

## Recent Developments in the Market Abuse Regime 2013

NOVEMBER 5, 2013

From 2009 to the beginning of 2012, the FSA convicted twenty-one people and imposed civil penalties of £24.5m for market abuse (£18.5m of which imposed on individuals). Only a month after its successor, the FCA, came into existence on April 1st, there were further arrests for the offence.

The new Authority has made it clear that it is taking strong action against market abuse, focusing on wholesale conduct, and taking a new approach to the supervision of trading platforms. They have recently emphasised that every individual involved in a chain that leads to trading must proactively challenge suspicious behaviour and ensure it is reported and that all 'approved persons' have a duty to help the FCA in its fight against market abuse.

And while market abuse now seems rarely to be away from the regulatory news headlines in the UK, the European market abuse regime has continued to evolve. On 26 June, the European Council and Parliament agreed the draft text of the new market abuse regulation (Draft MAR) which is aimed at tackling insider dealing and market manipulation on European securities markets. This will replace the existing MAD.

The key changes from MAD are: an extension of the definitions of insider dealing and market manipulation; an amended regime for SMEs regarding their dealing obligations and disclosure; the introduction of an obligation for exchange of information and cooperation between financial and commodity regulators.

The technicalities in market abuse and insider dealing offences, however, are many — particularly in the definition of "inside information" and the new regulations do not always provide complete clarity. Furthermore, it has been predicted by ESMA that oversight of complex trading strategies could still be difficult and may not catch potential abuse by high frequency traders.

Overall, however, it must be realised that there will be an increasingly fine line between what is normal (and sensible) business practice and what may now be classified as market abuse. This raises questions about communications between financial institutions and investors, and about corporate and analyst access. It has even been suggested that two senior staff talking within an institution about a change of senior management to improve the share price could contravene the

regulations.

The structure of this conference, the thirteenth in the series, has been designed this year with a keen awareness of these factors. Both policy makers and leading experts in the field will be addressing the sessions and there will be specialist workshops for both the equities and fixed income, and commodities sectors.

The programme coverage will be as follows:

- Keynote address: market abuse and the FCA's enforcement priorities
- Key developments in the fight against market abuse/insider dealing
- Market abuse and communications between issuers and investors
- Extensions to market abuse regulation: practical implications
- Market abuse in sales and trading
- Concurrent workshops in equities, bonds and commodities
- Panel on recent and current developments in enforcement

This conference should be attended by members of the compliance departments and in-house legal teams within financial institutions, including commodity brokers and their legal advisers.

WilmerHale Partner Stephen Pollard will participate in a panel discussion on recent and current developments in enforcement.

## READ MORE ABOUT THE EVENT

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## *Speakers*

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### **Stephen Pollard**

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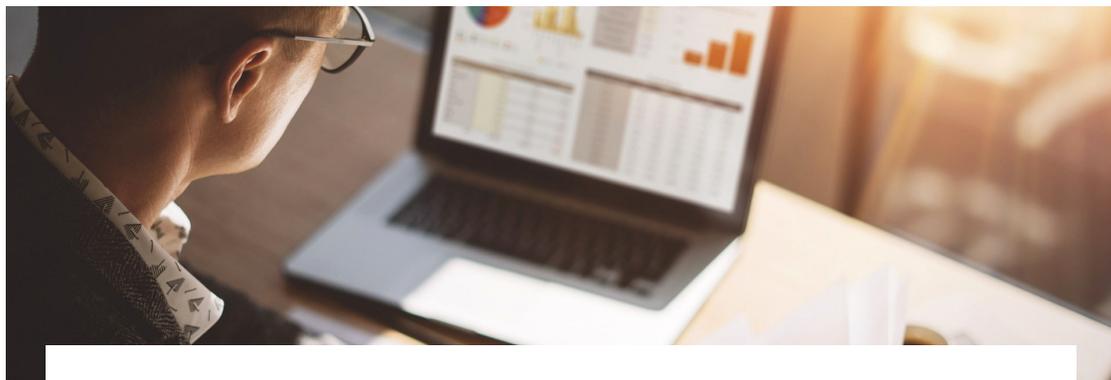
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