

Chapter 4

Commission Delegated Regulation (EU) 2016/957

Article 3 Prevention, monitoring and detection

(1) The arrangements, systems and procedures referred to in Article 2(1) and (3) shall:

- (a) allow for the analysis, individually and comparatively, of each and every transaction executed and order placed, modified, cancelled or rejected in the systems of the UK trading venue and, in the case of persons professionally arranging or executing transactions, also outside a UK trading venue;
- (b) produce alerts indicating activities requiring further analysis for the purposes of detecting potential insider dealing or market manipulation or attempted insider dealing or market manipulation;
- (c) cover the full range of trading activities undertaken by the persons concerned.

(2) Persons professionally executing or arranging transactions and market operators and investment firms operating UK trading venues shall, upon request, provide the Financial Conduct Authority with the information to demonstrate the appropriateness and proportionality of their systems in relation to the scale, size and nature of their business activity, including the information on the level of automation put in place in such systems.

(3) Market operators and investment firms operating UK trading venues shall, to a degree which is appropriate and proportionate in relation to the scale, size and nature of their business activity, employ software systems and have in place procedures which assist the prevention and detection of insider dealing, market manipulation or attempted insider dealing or market manipulation.

The systems and procedures referred to in the first subparagraph shall include software capable of deferred automated reading, replaying and analysis of order book data, and such software shall have sufficient capacity to operate in an algorithmic trading environment.

(4) Persons professionally arranging or executing transactions and market operators and investment firms operating a UK trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis in the monitoring, detection and identification of transactions and orders that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation.

(5) Market operators and investment firms operating a UK trading venue shall put in place and maintain arrangements and procedures that ensure an appropriate level of human analysis also in the prevention of insider dealing, market manipulation or attempted insider dealing or market manipulation.

(6) A person professionally arranging or executing transactions shall have the right, by a written agreement, to delegate to a legal person forming part of the same group the performance of the functions of monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation. The person delegating those functions shall remain fully responsible for discharging all of its obligations under this Regulation and Article 16 of Regulation (EU) No 596/2014 and shall ensure the arrangement is clearly documented and the tasks and responsibilities are assigned and agreed, including the duration of the delegation.

(7) A person professionally arranging or executing transactions may, by written agreement, delegate the performance of data analysis, including order and transaction data, and the generation of alerts necessary for such person to conduct monitoring, detection and identification of orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation to a third party ("provider"). The person delegating those functions shall remain fully responsible for discharging all of its obligations under this Regulation and Article 16 of Regulation (EU) No 596/2014 and shall comply at all times with the following conditions:

(a) it shall retain the expertise and resources necessary for evaluating the quality of the services provided and the organisational adequacy of the providers, for supervising the delegated services and for the management of the risks associated with the delegation of those functions on an ongoing basis;

(b) it shall have direct access to all the relevant information regarding the data analysis and the generation of alerts.

The written agreement shall contain the description of the rights and obligations of the person delegating the functions referred to in the first subparagraph and those of the provider. It shall also set out the grounds that allow the person delegating the functions to terminate such agreement.

(8) As part of the arrangements and procedures referred to in Article 2(1) and (3), persons professionally arranging or executing transactions and market operators and investment firms operating a trading UK venue shall maintain for a period of five years the information documenting the analysis carried out with regard to orders and transactions that could constitute insider dealing, market manipulation or attempted insider dealing or market manipulation which have been examined and the reasons for submitting or not submitting a STOR. That information shall be provided to the Financial Conduct Authority upon request.

The persons referred to in the first subparagraph shall ensure that the arrangements and procedures referred to in Article 2(1) and (3) guarantee and maintain the confidentiality of the information referred to in the first subparagraph.