ESMA_QA_1753

Submission Date
29/03/2019

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
Emission allowances market participants (EAMPs) - Disclosure of inside information concerning emission allowances, referring to installations of other undertakings of the group of the EAMP

Question
Are EAMPs under the obligation to disclose inside information concerning emission allowances where such inside information regards installations of other undertakings of the group of the EAMP?

ESMA Answer

29-03-2019

Original language

[ESMA70-145-111 MAR Q&A, Q&A 11.3]

Yes, in the circumstances explained below.

Article 3(1)(20) of MAR sets forth two cumulative requirements to be an EAMP: (i) being a person that enters “into transactions, including the placing of orders to trade, in emission allowances, auctioned products based thereon, or derivatives thereof”, and (ii) exceeding a threshold of carbon dioxide equivalent (or having had a rated thermal input exceeding a minimum threshold, where the participant carries out combustion activities).

As regards the first condition, ESMA’s technical advice on possible delegated acts concerning the Market Abuse Regulation (ESMA/2015/224) provides indications on several examples of participants to the emission allowances market. ESMA considers that market participants that enter into transactions or place orders to trade in emission allowances either directly and indirectly fall within the definition of Article 3(1)(20) of MAR. The latter is the case, for instance, for polluting companies that trade emission allowances through trading companies within the same group.

As regards the second condition, the minimum thresholds are provided for by Article 5 of the Commission Delegated Regulation (EU) 2016/522 and consist of carbon dioxide equivalent of 6 million tonnes a year or 2,430 MW of rated thermal input. The threshold applies “*at group level and relate to all business, including aviation activities or installations, which the participant in the emission allowance market concerned, or its parent undertaking or related undertaking owns or controls or for the operational matters of which the participant concerned, or its parent undertaking or related undertaking is responsible, in whole or in part.* ”.

Hence, in the case of two participants to the emission allowances market, respectively A and B, that are part of the same group, if the threshold set in Article 5 is met by summing up their

emissions, each of A and B is an EAMP and is individually subject to the obligation to disclose inside information concerning emission allowances under Article 17(2) of MAR. In other words, provided that the threshold is met at group level, both A and B are EAMPs, even if individually they are below the threshold of Article 5.

An EAMP has to disclose inside information concerning emission allowances where the installation of an undertaking that is a parent company of the EAMP or a related company (see A.5.6 above) has an impact on the EAMP's demand of emission allowances.

For instance, an EAMP operating a fossil fuel power plant would be directly impacted in its demand of emission allowances by the establishment of a significant wind farm by a related undertaking. Namely, relevant production of renewable energies could allow the EAMP to keep any spare allowances to cover its future needs or to sell them to another company that lacks allowances. In light of this, the EAMP would have to disclose inside information concerning emission allowances regarding the establishment of a relevant plant producing renewable energy.

The EAMP would also be responsible for any delay of disclosure of the inside information concerning emission allowances pursuant to Article 17(4) of MAR.

Should there be, as in the case of A and B above, more than one EAMP in a group, the obligation to disclose the inside information concerning emission allowances falls on the EAMP whose demand of emission allowances is impacted by the parent or related company's business (that would also be responsible for any delay in the disclosure). Where both A and B are impacted, each of them would be obliged to disclose such information and the disclosure obligation is fulfilled once the inside information concerning emission allowances is published.