

Without official guidance, how do you grapple with the impact of the market abuse regime on share plans and executive pay and the inevitable divergence in market practice?

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SLAUGHTER AND MAY

# Introduction of MAR

- 3 July 2016 - Market Abuse Regulation (EU 596/2014) comes into force
- Delegated Regulation (EU 2016/522)
- ESMA Technical Standards (e.g. format of insider lists and notifications)
- ESMA Guidelines (e.g. on delay in disclosure of inside information) (ESMA/2016/1130)
- UKLA's Model Code abolished
- Disclosure and Transparency Rule 3 deleted
- FSMA market abuse regime (FSMA s.118c) repealed
- Criminal Justice Act 1993 (criminal insider dealing) remains in place

# What guidance do we have? (1)

## Other Interpretative Materials:

- ESMA Questions and Answers (latest edition - 27 January 2017)
- ESMA technical advice on possible delegated acts (ESMA/2015/224)
- ESMA Final Report on draft technical standards (ESMA/2015/1455)
- FCA - Policy proposals and Handbook Changes - Consultation Paper CP15/35

# What guidance do we have? (2)

## Market initiatives:

- ICSA/QCA/GC100 Guidance Note  
(Dealing Code and policy document) - June 2016
- Q&A - City of London Law Society and Law Society Joint Company Law Committees
- Share Plan Lawyers Group - suggested approach to MAR in relation to employee share plans - latest edition 30 September 2016
- Association of Investment Companies - Guidance - June 2016

# Inside information: Grant or vesting of share awards

- Does inside information prevent grant or vesting of share awards?
- Is it inside information?

“information of a precise nature which has not been made public, relating directly or indirectly to one or more issuers 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 or on the price of related derivative financial instruments.” (MAR Article 7, paragraph 1(a)).

“.....information which, if it were made public would be likely to have significant effect on the prices of financial instruments..... shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decisions.” (MAR Article 7, paragraph 4)

# Inside information: Grant or vesting of share awards(2)

- “Insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of for his own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates.” (MAR Article 8, paragraph 1)
- “The essential characteristic of insider dealing consists of an unfair advantage being obtained from inside information to the detriment of third parties who are unaware of such information and, consequently, the undermining of the integrity of financial markets and investor confidence.” (MAR Recital (23))
- “The prohibition against insider dealing should apply where a person who is in possession of inside information takes unfair advantage of the benefit gained from that information by entering into market transactions.” (MAR Recital (23))

# Inside information: Grant or vesting of share awards (3)

- There is not insider dealing where there is “legitimate behaviour” (Article 9 of MAR).

Is it legitimate behaviour:

- Where such grants are part of a standard programme with pre planned award dates, amounts and vesting conditions?
  - Where grant authorities have previously been delegated to below board level for individuals who are neither PDMRs nor insiders and decisions are taken solely by individuals not privy to price sensitive information?
- Need to analyse the specific actions

# SAYE plans - operation and impact of MAR

Need to consider position during MAR closed period and where there is inside information:

- Invitation?
- Acceptance of invitation?
- Grant of option?
- Cessation of saving?
- Exercise of option?

# Notification of dealings

- Promise of awards - no notifiable transaction until conditions satisfied (see ESMA Q&As)
- Phantom options - phantom options or cash settled options are likely to be transactions caught by MAR
- Exercise and delivery of shares - one notification not two