Market Abuse Regulation Committee Terms of Reference

Phoenix Spree Deutschland Limited

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Objective

These terms of reference seek to assist the Market Abuse Regulation Committee ("**MAR Committee**") in:

- Identifying inside information when it arises.
- Understanding and ensuring compliance with the Company's disclosure obligations in respect of such inside information.
- Understanding and ensuring compliance with the record-keeping and notification obligations of the Company in respect of inside information.
- Takings reasonable steps to ensure that individuals on the insider list are aware of their legal obligations in respect of insider dealing, unlawful disclosure and market manipulation.

The obligations on the Company relating to the disclosure and control of its inside information are set out in the EU Market Abuse Regulation (Regulation 596/2014) ("**MAR**") together with its associated implementing regulations and guidance. The FCA's Disclosure Guidance ("**DG**") provides further assistance in respect of interpretation of the applicable rules.

The Appendix to this document contains guidance on the following areas:

- Identification of inside information
- Monitoring compliance
- Delaying disclosure
- Selective disclosure
- Market rumour
- Control of inside information: insider list
- Updating the insider list
- Making individuals on the insider list aware of legal and regulatory duties
- Insider dealing
- Unlawful disclosure of information
- Legitimate behaviour
- Market manipulation
- Inside information considerations and financial reporting
- Information in draft property valuation reports
- PDMR transactions
- Dealing during closed periods
- Notification of PDMR transactions

Members of the MAR Committee

All directors of the Board are members of the MAR Committee.

Quorum and proceedings

The quorum necessary for the transaction of business shall be any two (2) members of the MAR Committee. The members present shall elect one of themselves to chair the meeting of the MAR Committee. A duly convened meeting of the MAR Committee at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions

vested in or exercisable by the MAR Committee. Such a meeting of members shall only be validly convened if the majority of the members participating are located outside the United Kingdom. Such a meeting shall be deemed to take place where the Chair of the meeting then is located provided that no meeting can take place in the United Kingdom.

Meetings of the MAR Committee may be called on short or immediate notice via email.

The Company Secretary shall act as secretary to the MAR Committee.

General

Potential instances of inside information (including proposals relating to any transaction, event or matter involving the Company) shall be notified to the MAR Committee or the Company Secretary. In the event that any member of the MAR Committee is aware that he or she is, or may be, in possession of inside information or is approached with a potential development which may constitute inside information, such member shall contact the Company Secretary who should make a log of the potential inside information and convene a meeting with the other members of the MAR Committee as soon as possible.

In the event that information is deemed by the MAR Committee to be inside information or potentially be inside information, a member of the MAR Committee or the Company Secretary shall contact the Company's corporate broker without delay to discuss the implications of and to run through MAR as it relates to the facts of the case.

If the information is deemed to be inside information under MAR, the MAR Committee, in conjunction with the Company's corporate broker (and where necessary, legal advisers) will assess whether or not the Company is able to delay disclosure.

Once the information is deemed to be inside information:

- The Company Secretary will keep a detailed log of insiders as prescribed by MAR ("**Insider List**").

- A note will be kept by the Company Secretary setting out why the Company delayed disclosure (to the extent disclosure was delayed).

- If disclosure of the inside information is delayed, the Company Secretary will notify the Financial Conduct Authority ("**FCA**") when the inside information is announced providing a brief summary of the circumstances surrounding the delay.

- To the extent the inside information relates to external events consideration must be given to the use of confidentiality agreements to minimise the likelihood of leaks.

- The MAR Committee, in conjunction with the Company Secretary, will consider on a case by case basis when to add persons to the Insider List.

It is emphasised that record keeping of all of the above (in particular the decision and reasons behind delayed disclosure) is important and MAR stipulates prescribed forms for Insider Lists.

A copy of the Insider List, together with the PCA list, will be tabled at each MAR Committee meeting for review. The Company Secretary shall request on an annual basis a written confirmation from those on the Insider List that their information is complete and accurate.

Where the MAR Committee concludes that the information does not constitute inside information, a copy of the minutes recording the MAR Committee's decision must be circulated to all members of the MAR Committee.

Where a decision to allow selective disclosure of inside information is made, a draft holding announcement should be prepared as soon as possible and to be approved by the MAR Committee.

Where the MAR Committee concludes that a short delay is justified because further details must be obtained in order to assess the significance of the information, a draft holding announcement should be prepared as soon as possible and to be approved by the MAR Committee.

Where a decision to delay an announcement is made, a draft holding announcement should be prepared as soon as possible and to be approved by the MAR Committee.

Property transactions and other items

All information put forward for the MAR Committee for each event should be considered on its own merit. As a general rule of thumb, all the property purchases or disposals by the Company within 5% -10% of the Company's latest published Gross Assets Value ("**GAV**") shall be announced as a matter of good governance even if such purchases may not necessarily constitute inside information. Purchases greater than 10% of the Company's GAV should be considered in detail as it is highly likely to constitute inside information.

It is understood that the independent valuations of the properties and other underlying assets, if any, performed bi-annually for the purpose of the Company's interim and the annual financial statements, shall be considered approved for release once such valuations are duly approved by the Board. Immediately following the conclusion of the Board meeting, the valuation and associated announcement shall be considered by the MAR Committee, and if they are considered to constitute inside information, shall be released immediately. Paragraph 15 of the Appendix contains guidance in relation to the consideration of information contained in draft property valuation reports.

Paragraph 14 of the Appendix contains guidance in relation to financial reporting and inside information.

Appendix

1 Disclosure of inside information

1.1 The primary disclosure obligation in Article 17 of MAR is that a listed company must notify an RIS (Regulatory Information Service) as soon as possible of any inside information which directly concerns the company (Article 17(1) of MAR).

1.2 This is subject to some exceptions in Article 17(4) and (5) of MAR relating to delayed disclosure and selective disclosure which are set out below.

2 Identification of inside information

2.1 "Inside information" (with respect to listed securities and other financial instruments) is information of a precise nature which:

"(a) has not been made public,

(b) relates, directly or indirectly, to one or more issuers or to one or more financial instruments, and

(c) would, if it were made public, be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments."

(Article 7(1)(a) of MAR).

2.2 Each element of the above test must be satisfied for the information to be inside information. With respect to (c), information that a reasonable investor would be likely to use as part of the basis for an investment decision will be automatically deemed to be price-sensitive.

2.3 The FCA has previously indicated (under the pre-MAR regime) that examples of relevant information likely to affect a reasonable investor's decision include information relating to the assets and liabilities of the company, its financial condition or performance, major new developments in the company's business and information previously disclosed to the market.

Under MAR, information is "precise" if it:

"(a) indicates circumstances that exist or may reasonably be expected to come into existence or an event that has occurred or may reasonably be expected to occur; and

(b) is specific enough to enable a conclusion to be drawn as to the possible effect of those circumstances or that event on the price of financial instruments or related instruments (derivatives, etc.) (Article 7(2) of MAR).

2.4 In the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information. An intermediate step in a protracted

process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information (Article 7(3) of MAR).

According to the FCA, there is no figure (percentage change or otherwise) that can be set when determining the price significance of the information, as this will vary from company to company.

3 Monitoring compliance

3.1 Directors of a listed company should carefully and continuously monitor whether changes in the circumstances of the company are such that an announcement obligation has arisen under Article 17 of MAR.

3.2 The company should therefore put systems in place to ensure that information is escalated in a timely manner to the board to enable it to decide whether any information is inside information which should be announced.

3.3 Companies and their agents may establish disclosure committees (such as the present MAR Committee) to deal with their obligations on inside information. Instances of inside information (or potential inside information) should be drawn to the MAR Committee's attention immediately so that it can review and make a formal decision on any required announcement. The MAR Committee terms of references states that all the directors of the Board are members of the MAR Committee.

3.4 In the context of identifying and handling inside information during the preparation of financial reports, please refer to paragraph 14 below.

3.5 In the context of the consideration of information contained in draft property valuation reports, please refer to paragraph 15 below.

4 Delaying disclosure

4.1 Under Article 17(4) of MAR a company may, under its own responsibility, delay the public disclosure of inside information, such as not to prejudice its legitimate interests, provided that:

"(a) immediate disclosure is likely to prejudice its legitimate interests;

(b) delay of disclosure would not be likely to mislead the public; and

(c) the issuer is able to ensure the confidentiality of that information."

4.2 The European Securities and Markets Authority ("**ESMA**") has issued guidelines setting out a non-exhaustive indicative list of the legitimate interests of issuers such as may justify delay in disclosure of inside information, and on situations in which such delay may mislead the public. ESMA recommends that the non-exhaustive list of legitimate interests (potentially justifying delay) should include (in short) the following:

4.2.1 the issuer is conducting ongoing negotiations the outcome of which would likely be jeopardised by public disclosure;

4.2.2 the financial viability of the issuer is in grave and imminent danger and immediate public disclosure would risk jeopardising recovery negotiations;

4.2.3 the issuer has a two-tier board structure and secondary (i.e. supervisory board) approval is required to give effect to the relevant decision;

4.2.4 the issuer has developed a product or an invention and the immediate public disclosure of that information is likely to jeopardise the issuer's intellectual property rights;

4.2.5 the issuer is planning a major acquisition or disposal, the disclosure of which would jeopardise the conclusion of the transaction (and in these cases the issuer should keep evidence on file to support the existence of such a plan); and/or

4.2.6 a transaction previously announced is subject to a public authority's approval, which is conditional upon additional requirements, the disclosure of which will likely affect the issuer's ability to meet the relevant conditions.

4.3 ESMA indicates that delaying disclosure of inside information is likely to mislead the public in circumstances in which the inside information intended for delay would (if disclosed) contradict earlier information or current market expectations, including, at a minimum, circumstances in which the information intended to be delayed:

4.3.1 is materially different from a previous public announcement of the issuer on the same matter;

4.3.2 concerns the fact that the issuer's financial objectives (including profit forecasts) are likely not to be met, where such objectives were previously publicly announced; and/or

4.3.3 is in contrast with the market's expectations, where such expectations are based on signals that the issuer has previously sent to the market (such as interviews, roadshows or other similar communication by the issuer or with its approval).

4.4 Where the company is entitled to delay disclosure of inside information under Article 17(4) of MAR, the FCA's Disclosure Guidance ("**DG**") (building on Article 17(8) of MAR) indicates that the company may, depending on the circumstances, be justified in disclosing inside information to third parties under confidentiality restrictions.

4.5 The guidance (at DG 2.5.7 G) also sets out a non-exhaustive list of persons to whom it may be justifiable for the company to make selective disclosure. This list includes major shareholders of the listed company, its lenders and credit-rating agencies. The company should document the confidentiality restrictions or, if they are not reduced to writing, record the terms and (if appropriate) the nature of the obligations. However, if the confidentiality restrictions exist with an adviser with whom the company has an ongoing relationship, the company can rely on confidentiality provisions in its standard terms and conditions.

5 Selective disclosure

5.1 DG 2.5.7 G sets out a non-exhaustive list of persons to whom it may be justifiable for the company to make selective disclosure. This list includes major shareholders of the listed company, its lenders and credit-rating agencies. The Company should

document the confidentiality restrictions or, if they are not reduced to writing, record the terms and (if appropriate) the nature of the obligations. However, if the confidentiality restrictions exist with an adviser with whom the Company has an on-going relationship, the Company can rely on confidentiality provisions in its standard terms and conditions.

5.2 In disclosing inside information on a selective basis, the company should be mindful of its obligations under MAR prohibiting unlawful disclosure of inside information (Article 10 of MAR). In the context of a potential issue or placement of shares, the prescribed procedures to be followed for qualifying market soundings (not amounting to unlawful disclosure) will also need to be considered and followed, wherever practicable (Article 11).

6 Market rumour

6.1 In relation to market rumour, if the company has delayed disclosing inside information and it is the subject of largely accurate market rumour, Article 17(7) of MAR states that in such circumstances the company may not delay disclosure of the inside information any longer as it is unable to ensure the confidentiality of the inside information (as required under Article 17(7) of MAR). In this circumstance, the inside information must be disclosed by the company via an RIS as soon as possible, using a holding announcement if there may be a delay in a detailed announcement.

If the market rumour is false, the Disclosure Guidance indicates that it is unlikely that the fact that the company knows the rumour is false would itself be inside information. However, even if the knowledge that the rumour is false does constitute inside information, the company should be able to delay disclosure in accordance with Article 17(4) or (5) of MAR (DG 2.7.3 G).

7 Control of inside information: insider list

7.1 DG 2.6.1G recommends that issuers establish effective arrangements to deny access to inside information to persons other than those who require it for the exercise of their functions within the company.

7.2 The company must ensure that it (or a person acting on its behalf or on its account) draws up a list of those persons who have access to inside information and who are working for the company or relevant entity, under a contract of employment, or are otherwise performing tasks through which they have access to inside information relating to the company, such as advisers.

7.3 Persons acting on behalf of the listed company (such as advisers) are also subject to the obligation to draw up, update and provide to the FCA upon request their own insider list under Article 18(1) MAR of those persons who have access to inside information and who are working for the company or relevant entity, under a contract of employment, or are otherwise performing tasks through which they have access to inside information relating to the company.

7.4 The insider list must be in a secure electronic form, sufficient to ensure the accuracy and confidentiality of the information (as well as access to and retrieval of previous versions) and must follow a prescribed template.

7.5 Separate templates are prescribed for (i) deal-or event-specific inside information and (ii) permanent insiders. The deal-specific or event-specific sections are mandatory but the permanent insiders section is not. Permanent insiders are those persons who have access to all types of inside information at all times. The deal-or event-specific insider list must be split into sections for separate pieces of inside information, with each section including a list of individuals with access to the relevant piece(s) of inside information.

7.6 The list must contain the following information for each relevant individual:

7.6.1 first name;

7.6.2 surname;

7.6.3 birth name if different;

7.6.4 professional telephone numbers (work direct telephone line and work mobile number);

7.6.5 company name and address;

7.6.6 function and reason for being an insider;

7.6.7 date and time at which the person obtained access to the inside information (or, for permanent insiders, was included in the list);

7.6.8 date and time at which the person ceased to have access to the inside information;

7.6.9 date of birth;

7.6.10 national identification number (if applicable);

7.6.11 personal telephone numbers (home and personal mobile telephone numbers); and

7.6.12 personal home address.

7.7 Details for permanent insiders need not be repeated on the deal-or event-specific list.

8 Updating the insider list

8.1 The insider list must be updated promptly each time there is a change in the reason why a person is on the list (for example, as a result of a new piece of inside information), whenever a new person is added to the list and whenever a person on the list no longer has access to inside information (such as in cases where the information has been disclosed to the market). Each update to the insider list must state the dates and times on which it was created and updated (Article 18(4) of MAR). The list (including each updated version) needs to be kept for five years from the date on which it was drawn up or updated, whichever is the latest (Article 18(5)).

9 Making individuals on the insider list aware of legal and regulatory duties

9.1 The company and any person acting on its behalf or account must also take all reasonable steps to ensure that all individuals on the insider list are aware of the legal and regulatory duties entailed and are aware of the sanctions attaching to insider dealing, unlawful disclosure of inside information and market manipulation. (please refer to the sections below).

9.2 To do so, the company and any person acting on its behalf or account should ask each person on the insider list to **acknowledge in writing** that he or she understands and will comply with the legal and regulatory duties entailed and are aware of the sanctions attaching to insider dealing, unlawful disclosure of inside information and market manipulation and to provide guidance in relation to such duties as appropriate.

10 Insider dealing

10.1 Recital 23 of MAR states the following: "*The essential characteristic of insider dealing consists in 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*."

10.2 Article 14(c) of MAR prohibits a person from unlawfully disclosing inside information. Article 10 of MAR describes the behaviour that amounts to unlawful disclosure of inside information. It arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties (Article 10(1), MAR). The onward disclosure of recommendations or inducements referred to in Article 8(2) of MAR amounts to unlawful disclosure of inside information where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information (Article 10(2), MAR).

10.3 Article 14 of MAR prohibits a person from:

10.3.1 Engaging or attempting to engage in insider dealing (Article 14(a)).

10.3.2 Recommending that another person engage in insider dealing or inducing another person to engage in insider dealing (Article 14(b)).

10.3.3 Unlawfully disclosing inside information (Article 14(c)).

10.4 Article 8 of MAR sets out the behaviour which amounts to insider dealing. Insider dealing arises where a person possesses inside information and uses that information by acquiring or disposing of (for its own account or for the account of a third party), directly or indirectly, financial instruments to which that information relates. The use of inside information by cancelling or amending an order concerning a financial instrument to which the information relates will also amount to insider dealing, where the order was placed before the person concerned possessed the inside information.

10.5 Recommending that another person engage in insider dealing, or inducing another person to engage in insider dealing arises where the person possesses inside

information and recommends, on the basis of that information, that another person does any of the following:

10.5.1 Acquires or disposes of financial instruments to which that information relates, or induces that person to make such an acquisition or disposal (Article 8(2)(a)).

10.5.2 Cancels or amends an order concerning a financial instrument to which that information relates, or induces that person to make such a cancellation or amendment (Article 8(2)(b)).

10.6 The use of the recommendations or inducements referred to in Article 8(2) of MAR amounts to insider dealing where the person using the recommendation or inducement knows or ought to know that it is based upon inside information (Article 8(3), MAR). Recital 26 to MAR explains that, in this respect, competent authorities should consider what a normal and reasonable person knows or should have known in the circumstances.

10.7 Article 8 of MAR applies to any person who possesses inside information as a result of being a member of the administrative, management or supervisory bodies of the issuer, having a holding in the capital of the issuer, having access to the information through the exercise of an employment, profession or duties, being involved in criminal activities, or to any person who inside information under circumstances other than those referred to in the bullets above, **where that person knows or ought to know that it is inside information** (Article 8(4)).

11 Unlawful disclosure of inside information

11.1 Article 14(c) of MAR prohibits a person from unlawfully disclosing inside information. Article 10 of MAR describes the behaviour that amounts to unlawful disclosure of inside information. It arises where a person possesses inside information and discloses that information to any other person, except where the disclosure is made in the normal exercise of an employment, a profession or duties (Article 10(1), MAR). The onward disclosure of recommendations or inducements referred to in Article 8(2) of MAR amounts to unlawful disclosure of inside information where the person disclosing the recommendation or inducement knows or ought to know that it was based on inside information (Article 10(2), MAR). Article 10 applies to any natural or legal person in the situations or circumstances referred to in Article 8(4) of MAR (please refer to paragraph 10.7 above).

12 Legitimate behaviour

12.1 Article 9 of MAR sets out certain types of "legitimate behaviour" relevant for the purposes of Article 8 (insider dealing) and Article 14 (prohibition of insider dealing and unlawful disclosure of inside information) of MAR. This is to avoid inadvertently prohibiting legitimate forms of financial activity where there is no effect of market abuse.

12.2 The mere fact that a legal person is or has been in possession of inside information does not mean that person has used that information and engaged in insider dealing on the basis of an acquisition or disposal, where that legal person has done both of the following:

12.2.1 Established, implemented and maintained adequate and effective internal arrangements and procedures that effectively ensure that neither the natural person who made the decision on its behalf to acquire or dispose of financial instruments to which the information relates, nor another natural person who may have had an influence on that decision, was in possession of the inside information.

12.2.2 Not encouraged, made a recommendation to, induced or otherwise influenced the natural person who, on behalf of the legal person, acquired or disposed of financial instruments to which the information relates.

12.2.3 In addition, under Article 9(2) of MAR, it shall not be deemed from the mere fact that a person is in possession of inside information that the person has used that information and engaged in insider dealing on the basis of an acquisition or disposal, where either of the following applies:

12.2.1 The person is authorised to execute orders on behalf of third parties, and the acquisition or disposal of financial instruments to which the order relates, is made to carry out such an order legitimately in the normal course of the exercise of that person's employment, profession or duties.

12.2.1 For the financial instrument to which that information relates, the person is a market maker or authorised to act as a counterparty, and the acquisition or disposal of financial instruments to which that information relates is made legitimately in the normal course of the exercise of its function as a market maker or as a counterparty for that financial instrument.

However, Recital 30 to MAR explains that these protections do not extend to activities clearly prohibited by it, including the practice commonly known as "front running".

12.2.2 Under Article 9(3) of MAR, it shall not be deemed from the mere fact that a person is in possession of inside information that the person has used that information and engaged in insider dealing by conducting a transaction to acquire or dispose of financial instruments to discharge an obligation that has become due in good faith provided either of the following is satisfied:

12.2.3 The obligation results from an order placed or an agreement concluded before the person concerned possessed inside information.

12.2.4 For transaction is carried out to satisfy a legal or regulatory obligation that arose before the person concerned possessed inside information.

12.2.5 Article 9(4) of MAR provides that the mere fact that a person is in possession of inside information does not mean that person has used that information and engaged in insider dealing, where the inside information has been obtained in the conduct of a public takeover or merger with a company and used solely for the purpose of proceeding with that merger or public takeover, provided that, at the point of approval of the merger or acceptance of the offer by the shareholders of that company, any inside information has been made public or has otherwise ceased to constitute inside information. This provision does not apply to stake-building, which is defined as an acquisition of securities in a company which does not trigger a

legal or regulatory obligation to make an announcement of a takeover bid in relation to that company (Article 3(1)(31)).

12.2.6 Lastly, since the acquisition or disposal of financial instruments by a person necessarily involves that person taking a prior decision to do so, the mere fact of making the acquisition or disposal should not of itself be deemed to constitute the use of inside information (Article 9(5), MAR). This is helpfully summarised in Recital 31 to MAR as: "Acting on the basis of one's own plans and strategies for trading should not be considered as using inside information." However, no legal or natural persons should be protected by virtue of their professional function; they should only be protected if they act in a fit and proper manner, meeting both the standards expected of their profession and of MAR (that is, market integrity and investor protection) (Recital 31, MAR). Accordingly, an infringement of the prohibition of insider dealing set out in Article 14 of MAR may still be deemed to have occurred if the competent authority establishes that there was an illegitimate reason for the orders to trade, transactions or behaviours concerned (Article 9(6), MAR).

13 Market manipulation

13.1 Article 15 of MAR prohibits market manipulation and attempted market manipulation.

13.2 Article 12 of MAR describes the behaviour that amounts to market manipulation. Article 12 applies to natural and legal persons.

13.3 It is important to note that engaging in market manipulation or attempting to engage in market manipulation in a financial instrument may take the form of using related financial instruments, such as derivative instruments that are traded on another trading venue or OTC. In addition, a financial instrument may be manipulated through behaviour occurring outside a trading venue (recital 46 of MAR).

13.4 Non-exhaustive examples of instances which constitute market manipulation include the following, where a person:

13.4.1 Enters into a transaction, places an order to trade or carries out any other behaviour that gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, or secures, or is likely to secure, the price of one or several financial instruments, unless that person establishes that such transaction, trade, order or behaviour have been carried out for legitimate reasons and confirm with an accepted market practice.

13.4.2 Enters into a transaction, places an order to trade or carries out any other activity or behaviour which affects or is likely to affect the price of one or several financial instruments, which employs a fictitious device or any other form of deception or contrivance.

13.4.3 Disseminates information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of, a financial instrument, or is likely to secure, the price of one or several financial instruments, at an

abnormal or artificial level, including the dissemination of rumours, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. Recital 47 to MAR provides some background to, and more information on, this aspect of the market manipulation and attempted market manipulation offences, explaining the serious potential adverse impact that disseminating false or misleading information can have on investors and issuers. Recital 48 clarifies that the rise in the use of websites, blogs and social media means that disseminating false or misleading information via the internet (including through social media sites or un-attributable blogs) should be considered under MAR to be equivalent to doing so via more traditional communication channels.

13.4.4 Transmits false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behaviour which manipulates the calculation of a benchmark.

13.4.5 Buys or sells financial instruments at the opening or closing of the market, which has or is likely to have the effect of misleading investors acting on the basis of the prices displayed, including the opening or closing price.

13.4.6 Takes advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

13.5 As mentioned above, attempted market manipulation is also an offence under Article 15. An attempt to engage in market manipulation is distinguished from behaviour that is likely to result in market manipulation. Attempts may include situations where the activity is commenced, but not competed. This could happen, for example, as a result of failed technology or an instruction to trade that is not acted upon.

14 Inside information considerations and financial reporting

14.1 Listed companies should be aware that their obligations in relation to inside information under MAR continue during the preparation of annual reports and accounts or any interim reports and accounts.

14.2 Companies should not assume they can delay announcing inside information identified when preparing the accounts on the basis that the information will be subsequently disclosed when they announce their results. A delay is only possible if all three of the MAR conditions for a delay (as referred to in paragraph 4.1 above) are met i.e. (i) immediate disclosure is likely to prejudice the company's legitimate interests; (ii) delay is not likely to mislead the public; and (iii) the company is able to ensure the information's confidentiality.

14.3 The FCA has issued guidance for listed companies on identifying and handling inside information during the preparation of financial reports. The guidance is set out in an updated technical note (FCA/TN/506.2). Further information on the FCA's approach is set out in Primary Market Bulletin No. 23.

14.4 The guidance states that companies should begin from the assumption that information relating to financial results could constitute inside information. They should exercise judgment and conduct an ongoing assessment in good faith (as the status of the information may change). Companies also need to record and submit evidence of the assessment process if the FCA requests.

14.5 The guidance does not give examples of information that could amount to inside information in these circumstances. However it was previously suggested that while some financial results are clearly inside information (for example, results outside consensus expectations requiring a profit warning), some are clearly not and some fall within a grey area in between.

14.6 If the company identifies inside information, it must be announced immediately, unless the three circumstances for a delay (as referred to above) apply. As an example of a legitimate interest of the company that is likely to be prejudiced by immediate disclosure, the FCA gives the circumstances where the company "*is in the process of preparing a periodic financial report and immediate public disclosure of information to be included in the report would impact on the orderly production and release of the report and could result in the incorrect assessment of the information by the public*". However, the FCA expects that in many cases the company will be able to make an appropriate announcement that will enable the public to assess correctly the inside information, although in some cases it accepts this will not be possible other than through publication of the full report.

14.7 Even when the company can argue that it has a legitimate interest that needs protecting, MAR does not permit a delay where to do so would mislead the public. ESMA guidelines on delay in the disclosure of inside information give a number of examples of when ESMA considers a delay is likely to mislead the public. These include the situation where the company has previously announced financial objectives that are now no longer likely to be met.

14.8 A company must notify the FCA of any decision to delay announcing inside information, and provide its justification for doing so if the FCA requests.

14.9 The FCA reiterates the point that unwelcome news can rarely be delayed. Companies need to be alert during the preparation of results as to whether they are in line with consensus expectations, and if not, whether an immediate announcement is required. If the company determines that its financial results do not contain inside information, it needs to be able to justify and document this decision.

14.10 If the company does identify inside information, it must record the exact time and date, and if after careful analysis it concludes a delay in announcing is justifiable, it must document this and ensure that the information is kept confidential.

15 Information in draft property valuation reports

15.1 In relation to property valuation reports, broadly, the position is that information contained in a draft property valuation report is not likely to be considered inside information until the report is in a final form, i.e. at the point when no further changes are expected and that it is approved by the board. However, the caveat to this is if there *were* information in the draft property valuation report which identifies something which is materially different to what is currently or normally expected (for example, a very significant difference in the valuations when compared to what is expected).

15.2 In such a situation, a member of the MAR Committee or the Company Secretary should contact the Company's corporate broker without delay to discuss the implications of and to run through MAR as it relates to the specific facts of the case. If such information is then deemed to be inside information under MAR, the MAR Committee, in conjunction with the Company's corporate broker (and where necessary, legal advisers) will assess whether or not the Company is able to delay disclosure.

The final section of this Appendix highlights some of the primary obligations contained in MAR in relation to personal account dealings for "persons discharging managerial responsibilities" ("**PDMRs**") within a listed company.

16 PDMR transactions

16.1 Article 19 of MAR contains a requirement on all directors and other "persons discharging managerial responsibilities" ("**PDMRs**") within the listed company (and, where applicable, persons closely associated with PDMRs ("**PCAs**")) to comply with certain dealing restrictions and disclosure requirements in relation to transactions in or relating to the company's securities.

16.2 The purpose of the MAR 19 requirements is to ensure that PDMRs do not abuse, and do not place themselves under suspicion of abusing, inside information that they may be thought to have, especially in periods leading up to announcement of the company's results.

16.3 "Persons discharging managerial responsibilities" is defined in Article 3(1)(25) of MAR as being a member of the administrative, management supervisory bodies of the issuer (which includes directors of the company) or other senior executives of the issuer who have "*regular access to inside information relating, directly or indirectly, to the issuer and [have] power to make managerial decisions affecting the future development and business prospects of the issuer*". The FCA confirms that an individual may be a "senior executive" of the company irrespective of whether an employment relationship or other contractual arrangement exists between the individual and the company (provided that the conditions regarding access to inside information and managerial decision making powers are satisfied).

16.4 In the case of an investment company with an external fund management company, the fund management company would not be a PDMR as it would not be a "director" or "senior manager" of the investment company as that term applies to individuals.

If an individual fund manager or any other representative of the fund management company is a director of the investment company then that individual would be a PDMR of the investment company. However, if an individual fund manager or any other representative of the fund management company is not a director of the investment company then that individual would not be a PDMR of the investment company as this person would not amount to a "senior executive of the issuer". While this memorandum looks at the obligations on PDMRs and their PCAs, although neither an external investment company or an individual fund manager who is not on the board of the listed investment company will be treated as a PDMR, external fund managers should consider the appropriate obligations to be placed on their individual fund managers and other relevant staff in relation to dealing in the investment company's securities. They may develop personal account dealing policies for relevant staff which contain some of the obligations referred to in this paragraph 1 and paragraph 2 in relation to restrictions on dealing.

16.5 A "**person closely associated**" with a PDMR includes:

16.5.1 a spouse, or a partner considered to be equivalent to a spouse in accordance with national law, including a civil partner;

16.5.2 a dependent child or step child (who is under 18, unmarried and without a civil partner);

16.5.3 a relative who has shared the same household for at least one year on the date of the transaction concerned; or

16.5.4 a legal person, trust or partnership, the managerial responsibilities of which are discharged by a person discharging managerial responsibilities or by a person referred to in sub-paragraphs 16.5.1, 16.5.2 or 16.5.3, or which is directly or indirectly controlled by such a person, or which is set up for the benefit of such a person, or the economic interests of which are substantially equivalent to those of such a person.

16.6 The principal requirements on PDMRs are:

16.6.1 not to enter into transactions during "closed periods" whether on an own-account basis or for the account of another person (Article 19(11)); and

16.6.2 to notify the company and the FCA of every own-account transaction relating to shares or debt instruments of the company, or related instruments such as derivatives, in accordance with the prescribed procedures (MAR 19(1)). This obligation also applies to PCAs.

16.6.3 PDMRs must notify their PCAs of their obligations under MAR and must keep a copy of the notification. PDMRs should also notify any investment managers conducting transactions on the PDMR's behalf that they should not deal during closed periods in relation to the company's securities.

16.7 Article 19 also imposes certain obligations on the company, to:

16.7.1 draw up a list of PDMRs and their PCAs, and notify PDMRs in writing of their obligations under Article 19 of MAR; and

16.7.2 ensure that PDMR notifications are made public within three business days of the transaction (Article 19(3)).

16.8 Listed companies typically adopt a share dealing code which requires directors and other PDMRs to seek clearance to deal in the company's securities.

17 Dealing during closed periods

17.1 As noted above, a PDMR must not deal:

17.1.1 during a "**closed period**": (30 calendar days before the release of a preliminary announcement of the company's annual results or, where no such announcement is released, 30 calendar days before publication of the company's annual financial report and the period of 30 calendar days before the publication of the company's half-yearly financial report); or

17.1.2 at any time when there exists any matter which constitutes inside information in relation to the company.

17.2 For these purposes, the restriction on "dealing" in Article 19(11) of MAR means that a PDMR must not conduct any transactions on its own account or for the account of a third party, directly or indirectly, relating to the shares or debt instruments of the company or to derivatives or other related financial instruments. This restriction is accordingly wide enough to prohibit not only acquisitions, disposals and gifts of the company's securities, but also (for example), pledging, lending or borrowing of securities, entering into a contract for difference or other derivative transaction with respect to the securities, the grant, acceptance, acquisition, disposal, exercise or discharge of an option over securities or related derivatives and would also extend in principle to any other right or obligation, present or future, conditional or unconditional, to acquire or dispose of any securities of the issuer or related derivatives or other related financial instruments. Transactions in investment funds and index products may also be caught where the company's securities represent 20% or more of the composition.

17.3 Under Article 19(12), a PDMR seeking clearance to deal during a closed period may submit a reasoned request to the company making the case for exceptional circumstances or (as the case may be) a permitted transaction.

17.4 Clearance may be given by the company in the following scenarios:

17.4.1 in cases of exceptional circumstances, such as severe financial difficulty, which require the immediate sale of shares. This should only apply in cases where the reason for requesting clearance to deal is not only extremely urgent but also unforeseen, compelling and is external to and beyond the control of the requesting PDMR (for example, fulfilment of a court order or unforeseen tax liability).

17.4.2 in relation to transactions made under or in relation to an employee share scheme or savings scheme or transactions where the beneficial interest in the relevant securities does not change such as transfer between two accounts of the PDMR.

18 Notification of PDMR transactions

18.1 A director or other PDMR (and its PCAs, where applicable) must notify all own account transactions relating directly or indirectly to securities of the company or related financial instruments to the company and the FCA within three business days of the transaction occurring.[1]

18.2 The notification requirements for such transactions extend not only to acquisitions, disposals, options, pledging or lending of securities/derivatives etc. but also to (among others) certain own-account transactions in funds and index or basket products.

18.3 There is a specific form of disclosure template for PDMR and PCA transactions.

18.4 Responsibility for making the disclosures under Article 19 of MAR falls upon the director, other PDMRs and their PCAs personally.

[1] Although the MAR requirements provide for three business days, listed companies typically resolve that PDMRs and their PCAs must notify the company within two business days to ensure that the company is able to meet its own obligations to announce the dealing.