The Hungarian Compliance Professionals Working Group welcomes the opportunity to respond to *ESMA’s policy orientations on possible implementing measures under the Market Abuse Regulation.* Therefore we are very supportive of the proposed guidelines in general but also very precise in giving a few comments and we would like to draw your attention to the following few points where we’ve consider further discussion and work is required in order to improve the proposed policy:

General comments:

1. Key importance that the employees who are affected by this rule should be aware of what is his/her obligation under the proposed policy. This will be met only if they received the necessary trainings, consultations, practical guidelines and also the required technical conditions (proper IT systems) are available for them in order to identify for example the suspicious transactions or any other activities. The question is the quality of the trainings and this topic should be more pointed out in the policy with real-life examples or real-life experience. Sometimes the training just a paper or test with questions or answers without physical professional presence thus there is no chance to ask any questions in order to understand the operation of the market abuse by the employees. Also a significant problem that the market abuse cases are confidential or published by censorship, thus as an instructor or as an employee or just a reader of the publication cannot see thought clearly. Sometimes the name of financial instrument -which was concerned in a market abuse- is non-published or covered. We can agree with that the personal data should be strictly protected but all the other data needs to be published and the Supervisors need to publish all the closed cases for the market participants in order to prevent the recurrence of the incident.
2. In the policy there should be stated that who is responsible for the Market Abuse’ controls centrally. We believe that this task should be under the compliance function review, but all the related support functions need to help to the compliance function too in order to identify and report the transaction internally. We do not accept those practices when someone else disposes totally of this task, for example employees working on back office, risk management, or internal audit.
3. There should be clearly defined separately in the policy, what the role and the task between Compliance function and Internal Audit is regarding Market Abuse’s control because based on the present drafted text the implantation in the practice is very-very difficult or causes lots of parallel operations.
4. All the information related to insider trading and market manipulation need to be recorded and retain for 5 years (personal data recording is questionable if the information has insider trading sign), means that the company has to have proper IT systems and storage, where record all the lines compulsory (phone, email, documents). Sometimes the company does not record all the information, because the storage of the information are very expensive, thus if there are cases the retrieval of the information is questionable.
5. Insider list: because of the list is changing very often, thus the employees who deal with it directly or indirectly they are in very difficult situation. We prefer as in case of PEP’s list, that the insider lists are also will be available for the market participants in order to be able to identify the potential suspicious transactions. The minimal content of the list should be a name and another identification data of the insider person. MS (especially Supervisors) needs to ensure the list about all the insider persons regarding the MS’s issuers. The present practice shows that if there is an issuer who is financial institution, their insider employees have another personal banking business relationship, and the suspicious transactions are done at there. The other banks can’t identify that that person is an insider person of other issuer, because the collection of the information is very time consuming and sometimes the management doesn’t provide the necessary resources. Also key importance that the responsible person for the reporting and for the identification of the suspicious transaction has the unlimited access all the information within the company with automatic entitlement. Sometimes this principle does not exist in the practice or it has just limited information access (for example access to management level information in case of significant business related decision).

By the way this approach will decrease the single issuer costs to, if they do not have to collect all the information individually. The present market practice shows that there are huge pressures on the employees, instead of proper resources.

1. Investment recommendations (Article 15 of MAR) we have a general comment. There are huge sales pressures on the employees, because they have personal and branch and region and country sales target. The content of investment recommendation is very important element in order to ensure the fair and correct information provision to the client. Sometime the recommendation does not contain clear information about the interest and conflict of interest, it’s hidden or found somewhere back in the related documents. It should be increasing the transparency and need to ensure, define exactly that what would be the elementary sales approach when they using investment recommendation.
2. The difficulties of identification are based on the availability of market data. Sometimes the real-time market data are very expensive there are no options for post-time free data access. In order to detect the manipulation easily companies and the control functions of the companies there should be a cheap database of market data only for identification of market manipulations not for other purposes. Still the real time market data is at the high level cost, there is no interest for the small companies to operate any effective control function only manual screening will be working.

Questions:

*Q1: Do you agree that the mechanism used in the Transparency Directive or comparable mechanism should be used for public disclosure regarding buy-backs?*

Yes, we agree that the comparable mechanism should be used regarding shares traded out of RM.   
Also, we would like to draw attention to associated instruments such as derivatives, because if there is a buy-back program where the relevant shares are linked to other financial instruments which traded on non-RM, it should be further discussed and work on this issue what would be the expected rules and practice.

*Q2: Do you agree that aggregated figures on a daily basis would be sufficient for the public disclosure of buy-back measures? If so, should then the details of the transactions be disclosed on the issuer’s web site?*

The disclosure of aggregated figures are sufficient enough, the detailed transactions shouldn’t be disclosed. It would cause a high administrational burden, but the ex-post disclosure wouldn’t serve the interest of investors that much.

*Q3. Do you agree to keep the deadline of 7 market sessions for public disclosure or to reduce it?*

We do not agree with the seven market session deadline, according to our opinion it takes too long so it can be the base of the abuse. According to our opinion the best would be, if the deadline was much shorter, maximum of 3-5 market sessions, because the details of the transactions are known to the entity on the day when the transaction has been carried out.

*Q4 Do you agree to use the same deadline as the one chosen for public disclosure for disclosure towards competent authorities?*

Yes, if the deadline is the same as we mentioned in the answer of Question 3.

*Q5: Do you think that a single competent authority should be determined for the purpose of buy-back transactions reporting when the concerned share is traded on trading venues in different Member States? If so, what are your views on the proposed options?*

There can be a single competent authority, however the reporting from the issuer’s point of view should be the home competent authority of the issuer. The home competent authority will report it to the responsible authority.

*Q6: Do you agree that with multi-listed shares the price should not be higher than the last traded price or last current bid on the most liquid market?*

No, we do not agree, because the definition of the “independent” could not be described properly in Regulation No 2273/2003, and sometimes the bids are misleading, as there are no real business purposes only just tries to influence the market. The last traded price much better for this purpose, but also should be considered to determine a spread of the price where the transaction will be not out of market (eg. +/- 1-3%)

*Q7: Do you agree that during the last third of the regular (fixed) time of an auction the issuer must not enter any orders to purchase shares?*

Yes, we agree

*Q8: Do you agree with the above mentioned cumulative criteria for extreme low liquidity? If not, please explain and, if possible, provide alternative criteria to consider.*

No, there are member states, where RMs are not so advanced. Thus, the proposed criteria data will not cover the market only just few shares, instead of the majority of the shares. When ESMA wants to define unified criteria for the extreme low liquidity, it needs to cover all the member states of RM practice. For these purposes we suggest the following:

 The total market capitalisation/free float is less than EUR 10 million;

 The share is on average traded less than every 10th trading session (aggregation of all trading venues);

 The average daily number of transactions in the share is less than 50 (aggregation of all trading venues);

 The average daily turnover for the share is less than EUR 100,000 (aggregation of all trading venues).

*Q9:Do you think that the volume-limitation for liquid shares should be lowered and three different thresholds regarding liquid, illiquid and shares with extreme low liquidity should be introduced?*

Yes, we agree with the following regarding daily average volume:

liquid shares (15%), illiquid shares 25% and shares with extreme low liquidity (50%).

*Q10: Do you think that for the calculation of the volume limit the significant volumes on all trading venues should be taken into account and that issuers are best placed to perform calculations?*

We believe that besides the issuer, there should be another independent participant, who might be the competent authority in order to check the volume on each of the trading platforms and calculate the relevant volume limit.

*Q11: Do you agree with the approach suggested to maintain the trading and selling restrictions during the buy-back and the related exemptions? If not, please explain.*

No, we do not agree with the related exemptions, because the Chinese Walls rules can be very different from member state to member state. Also taking into consideration those financial instruments, which link to the originals shares or the underlying instruments is the originals shares (for example: derivatives) and same restrictions need to be applied.

*Q15: Do you agree that there should be an exclusive responsibility with regard to transparency requirements? Who should be responsible to comply with the transparency obligations: the issuer, the offeror or the entity which is actually undertaking the stabilisation?*

Yes, we agree entirely that, there should be an exclusive responsible person with regard to transparency requirements and it should be the entity who actually undertakes the stabilisation.

Within the company the compliance function needs to be supervise the requirements. The compliance function needs authority to supervise all transactions entirely.

*Q16: Do you agree that there should be an exclusive responsibility with regard to reporting obligations? Who should be responsible for complying with the reporting requirements: the issuer, the offeror or the entity, which is actually undertaking the stabilisation?*

Yes, we agree entirely that there should be an exclusive responsible person with regard to the reporting obligations and it should be the entity who actually undertakes the stabilisation. Within the company the compliance function needs to be supervise the requirements.

*Q22: Do you agree that “block-trades” cannot be subject to the exemption provided by Article 3(1) of MAR?*

Yes, we agree.

*Q23: Do you agree with ESMA’s proposals for the standards that should apply prior to conducting a market sounding?*

Yes, it is necessary to standardize to avoid insider information and to follow the way of information.

*Q25: Which of the 3 options described above in paragraph 82 do you think should apply? Should any other options be considered?*

Option 2 should be considered.

*Q28: Do you agree with the requirement for disclosing market participants set out in paragraph 89?*

It is agreed, however involving Compliance is a must, because of the independent control and record-keeping.

*Q29: Do you agree with these proposals regarding recorded lines?*

No, we do not agree with the recorded lines, because these are not completed; we suggest that all the communication channels need to be recorded compulsory like e-mails, chats or any other platform trading channels.

*Q30: Are you in favour of an ex post confirmation procedure? If so, do you agree with its proposed form and contents?*

*Q31: Do you agree with the approach described above in paragraph 96 with regard to confirmation by investors of their prior agreement to be wall-crossed?*

In case of market sounding the consent should be given quickly, so the first point must be on recorded line, and then there can be a written confirmation. The content of the written confirmation is enough, but a timeline should be given to sign and to send it back. It is a question ,whether it is sufficient to have a prior consent and then should be confirmed it on recorded line.

*32: Do you agree with these proposals regarding disclosing market participants’ internal processes and controls?*

Regarding the internal process, there should be a written acceptance (for example electronic based declaration platforms) of the internal procedure by the employees. We believe that this acceptance needs to be taken in case of each alteration of the procedure, too.

In connection with the mentioned internal controls, it should be clearly specified, who is responsible for what. It’s a decent approach, the compliance function always needs to be notified about any market sounding at the first level.

*Q35: Do you think that the buy-side should or should not also inform the disclosing market participant when it thinks it has been given inside information by the disclosing market participant but the disclosing market participant has not indicated that it is inside information?*

We think that the buy-side should inform the disclosing market participants, when the think it has been given inside information even if the disclosing market participant has not indicated that it is inside/insider information. The disclosing market participant should record the information and assess it.

*Q36: Do you agree with the proposal for the buy side to report to the competent authorities when they suspect improper disclosure of inside information, particularly to capture situations where such an obligation does not already otherwise arise under the Market Abuse Regulation?*

It is agreed that the competent authority should be notified, however it should clear whether the buy-side should inform, or if it should be checked why the disclosing market participant has not notified the authority

*Q41: Are there other examples of practices of market manipulation that should be added to the list presented in Annex III, that are more focused, for instance, on OTC derivatives, spot commodity contracts or auctioned products based on emission allowances or that are more related with persons who act in collaboration with others to commit market manipulation?*

Yes, the examples need to be broadened, it would be fine to identify most of the past cases and based on this, with the help of an experienced practitioner, the list has to be finalized. We also give some examples for market manipulations:

Dissemination of misleading or false information

•The dissemination of false or misleading information regarding a financial instrument or company by means of a press release or by placing a message on a website.

•Issuing misleading signals other than through communications or the media, for example by moving or storing commodities in order to give a false impression of the demand for or supply of a commodity.

*Q42: In your view, what other ways exist to measure order cancellations?*

Order cancellations should be considered more seriously when it happens around significant periods. (eg: opening and closing session)

*Q54: Do you agree with the principle of persons performing an AMP to act independently? In which situations should this principle be adapted?*

It is necessary that the persons performing an AMP act independently to avoid conflict of interest, and to their commitment should be indisputable. This fact also need be involved into the contract. The independence has to be linked to the internal incentive system, too. We believe that these persons need to have different and independent incentive systems, which do not belong to the financial profit of the company. Same incentive systems need to be applied as in case of control functions’ persons if they are not under that.

*Q55 Do you think persons performing AMPs should be members of the trading venue in which they execute the AMP?*

In our point of view, it is necessary to these persons to have the appropriate knowledge of the trading venue in which they execute the AMP, so the answer is yes, but is necessary to make it possible to them to act independently.

*Q58: What kind of records of orders, transactions etc. should a person that performs an AMP have?*

In our point of view the persons that perform an AMP should have all the necessary information and reports about transactions that can be checked. In this case it is necessary to have a person in control function (compliance function is recommended) who’s checking periodically whether the AMP is appropriate.

*Q61: Do you agree that the above approach to timing of STR reporting strikes the right balance in practice?*

One element is missing. In case of the „appropriate time” for reporting the guideline says that maximum in a 2 weeks time, but the entity should collect a lot of information to decide whether the transaction is suspicious or not. It is not clear what is the required practice to notify the competent authority immediately or just after the examination.

*Q64: Do you have a view on whether entities subject to the reporting obligation of Article 11 should or shouldn’t be subject to a requirement to establish automated surveillance systems and, if so, which firms? What features as a minimum should such systems cover?*

*Q65: Do you consider that trading venues should be required to have an IT system allowing ex post reading and analysis of the order book? If not, please explain.*

The existence of an automated surveillance system is very powerful, in the meanwhile it is recommended to harmonize the current regulation with ESMA Guideline 2012/122( Guidelines

Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities), since it seems like there are some overlapping parts. It should be considered what should be monitored ex-ante and ex-post, duplication of checks should be avoided.

*Q66: Do you have views on the level of training that should be provided to staff to effectively detect and report suspicious orders and transactions?*

1. There should be compulsory training (industry training) for the responsible person /in the company who is giving trainings for the employees/ by the supervisory at least yearly.
2. All the closed cases need to be publishing on the Supervisors’s website in order to prevent the recurrence of the incident and diffusion of control culture.
3. There should be hot-line to the Supervisors asking questions or advice
4. There should be class-roam training for every related person (beside or instead of e-learning) for the employees (compulsory for new entry employees) in order to ask questions personally.
5. There should be written test about the knowledge of the expectations.
6. There should be at least repetition of the trainings annually

*Q67: Do you agree with the proposed information to be included in, and the overall layout of the STRs?*

Currently, data regarding „Place of employment” and „Position” are currently not always available concerning all the customers. If the regulation oblige to provide such information, the whole customer information record should be refreshed, which would result a serious administrative burden.

*Q68: Do you agree that ESMA should substantially revise existing STR templates and develop a common electronic template? Do you have any views on what ESMA should consider when developing these templates?*

Yes, there is one thing that should be regulated: “Development of a secured, electronic channel between the Competent Authority and the Investment Service Provider” would enhance the effectiveness of the reporting process due to the faster and secured communication

*Q72: Do you agree to include the requirement to disclose as soon as possible significant changes in already published inside information? If not, please explain.*

It would be essential however, the issuer under its own responsibility may delay the public disclosure of the change of inside information if certain specific and cumulative conditions are fulfilled. Maybe the competent authority should be notified immediately, and give the reasoning of the delay.

*Q74: What are your views on the options for determining the competent authority for the purpose of notifying delays in disclosure of inside information by issuers of financial instruments?*

In our point of view it could be suggested to determine the competent authority of the MTF/OTF where the financial instrument was first traded.

*Q75: What are your views on the options for determining the competent authority for the purpose of notifying delays in disclosure of inside information by emission allowances market participants?*

I agree with the opinion from market perspective, that there will be only one competent authority for particular emission allowances certificate.

*Q77: Do you agree with the approach to require issuers to have minimum procedures and arrangement in place to ensure a sound and proper management of delays in disclosure of inside information? If not, please explain.*

We agree with the need of minimum level procedure and arrangement, but there should be a written acceptance (for example electronic based declaration platforms) of the internal procedure by the employees. We believe that this acceptance needs to be taken again after each modification of the procedure. In the big companies where there are hundreds of procedures and these are changing very often, the employees are in difficult situation if they want to be updated regarding all. But if they make a mistake (because they do not read the modified rules or not updated the regulated rules) based on the related procedure, they are responsible for that or it is a legal base to terminate the contracts.

*Q94: What are your views on the possibility to aggregate transaction data for public disclosure and the possible alternatives for the aggregation of data?*

The last point can be useful, so that all the transactions on a financial instrument carried out on the same day could be aggregated but not netted, indicating the timeframe of the executions and the price range and/or the weighted average price.

*Q95: What are your views on the suggested approach in relation to exceptional circumstances under which an issuer may allow a PDMR to trade during a trading window?*

Concerning trading in financial instruments relating to the issuer, 30 days before an annual or interim report is not supported. The 30 days period doesn’t totally cover the real period when the affected persons may have insider information.

Approval to trade outside of the trading window may be granted in exceptional circumstances at the discretion of the Chairman (or if unavailable, the Managing Director), but at the same time notifying the Compliance function compulsory as well. Exceptional circumstances may include cases of severe financial hardship, where court orders exist or other overriding legal circumstance requiring the sale or transfer of the securities.

*Q97: Do you have suggestions on how to determine when an investment recommendation is “intended for distribution channels or for the public”?*

*Q98: Do you think that there should be a threshold for what constitute “large number of persons” for the purpose of determining that an investment recommendation is intended for the public?*

Information is considered to have been generally disclosed if: (i) the information has been disseminated in a manner calculated to effectively reach the marketplace, and (ii) public investors have a reasonable amount of time to analyse the information. For the purposes of this policy, information will be considered public; i.e. no longer non-public, after information has been generally disclosed by means of a broadly disseminated press release and the trading has closed on the first full trading day following such press release. The time period can be influenced by the liquidity of the security and the nature of the information. It is important to note that information is not necessarily public, because it has been discussed in the press. A news article reporting speculation or rumour, even if true, is not the same as direct disclosure of facts by an issuer or other related party.

*Q104: Do you agree on the introduction of a disclosure duty for net short positions? If yes, what threshold do you consider would be appropriate and why?*

*Q105: Do you agree on the introduction of a disclosure duty for positions in debt instruments? If yes, what threshold do you consider would be appropriate and why?*

*Q106: Do you think that additional specific thresholds should be specified with respect to other ‘non-equities’ financial instruments?*

Yes, it would be essential, and we can use those thresholds that it is stated in Commission Regulation No 827/2012 about short selling.

*Q112: Do you agree on the proposed approach and the suggested procedures for the receipt of reports of breaches and their follow-up? Do you see other topics to be addressed?*

We agree mostly with the proposed approach, but we would like to draw attention to the mentioned comments describe point 5. Also elementary that beside the internal regulations there should be proper and automated IT systems (and this should be defined clearly in the policy) in order to identify or filter suspicious transaction. Sometime only excel sheets are available for the persons and the transaction monitoring is done manually, which is not effective.

Internal incentive system needs to mention in this context, too. We believe that these persons need to have different and independent incentive systems, which do not belong to the financial profit of the company. Same incentive systems need to be applied as in case of control functions’ persons if they are not under that. If the incentive systems link to profit in any way, the persons won’t be interested in the identification of the suspicious transactions.

Regarding the protection, we suggest displaying the protections within their contracts for safer protection against retaliation, discrimination or other types of unfair treatment at a minimum.

It is also essential to clarify the word „reasonable” (eg. with some examples), this would help in practise.

*Q113: Do you agree on the proposed approach to the protection of the reporting and reported persons? Do you see other topics to be considered?*

Yes, we welcome the proposed approach, but we would like to emphasize the importance of the protection of the employees. Sometimes the reported persons need to share information with the executives or any other board members. In this case the reported persons’ protection might be questionable, because information can be spread to others, too. There should be further work on the proposed approach in order to regulate only the compulsory one way reporting lines and any other reporting is strictly prohibited.

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