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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
Potential cases of inside information in relation to collective investment undertakings voluntarily admitted to trading or traded on a trading venue

Question
Are there any specific cases of inside information that may arise with respect to CIUs admitted to trading or traded on a trading venue under Article 17 of MAR?

ESMA Answer

29-03-2019

Original language

[ESMA70-145-111 MAR Q&A, Q&A 5.7]

According to Article 7 of MAR, inside information is such information that is non-public, precise, directly or indirectly related to one or more financial instruments or issuer, and if it were made public would be likely to have a significant effect on the price of the issuer's financial instrument or related financial instruments.

The examples provided below are a non-exhaustive list of cases where inside information may arise. They do not aim at covering all the possible instances of inside information. Ultimately, the final assessment has to be made on a case-by-case basis. Some of the situations listed below may not constitute inside information in all cases.

For CIUs *admitted to trading/traded on a trading venue in general (including ETFs)* the following situations can be envisaged as potential cases of inside information:

(a) any situation with significant impact (appreciation or depreciation) on the valuation of the CIU assets and, as a result, on the value of the CIU's units;

(b) cases where the CIU has been affected by fraud, theft or an adverse tax ruling;

(c) unexpected circumstances in the creation/redemption of units of a CIU, including:

- any situation under which the CIU cannot issue/redeem its units;
- creation of excessive or insufficient units due to a material mistake.

(d) events that will directly affect the liquidity of the market in units of an ETF arising from events impacting the entities acting as counterparties in the secondary market: bankruptcy of the official liquidity provider/s, absence of authorised participants, decision to change the segment on which the CIUs are traded, etc.;

(e) failure or delay of a counterparty to an OTC derivative impacting the return or the risk of the CIU;

(f) failure or delay of a counterparty in a securities lending transaction;

(g) issues related to the total or partial liquidation of the CIU's assets, such as:

- imminent insolvency or termination of the CIU, or a sub-fund where the CIU is an umbrella fund;
- partial liquidation of the CIU's units; or
- modalities and payment terms preceding the liquidation or delisting of the CIU.

In particular, for *real estate CIUs admitted to trading/traded on a trading venue*, inside information according to Article 7 of MAR may also arise in the context of significant events related to the acquisition, sale or management of the CIU's real estate assets, including rents renegotiation or possible relevant losses derived from legal disputes.