



MARKET SOUNDINGS

A **market sounding** is defined as a communication of information prior to the announcement of a transaction, in order to gauge the interest of potential investors in a possible transaction, and the conditions relating to it such as its potential size or pricing.



THE MARKET SOUNDINGS REGIME FOR DISCLOSING MARKET PARTICIPANTS (“DMP”)

The scope of the market soundings regime that is included in the new EU Market Abuse Regulations (“MAR”) is important because **it provides a specific "defence" to Disclosing Market Participants (“DMPs”) in relation to the prohibition on the unlawful disclosure of inside information**, if a number of detailed requirements are satisfied. These requirements include:

- A standard set of information that must be included in communications to a Market Sounding Recipient (“MSR”), informing the MSR of whether the information being provided amounts to inside information, estimating when any inside information that is to be communicated will cease to be inside information, and seeking consent to proceed with the relevant sounding;
- Recording data in relation to natural persons within MSRs who receive information during a sounding;
- Notifying MSRs when any inside information communicated during a sounding ceases to be inside information; and

- Detailed record keeping requirements, including the requirement to maintain written minutes or notes of any soundings taking place via unrecorded meetings or telephone conversations and to agree such record with the relevant MSR, or otherwise to keep a copy of the MSR's written notes of the sounding with the DMP's own record.

If a DMP does not comply with the Technical Standards, or does not fall within the scope of the market soundings regime, the specific market soundings defence in relation to an allegation of unlawful disclosure of inside information under MAR will not be available.

- **ACTION: Use the Checklists, Newgate can provide these.**