

FCA publishes Market Watch 75

Market conduct and Transaction reporting issues

On 31 October 2023, the FCA published [Market Watch 75](#), in this edition, the FCA shares its observations about Market soundings since it published Market Watch 51 and 58. It also serves to remind businesses of the formalised procedures established by the UK Market Abuse Regulation's market soundings regime.

The FCA draws attention to the following current findings:

Trading during the market soundings procedure

There have been instances reported of Market Soundings Recipients (MSRs) trading the relevant financial instruments at some point after a Disclosing Market Participant (DMP) first contacted them or requested their permission to provide soundings and inside information, but prior to the DMP disclosing the inside information. The identities of the financial instruments, the nature of the proposed transaction, and the possibility that it would proceed were not disclosed by the DMPs in the first correspondence. Nevertheless, by utilizing more data at their disposal, the MSRs managed to recognize such specifics. This has frequently happened when there has been a lag between the MSR's assent and the DMPs request.

In many cases, the MSRs have offered explanations that are difficult to reconcile with the trading conditions. For instance, "Rebalancing a portfolio" is not reconciled with an MSR selling a financial asset right away after a DMP has requested permission to get inside information and then purchasing the same amount of the financial instrument back in the next placement. Furthermore, the hurry with which the directions to trade are worded conflicts with this logic.

In light of these findings, the FCA advises businesses to do the following, among other things, to reduce the dangers of insider trading and illegal disclosure:

- When performing soundings on financial instruments with few actors and when the MSRs' possible external information could be utilized to reasonably identify the relevant financial item, DMPs should use extra caution.
- DMPs should be mindful of the possibility of illegally revealing inside information when meeting with MSRs for the first time and getting their permission to receive market sounding and inside information. In order to determine whether or not MSRs want to receive the information, they should think about whether the information supplied at this point is necessary.
- In situations where the MSR is a private individual whose knowledge of potential breaches may be lower than that of corporate clients, DMPs may also wish to take particular arrangements and scripts into consideration.
- In their initial correspondence and consent requests, DMPs should carefully evaluate and consider the standardised information they plan to give MSRs. Any time they communicate in a market sounding manner, they should be very clear from the outset that they are doing so.

- The amount of time that passes between the DMP's initial communications and requests for consent and the MSRs' consent to those requests should be minimized, according to DMPs and MSRs.
- It is important for companies and their staff to understand the range of data that the Financial Crimes Authority (FCA) has access to when reviewing trades, correspondence, and soundings-related documentation.