition applies only to transactions conducted by the PDMR (and not those conducted for their account), it appears narrower than the notification obligation discussed above. For example, while a PDMR would need to notify receiving a gift of shares, no clearance should be required.

Other than the market abuse regime more generally – in particular the prohibition on dealing when in possession of insider information - there are no restrictions in MAR on dealings by PDMRs outside closed periods, or any prescribed clearance procedures.

Note that PDMRs are covered by the basic prohibition described above, but not their PCAs. MAR contains no restriction on PCAs trading during a closed period and there is no requirement in MAR for PDMRs to advise PCAs of such periods.

**1.31 Preliminary statement of results**

Companies in the UK frequently announce preliminary results ahead of publication of their annual report and accounts which will be some weeks later. Following clarification from the European Commission and ESMA, the FCA has confirmed it will take the view that where the Company announces preliminary results, the closed period of 30 days ends immediately before the preliminary results are announced and that no additional closed period will need to be applied before the annual report and accounts are published. This applies only where the preliminary announcement contains all inside information expected to be included in the annual report and accounts.

**1.32 Quarterly reporting**

If the Company is required to report quarterly results because of listings in other jurisdictions, it is suggested that a MAR closed period should be treated as including the 30 days prior to the release of the Company's quarterly results. The Company could also, again voluntarily, apply a (possibly shorter) closed period before publication of interim management statements (if relevant), although this is not required by MAR.

**1.33 Exception to prohibition – exceptional circumstances**

The Company is permitted to allow a PDMR to sell (but not buy) shares on its own account or for the account of a third party during a closed period on a case-by-case basis due to the existence of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares.

The PDMR must provide a 'reasoned written request' to the Company for obtaining its permission to proceed with an immediate sale of shares during a closed period. The written request must describe the transaction and provide an explanation of why the sale of shares is the only reasonable way of obtaining the necessary financing.

The Company must apply the following principles to determine whether a request can be granted:

- the PDMR must be able to demonstrate that the particular transaction cannot be executed at another moment in time other than during the closed period;

- when deciding whether to grant permission, the Company must make a case-by-case assessment of the PDMR's written request. The Company has the right to permit the immediate sale of shares only when the circumstances for such transactions may be deemed exceptional;

- circumstances are considered to be exceptional when they are extremely urgent, unforeseen and compelling and where their cause is external to the PDMR and the PDMR has no control over them; and

- when examining whether the circumstances described in the PDMR's written request are exceptional, the Company must take into account, among other indicators, whether and the extent to which the PDMR:

    - is at the moment of submitting its request facing a legally enforceable financial commitment or claim; and

    - has to fulfil or is in a situation entered into before the beginning of the closed period and requiring the payment of a sum to a third party, including a tax liability, and cannot reasonably satisfy a financial commitment or claim by means other than immediate sale of shares.

    - Given these constraints, permission to deal for exceptional circumstances is unlikely to be relevant except in rare cases.

**1.34 Exception to prohibition – employee share schemes etc.**

Trading by a PDMR during a closed period may also be permitted by the Company in relation to:

- certain employee share or saving schemes (see below for examples);

- qualification or entitlement to shares; or

- dealings where the beneficial interest in the security does not change,

provided that in each case the PDMR can demonstrate that the particular transaction cannot be executed at another time than during the closed period.

**Part C Additional Share Dealing Restrictions**

**1.35 The Share Dealing Code**

Pursuant to AIM Rule 21 the Company must have in place from Admission a reasonable and effective dealing policy setting out the requirements and procedures for directors' and applicable employees dealing in any of its securities (a Share Dealing Code).

The purpose of the Share Dealing Code is to minimise the risk that employees place themselves in a position where they could, often with the benefit of hindsight, be suspected of taking advantage of

inside information that they may be thought to have, especially in periods leading up to the announcement of results. The Share Dealing Code is intended to protect those to whom it applies, as well as the Company and its management.

Breaches would be regarded as serious and could lead to disciplinary action, including, where appropriate, dismissal.

The Share Dealing Code should apply to all employees and members of the board of directors. It provides that employees with inside information cannot deal in the Company's securities. In addition, where employees are informed that they are 'restricted employees', those restricted employees would need to obtain clearance before dealing in the Company's securities by completing and returning a 'Request for clearance to deal' form.

## Part 4 – Share Buy-Back Programmes

### 1.36 Overview

MAR exempts share buy-back programmes from the market abuse prohibitions on insider dealing, unlawful disclosure of inside information and market manipulation on the basis that such trading can be legitimate for economic reasons.

For the exemptions to apply, the trading must be carried out in accordance with the following conditions:

- full details of the programme must be disclosed before the start of trading;
- trades must be reported to the competent authority of each trading venue on which the shares have been admitted to trading or are traded and subsequently disclosed to the public;
- adequate limits on price and volume must be complied with;
- the specified objectives, being solely to:

  i. reduce the capital of the Company;

  ii. meet obligations arising from debt financial instruments that are exchangeable into equity instruments; or

  iii. meet obligations arising from share option programmes, or other allocations of shares, to employees or to members of the administrative, management or supervisory bodies of the company or of an associate company; and

  iv. the programme must be carried out in accordance with the disclosure and reporting obligations (see below), trading conditions (see below) and trading restrictions (see below) contained in the regulatory technical standards for the conditions applicable to buyback programmes and stabilisation measures.

### 1.37 What are the disclosure and reporting obligations?

Before the start of trading there must be adequate public disclosure of:

- the purpose of the programme (see the objectives listed above);
- the maximum pecuniary amount allocated to the programme;
- the maximum number of shares to be acquired; and
- the duration of the programme.

Any changes to the programme or information that has already been published must also be adequately disclosed.

The Company must report all transactions related to the programme to each trading venue on which the shares are admitted to trading or are traded, by the end of the seventh daily market session after the date of the transaction. Transactions must be reported in detailed form and in aggregate form – the aggregate form must show the aggregated volume and the weighted average price by day and by trading venue.

The Company must disclose this information to the public by the same deadline, and post it on its website for at least five years.

The Company must have mechanisms in place to enable it to fulfil its reporting obligations and record each transaction. Your lawyer can assist you in the implementation of these policies.

### 1.38 What are the trading conditions?

For the exemptions to apply, transactions relating to a buy-back programme must meet the following trading conditions:

- The Company must purchase the shares on a trading venue where the shares are admitted to trading or traded.

- For shares traded continuously on a trading venue, the orders must not be placed during an auction phase and the orders placed before the start of the auction phase must not be modified during that phase.

- For shares traded solely on a trading venue through auctions, the orders must be placed and modified by the company during the auction provided that other market participants have sufficient time to react to them.

- The Company may not purchase shares at a price higher than the higher of the price of the last independent trade and the highest current independent purchase bid on the trading venue where the purchase is carried out, including when the shares are traded on different trading venues.

- The Company may not purchase on any trading day more than 25 per cent of the average daily volume of the shares on the trading venue on which the purchase is carried out.

- The average daily volume calculation must be based on the average daily volume traded during either of the following periods:

    - the month preceding the month of the required disclosure (see above), if the fixed volume is referred to in the programme and applies for the duration of that programme; or

    - the 20 trading days preceding the date of purchase, if the programme makes no reference to that volume.

### 1.39 What are the trading restrictions?

The Company must not for the duration of the programme:

- sell its own shares;

- trade during a 'closed period'; or

- trade where the Company has decided to delay the public disclosure of inside information,

unless:

- the Company has in place a time-scheduled programme; or

- the programme is lead-managed by an investment firm or a credit institution which makes its trading decisions concerning the timing of the purchases of the Company's shares independently of the company.

## Part 5 – Marketing Soundings

### 1.40 What is the market sounding regime?

**There is currently some uncertainty (and a lack of ESMA guidance) as to whether the market soundings regime creates obligations that must be complied with when a market sounding occurs, or whether compliance with the procedural requirements provides a safe harbour from the offence of unlawful disclosure of inside information when information is disclosed to a potential investor**.

**Our view is that the regime creates a safe harbour, and there is no presumption that market participants that do not comply with MAR when conducting a market sounding have unlawfully disclosed inside information. However, in the light of the uncertainty and given the obvious benefits of being able to take advantage of the exemption, the Company and those acting on its behalf would be well advised to comply with the regime where it applies.**

The regime applies to the Company both when it is the entity disclosing information (as a Disclosing Market Participant or DMP) and when it is the entity receiving information from, or on behalf of, another issuer (in which case it is a Market Sounding Recipient or MSR). Failure to comply will not (in our view) automatically mean market abuse is committed, but the exemption provided by the regime will not be available.

Your lawyer can work with the company to establish an example market sounding policy.

**The regime is relevant in relation to both capital markets transactions, such as rights issues and open offers, and in relation to takeovers, as set out below.**

A market sounding the context of capital markets transactions – e.g. rights issues, open offers, placings is the communication of:

- any information (not just inside information);
- prior to the announcement of a transaction;
- in order to gauge the interest of potential investors in a possible transaction and the conditions relating to it such as its potential size or pricing;
- to one or more potential investors;
- by the Company or a third party acting on its behalf or on its account.
- If the Company were to sell securities in another issuer by way of a 'block trade' or other book built process, the regime would also apply to it/a third party acting on its behalf or on

This applies to a communication by the Company or by a third party adviser acting for the Company.

A market sounding in the context of takeovers or mergers is the disclosure of:

- inside information;
- by the Company;
- where it intends to make a takeover bid for or merge with a target company;
- to the holders of securities of the target company;
- provided that:

- the information is necessary to enable the target's security holders to form an opinion on their willingness to offer their securities: and

- the willingness of the security holders to offer their securities is reasonably required for the Company's decision to make the takeover bid or merger.

This applies only to a communication by the Company itself although advisers to the Company may want to comply with the regime in any event thereby minimising the risk that their communications might be considered unlawful.

**1.41 The Company as a Disclosing Market Participant ("DMP")**

*Company*

The Company must establish procedures describing the manner in which it conducts market soundings as a DMP. The procedures should set out a standard set of information to be exchanged with the MSRs, ensuring that no unnecessary potentially sensitive information is disseminated, and that all the persons receiving the market sounding receive the same level of information. The Company must ensure that the arrangements and procedures it establishes to comply with these requirements are regularly reviewed and updated where necessary. Your lawyer can assist you in the implementation of these procedures.

*Advisers*

If a market sounding is carried out by an adviser without participation by the Company, the Company itself will not need to do anything to comply with the market soundings regime. Those obligations will fall on the adviser. However, where the Company participates in a joint market sounding with the adviser the Company will have to comply with the requirements in full as it will be a DMP, as will the adviser. It is not sufficient for one DMP to comply.

*What must the Company do before conducting a market sounding?*

*Information to be disclosed*

**Before conducting a market sounding, the Company must determine the information it intends to disclose, taking into account what is necessary and appropriate to disclose in order to gauge potential investors' interest in a possible transaction and its pricing, size and structuring.** This will generally be information related to the characteristics of the possible transaction but may also include information that is not directly related but which provides important context, for example, general information about the Company and its financial standing. **The Company should, however, avoid disclosing unnecessary additional inside information.**

As a matter of good practice, the Company should also determine, before conducting a market sounding, the type and number of investors it intends to approach.

*Characterising the information to be disclosed*

**The Company should specifically consider whether the market sounding will involve the disclosure of inside information. The Company must keep a written record of its conclusion including the reasons it believes the relevant information is or is not inside information.** The Company must maintain those written records for five years, and make them available to the FCA on request.

**It is important to note that this requirement applies before each disclosure of information throughout the course of the market sounding.** The Company's written records should be updated to reflect the disclosure of each new piece of information.

On a joint market sounding, the DMPs should aim to agree on the characterisation of the information, although MAR does not provide for how information is to be treated on a joint market sounding where the DMPs do not agree.

*Format of a market sounding*

A market sounding can be carried out orally (in physical meetings or via audio or video telephone calls) or in writing (by mail, fax, or electronic communications).

If the Company has access to a recorded telephone line, a recorded line must always be used for market soundings carried out by telephone unless the MSR does not consent to the recording of the conversation. The Company must ensure that its employees use only Company equipment when making, sending or receiving telephone calls and electronic communications for the purposes of market soundings. Market soundings should not be carried out on private mobile phones.

*Content requirements for a market sounding*

**The requirements for the content of a market sounding are quite prescriptive.**

**The Company is required to have in place procedures to exchange a standard set of information with MSRs during market soundings, in a predetermined sequence.** The standard set of information must be determined before the market soundings are carried out, and the same standard set of information must be used for all MSRs receiving that market sounding. **The Company must ensure that the same level of information is communicated to each MSR in relation to the same market sounding.**

**The precise content of the standard set of information to be used depends on whether the Company considers that the market sounding will or will not involve the disclosure of inside information, as set out below:**

| **Inside information being disclosed** | **No inside information being disclosed** |
|---|---|
| A statement clarifying that the communication is taking place for the purposes of a market sounding | Same requirement |
| Where the market sounding is conducted by recorded telephone lines, or audio or video recording is being used, a statement indicating that the conversation is recorded and the consent of the MSR to be recorded | Same requirement |
| A request for and a confirmation from the contacted person that the DMP is communicating with the person entrusted by the potential investor to receive the market sounding and the reply to that request | Same requirement |
| A statement clarifying that, if the contacted person agrees to receive the market sounding, the MSR:<br>• will receive information that the Company considers to be inside information; and<br>• is required to assess for itself whether | A statement clarifying that, if the contacted person agrees to receive the market sounding, the MSR:<br>• will receive information that the Company considers not to be inside information; and<br>• is required to assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside |

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| it is in possession of inside information or when it ceases to be in possession of inside information | information |
| Where possible:<br><br>• an estimation of when the information will cease to be inside information;<br><br>• the factors that may alter that estimation; and<br><br>• in any case, information about the manner in which the MSR will be informed of any change in such an estimation.<br><br>Note: This estimate is required to be given before the MSR has consented to receive inside information. Care must be taken to ensure that the estimate itself does not provide the MSR with inside information (note that the requirement applies only 'where possible') | Not required |
| A statement informing the MSR that:<br><br>• he is prohibited from using the information, or attempting to use that information, by acquiring or disposing of, for his own account or for the account of a third party, directly or indirectly, financial instruments relating to that information;<br><br>• he is prohibited from using the information, or attempting to use that information, by cancelling or amending an order which has already been placed concerning a financial instrument to which the information relates; and<br><br>• by agreeing to receive the information he is obliged to keep the information confidential | Not required |
| A request for the consent of the MSR to receive inside information and the reply to that request | A request for the consent of the MSR to proceed with the market sounding and the reply to that request |
| Where the consent required is given, the information being disclosed for the purposes of the market sounding, identifying the information considered by the Company to be | Where the consent required is given, the information being disclosed for the purposes of the market sounding |

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| inside information | |

*Cleansing*

**Where the Company assesses that information that has been disclosed in the course of a market sounding ceases to be inside information for any reason, the Company must inform each MSR that this is the case in writing, as soon as possible. This applies even if the reason the information ceased to be inside information is because it has been announced.** This is because ESMA is of the view that, depending on the nature of the transaction and the information disclosed, some information disclosed during the market sounding may still be (at least partially) inside information. **As such the Company must always provide a written cleansing notification to each MSR.** The cleansing notification must include:

- the name of the Company;
- details to identify the transaction subject to the market sounding;
- the date and time of the market sounding;
- the fact that the information disclosed has ceased to be inside information; and
- the date on which the information ceased to be inside information.

ESMA has provided a template for recording the communication informing MSRs that the information disclosed has ceased to be inside information. The Company must maintain records of any such cleansing notification for five years, and make them available to the FCA on request.

*What records must be kept by a Disclosing Market Participant?*

Detailed records must be kept at all stages of the market sounding process. The FCA can ask to see any of the records, which must be in an electronic format and retained for five years. Records must be kept whether or not the Company considers that the market sounding involves the communication of inside information:

- Characterisation of the information: written record of the Company's conclusion on whether the information to be disclosed is or is not inside information, including the reasons for that conclusion.
- Standard set of information procedures: the Company's procedure to provide to and request from MSRs a 'standard set of information' during market soundings.
- Standard sets of information: the 'standard set of information' used for each market sounding.
- List of sounding recipients: in relation to each market sounding the Company must draw up a separate list containing:
    - names – the names of all natural and legal persons to whom information has been disclosed in the course of the market sounding;
    - date and time of each communication – the date and time of each communication of information which has taken place in the course of or following the market sounding; and
    - contact details – contact details of the MSRs used for the purposes of the market sounding.

- Communications: all communications of information which have taken place between the Company and all MSRs for the purposes of the market sounding. This must include any documents provided by the Company to the MSRs. What is required depends on how the market sounding was carried out:

    - recorded telephone lines – recordings of telephone conversations (provided MSRs consented);

    - in writing – a copy of the correspondence;

    - video or audio recorded meetings – recordings of those meetings (provided MSRs consented); or

    - unrecorded meetings or telephone conversations – written minutes or notes of those meetings or telephone conversations.

- Minutes/notes – where minutes/notes are required (i.e. in the case of unrecorded meetings or telephone conversations), they should follow the templates provided by ESMA. Minutes/notes should be drawn up by the Company and signed by both the Company and the MSR. The minutes/notes should include:

    - the date and time of the meeting or telephone conversation;

    - the identity of the participants;

    - the details of the information related to the market sounding which were exchanged between the Company and the MSR in the course of the market sounding (including information provided to the MSR and requested from the MSR in accordance with the 'standard set of information'); and

    - any document and material provided by the Company to the MSR in the course of the market sounding.

    As a result, the DMP and MSR should aim to agree the minutes/notes. However, where minutes/notes are not agreed within five working days after the market sounding, the Company (as DMP) must record both the version of the minutes or notes signed by the Company and the version signed by the MSR. If the MSR does not provide the Company with any signed written minutes/notes within five working days after the market sounding, the Company must keep a copy of the version of the minutes/notes signed by the Company.

- Cleansing information: the information leading to the Company's assessment that the information communicated during the market sounding has ceased to be inside information

    Details of any cleansing notifications to MSRs (see above)

*Lists of potential investors that do not want to receive market soundings*

**The Company must draw up a list of any potential investors that have informed it that they do not wish to receive market soundings, in relation to either all potential transactions or particular types of potential transactions. This should be kept as a single list.** The Company should not communicate information for the purposes of market soundings to any such potential investor.

**1.42 The Company as Market Sounding Recipient (MSR)**

The Company will only be a MSR when it is contacted by a DMP in relation to a market sounding. Given the procedure the DMP will need to go through and the script, it will be clear to the recipient of the sounding that it is a MSR.

Where the Company is the MSR, it must assess for itself whether it is in possession of inside information or when it ceases to be in possession of inside information, (notwithstanding what it is told on this point by the DMP). It is also required to comply with detailed record keeping requirements, put in place procedures to control the flow of information, ensure staff are appropriately trained, keep lists of staff in possession of inside information and assess the financial instruments to which the inside information relates. Details of these requirements are set out below.

*Guidelines for MSRs*

Designated contact for market soundings

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| Designated contact for market soundings | The Company may choose to designate a specific person or (to guard against personnel change over time) a contact point to receive market soundings. If it does so, the Company should ensure that information regarding the designated contact is made available to DMPs, for example on its website.<br><br>As a matter of good practice the Company should keep evidence of any decision to designate a specific person or contact point and the way that information is made available to DMPs. |
| Notification the Company does not wish to receive market soundings | If contacted by a DMP, the Company may choose not to receive future market soundings in relation to either all potential transactions or particular types. If so, the Company should notify the DMP of that decision and keep a record of the notification. |
| Inside information assessment | The Company should independently assess whether it is in possession of inside information as a result of the market sounding.<br><br>The Company should take into account:<br><br>• the DMP's assessment; and<br><br>• all the information available to the Company, including the information obtained from sources other than the DMP. |
| Cleansing assessment | The Company should independently assess whether it is still in possession of inside information. The Company should take into account:<br><br>• the DMP's notification that the information is no longer inside information; and<br><br>• all the information available to the Company, including the information obtained from sources other than the DMP. |
| Discrepancies of opinion between the Company and a DMP | If the Company's assessment is that it is, or continues to be, in possession of inside information and this is contrary to the assessment of the DMP, the Company should tell the DMP that this is the case only if the Company's assessment is based exclusively on information received from the DMP. If the Company's assessment is based on other information, it should not inform the DMP of the discrepancy of opinion.<br><br>Regardless of a DMP's assessment, whenever the Company |

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| | assesses it is in possession of inside information it should comply with the prohibition arising from that possession. Likewise if the Company assesses it is not in possession of inside information it is free to disregard those prohibitions, although if the Company's assessment is wrong, it may breach provisions on insider dealing and unlawful disclosure of inside information. As such, this is unlikely to be an attractive course.<br><br>Where a DMP believes information is inside information but the Company disagrees, there is no obligation on the Company to notify the DMP (although it is free to liaise with the DMP if it wishes to do so).<br><br>As a matter of best practice, it would seem prudent for the Company to notify the DMP of any disagreement with its assessment (except where its assessment is based on information other than that obtained from the DMP), and to maintain a record of the Company's own assessment and that notification. |
| Company procedures to control information | The Company should establish, implement and maintain internal procedures to:<br><br>• ensure that the information received in the course of the market sounding is internally communicated only through pre-determined reporting lines and on a need-to-know basis;<br><br>• ensure that the function or body entrusted to assess whether the Company is in possession of inside information as a result of the market sounding is clearly identified and composed of staff properly trained for that purpose; and<br><br>• manage and control the flow of inside information arising from the market sounding within the Company and its staff, in order to comply with the insider dealing and unlawful disclosure of inside information requirements of MAR. |
| Staff training | The Company should ensure that the staff receiving and processing the information in the course of the market sounding are properly trained on the relevant internal procedures and on the prohibitions against insider dealing and unlawful disclosure of inside information arising from being in possession of inside information. |
| List of staff in possession of information | For each market sounding, the Company should draw up a list of the persons working for it who are in possession of the information communicated in the course of the market soundings.<br><br>This is a standalone requirement, although it may overlap with any insider list drawn up by the Company. |
| Assessment of related financial instruments | Where the Company has assessed it is in possession of inside information as a result of a market sounding, the Company should identify all the issuers and financial instruments to which that inside information relates. |

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| Written minutes or notes | Where the DMP has drawn up written minutes or notes of an unrecorded meeting or unrecorded telephone conversation, the Company, as MSR, should:<br><br>• **if the Company agrees the content** – sign the minutes or notes; or<br><br>• **if the Company does not agree the content** – provide the DMP with its own version of the minutes or notes duly signed within five working days after the market sounding. |
| Record keeping | The Company should keep records in a durable medium that ensures accessibility and readability for a period of five years of:<br><br>• any notification to a DMP that the Company does not wish to receive market soundings;<br><br>• inside information assessments;<br><br>• cleansing assessments;<br><br>• any discrepancy of opinion with a DMP in relation to an inside information or cleansing assessment;<br><br>• the Company procedures to control information;<br><br>• lists of staff in possession of information communicated in the course of market soundings; and<br><br>• the assessment of related financial instruments. |

# Appendix 1
## Flow chart – does information need to be disclosed?