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| **Amundi’s response to ESMA’s Consultation Paper on**  **Draft Guidelines on the Market Abuse Regulation**  (March 31st, 2016) |  |
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With assets under management above € 985 billion at the end of 2015, Amundi is the leading asset manager in Europe and ranks in the top 10 of the industry worldwide. Located at the heart of the main investment regions in more than 30 countries, Amundi offers a comprehensive range of products covering all asset classes and major currencies. Amundi has developed savings solutions to meet the needs of more than 100 million retail clients worldwide and designs innovative, high-performing products which are tailored specifically to the requirements and risk profile of institutional and corporate clients. Amundi is a listed company with Credit Agricole Group as its majority shareholder.

In its organisation and the conduct of its business, Amundi is very sensitive to issues relating to Market Abuse and aims at exemplarity in the implementation of the highest standards in the industry. Amundi wishes to thank ESMA for consulting on two guidelines which impact, potentially and to different degrees, several of its fields of activity.

Amundi’s general view is that :

* market soundings (see recital 32) are very useful to ensure the best possible pricing of an issue and thus participate to a more efficient financial market; we believe that it is important to offer a framework that is simple and safe for all participants;
* the proposed framework for market soundings does not bring sufficient legal security to participants and puts them at a significant level of risk, especially for larger institutions with diversified activities ; it further implies specific costs; as a consequence, Amundi will probably not change its current restrictive policy towards market soundings;
* with respect to circumstances enabling issuers to legitimately delay the publication of inside information, we think that the key point is to ensure a real protection of the investors community; hence, we favour a prudent approach;
* however, Amundi is not convinced that the notions of “contrast with the market’s expectations” and of “signals that the issuer has previously set” are sufficient to lead to a consistent jurisprudence; further clarification or illustration should be provided in the document accompanying the guidelines; we suggest a new wording.

We now turn to the list of questions of the consultation.

**Guidelines for persons receiving the market soundings :**

Q1: Do you agree with this proposal regarding MSR’s assessment as to whether they are in possession of inside information as a result of the market sounding and as to when they cease to be in possession of inside information?

No. We believe that the assessment made by the DMP on the nature of information communicated should be relied upon after having been challenged. Practically, we suggest to introduce proportionality in the process. MSR is supposed to assess whether information received amounts to inside information, what has been assessed by DMP earlier. Proportionality would lead to a reduced level of assessment on the part of the receiver who is not in contact with the issuer contrary to the DMP who, hence, has a better knowledge of issuer’s disclosure.

The truth is that MSR has procedures to identify inside information and establish lists of instruments and issuers on which transactions are prohibited or restricted. We believe that the general organization has not to be modified in case of market sounding. On the one hand, when the inside character is announced by the DMP, there is no alternative but to comply to the appropriate internal, procedure about inside information. On the other hand, if the DMP estimates it does not disclose inside information, the MSR has first to consider as sensitive and confidential the knowledge he has of the preparation of a new issue and its potential terms; this is covered by existing procedures. Second, the MSR will undertake a double check, answering the question: “Knowing what I already knew before receiving information from the DPM, am I comfortable with the DMP’s classification?”. It is difficult to believe that the addition of pieces of information already in possession of an actor and the item disclosed by the DMP will amount to inside information, when inside information is according to Art 7 (1) (a) *information of a precise nature, which has not been made public, relating, directly or indirectly, to one or more issuers or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.* There is in our view not much chance that adding pieces of information would turn to precise inside information.

Q2: Do you agree with this proposal regarding discrepancies of opinion between DMP and MSR?

No. We think that there are a very limited number of cases when the MSR, if he disagrees with the DMP, should inform the DMP and suggest a review of the classification. We believe that this may only happen when there is an obvious misunderstanding and should not apply when the DMP has declared as inside information items he has disclosed. In such a circumstance, and contrary to the proposed guidelines §4 (2), the “inside” classification as determined by the DMP should in our view unambiguously apply to all the MSRs who are contacted.

Q3: Do you agree with this proposal regarding internal procedures and staff training? Should the Guidelines be more detailed and specific about the internal procedures to prevent the circulation of inside information?

Yes, we support the idea to train staff. We draw ESMA’s attention on the importance of the wording: training applies to employees and the text should not mention a function or a body without specifying that it refers to individuals.

Q4: Do you agree with this proposal regarding a list of MSR’s staff that are in possession of the information communicated in the course of the market sounding?

We think that investment firms have already in place procedures to identify and control persons that are in possession of inside information. We believe that these procedures will apply in case of market soundings.

Q5: Do you agree with the revised approach regarding the recording of the telephone calls?

Yes.

Q6: Do you agree with the proposal regarding MSR’s obligation to draw up their own version of the written minutes or notes in case of disagreement with the content of those drafted by the DMP?

Amundi believes that some clarification is needed about the signing of minutes. We would prefer to require that participants express their approval or refusal. Practically, a mail in return should be acceptable a signature. In most cases traceability requirements will anyway impose on both sides to draft minutes of the meeting.

Q7: Can you provide possible elements of compliance cost with reference to the regime proposed in the guidelines for MSRs?

We agree with the list of costs as it reads in Annex II, but we consider that, over time, the on-going cost will be far more significant than the initial implementation cost, even with regard to staff training.

**Guidelines on legitimate interests of issuers to delay inside information and situations in which the delay of disclosure is likely to mislead the public**

Q8: Do you agree with the proposal regarding legitimate interests of the issuer for delaying disclosure of inside information?

Amundi shares the view that, in compliance with ESMA’s mandate, the list of examples should not be limitative but purely illustrative. As a consequence, some examples might be seen as safe harbour rules that do not prevent other situations to be acceptable as well. Examples which ESMA did not consider as cases of legitimate interest to delay disclosure, such as CEO’s resignation or delay for checking accounting information of a subsidiary (§ 63 and 64) are to be interpreted on a case by case basis. There might be circumstances where the resignation of the CEO could legitimately be disclosed with a delay and, as pointed out in §67, a short delay may be acceptable to clarify the situation (of the accounts of a subsidiary).

We have to express doubts on two points:

* §78 (d) (included in guidelines as § 1 (c) (iv)) very much contradicts the most basic rules of governance : if final approval is expected from a responsible body there is no way to guess before its meeting what will be its final decision, whatever the composition of this body or its record on past decisions; we strongly oppose, as a matter of principles relating to the respect of governance, the requirement that all four criteria mentioned should be met; we can understand that an example where they are all met will definitely ensure legitimacy (safe harbour) but it should not prevent issuers that refuse to bet on the final decision of their governing body to demonstrate that they can be legitimate in delaying disclosure;
* The requirement under §88 that the issuer should be able to explain why the deal is *very likely to fail* in case of disclosure should not be considered as a final interpretation of *jeopardise* in guidelines § 1(e); the point made by SMSG and quoted in § 65 should apply and a *mere probability* is a sufficient criterion in our view.

Q9: Do you agree with the proposal regarding situations where the delayed disclosure is likely to mislead the public?

We agree with (a) and (b) under § 2 of the guidelines as we think that on the one hand they are sufficiently clear for being manageable by the issuer and on the other hand they relate to situations where the investors’ interest demand an immediate disclosure.

Conversely, we doubt that (c) is clear enough to be a rule which can easily apply. We think that the proposed wording will raise more questions than it will bring answers.

Q10: Do you see other elements to be considered for assessing market’s expectations?

First question: what is a signal if neither an announcement nor an objective disclosed by the firm ? If it refers to press interviews by senior managers, we think that guidelines should be more specific and refer to what it intends to cover. In order not to be too restrictive on the scope, a wording such as “ *interviews, roadshows* *or any other type of communication organized by the issuer or with its approval*” would be more effective in our opinion. If there are other clear circumstances that should be covered there is no objection to specifically mention them.

Second question: does the reference to consensus among financial analysts amount to market’s expectations ? We believe it is the best proxy we have at hand and agree with §101. However it does not qualify to express market’s expectations *based on signals that the issuer has previously set.* Analysts typically specialize in a sector and have a profound knowledge of different firms in that sector that enables them to draw comparisons and not exclusively rely on signals and announcement of the issuer.

Conclusion: we do not believe that the addition of the reference to signals that the issuer has previously set brings the clarity that ESMA intended according to § 101. We therefore suggest to suppress the mention of market’s expectations in (c) and to have an item comparable in structure to (a) and (b). (c) would read: *the inside information whose disclosure the issuer intends to delay is in contrast with the content (not amended since) of interviews, roadshows or any other type of communication organized by the issuer or with its approval”.*

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