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The UK's FCA Shares Observations on 'Market Soundings'



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The UK's Financial Conduct Authority ("FCA") has devoted [issue 75 of Market Watch](#) (a newsletter on market conduct and transaction reporting issues) to share observations on practices around 'market soundings'.

Market soundings are communications between issuers and potential investors that take place prior to transactions and that are undertaken to gauge interest and help set price, size and structure. Because of the involvement of inside information in such interactions, there are regulations and procedural requirements that must be in place in order to manage the risk of the inappropriate use of this information, largely driven by the UK's onshored version of the EU Market Abuse Regulation ("UK MAR"). One of the functions of UK MAR is to ensure that no potentially sensitive information is unnecessarily disclosed, as well as ensuring that Market Sounding Recipients ("MSRs") do not trade or attempt to trade on the basis of any inside information they receive from Disclosing Market Participants ("DMPs").

Market Watch 75 is concerned with cases the FCA has observed when MSRs have traded a financial instrument during the period after a DMP has made initial contact with them or asked for their consent to receive a sounding and thereby receive inside information. MSRs are required to make their own independent assessment of whether or not they are in possession of inside information, and this assessment must include not just any preliminary information they have received from a DMP, but also other information the MSR may possess that may enable the MSR to identify the issuer. Market Watch 75 sets out the FCA's concerns that there have been a number of instances when MSRs have traded during this intervening period after an initial communication from a DMP but before the DMP has disclosed inside information including the identity of the issuer involved. In those cases, the FCA has identified that the MSRs were in possession of other information that would enable them to ascertain inside information.

The FCA uses Market Watch 75 to alert DMPs to the need to take care when undertaking soundings that involve a limited pool of potential market participants,

and to assess the possibility that they are disclosing inside information at all stages of the sounding, including the initial communications with MSRs seeking their consent to receive soundings and thereby receive inside information. This could involve reviewing scripts used during soundings, tailoring information depending on the nature of the transaction, minimising the time between initial communications and requesting MSR consent to receive the sounding, and putting in place 'gatekeeper' arrangements whereby specific teams in compliance functions act as the first point of contact for DMPs.
