



European Securities and
Markets Authority

Reply form for the ESMA MAR Technical standards





European Securities and
Markets Authority

Date: 20 August 2014



Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Draft technical standards on the Market Abuse Regulation (MAR), published on the ESMA website ([here](#)).

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA_QUESTION_MAR_TS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **15 October 2014**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.

Naming protocol - In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_MAR_CP_TS_NAMEOFCOMPANY_NAMEOFDOCUMENT: e.g. if the respondent were ESMA, the name of the reply form would be ESMA_MAR_CP_TS_ESMA_REPLYFORM or ESMA_MAR_CP_TS_ESMA_ANNEX1

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading ‘Disclaimer’.



General information about respondent

Are you representing an association?	Yes
Activity:	Other Financial service providers
Country/Region	UK



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MAR_TA_1 >

TYPE YOUR TEXT HERE

< ESMA_COMMENT_MAR_TA_1 >



II. Buy-backs and stabilisation: the conditions for buy-back programmes and stabilisation measures

Q1: Do you agree with the approach set out for volume limitations? Do you think that the 50% volume limit in case of extreme low liquidity should be reinstated? If so, please justify.

<ESMA_QUESTION_MAR_TS_1>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_1>

Q2: Do you agree with the approach set out for stabilisation measures? If not, please explain.

<ESMA_QUESTION_MAR_TS_2>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_2>

III. Market soundings

Q3: Do you agree with ESMA's revised proposals for the standards that should apply prior to conducting a market sounding?

<ESMA_QUESTION_MAR_TS_3>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_3>

Q4: Do you agree with the revised proposal for standard template for scripts? Do you have any comments on the elements included in the list?

<ESMA_QUESTION_MAR_TS_4>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_4>

Q5: Do you agree with these proposals regarding sounding lists?

<ESMA_QUESTION_MAR_TS_5>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_5>

Q6: Do you agree with the revised requirement for DMPs to maintain sounding information about the point of contact when such information is made available by the potential investor?

<ESMA_QUESTION_MAR_TS_6>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_6>

Q7: Do you agree with these proposals regarding recorded communications?

<ESMA_QUESTION_MAR_TS_7>



TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_7>

Q8: Do you agree with these proposals regarding DMPs' internal processes and controls?

<ESMA_QUESTION_MAR_TS_8>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_8>

IV. Accepted Market Practices

Q9: Do you agree with ESMA's view on how to deal with OTC transactions?

<ESMA_QUESTION_MAR_TS_9>

Yes. FIA Europe considers ESMA's analysis consistent with the primary legislation and accepts the proposed extension to OTC transactions and the higher standard for OTC transactions vis-à-vis the Article 13(2)(a) criterion. FIA Europe notes the proposed consultation requirement in Article 16(1)(b) of the draft RTS and the reference to "financial services providers". This term is not defined in either the primary legislation or in the draft RTS. We advocate amending the relevant text to use terms consistent with the primary legislation, and other European Union legislation which we consider to be better understood and less prone to narrow interpretation.

Proposed amendment: Article 16(1)(b) of the draft RTS (Annex IV, p.17)

*consultation with relevant bodies such as representatives of issuers, ~~financial service providers~~ **market participants**, consumers, market operators **and investment firms operating trading venues** and other authorities.*

<ESMA_QUESTION_MAR_TS_9>

Q10: Do you agree with ESMA's view that the status of supervised person of the person performing the AMP is an essential criterion in the assessment to be conducted by the competent authority?

<ESMA_QUESTION_MAR_TS_10>

No. FIA Europe notes that there is no definition or description in the primary legislation or in any of ESMA's analysis as to what constitutes "performing" or "executing" an AMP. ESMA's analysis at paragraph 124 concedes that there is no basis for such a restriction in the primary legislation and proposes that any requirement on the status of persons performing/executing an AMP be left to the discretion of the authorising NCA. However, Article 18(2)(a) of the draft RTS appears to place a burden on the NCA to justify authorising AMPs that may be performed/executed by persons other than "supervised entities". FIA Europe advocates amendments to Article 18(2) of the draft RTS consistent with the analysis and Recital 24 and the principle of making AMPs accessible to all market participants.

Proposed amendment: Article 18(2) of the draft RTS (Annex IV, p.18)

*(a) being supervised persons, in particular when the interested party who benefits from the AMP delegates or instructs a supervised person to execute an AMP. ~~Where a competent authority accepts an AMP where the person performing the AMP is not a supervised person, it shall be in a position to explain the reasons.~~ **A competent authority may establish an AMP where the person performing the AMP is not a supervised person;***

(b) ~~being members of a trading venue where the AMP is performed;~~

<ESMA_QUESTION_MAR_TS_10>

V. Suspicious transaction and order reporting

Q11: Do you agree with this analysis regarding attempted market abuse and OTC derivatives?

<ESMA_QUESTION_MAR_TS_11>

Yes. FIA Europe considers that ESMA's analysis on scope is consistent with the primary legislation. We accept the extension of the reporting obligation to OTC transactions.

<ESMA_QUESTION_MAR_TS_11>

Q12: Do you agree with ESMA's clarification on the timing of STOR reporting?

<ESMA_QUESTION_MAR_TS_12>

No. FIA Europe notes ESMA's analysis clarifying "without delay" and citing an indicative two week timeframe for reporting. We consider that two weeks will often be insufficient time for market participants subject to the Article 16(2) MAR requirement to complete and submit STORs, especially given the content requirements proposed by ESMA. We consider that the term "without delay" requires neither clarification nor quantification, nor do we consider it appropriate or helpful to require market participants to explain why more than two weeks may be required in some instances.

Proposed amendment: Recital 3 of the draft RTS (Annex VI, p. 3)

Suspicious transaction and order reports should be submitted to the relevant competent authority as soon as possible once a reasonable suspicion is formed in relation to a trading behaviour. "Batching", the practice consisting in waiting for a particular number of suspicious orders and/or transactions to justify a submission although suspicion by this time has already risen, is not consistent with the requirement to notify without delay. ~~Generally and indicatively, suspicious transaction and order reports should be submitted within two weeks of the actual suspected breach.~~

Proposed amendment: Recital 4 of the draft RTS (Annex VI, p. 3)

Exceptionally, there may be circumstance when a reasonable suspicion of market abuse or attempted market abuse is formed sometime after the suspected breach effectively occurred, due to subsequent events or information coming to light. This should not be considered a reason for not reporting to the competent authority. ~~In these specific circumstances, the person making the notification should be in a position to justify the time discrepancy between the occurrence of the suspected breach and the formation of the reasonable suspicion of market abuse or attempted market abuse, in order to demonstrate compliance with the reporting requirement.~~

Proposed amendment: Article 7 of the draft RTS (Annex VI, p. 5)

The effective arrangements, systems and procedures referred to in paragraph 1 shall enable reporting of STORs on trading behaviours, including transactions and orders, detected sometime after their occurrence which become suspicious in the light of subsequent events or information. ~~In such cases, the person subject to the reporting obligation under Article 16(1) and (2) of Regulation (EU) 596/2014 shall be able to justify the delay between the suspected breach and the submission of the STOR according to the specific circumstances of the case.~~

<ESMA_QUESTION_MAR_TS_12>

Q13: Do you agree with ESMA's position on automated surveillance?

<ESMA_QUESTION_MAR_TS_13>

No. FIA Europe notes ESMA's defence of the proposed requirement for all persons within the ambit of Article 16(1) and (2) MAR to have automated surveillance systems. However, we do not believe that an automated surveillance system encompassing all trading activity should be required for all market participants subject to the Article 16(2) requirement. We see no such requirement in the primary legislation

and we are concerned that so-called off-the-shelf automated systems are currently designed to monitor equity markets only and are not suitable for firms trading multiple asset classes. Furthermore, even fairly rudimentary off-the-shelf systems are prohibitively expensive for many smaller firms.

We believe “appropriate arrangements, systems and procedures” should include both automated and human surveillance. The latter remains indispensable for surveillance of OTC trading activity.

Proposed amendment: Article 5(1) of the draft RTS (Annex VI, p. 5)

Persons referred to in Article 16(1) and (2) of Regulation (EU) 596/2014 shall establish and maintain appropriate automated surveillance systems to conduct effective monitoring of orders and transactions, including through the generation of alerts. Those persons shall explain to their competent authority, if requested, the extent to which the level of automation of their system is appropriate for and proportionate to the scale, size and nature of their business activity. ~~The automated system shall cover the full range of trading activities undertaken by the concerned person.~~

<ESMA_QUESTION_MAR_TS_13>

Q14: Do you have any additional views on the proposed information to be included in, and the overall layout of the STORs?

<ESMA_QUESTION_MAR_TS_14>

FIA Europe considers that a number of the data fields proposed for section 1 are redundant and/or irrelevant for the purposes of reporting should be removed from the proposed template. Furthermore, we see no clear distinction between the required data and the “non-exhaustive guiding criteria” in section 5. We suggest that ESMA clarifies this particular point. We consider in any case a requirement to provide KYC or AML documentation on a person suspected of suspicious behaviour to be disproportionate.

Proposed amendment: Annex 1 of the draft RTS (Annex VI, p. 8-11)

We consider the following data fields to be redundant given the required content of preceding or related data fields.

Section 1 – TRANSACTION / ORDER

~~Location – country (if available)~~

~~If outside trading venue – specify~~

~~Margin, up-front payment and nominal size/value of underlying security~~

~~Name and ISIN of underlying security (if applicable)~~

Section 3 – IDENTITY OF ENTITY / PERSON SUSPECTED OF BREACH

~~Place of employment~~

~~Position~~

We consider the following data fields to be disproportionate and unnecessary for the purpose of reporting suspicious behaviour.

Section 5 – ADDITIONAL INFORMATION

~~KYC or AML documentation~~

<ESMA_QUESTION_MAR_TS_14>

Q15: Do you have any additional views on templates?

<ESMA_QUESTION_MAR_TS_15>

TYPE YOUR TEXT HERE



<ESMA_QUESTION_MAR_TS_15>

Q16: Do you have any views on ESMA’s clarification regarding “near misses”?

<ESMA_QUESTION_MAR_TS_16>

FIA Europe recognises the interests of competent authorities to have access to ‘near misses’ for the purposes of possible future investigations. We have no objection in principle to recording ‘near misses’ so long as any such requirement is appropriate and proportionate. In particular, we do not consider it appropriate or proportionate to populate all STOR data fields for ‘near misses’.

Proposed amendment: Article 10(2)(a) of the draft RTS (Annex VI, p. 7)

*every STOR submitted, including ~~the relevant elements on the basis of which the STOR was prepared and reported to the competent authority~~ **all documentation attached**, and*

Proposed amendment: Article 10(2)(b) of the draft RTS (Annex VI, p. 7)

Relevant details of transactions and orders which were identified as potentially suspicious but following examination were subsequently not submitted, including a summary of the reasons for not submitting a STOR;

<ESMA_QUESTION_MAR_TS_16>

VI. Technical means for public disclosure of inside information and delays

Q17: Do you agree with the proposal regarding the channel for disclosure of inside information?

<ESMA_QUESTION_MAR_TS_17>

Yes. However, FIA Europe notes that both Article 21(1) of Directive 2004/109/EC [Transparency Directive] and Commission Directive 2007/14/EC [TD Implementing Directive] require that inside information is stored following disclosure with an official appointed mechanism (OAM). We also note ESMA's analysis at paragraph 237, which distinguishes between disclosure and storage mechanisms and suggests that storing inside information would not be required for issuers whose financial instruments are traded only on a MTF/OTF. We see no reason why emission allowance market participants (EAMPs), subject to the disclosure requirement under Article 16(2) MAR, should be required to store publicly-disclosed inside information within the ambit of Article 7(1)(c) MAR with OAMs. We suggest that ESMA clarifies the public disclosure requirement in the draft RTS.

Proposed amendment: Article 2 of the draft RTS (Annex VII, p. 5)

*Pursuant to Article 17(1) and Article 17(2) of Regulation (EU) No 596/2014 inside information shall be disseminated using the mechanisms and channels established in Member States to comply with the **disclosure** standards set out in Article 21(1) of Directive 2004/109/EC of the European Parliament and of the Council and Article 12 of Commission Directive 2007/14/EC.*

<ESMA_QUESTION_MAR_TS_17>

Q18: Do you believe that potential investors in emission allowances or, more importantly, related derivative products, have effective access to inside information related to emission allowances that have been publicly disclosed meeting REMIT standards as described in the CP, i.e. using platforms dedicated to the publication of REMIT inside information or websites of the energy market participants as currently recommended in the ACER guidance?

<ESMA_QUESTION_MAR_TS_18>

Yes. FIA Europe believes that potential investors have effective access to information that may be considered within the ambit of Article 7(1)(c) MAR through TSO and trading venue-operated platforms and dedicated sections of energy market participant websites.

<ESMA_QUESTION_MAR_TS_18>

Q19: What would be the practical implications for the energy market participants under REMIT who would also be EAMPs under MAR to use disclosure channels meeting the MAR requirements for actively disseminating information that would be inside information under both REMIT and MAR?

<ESMA_QUESTION_MAR_TS_19>

FIA Europe notes Recital 51 MAR and advocates a corresponding recital in the draft RTS on the avoidance of duplication in mandatory reporting. We further note ESMA's analysis at paragraphs 244-246 regarding the differences between REMIT and MAR requirements for the effective disclosure of inside information. We consider such differences to be marginal and we believe that EAMPs may meet the requirement to "actively distribute" inside information within the ambit of Article 7(1)(c) MAR through mechanisms established pursuant to Article 4 REMIT.

Proposed amendment: Recital (1a) (new) of the draft ITS (Annex VII, p. 2)



Emission allowance market participants may comply with equivalent inside information disclosure requirements, notably pursuant to Regulation (EU) No 1227/2011. To avoid the duplication of mandatory disclosures with substantially the same information, S emission allowance market participants should be able to use established mechanisms for the disclosure of inside information where required under Article 17(2) of Regulation (EU) No 596/2014.

<ESMA_QUESTION_MAR_TS_19>

Q20: Do you agree with ESMA's proposals regarding the format and content of the notification?

<ESMA_QUESTION_MAR_TS_20>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_20>

Q21: Do you agree with the proposed records to be kept?

<ESMA_QUESTION_MAR_TS_21>

TYPE YOUR TEXT HERE

<ESMA_QUESTION_MAR_TS_21>



VII. Insider list

Q22: Do you agree with ESMA's proposals regarding the elements to be included in the insider lists?

<ESMA_QUESTION_MAR_TS_22>
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<ESMA_QUESTION_MAR_TS_22>

Q23: Do you agree with the two approaches regarding the format of insider lists?

<ESMA_QUESTION_MAR_TS_23>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_23>



VIII. Managers' transactions format and template for notification and disclosure

Q24: Do you have any views on the proposed method of aggregation?

<ESMA_QUESTION_MAR_TS_24>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_24>

Q25: Do you agree with the content to be required in the notification?

<ESMA_QUESTION_MAR_TS_25>
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<ESMA_QUESTION_MAR_TS_25>



IX. Investment recommendations

Q26: Do you agree with the twofold approach suggested by ESMA of applying a general set of requirements to all persons in the scope and additional requirements to so-called “qualified persons” and “experts”?

<ESMA_QUESTION_MAR_TS_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_26>

Q27: Should the issuance of recommendations “on a regular basis” (e.g. every day, week or month) be included in the list of characteristics that a person must have in order to qualify as an “expert”? Can you suggest other objective characteristics that could be included in the “expert” definition?

<ESMA_QUESTION_MAR_TS_27>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_27>

Q28: Are the suggested standards for objective presentation of investment recommendation suitable to all asset classes? If not, please explain why.

<ESMA_QUESTION_MAR_TS_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_28>

Q29: Do you agree with the proposed standards for the objective presentation of investment recommendations and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_29>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_29>

Q30: Do you agree with the proposed standards for the disclosure of interest or indication of conflicts of interests and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_30>

Q31: Do you consider the proposed level of thresholds for conflict of interest appropriate for increasing the transparency of investment recommendation?

<ESMA_QUESTION_MAR_TS_31>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_31>

Q32: Do you think that the positions of the producer of the investment recommendation should be aggregated with the ones of the related person(s) in order to assess whether the threshold has been reached?



<ESMA_QUESTION_MAR_TS_32>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_32>

Q33: Do you agree that a disclosure is required when the remuneration of the person producing the investment recommendation is tied to trading fees received by his employer or a person related to the employer?

<ESMA_QUESTION_MAR_TS_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_33>

Q34: Do you agree with the proposed standards relating to the dissemination of recommendation produced by third parties? If not, please specify.

<ESMA_QUESTION_MAR_TS_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_34>

Q35: Do you consider that publication of extracts rather than the whole recommendation by news disseminators is a substantial alteration of the investment recommendation produced by a third party?

<ESMA_QUESTION_MAR_TS_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_35>