ADVICE FROM INSIDE FOR ADVISOR INSIDERS – THE MARKET ABUSE REGULATION

AUGUST 2016

Following the implementation of the Market Abuse Regulation (MAR) which came into force on 3 July 2016, the GC100 (a collection of the senior legal officers of FTSE 100 companies) has published both a summary of the Q&A responses to its member poll in respect of the implementation of MAR together with guidance as to the maintenance of insider lists.

Together the Q&A and the guidance provide a helpful steer to both companies and advisors on the practical approach to take in maintaining insider lists in accordance with MAR. By following the GC100's lead, companies can ensure they do not fall foul of the new obligations, and advisors can both limit their own exposure and ensure their clients are adequately protected.

As part of the changes implemented by MAR, both the previous requirements for a company to maintain a register of people with inside information, and the extent of the information on each person to be recorded, have been extended. MAR also places an obligation on a company to take all reasonable steps to ensure each individual person with inside information acknowledges, in writing, the duties entailed for holding inside information and the potential sanctions for breach.

At first blush these new requirements could add a significant administrative burden onto the relevant company, particularly in recording information in respect of the employees of its advisors. However, the overwhelming consensus of the GC100 from the Q&A is that, in practice, those GC100 companies will continue to rely on their advisors themselves to maintain insider lists in respect of their own staff. The guidance does suggest that companies should take certain steps to ensure the disclosure of inside information to its advisors is carefully logged and, in certain circumstances, agreements with its advisors are put in place.

From an advisor's perspective, the MAR requirements for information to be contained in an insider list, and for obtaining consent, should be applied equally by the advisor. This will likely require advisors to adopt MAR compliant procedures for receiving and distributing inside information amongst its own staff, if not already in place, and advisers should be considering this to the extent they work with companies with listed securities to avoid both legal sanction and the risk of damaging client relationships.

If you work for a company which has securities listed on any securities exchange within the EU, or a corporate advisor or other service provider who may come into contact with inside information from time to time, and you would like to discuss the MAR insider list requirements further, please don't hesitate to contact Simon Heggs or Wayne Atkinson at Collas Crill.

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