# ESMA_QA_1147

**Submission Date**
20/09/2022

Status: Answer Published

## Additional Information

**Level 1 Regulation**
Market Abuse Regulation (MAR) Regulation (EU) No 596/2014 - Market Intergrity

**Topic**
Inside information, public disclosure and delayed disclosure of inside information

**Subject Matter**
Financial guidance and disclosure of inside information

**Question**
Should the issuer generally consider the first financial guidance for a given financial year to be inside information in the context of MAR, bearing in mind that such financial guidance forms part of the financial reports prepared under the Transparency Directive and national legislation, which do not require or even anticipate premature disclosure?

## ESMA Answer

08-10-2026

Original language

[ESMA70-145-111 MAR Q&A5.11]

In principle, the financial expectations to be published by the issuer in certain jurisdictions (i.e. financial guidance), must follow the schedule established under the Transparency Directive (TD) and the corresponding national legislation, just like the yearly and half-yearly reports under the TD.

Pursuant to Article 17(1) of MAR, inside information relating to intermediate steps in a protracted process is not subject to the disclosure obligation until its completion. Point C11 in Annex I of the Commission Delegated Regulation (EU) 2026/789 addresses the disclosure in relation to financial reports or interim financial reports. In particular, it requires the disclosure to occur “As soon as possible after the issuer’s governing body has acknowledged or approved the financial results”. In addition, point C12 of the same Annex identifies the acknowledgement or approval of the forecasts by the issuer’s governing body as the relevant final event, which triggers disclosure as soon as possible.

ESMA notes that including the production of financial reports as a separate item from the production of forecasts in the list of protracted processes of Annex I of the Commission Delegated Regulation (EU) 2026/789 highlights that the two are separate and independent processes. As a result, where the financial guidance is deemed to be inside information, the issuer has to disclose it as soon as possible after such guidance has been acknowledged or approved by its governing body. The issuer is not allowed to wait for the disclosure of the financial guidance until the financial report is published. ESMA would like to highlight that profit warnings or earnings surprises cannot be considered part of the processes aimed at producing the periodic financial reports. Thus, they are to be considered standalone pieces of inside information, whose disclosure cannot be postponed until publication of the financial reports or until the dates set for the announcement of quarterly or annual earnings.

For completeness, it is also worth recalling that, in accordance with Recital 3 of the Commission Delegated Regulation (EU) 2026/7 under Article 17(12) of MAR, the evaluation on whether financial guidance qualifies as inside information remains a case-by-case assessment to be conducted by the issuer against the criteria set for inside information in Article 7(1) of MAR.