

FCA highlights shortcomings in market abuse surveillance

AT A GLANCE

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What's new?

- The FCA issued [Market Watch 69](#), a newsletter on market conduct and transaction reporting issues, on 17 May 2022.
- The FCA makes observations on small and medium-sized firms' arrangements for market abuse surveillance, obligations involving policies and procedures to counter the risk a firm is used to further financial crime, and potential market abuse by firms' employees and clients.

What does this mean?

- The FCA reminds firms that the most effective risk assessments consider the different types of market abuse and how they apply across different areas of the business and asset classes.
- The FCA notes that some firms fail to effectively identify relevant market abuse risks. Particular examples include firms failing to consider:
 - specific categories, such as layering and spoofing, wash trading and ramping
 - how different types of business activity (client/ house trading, discretionary/ execution-only) might present different market abuse risks
 - the method of execution or the nature of the platform where the trading takes place
 - the inherent risks in business areas with low trading volumes
- The FCA notes that some firms continue to deploy little or no order and trade surveillance. Weaknesses include generic alert calibration across and within different asset classes, with the most significant example involving 'lookback periods' for insider dealing.
- The FCA also notes a variety of standards around market abuse monitoring policies and procedures, resulting in inconsistent approaches adopted within the firm.
- Outsourcing monitoring to another part of the organisation or to a third party provider, may result in a limited understanding and/or oversight of the surveillance taking place, including inadequate knowledge of alert logic and calibration, weak or no quality assurance work on triaging alerts and insufficient management information.
- Some firms place a reliance on front office staff to identify and mitigate market abuse, with limited or no involvement from Compliance. As a result, potentially suspicious activity is not consistently identified and escalated.
- In cases of firms identifying potential market abuse with their own employees, the FCA reminds firms subject to Article 16 of UK MAR on the requirement to submit a STOR without delay. This may be before the full internal investigation is concluded.

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What do firms need to do?

- All firms should regularly review and update the systems and processes used to monitor, identify and escalate market abuse to ensure firms remain effective in the context of risks arising from changes in their business.
- Where responsibilities are delegated to a separate organisation, the person delegating should have sufficient expertise and resources to oversee the services provided.
- In cases of delegation, firms should ensure that there is clear documentation showing the oversight, review and quality assurance practices of the delegating team.
- Firms should review policies and procedures to provide clear, detailed and up-to-date reference points for the review and escalation of alerts. Specifically, firms must bear in mind the value of good quality guidance on how to review and close various alert types.
- Firms should deliver regular, tailored training to front office staff to help them understand market abuse as well as their role and obligations in escalating potentially suspicious behaviour, as per UK MAR.
- Firms should review the order monitoring arrangements in place, specifically considering any gaps such as the review of cancelled or amended orders.
- Firms should assess alert review processes to ensure that a lack of obvious link to insider information is not used as the sole factor for discounting insider trading alerts.
- When reviewing alert system thresholds and lookback periods, firms should assess the specific nature of the relevant market rather than applying blanket decisions.
- Firms should also ensure detailed and rigorous escalation processes for front office staff to an independent Compliance function, so that surveillance is undertaken free from conflicts of interest.

Next steps

Firms should consider the FCA's comments and take steps to ensure that, irrespective of the size of the firm, they comply with their regulatory requirements.



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