



European Securities and Markets Authority

Submitted online at: www.esma.europa.eu

15 October 2014

Dear Sir/Madam,

GC100 Response to the European Securities and Markets Authority (ESMA) Consultation Paper - Draft technical advice on possible delegated acts concerning the Market Abuse Regulation (MAR)

Our responses to the questions asked are set out below:

Managers' transactions

Question 10: Do you agree with the types of transactions listed in the draft technical advice that trigger the duty to notify?

No. In relation to the draft technical advice paragraph 2(m), inheritance should only trigger notification when securities are actually received and vested in the PDMR. Prior to this date, the PDMR may not be aware they are a beneficiary. It seems inappropriate to impose an obligation on a PDMR that may be impossible to fulfil. It is also possible that shares intended to be gifted to a PDMR will need to be sold by the estate and will therefore never actually be transferred to that individual, again suggesting that receipt of the securities should be the trigger for disclosure.

In relation to the draft technical advice paragraph 2(b), it would be helpful to clarify that the unilateral grant of stock options, where no acceptance is required by the employee, does not require notification. It would also be useful to identify whether this applies to other rights granted to employees as part of their remuneration package, such as conditional awards.

Question 11: Under paragraph 3 of the draft technical advice, do you consider the use of a “weighting approach” in relation to indices and baskets appropriate or alternatively, should the use of such approach be discarded? Please provide an explanation.

Yes.

GC100 Group

The Association of General Counsel and Company Secretaries of the FTSE 100

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Question 12: Do you support the ESMA approach to circumstances under which trading during a closed period may be permitted by the issuer? If not, please provide an explanation.

No. We assume the purpose of these rules is to ensure that PDMRs do not place themselves under suspicion of abusing inside information that they may be thought to have in the period leading up to an announcement of the company's results. It is important to ensure that this market perception objective is achieved without imposing a disproportionate burden on PDMRs. In the UK this is done by the inclusion in the Model Code of the UK FCA a number of exceptions designed to allow PDMRs to trade in specific circumstances, including in particular in relation to rights issues, takeover offers and other offers where they are being treated identically to other existing shareholders. We suggest therefore that the list of transactions permitted in a closed period should be expanded to cover those areas exempted from the Model Code of the UK FCA (see Annex to Listing Rule 9 of the UK FCA Listing Rules). It is unclear why PDMRs should be treated any differently to all other shareholders in such circumstances, than is appropriate.

In paragraph 2(n) of the technical advice, the extension of the prohibition on trading in a closed period to transactions carried out as part of a fully discretionary asset/portfolio management mandate, including in relation to units in collective investment undertakings holding shares in the PDMR's company as part of their portfolio, is unnecessary. MAR includes dealings by another person on behalf of a PDMR "including where discretion is exercised". While this reference clearly relates to mandates where limited discretion is exercised (for example as to timing or price of trades), we disagree that this should be extended to transactions executed by a third party exercising full discretion as contemplated in paragraph 90 of the CP. This restriction would result in severe practical difficulties for PDMRs that do not appear to be justified by any increased protection for the market.

We also note that it is proposed that only the publication of a full annual financial report will end the closed period. In the UK this is likely to cause practical difficulties, as it is UK market practice for issuers to publish preliminary results in advance of their full year end report to ensure timely disclosure to the market (to the extent the results contain inside information, this will be included). In recognition of this fact, the Model Code of the UK FCA provides that publication of preliminary results brings the relevant closed period to an end. A similar approach under MAR would seem to be proportionate and avoid an unnecessary restriction being borne by PDMRs. Where a preliminary report contains all inside information that will be included in the later publication of the full annual report, no closed period should be required prior to publication of the full annual report. If, as currently set out in the CP, a closed period is required to run for the 30 days prior to the publication of the full annual report this is likely to result in an unnecessary prohibition on PDMR trading at a time when the market is in possession of all relevant information. At the same time, the MAR protections will not apply prior to publication of the preliminary results. The proposed restrictions do not seem to operate in a way that will protect the market. As such we suggest that ESMA treats preliminary reports containing relevant inside information as "year-end reports" (as referred to in Article 19(11) of MAR) for this purpose, and

the closed period applies to the period prior to publication of the earlier of any preliminary report and the full annual report (i.e. publication of the later report does not require a new closed period). This would seem to meet the aims of Article 19 of MAR.

In paragraph 4 of the draft technical advice, the requirement that the PDMR “can demonstrate that the particular transaction cannot be executed at another moment in time than during the closed period” should be deleted. This requirement is impractical and goes further than the requirements set out in Article 19(12) of MAR. Paragraphs 6 to 9 of the draft technical advice should provide that the exercise of options may be permitted in exceptional circumstances, as well as the sale of shares.

Paragraphs 6 to 9 of the draft technical advice should provide that financial difficulty is only one example of “exceptional circumstances”, as provided in Article 19(12)(a) of MAR.

Paragraph 10 of the draft technical advice refers to the paragraphs that follow as a “non-exhaustive” list of transactions in relation to Article 19(12)(b) of MAR. It would be helpful if the draft technical advice set out expressly that it is possible to look beyond the very detailed list of transactions in paragraphs 11 to 16 and that other transactions may fall into this category. This is a concern as competent authorities have in certain cases approached interpretation of non-exhaustive lists as though they were exhaustive.

Paragraph 11(b)(ii) should make clear that it is sufficient for an employee share scheme to set out limits on the amount of awards that can be granted to any one recipient. Overall limits on a scheme are typically not included in order to maximise flexibility for an issuer.

Paragraph 15 should be amended to reflect the broader Article 19(12)(b) of MAR, which provides for an exemption wherever “the beneficial interest in the relevant security does not change”. This goes beyond the paragraph 15 wording relating to a transfer between two accounts.

Question 13: Regarding transactions executed by a third party under a (full) discretionary portfolio or asset management mandate, do you foresee any issue with the proposed approach regarding the disclosure of such transactions or the need to ensure that the closed period prohibition is respected?

Yes. As noted above in relation to Q12, the extension of the prohibition on trading in a closed period to transactions carried out as part of a fully discretionary asset/portfolio management mandate, including in relation to units in collective investment undertakings holding shares in the PDMR's company as part of their portfolio, is unnecessary to protect the market. This restriction would result in severe practical difficulties for PDMRs that do not appear to be justified by any increased protection for the market. While the use of a "weighting approach" to indices and baskets is helpful, it does not solve all issues in this regard particularly for PDMRs of companies that form a significant proportion of certain indices who could as a practical matter be prohibited from investing in certain tracker products (e.g. in the FTSE 10).

Yours faithfully,



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