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Lee Foulger  
Member of Cabinet  
Financial Stability, Financial Services and Capital Markets Union  
European Commission  
Rue de la Loi 200  
1049 Brussels  
Belgium

15 December 2015

Dear Mr Foulger,

***Re: Draft technical standards on the Market Abuse Regulation***

---

The City of London Law Society (CLLS) represents approximately 15,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi jurisdictional legal issues.

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Yours sincerely

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C.W.Y. Underhill  
Chairman, Company Law Committee

Cc. Tilman Lueder, Head of Securities Markets Unit, Directorate C – Financial Markets, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

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Tilman Lueder  
Head of Securities Markets Unit  
Directorate C – Financial Markets  
DG Financial Stability, Financial Services and Capital Markets Union  
European Commission  
SPA2 – Pavillon  
Rue de Spa 2  
1000 Brussels  
Belgium

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Principal Economist  
DG Internal Market, Industry, Entrepreneurship and SMEs  
European Commission  
c/o Communication, Access to Documents and Document Management Unit A5  
BREY 13/092  
B – 1049 Brussels  
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Marlene Rosemarie Madsen  
Member of Cabinet  
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### **Delayed disclosure of inside information**

The draft (in Article 4(1)(a)(i)) requires issuers and emission allowance market participants to keep information about the dates and times when the inside information first existed within the issuer or emission allowance participant. The issuer may not know, and may not be able to discover, this information in all cases, for example if the inside information relates to a fraud perpetrated by an employee where the issuer cannot determine when the fraud first started or where the inside information relates to a decision by a third party, such as a decision by someone with whom the issuer has a major contract to terminate that contract. Further, it may be difficult for issuers and emission allowance market participants to identify when information about a developing situation became sufficiently precise or price sensitive to amount to inside information. We suggest the draft is changed to read “the issuer or emission allowance market participant first became aware of the information and determined that the information was, or may be, inside information”.

The draft (in Article 4.1(a)(iii)) also requires the issuer or emission allowance market participant to keep information about the dates and times when it is likely to disclose the inside information. It will usually be very difficult to determine this information, particularly when the issuer is negotiating with a third party, for example in relation to a proposed acquisition or disposal. It is also likely that the assessment will change frequently during the negotiating process. We think it is unduly burdensome on issuers and emission allowance participants to require them to keep this information. If, however, the Commission decides it is necessary to keep a requirement like this, at least we believe it should be changed to read “the issuer or emission allowance participant expects to disclose the inside information” so it is clear that it is their assessment of the likely timing of disclosure that is relevant.

### **Insider lists**

Most issuers and advisers will have some of the information proposed to be included in the insider list, such as date of birth, national ID numbers and personal full address as part of their HR records for employees. We think it is unnecessarily burdensome to require issuers and their advisers to duplicate this information in an insider list and suggest that, instead, the draft Regulation should allow the persons referred to in Article

2(1) to keep this information in separate HR records provided it is added to, or provided to the competent authority with, the insider list when requested. We suggest that further wording is added to Article 2 (3) to allow this as follows: "The persons referred to in paragraph 1 may keep information relating to date of birth, national ID numbers and personal full address as part of their HR records, rather than including such information in an insider list provided that such information is added to, or provided to the competent authority together with, the insider list when requested by the competent authority."

If you have any queries regarding this letter, please contact the Chairman of the Company Law Committee, William Underhill ([William.Underhill@SlaughterandMay.com](mailto:William.Underhill@SlaughterandMay.com)).

Yours sincerely

A handwritten signature in black ink, appearing to read 'C.W.Y. Underhill', written in a cursive style.

C.W.Y. Underhill  
Chairman, Company Law Committee

Cc. Lee Foulger, Member of Cabinet, Financial Stability, Financial Services and Capital Markets Union, European Commission

Tilman Lueder, Head of Securities Markets Unit, Directorate C – Financial Markets, DG Financial Stability, Financial Services and Capital Markets Union, European Commission

Joachim Schwerin, Principal Economist, DG Internal Market, Industry, Entrepreneurship and SMEs, European Commission