



Leading on Investments and Savings

**Response by TISA to
Guidance Consultation
GC18/1
Proposed guidance on
financial crime systems and
controls: insider dealing
and market manipulation**

June 2018



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About TISA

TISA is a unique, consumer-focused membership organisation. Our aim is to improve the financial wellbeing of UK consumers by aligning the interests of people, the financial services industry and the UK economy. We achieve this by delivering innovative, evidence-based proposals to government, policy makers and regulators.

TISA's growing membership comprises over 190 firms involved in the supply and distribution of savings and investment products and services. These members represent all sectors of the financial services industry, including asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, FinTech, consultants and advisers, software providers, financial advisers, pension providers, banks and stockbrokers.

Current themes of TISA policy work include:

- Brexit: developing proposals for government that will enable the savings and investments sector to prosper on a global scale
- Digitalisation: a digital identity for consumers of financial services, innovation, standards and data responsibilities
- ISA's: LISA, simplification of the regime
- Retirement saving: the Auto Enrolment review, self-employed and pension tax relief
- Housing: the use of property to supplement retirement income
- Guidance: developing a framework and services to make guidance more widely available
- Education: supporting the education of young people to make them aware of the impact of finance on their life.

TISA also provides support on a range of operational and technical issues targeted at improving infrastructure and processes, standards of good practice and the interpretation and implementation of new rules and regulations. TISA has a successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve industry effectiveness by reducing cost and risk and to enhance customer outcomes. This work currently includes: MiFID II, CASS, the UK Fund Settlement initiative and Payments Strategy Forum. TISA Exchange (TeX) is providing a model for transfers and re-registrations.

Introduction

We welcome the provision of guidance for insider dealing and market manipulation to the financial crime guide for firms (“the Guide”), particularly the examples of good and poor practice which are useful to firms.

Our response is divided into two parts: Part 1 concerns the introduction of the new guidance for insider dealing and market abuse and Part 2 concerns minor amendments made to other parts of the Guide.

PART 1 – Response to new guidance (chapter 8)

8.2.3 Policies and Procedures

We are concerned that the requirement to prevent attempted financial crime by refusing to execute any trade where there is a clear risk that the trade is in breach of relevant legal or regulatory requirements could be akin to ‘tipping off’. Such refusal to execute would be visible to the individual concerned which would in turn, by virtue of the firms’ policies and procedures, provide disclosure of the notification of attempted insider dealing or market manipulation.

- Article 16(2) of MAR requires a firm to notify the competent authority of any transaction that could constitute insider dealing, market manipulation or attempted insider dealing, market manipulation.
- Section 333 of POCA provides that a tipping off offence is committed where disclosure has been made in relation to that matter.

We ask for removal of the requirement to refuse to execute such trades.

PART 2 - Response to minor amendments

1.1.9 Relevant Guidance

We note there has been a significant change from ‘not relevant guidance’ to ‘relevant guidance’. We ask for clarification of the reasons for this change and the impact of the change on firms to be highlighted.

3.2.11 Record Keeping

‘References to evidence of the customer’s identity’ has been removed from the record keeping guidance, requiring firms to keep copies of documents or information. We understand there may be issues for some firms where records are stored electronically or references to identification (such as a passport number) are or have previously been used as evidence.

3.2.7 Handling higher risk situations

Politically exposed persons (PEPs), family members and known close associates of a PEP: the final sentence of this section states ‘In meeting these obligations firms must have regard to the FCA’s guidance on a risk-based approach to PEPs’. We believe that ‘must’ should be replaced by ‘should’ in this sentence, in the context of firms applying guidance as they consider relevant rather than being bound to do so.