



## FINANCIAL SERVICES REGULATION

### MARKET ABUSE UPDATE JULY 2016

The Market Abuse Regulation (MAR) and the [Criminal Sanctions \(Market Abuse\) Directive](#) came into application in Europe on 3 July. Various outstanding pieces of secondary legislation were published in the Official Journal shortly before then, and ESMA published its final form [guidelines](#) in relation to delay in disclosure of inside information and market soundings and an [updated MAR Q&A](#) document on 13 July. Further guidelines are expected later this year.

We anticipate that the European regulators will show some forbearance to firms that are still struggling to implement the rather belated wave of secondary legislation. However, regulators in Europe and globally continue to pursue both civil and criminal enforcement action in respect of offences of insider dealing and market manipulation: this briefing features a selection of those cases.

#### 1. #MAR\_bitesize

To guide you through the first six months under the new regime, we are issuing fortnightly "bitesize" updates on our [blog](#), providing concise snapshots of a number of key practical areas of interest under MAR.

Our first #MAR\_bitesize blogs looked at:

- [Delaying disclosure of inside information](#)
- [Suspicious transaction and order reporting](#)
- [Extra-territorial scope of MAR: impact on non-EU firms](#)

#### 2. Bringing the Market Abuse Regulation into application in the UK

As MAR has direct effect in each EU Member State, implementing measures were only required to remove overlapping or inconsistent provisions of national law and to provide for enforcement of MAR by the national competent authorities (NCAs).

#### The Financial Services and Markets Act 2000 (Market Abuse) Regulations 2016

Somewhat belatedly, on 29 June 2016, the requisite [Regulations](#) to amend UK law to make it compatible with and implement MAR were laid before Parliament. These came into force on 3 July 2016 and substantially amended

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Parts 6 and 8 of the Financial Services and Markets Act 2000 (FSMA). The FCA was designated as the UK's competent authority for the purposes of MAR.

The Regulations prescribe how applications or notifications should be made to the FCA under MAR, and when explanations for delaying public disclosure of inside information must be provided to the regulator. The FCA was also given additional powers for the purposes of MAR, including powers to:

- monitor the financial markets and gather information
- require the publication of corrective statements and other information
- suspend the trading of financial instruments

These powers may, if necessary be enforced by search warrant or by criminal proceedings against a person who fails to comply.

The powers are cast very broadly:

- The power to gather information from issuers, persons discharging managerial responsibilities within issuers (PDMRs) and their connected persons can be exercised if the FCA reasonably requires the information for the purpose of protecting the interests of users of financial markets and exchanges in the UK, or of the orderly operation of those financial markets and exchanges, or simply to verify compliance with Article 17 (public disclosure of inside information) or Article 19 (managers' transactions) of MAR.
- Any person (not merely those working within the regulated sector) can be required to produce information and documents which the FCA "reasonably requires for the purpose of the exercise by it of functions under the market abuse regulation or a supplementary EU regulation". This is arguably sufficiently wide to enable FCA to deploy the power for supervisory purposes, not merely in support of enforcement investigations.

The Regulations also give the FCA enforcement powers in respect of contraventions of MAR, and of secondary legislation made thereunder, to allow it to impose fines and other administrative sanctions. These include power to:

- temporarily prohibit individuals from managing or dealing where they have been directly or knowingly concerned in the civil offences created under MAR
- suspend or restrict permission to carry on regulated activities;
- prohibit an individual from working in or holding a management role in an investment firm.

The regulations also impose requirements on regulated firms, exempt professionals carrying on regulated activities, recognised bodies, EEA central counterparties, or third country central counterparties to establish appropriate internal procedures for their employees to report contraventions of the market abuse regulation or any supplementary EU regulation.

In addition, the Regulations provide that the powers in FSMA which relate to MAR also apply with appropriate modifications for the purposes of the regime under the auctioning regulation, until 3 January 2018 when, on the coming into force of MiFID II (2014/65/EU), MAR will apply to market abuse in relation to all emission allowances.

### FCA rule-making and guidance

The FCA published the final version of the changes it has made to its Handbook (PS 16/13 and PS 16/18) consequent on the powers conferred by it under the Regulations. These also came into force on 3 July 2016.

The FCA's [Primary Market Bulletin](#) for June 2016 focuses on proposed amendments to, and deletions of, various Technical Notes that are necessary owing to the changes introduced under MAR. Much of the FCA's regulatory material has in effect been downgraded to guidance on the application of MAR within the UK.

## 3. Scope of MAR

MAR considerably expands the scope of the EU market abuse regime as to venues and products that are covered and the extra-territorial effect of the regime. It introduces new procedural requirements in a number of areas.

Many of the key provisions in MAR are supplemented by directly applicable EU Implementing Regulations and technical standards. These set out the detailed requirements that issuers and market participants need to comply with. We have prepared a [list](#) of these. Most recently EIOPA has [proposed](#) implementing technical standards on how NCAs should notify ESMA of the investigations and the sanctions and measures they apply.

### The civil offences

MAR contains the same three primary offences of market abuse as MAD, that is:

- insider dealing,
- unlawful disclosure and
- market manipulation.

We have described these offences in a bit more detail on our [fact sheet](#). The offences apply in relation to financial instruments traded or admitted to trading on an EU trading venue (Traded Financial Instruments), irrespective of whether the issuer has given its consent to that trading, and in relation to other financial instruments whose price or value depend on, or have an effect on, the price or value of Traded Financial Instruments.

The market manipulation offences also extend to dealings in spot commodity contracts where the dealing is likely to have an effect on the price of an investment covered by MAR.

### The criminal market abuse regime

Criminal market abuse is covered, within the EU, by the Criminal Sanctions for Market Abuse Directive 2014/57/EU (CSMAD). The UK exercised its right to opt out of CSMAD.

The UK's criminal market abuse regime is contained in Part V of the Criminal Justice Act 1993 and Part VII of the Financial Services Act 2012. The government intends to reform these provisions within the [Fair and Effective Markets Review](#).

## 4. Market Abuse and Brexit

If and when the UK leaves the EU, the Market Abuse Regulation (MAR) would cease to apply within the UK, unless the UK were to remain within the EEA. This seems the least likely option at the time of writing.

The original UK market abuse regime pre-dated the Market Abuse Directive. The UK is therefore certain to legislate to reinstate a civil market abuse regime. We would expect any UK market abuse regime to capture behaviour, orders and transactions taking place in the UK, or in relation to qualifying investments traded on a trading venue situated in the UK or accessible electronically in the UK.

Many financial instruments traded on UK trading venues may well also be traded on trading venues within the EU. MAR provisions with extra-territorial effect (for example surveillance and STORs requirements, and requirements relating to investment recommendations) will therefore continue to be engaged in relation to behaviour, orders and transactions in relation to those financial instruments. Firms in the UK will therefore need to consider compliance with MAR requirements as well as the requirements the UK chooses to put in place.

The FCA has been influential in shaping the new EU regime, particularly provisions relating to insider lists and market soundings. We would anticipate that much of the detail fleshed out in the EU technical standards and guidelines would be replaced through equivalent FCA rule-making and guidance. The FCA would, however, be free to adapt its rules, and critically, to provide guidance and safe-harbours unfettered by ESMA's view. It is also worth noting that there would probably be no obligation to follow the European Court interpretation of EU law or to apply that interpretation to UK law based on EU law.

The FCA will in due course no doubt enter into a series of bilateral MoUs with ESMA and the National Competent Authorities (NCAs) of Member States pursuant to Article 26 of MAR. The purpose here would be to put in place cooperation arrangements for the efficient exchange of information to enable the NCAs and the FCA to carry out their duties under their respective market abuse regimes.

MAR provides for personal data processed under the regime to be transferred to third countries in compliance with EU data protection rules. Transfer is possible "only on a case-by-case basis" where it is necessary for the purpose of MAR. The UK will need to establish that its post Brexit data protection regime is equivalent to the EU data protection rules (from May 2018, the [EU General Data Protection Regulation](#)). The FCA would not be able to transfer data received pursuant to MAR from an NCA to another third country (e.g. the US, Hong Kong) without its express consent.

## 5. Enforcement round-up

### United Kingdom

#### Civil enforcement

Two recent civil cases demonstrate the FCA's willingness to take action for market abuse even when the amounts in issue are quite modest.

#### Financial adviser banned for insider dealing

In May 2016 the FCA [fined](#) T, a financial adviser, £36,285 and banned him for a period of at least two years for engaging in insider dealing. The CEO of his company had circulated an email confirming that the company had made an offer for another company, A. Having tried to recall the email, he sent a further email to staff, noting that it was "not public information yet" and warning staff not to act on the information, because "it is potentially insider trading". T nonetheless instructed his broker to buy shares in A. After receiving a further email from the CEO confirming the information was now public, sold them, making a profit of £3,498. The following day, T called the broker through which he had placed the above trades and asked "whether it's possible to reverse a buy-sell trade that I placed yesterday within my SIPP?" for the reason that "I fear I may have been guilty or be judged to be guilty of insider trading." The broker informed T that it was not possible to reverse the trade and stated "it's probably one for your compliance department". The broker made a suspicious transaction report to the FCA. T did not inform his compliance function or the FCA of his concerns.

Although the relatively small fine reflects a discount for early settlement and financial hardship, and the relatively small profit obtained, the FCA noted that the deliberate and dishonest nature of T's actions demonstrated a lack of honesty and integrity, and that he posed a serious and continuous risk to consumers and to confidence in the financial system.

#### Improper dealing and unlawful disclosure

The FCA has also [fined](#) B, a Jersey resident, £60,000 for insider dealing and publicly censured him for improper disclosure. B had been contacted by the CEO of MoPowered who told B that the company was intending to raise new capital via a share placement, and asked whether B would be interested in subscribing for shares at a likely substantial discount to the current share price. B forwarded the CEO's email and attached presentation to another shareholder who was not an insider, thus disclosing inside information. The other shareholder did not act on the information. Following a subsequent request from the CEO for a significant level of funding, B asked his broker to sell his entire shareholding in MoPowered 'at any price'. In the event the broker was only able to sell a small part of the holding before the announcement. After the placement was disclosed, the share price of MoPowered fell from 20.25p to 8p within the first hour.

In addition to the fine and censure, the FCA ordered B to pay restitution amounting to £1,850 plus interest of £259. This was based on the losses suffered by the purchasers of his shares, to whom the restitution was payable.

#### Criminal cases

The FCA continues to maintain its determination to bring criminal prosecutions against city professionals who use their position to abuse the markets. Mark Steward, the Director of Enforcement and Market Oversight, noted recently that insider dealing has become 'increasingly detectable'. Many of the notification, record-keeping and surveillance requirements in MAR are specifically designed to enhance the ability of regulators to identify such misconduct.

### **Operation Tabernula update: convictions and acquittals**

A former senior investment banker and a chartered accountant were convicted by a 10 to 2 majority and **sentenced** in May 2016 to 4.5 years and 3.5 years imprisonment respectively having been convicted of conspiring in insider dealing.

The individuals, D and H were close friends. They agreed to deal secretly, sometimes on the basis of inside information. D sourced the inside information from within the investment banks at which he worked, either through working on transactions himself or through being able to glean what his colleagues were working on. He passed this inside information to H who then dealt for the benefit of D and himself.

D and H put in place elaborate strategies designed to prevent the authorities from uncovering their activities. These included the use of unregistered mobile phones, encoded and encrypted records, safety deposit boxes and the transfer of benefit using cash and payments in kind. The FCA relied on five acts of insider dealing to prove this conspiracy. In sentencing D and H the judge, His Honour Judge Pegden, described their offending as "persistent, prolonged, deliberate, dishonest behaviour."

These cases were part of the FCA's largest and most complex insider dealing investigation, Operation Tabernula, which has resulted in five convictions to date.

Three other defendants were acquitted by the jury. Whilst giving evidence, one of the subsequently acquitted traders apparently admitted having tried to reinvigorate a false rumour about a bid for BSkyB to a journalist after taking a large position in the stock. This led the judge to give him a warning about self-incrimination in respect of potential market abuse.

The National Crime Agency had supported the FCA in deploying and monitoring a listening device, placed in the kitchen of the office of two of these, which recorded key conversations. Whilst the evidence in the covert recordings of the office conversations seemingly did not persuade the jury of the knowledge or involvement of the two traders, the recordings and surveillance played a critical role in identifying H and D. The deployment of these techniques reflects the regulator's determination to crack down on institutional and deliberate market abuse.

### **Insider dealing at an investment management firm**

A former equities trader at an investment management firm was **sentenced** in June 2016 to two years' imprisonment. He had pleaded guilty to nine counts of insider dealing. The offences were committed over a nine year period between October 2003 and November 2012. The total profits made from the insider dealing amount to at least £155,161.98. The FCA will also take confiscation proceedings against the trader.

In sentencing the judge said "it was no exaggeration when prosecution counsel said in opening that these offences were pre-meditated, deliberate, and dishonest." The FCA described this as 'yet another case involving a city professional caught and jailed for abusing the market that employs him'.

### **US\$ LIBOR manipulation**

In July 2016 four former bank employees were **sentenced** to a total of 17 years in prison. This followed their convictions after an 11 week trial for manipulating US\$ LIBOR. In passing sentence His Honour Judge Leonard QC said that the culpability of the defendants was high and their behaviour showed "an absence of integrity". One of the defendants, who had earlier accepted responsibility and pleaded guilty, was the first to be convicted in the SFO's LIBOR investigation. The other three had contended in court that their bosses had sanctioned communications on LIBOR rates and that requests to rig rates were sent over corporate messaging systems in full view of compliance staff.

A confiscation order in the sum of £114,501.19 and a costs order of £30,000 were imposed against one individual. Confiscation proceedings against the other individuals have been adjourned to a later date.

Two others facing related charges are to be **retried**, the jury having failed to reach verdicts for the two individuals after the same 11-week trial.

The fact that this trial included American nationals reflects extensive cooperation between US and UK authorities, and the global nature of the regulatory response to benchmark manipulation. We touch on similar prosecutions in other jurisdictions for benchmark manipulation below.

## France

### High frequency trading (HFT) issues

The Autorité des marchés financiers (AMF) has **fined** a firm €400,000 in relation to HFT trading which took place in 2011. The AMF found that the firm concerned manipulated the market through the trading. The firm had issued a large number of "flickering orders" (which either oscillated between two price limits, or were issued and then immediately cancelled). These created a false or misleading impression as to the supply, demand or price of financial instruments.

It appears that different algorithmic models set up within the firm would in some circumstances begin to resonate with each other and generate flickering orders. These models were not programmed to cancel or modify orders immediately, but to generate a profit on the basis of the spread between the sell and buy price in the order book. Accordingly, orders would be annulled or modified when the model determined that the current order would no longer generate a profit if executed at that price. The modification of orders was not intended to induce other participants to trade at a price other than the market price, nor to prevent others from trading.

The AMF noted that the flickering orders were generally the result of a programming glitch: the models failed to take into account the existence of small residual positions in setting an order of the highest possible volume within risk limits. The algorithm would then recalculate the total exposure to reflect the order just sent, and cancel the last order to bring the position back within risk limits (up to 100 times a second). In addition the flickering orders constantly lost their priority, which made their execution less likely.

The description of the functioning of the algorithms was provided by the firm. It is noteworthy that the analysis performed by the regulator and the trading venues in respect of the cross-venue effects focused on one week's trading; that analysis was used to support evidence derived from Euronext's analysis of daily trading over a 34 month period, during which the firm did not identify or address the programming error.

In determining the fine, the factors the AMF took into account included:

- a failure promptly to identify and correct an incorrectly calibrated algorithm;
- the absence of genuine interest in acquiring the stocks the subject of the flickering orders;
- the impact of the orders on the stability of the order book;
- the creation of an impression of intense activity in the order book;
- the information processing difficulties these orders created for other market participants; and
- the fact that the firm no longer undertakes trading activities.

Initially, the AMF had also alleged that the orders employed fictitious devices to set the price at an artificial level, but concluded that the evidence did not establish any actual or potential impact of the flickering orders on the price of the securities in question, and noted that the provisions of MAR introduce the element of price effect into the new equivalent of this offence. The AMF therefore did not go on to determine whether the flickering orders constituted activities giving a fictitious view of the market or whether they involved other deception or contrivance.

Importantly, the AMF also noted that the accepted market practice exemption relating to liquidity providers was confined to signed mandates between a broker and an issuer for the purpose of a share buy-back program. Agreements for the provision of liquidity entered into between a trading venue and a broker fall outside the safe harbour.

### Fixing the price at an artificial level

The AMF has imposed a **fine** of €250,000 on an individual for trading through online brokerage platforms on his own account and on behalf of connected persons between September 2012 and August 2013. The trading was

carried out with a view to fixing the price of shares on Euronext at an artificial level, in order to profit from trading on Equiduct and on CFDs entered into with IG Markets.

As in the HFT case discussed above, the AMF emphasised the absence of economic rationale for the trading: most of the Euronext trading was loss-leading, not merely because of the fees incurred in the context of small transactions, but also the fact that the orders were placed well away from the current market value. The AMF concluded this was designed to fix the price, rather than secure a profit from the trading.

The fact that the individual sought to circumvent the closure of his personal account by trading through the accounts of connected persons and that he continued to trade after receiving a warning from the AMF served to confirm the deliberate nature of the trading (as did a text message to a friend).

### **Disclosure breaches**

The AMF has **fined** an issuer and its president/CEO €200,000 for having failed to disclose inside information to the public promptly, and in any event before drawing on its equity line on 15 November 2013. The issuer became aware on 21 October that it was likely that the Committee for Medicinal Products for Human Use (CHMP) of the European Medicines Agency would issue a negative opinion at a meeting on 21 November 2013. The opinion was in relation to the issuer's application for conditional authorization for marketing of a drug in relation to gastro intestinal disorders. The issuer continued to make representations to the CHMP, but in the AMF's view, a negative decision remained "highly probable". When the decision was eventually announced, the issuer's share price fell by 21.05%.

Plainly, in this case the information about the decision was inside information, being price sensitive, precise and non-public. The president of the company sent an email to the CHMP on 22 October 2013 saying that he had noted the fact that "it was probable that CHMP would issue a negative opinion on the drug in relation to gastro intestinal disorders, and referred to having received the comments of the Rapporteurs following the oral presentation. In his message to staff, he said "The position of CHMP is not a surprise. The reasons given are surprising". It should therefore have been disclosed, absent any legitimate purpose for delay.

It is worth considering the issue of delay in the light of the final form ESMA guidelines under MAR. Those guidelines suggest that where a transaction previously announced is subject to a public authority's approval, and such approval is conditional upon additional requirements, if the immediate disclosure of those requirements will likely affect the ability for the issuer to meet them and therefore prevent the final success of the deal or transaction, then delay may be justified (assuming the other conditions for delay are met). In this case, there was no suggestion that an announcement would have jeopardised the final outcome.

### **Insider dealing and PDMR transactions**

The AMF has imposed a **fine** of €25,000 on an individual (M), and of €5,000 on an entity S on whose behalf he also traded, in relation to insider dealing and breach of persons discharging managerial responsibilities (PDMR) disclosure obligations. M, a manager of Europlasma, sold shares in the issuer, some of which were held by S, on 20 and 28 February 2013, at a time when he was in possession of inside information. Delays in a project for the construction of a plant significantly increased the issuer's need for cash and, adversely impacted its results in the absence of revenue from the plant. M had attended a Board meeting in late January 2013, at which the deterioration in Europlasma's financial position was discussed. The CFO informed the Board that by late March or early April 2013, the issuer would become unable to meet its payments.

Because the issuer issued an announcement regarding its financial position on 4 March 2013, a subsequent sale of shares was held not to constitute insider dealing. However, M was sanctioned for having failed to disclose that sale as well.

## **Hong Kong**

### **SFC prohibits broker from processing client's cash and shares**

The SFC has **issued** a **restriction notice** to a broker to prohibit it from processing cash and shares in a client account which holds proceeds of suspected insider dealing. The notice prevents the broker from processing

instructions from the client (or anyone authorised to operate the account) relating to shares of a Hong Kong listed company, without the written consent of the SFC. This includes withdrawing any such shares or transferring proceeds from the disposal of such shares, and disposing or dealing with the shares. The broker must also notify the SFC upon receipt of instructions to do the same.

The publication is interesting in that it does not identify the listed company or the client – the press release identifies only the broker – which is not itself subject to the SFC's investigation into the suspected insider dealing, and the restriction notice does not affect its operations or its other clients.

#### **Administrators complete execution of restoration order on insider dealing case**

The SFC has [announced](#) that court-appointed administrators have completed the execution of the [restoration order](#) made by the Court of First Instance in December 2013 in relation to the Tiger Asia insider dealing case. The order was made following the admission of insider dealing by an asset management company and its 2 senior officers. The SFC's press release states that:

- a total of around HK\$43.7 million (accounting for 97% of the restoration fund) has been paid to 1,591 local and overseas investors;
- the SFC and the administrators have taken all reasonable steps to contact the remaining 209 investors, without success; and
- the balance of the restoration fund has been returned to the asset management company and the 2 senior officers with the approval of the court.

The distribution of funds recouped under such orders can place a considerable administrative burden on regulators. In the UK, the regulators may also make, or obtain from the court, orders for restitution in respect of losses suffered as a result of market abuse, most typically in civil cases involving retail investors. The regulator will otherwise look for "disgorgement" of profits in the context of its penalty setting process (regulatory penalties are payable to public funds).

## **United States**

### **Indictment of two former bank employees on fraud charges in connection with LIBOR manipulation**

The US Department of Justice (DOJ) has [announced](#) the indictment of a supervisor of a Trading Desk and a derivatives trader at an international bank for their alleged roles in a scheme to manipulate the USD London InterBank Offered Rate (LIBOR). They were charged with one count of conspiracy to commit wire fraud and bank fraud and nine counts of wire fraud. The DOJ alleged that the two bankers directed their subordinates to submit false and fraudulent LIBOR contributions to gain financial interests for the bank. The charges in the indictment are merely allegations, and the defendants are presumed innocent unless and until proven guilty.

### **CFTC fines for attempted manipulation of interest rate benchmarks**

The US Commodity Futures Trading Commission (CFTC) [announced](#) two enforcement actions against a bank and certain affiliates for attempted manipulation of several benchmark rates. The benchmarks in this round of enforcement actions include Yen London Interbank Offered Rate (LIBOR), Euroyen Tokyo Interbank Offered Rate (Euroyen TiBOR) and USD International Swaps and Derivatives Association Fix (USD ISDAFIX). The combined fines for these two enforcement actions totalled USD 425 million. The entities are also required to take remedial actions to strengthen their internal controls and procedures, including annual audits by third party auditors.

This followed an earlier fine of USD 310 million against the bank in November 2014. The earlier fine was for attempted manipulation, and for aiding and abetting other banks' attempts to manipulate global foreign exchange benchmark rates.

### **Brokers indicted in Forcefield market manipulation scheme**

The Department of Justice (DOJ) has [unsealed](#) an indictment against several individuals. These include five registered brokers. It is alleged that they have committed:

- securities fraud;

- wire fraud;
- money laundering;
- misrepresentation to law enforcement officials; and
- related conspiracies.

The conspiracies related to carrying out a market manipulation scheme for ForceField Energy Inc. (ForceField), a Nasdaq-listed lighting product manufacturer. The defendants used their positions as a stock promoter, brokers, or investor relations to push stock, and allegedly controlled the price and volume of ForceField's stock trading, causing a loss of USD 131 million to the investors. The defendants knew that ForceField had no business operations and little revenue, and allegedly used kickbacks, concealment and manipulative trading to deceive investors. The SEC has also filed a similar complaint.

### **Frontrunning scheme**

The DOJ has **charged** two senior foreign exchange traders at a global bank with conspiring to defraud a client through a "front-running" scheme. According to [the complaint filed](#), in November and December 2011, the traders misused information provided to them by a client to execute a high-value foreign exchange transaction which related to the planned sale of one of the client's foreign subsidiaries. The bank's agreement with the client required the bank to keep the details of the client's planned transaction confidential. The traders allegedly made foreign exchange transactions for the bank's "proprietary" accounts, which they held until the client's planned transaction was executed.

Both defendants allegedly made misrepresentations to the client about the planned foreign exchange transaction, concealing the self-serving nature of their actions. The complaint alleges that they caused the US\$ 3.5 billion foreign exchange transaction to be executed in a manner that was designed to spike the price of the Pound Sterling, to the benefit of the bank and at the expense of their client – and potentially other market participants. The questionable transactions allegedly generated profits of roughly US\$8 million, including profits generated from the front running conduct by the defendants, and other traders whom they directed. The charges in the complaint are merely allegations, and the defendants are presumed innocent unless and until proven guilty.

Recital 30 of MAR notes that the protection in MAR for persons authorised to execute orders on behalf of third parties with inside information does not extend to activities clearly prohibited under this Regulation including, for example, front-running'.

## **Australia**

### **Two years imprisonment for conspiracy to commit insider procuring**

A former stockbroker was convicted by a jury of conspiracy to commit insider procuring, and has been **sentenced** to two years imprisonment. The prosecution contended that the conspiracy involved an agreement between the stockbroker and a friend who worked for an asset management firm. The friend, with the benefit of inside information about the trading intentions of his employer, would procure trading in 'Contracts for Difference' by the stockbroker. The Supreme Court of NSW has ordered that the stockbroker be released after serving one year of his custodial sentence. It is unclear whether the decision will be appealed.

### **BBSW rate rigging proceedings commenced against third major bank**

ASIC has commenced civil penalty proceedings against a third major bank alleging market manipulation of the bank bill swap reference rate (BBSW), in addition to allegations of unconscionable conduct. ASIC is seeking pecuniary penalties and an order that the bank will implement a comprehensive compliance program designed to ensure that employees or other persons involved in its trading are aware of their responsibilities and obligations in relation to trading Prime Bank Bills in the Bank Bill Market.

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