



European Securities and
Markets Authority

Reply form for the ESMA MAR Technical standards





European Securities and
Markets Authority

Date: 20 August 2014

Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Draft technical standards on the Market Abuse Regulation (MAR), published on the ESMA website ([here](#)).

Instructions

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA_QUESTION_MAR_TS_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

To help you navigate this document more easily, bookmarks are available in “Navigation Pane” for Word 2010 and in “Document Map” for Word 2007.

Responses must reach us by **15 October 2014**.

All contributions should be submitted online at www.esma.europa.eu under the heading ‘Your input/Consultations’.

Naming protocol - In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA_MAR_CP_TS_NAMEOFCOMPANY_NAMEOFDOCUMENT: e.g. if the respondent were ESMA, the name of the reply form would be ESMA_MAR_CP_TS_ESMA_REPLYFORM or ESMA_MAR_CP_TS_ESMA_ANNEX1

Publication of responses

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading ‘Disclaimer’.



General information about respondent

Are you representing an association?	No
Activity:	Banking sector
Country/Region	France



Introduction

Please make your introductory comments below, if any:

< ESMA_COMMENT_MAR_TA_1>
TYPE YOUR TEXT HERE
< ESMA_COMMENT_MAR_TA_1>

II. Buy-backs and stabilisation: the conditions for buy-back programmes and stabilisation measures

Q1: Do you agree with the approach set out for volume limitations? Do you think that the 50% volume limit in case of extreme low liquidity should be reinstated? If so, please justify.

<ESMA_QUESTION_MAR_TS_1>

SOCIETE GENERALE agrees with the approach set out for volume limitations. Regarding the 50% volume limit, considering that no competent authority, except one for small cap issuers, has reported cases of extreme low liquidity situations justifying the application of the extended volume limitations, we do not consider it necessary to maintain such a possibility.

Furthermore, this would avoid having to provide a strict definition of “extreme low liquidity” as this depends much on a case-by-case assessment considering the characteristics of the specific instrument and venue.

<ESMA_QUESTION_MAR_TS_1>

Q2: Do you agree with the approach set out for stabilisation measures? If not, please explain.

<ESMA_QUESTION_MAR_TS_2>

The proposals appear to be largely aligned with current practices and associated procedures. Some exceptions to this:

1. Section 38: The draft does not comment on what would constitute adequate public disclosure (aside from saying it needs to be efficient). This problem is similar to the one for public announcement.
2. Section 41: States that the identity of the stab “manager” must be publically disclosed before any stab activity is started. Current practice is that syndicated transactions will have a “co-coordinating” manager and that that manager usually makes all disclosures. Stab can however be undertaken by one or more of the managers (not just one). In those instances the coordinating manager tends to dictate how reporting will occur. It tends to vary between the co-coordinating manager picking up all reporting, and, the co-ordinating manager instructing other managers to report their own trades. The draft seems not to acknowledge the existence of syndicates.
3. Section 44: Giving the exclusive responsibility of the reporting to the market of stabilization activities to the stabilizing agent is, understandable in that the Stabilizing Agent has, de facto, all the data necessary to provide the market with the required information. Nevertheless, in terms of information of the market, it would have been relevant to state in the regulation that the information may/must also be posted on the Issuer / underlying shares’ issuer website.
4. Section 47: Discusses again the need to disclose the “entity” stabilizing. As per (1) above; stab may be being conducted by a number of managers on a co-ordinated basis.
5. Section 46 & 48: States that the “transactions must be notified to the competent authority of the relevant market” and that the “competent authorities should receive the details of all stab transactions conducted on their trading venue”. This appears to focus entirely on equities and disregard bond markets (which are largely OTC); In addition, the section discusses the need to disclose to different jurisdictions where stab is being undertaken. It should be made clear that such report-

ing should only be required if actual stab is being conducted in the relevant jurisdiction. Disclosure should not be required merely because an additional or associated listing exists in a jurisdiction.

6. Section 50; The conditions on the underlying share price are quite restrictive and may have been softened (as proposed in the AMAFI response to the previous consultation – see § 22 of AMAFI doc)
7. Section 52-53: Sections seem to suggest, but not explicitly state, that over-allotment should be reported as stabilization. The view amongst many houses appears to be that, whilst the over-allotment provision is established to support stab, actual stab has not occurred. Reporting is therefore unnecessary. SOCIETE GENERALE which had until recently reported over-allotment as stab, altered its approach to become aligned with other houses. A definitive and clear position should be established on whether over-allotment in isolation (i.e. without subsequent stabilization) must be reported. It is also not clear whether a house or syndicate can exceed the 5% level but are no longer covered by the safe harbor.
8. Sections 54-55: Suggests that sell transactions cannot be subject to the exemption. The process of stab will often result in buys that do not exactly match the required need. This can result in residual positions. These need to be flattened. The seeming (but not explicit) prohibition on sells would prevent this. In addition, a house or syndicate cannot build a long position for the sake of stabilization so excluding sale restricts our effectiveness of the stabilization.
9. Sections 56, 57 and 58: Both SOCIETE GENERALE and AMAFI previously raised a point on this. The desire is that ESMA enact that a “significant distribution” does not necessarily require a transaction with a prospectus and that a “block trade” i.e. a publicly announced placement is a significant distribution and may therefore be subject to stabilization that benefit from the safe harbor. The current wording of the CP is a bit clearer but should this be re-affirmed?

<ESMA_QUESTION_MAR_TS_2>

III. Market soundings

Q3: Do you agree with ESMA’s revised proposals for the standards that should apply prior to conducting a market sounding?

<ESMA_QUESTION_MAR_TS_3>

From a debt capital market (DCM) perspective, and one operating under French home state regulation, the proposals appear largely in line with current practices and associated procedures. A number of significant issues do however exist. In particular:

- The current proposal for sounding investors for “non-wallcrossed” market soundings appears to require that the recipients consent is required before release of the information. SOCIETE GENERALE is of the view that in such instances implied consent through mandatory pre-warning notices prior to being able to access the information would be sufficient. The need to obtain return explicit consent prior to release should not be required.
- The proposal as relating to cleansing suggests that sounding should include reference to when the deal might be announced, OR, becomes stale. This in many cases might be purely speculative at the stage of sounding. It could conceivably then serve more to mislead than inform. It might also provide grounds for dispute.

In § 78 with “a DMP should keep a record of the due diligence made...”. It is not clear to understand what needs to be on the record.

For instance on equity capital market (ECM) side, in case a market sounding for a capital increase aiming at financing an acquisition or whatever, both the contemplated capital increase and the use of proceeds are inside information. It is not kept a record of the due diligence session done during the ECM process (and it is proceeded with these due diligence session before knowing if a market sounding will be conducted or not). What is supposed to be recorded?

<ESMA_QUESTION_MAR_TS_3>

Q4: Do you agree with the revised proposal for standard template for scripts? Do you have any comments on the elements included in the list?

<ESMA_QUESTION_MAR_TS_4>

In §90, it seems that the record keeping requirements also apply to bloc monitoring. Block monitoring is ONLY on publicly available information. There is no use in keeping track of which investors have been contacted and what was discussed as there is no inside information to be had, transmitted or obtained in the exercise. Moreover, it would be cumbersome and time consuming to keep track especially since it is based on publicly available information, a broader client sample is reached out to than it is normally done on a market sounding exercise, which given its nature, is targeted to a much lower number of relevant investors.

Non wall crossing script

The script should include the prospective investor may receive “confidential information”.

In the non-wall crossed script, the warning that “*there is the risk **that the assessment is incorrect** or that the information, when combined with other information held by the potential investor, could become inside information*” is unhelpful to the potential investor, in particular the highlighted wording. It is misleading and will lead to confusion as it compromises the fact that it is the DMP’s ultimate responsibility to make an assessment on whether the information to be disclosed in II or not (see paragraph 78 of Ch 3). The reference to the fact that it is the responsibility of the recipient to also assess whether or not the information received is inside information should be a sufficient warning.

From a DCM perspective, SOCIETE GENERALE already operates with standard templates. Formalizing this industry wide would provide for a “level playing field”.

<ESMA_QUESTION_MAR_TS_4>

Q5: Do you agree with these proposals regarding sounding lists?

<ESMA_QUESTION_MAR_TS_5>

From a DCM perspective, records of individuals sounded are already being kept. The need to record all subsequent employees made aware appears to infringe on the recipients own internal systems controls and records. SG agrees this is excessive<ESMA_QUESTION_MAR_TS_5>

Q6: Do you agree with the revised requirement for DMPs to maintain sounding information about the point of contact when such information is made available by the potential investor?

<ESMA_QUESTION_MAR_TS_6>

Same response as for Q5.

<ESMA_QUESTION_MAR_TS_6>

Q7: Do you agree with these proposals regarding recorded communications?

<ESMA_QUESTION_MAR_TS_7>

Written confirmation:

For wall crossed market soundings, it may be useful for the sell side firm to send an ex post confirmation of wall crossing, to the buy side firms, who gave orally (on recorded line) its agreement to be sounded. It would be useful to have a written audit trail to supplement the recorded line. However, requirement of a signature of a written record agreed by all parties is unlikely to be practicable. When the buy side firm has been contacted through a written invitation and has given a written agreement prior to be sounded, it is likely to be less useful

For non-wall crossed soundings, no written consent is recorded – this would be acceptable where the sounding is on a recorded line, but would not cover soundings which are done in person/by meetings and not on a recorded line.

From DCM perspective, the need to provide written confirmation, having already obtained consent, appears to be excessive, unduly burdensome and wasteful. If the intention is that of providing the firm control functions with a separate record of the sounding, this could presumably be better achieved at the consent stage (where it could be prevented).

<ESMA_QUESTION_MAR_TS_7>

Q8: Do you agree with these proposals regarding DMPs' internal processes and controls?

<ESMA_QUESTION_MAR_TS_8>

No comments.

<ESMA_QUESTION_MAR_TS_8>

IV. Accepted Market Practices

Q9: Do you agree with ESMA's view on how to deal with OTC transactions?

<ESMA_QUESTION_MAR_TS_9>

Yes, Société Générale considers that competent authorities will have to consider carefully whether the necessary criterion is met for OTC trading when they conduct the assessment of a particular market practice.

<ESMA_QUESTION_MAR_TS_9>

Q10: Do you agree with ESMA's view that the status of supervised person of the person performing the AMP is an essential criterion in the assessment to be conducted by the competent authority?

<ESMA_QUESTION_MAR_TS_10>

See the answer of EuropeanIssuers

<ESMA_QUESTION_MAR_TS_10>

V. Suspicious transaction and order reporting

Q11: Do you agree with this analysis regarding attempted market abuse and OTC derivatives?

<ESMA_QUESTION_MAR_TS_11>

Yes, we agree that the suspicious transaction and order reporting regime should apply to attempted market abuse and OTC derivatives. However, in relation to the overall requirements relating to the STOR regime, ESMA should avoid being too prescriptive in the mechanisms to be implemented within market participants and market operators to facilitate identification of potentially suspicious activities, because this will depend on the nature, scale and complexity of the activities of each market participant and market operator.

<ESMA_QUESTION_MAR_TS_11>

Q12: Do you agree with ESMA's clarification on the timing of STOR reporting?

<ESMA_QUESTION_MAR_TS_12>

No, we do not agree with ESMA's clarification on the timing of STOR reporting. Whilst it is important to have an indication of what is expected by reporting having to be made "without delay", as being "as soon as possible once reasonable suspicion is formed", we are concerned that a defined period of 2 weeks becomes too prescriptive. The key factor is to ensure the quality of STORs, and having a defined 2 week period is more likely to lead to defensive reporting by some firms, because they consider that the time they have available is too short to consider the complexities of particular activities. Additionally, it may also be difficult to identify precisely the point at which a suspicion is formed.

We are also concerned by the statement that "occasionally a suspicious transaction or orders may only be detected some time after it has actually occurred". Some detection mechanisms are not run on a daily basis, being more effectively monitored using trend analysis, and therefore there may be regular occasions where it may take some time to identify a suspicious transaction or order.

It is therefore important that firms can retain flexibility around the timing of the STOR being submitted, in order to maintain the right balance between the need to report quickly, versus the risk of defensive reporting for fear of regulatory follow-up on the reasons for having delayed submitting a STOR within a precisely defined timescale. It would seem more appropriate to use the terminology "without undue delay".

<ESMA_QUESTION_MAR_TS_12>

Q13: Do you agree with ESMA's position on automated surveillance?

<ESMA_QUESTION_MAR_TS_13>

NO, we do not agree with ESMA's position on automated surveillance. The need for automated surveillance should be driven by the nature, scale and complexity of a market participant's business, where the approach to surveillance should be proportionate to the business being monitored. Sufficient flexibility should be retained in the guidance to enable flexibility within market participants to vary their approach, based on their own business structures. It may be that a large market participant in one asset class, may have a particularly small activity in another asset class, which would not warrant the significant investment in automated surveillance mechanisms. Therefore, the expectations regarding automated surveillance should remain flexible, enabling a proportionate approach to be maintained within each market participant.

<ESMA_QUESTION_MAR_TS_13>

Q14: Do you have any additional views on the proposed information to be included in, and the overall layout of the STORs?

<ESMA_QUESTION_MAR_TS_14>

It is important that a consistent template for STOR reports is established across all member states, in order to facilitate consistency on the level of information required. However, it is important that this template is not overly prescriptive or require too much mandatory information, as the information avail-

able to formulate a suspicion may vary, and competent authorities can follow up with the submitting market participant to seek further information as necessary. It is important that the template contains a workable level of information required, in order to avoid slowing down the process of reporting.

<ESMA_QUESTION_MAR_TS_14>

Q15: Do you have any additional views on templates?

<ESMA_QUESTION_MAR_TS_15>

Templates should remain flexible, and not require too much mandatory information, or require every field to be completed.

<ESMA_QUESTION_MAR_TS_15>

Q16: Do you have any views on ESMA's clarification regarding "near misses"?

<ESMA_QUESTION_MAR_TS_16>

Yes, the clarification regarding "near misses" from ESMA is helpful. It is important, however, that a distinction is made between alerts generated in firms' day to day surveillance activities, which are examined and closed as a matter of routine, and those which warrant further investigation, which are considered "near misses" only after special consideration, in order to distinguish between differing record keeping requirements.

<ESMA_QUESTION_MAR_TS_16>

VI. Technical means for public disclosure of inside information and delays

Q17: Do you agree with the proposal regarding the channel for disclosure of inside information?

<ESMA_QUESTION_MAR_TS_17>

See the answer of EuropeanIssuers.

<ESMA_QUESTION_MAR_TS_17>

Q18: Do you believe that potential investors in emission allowances or, more importantly, related derivative products, have effective access to inside information related to emission allowances that have been publicly disclosed meeting REMIT standards as described in the CP, i.e. using platforms dedicated to the publication of REMIT inside information or websites of the energy market participants as currently recommended in the ACER guidance?

<ESMA_QUESTION_MAR_TS_18>

Yes, Société Générale agrees with the proposed solution.

<ESMA_QUESTION_MAR_TS_18>

Q19: What would be the practical implications for the energy market participants under REMIT who would also be EAMPs under MAR to use disclosure channels meeting the MAR requirements for actively disseminating information that would be inside information under both REMIT and MAR?

<ESMA_QUESTION_MAR_TS_19>

The practical implications would be easier requirements and cost savings.

<ESMA_QUESTION_MAR_TS_19>

Q20: Do you agree with ESMA's proposals regarding the format and content of the notification?

<ESMA_QUESTION_MAR_TS_20>

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<ESMA_QUESTION_MAR_TS_20>

Q21: Do you agree with the proposed records to be kept?

<ESMA_QUESTION_MAR_TS_21>

Yes, Societe Generale agrees with the proposal records to be kept.

<ESMA_QUESTION_MAR_TS_21>

VII. Insider list

Q22: Do you agree with ESMA's proposals regarding the elements to be included in the insider lists?

<ESMA_QUESTION_MAR_TS_22>

Currently, we are not authorized by the French Authorities to provide the following private data:

- National Identification Number
- Home address
- Private & professional email addresses and phone numbers.

Moreover, in France at least, requesting the National Identification Number could only be enforceable via a national law.

Similar data privacy regulation may be applicable in other countries.

<ESMA_QUESTION_MAR_TS_22>

Q23: Do you agree with the two approaches regarding the format of insider lists?

<ESMA_QUESTION_MAR_TS_23>

We have no objection with regards to these 2 approaches.

<ESMA_QUESTION_MAR_TS_23>

VIII. Managers' transactions format and template for notification and disclosure

Q24: Do you have any views on the proposed method of aggregation?

<ESMA_QUESTION_MAR_TS_24>

We support the Option 3: All the transactions on a financial instrument carried out on the same day could be.

<ESMA_QUESTION_MAR_TS_24>

Q25: Do you agree with the content to be required in the notification?

<ESMA_QUESTION_MAR_TS_25>

See the answer of EuropeanIssuers

<ESMA_QUESTION_MAR_TS_25>

IX. Investment recommendations

Q26: Do you agree with the twofold approach suggested by ESMA of applying a general set of requirements to all persons in the scope and additional requirements to so-called “qualified persons” and “experts”?

<ESMA_QUESTION_MAR_TS_26>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_26>

Q27: Should the issuance of recommendations “on a regular basis” (e.g. every day, week or month) be included in the list of characteristics that a person must have in order to qualify as an “expert”? Can you suggest other objective characteristics that could be included in the “expert” definition?

<ESMA_QUESTION_MAR_TS_27>
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<ESMA_QUESTION_MAR_TS_27>

Q28: Are the suggested standards for objective presentation of investment recommendation suitable to all asset classes? If not, please explain why.

<ESMA_QUESTION_MAR_TS_28>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_28>

Q29: Do you agree with the proposed standards for the objective presentation of investment recommendations and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_29>
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<ESMA_QUESTION_MAR_TS_29>

Q30: Do you agree with the proposed standards for the disclosure of interest or indication of conflicts of interests and how they apply to the different categories of persons in the scope? If not, please specify.

<ESMA_QUESTION_MAR_TS_30>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_30>

Q31: Do you consider the proposed level of thresholds for conflict of interest appropriate for increasing the transparency of investment recommendation?

<ESMA_QUESTION_MAR_TS_31>
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<ESMA_QUESTION_MAR_TS_31>

Q32: Do you think that the positions of the producer of the investment recommendation should be aggregated with the ones of the related person(s) in order to assess whether the threshold has been reached?

<ESMA_QUESTION_MAR_TS_32>
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<ESMA_QUESTION_MAR_TS_32>

Q33: Do you agree that a disclosure is required when the remuneration of the person producing the investment recommendation is tied to trading fees received by his employer or a person related to the employer?

<ESMA_QUESTION_MAR_TS_33>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_33>

Q34: Do you agree with the proposed standards relating to the dissemination of recommendation produced by third parties? If not, please specify.

<ESMA_QUESTION_MAR_TS_34>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_34>

Q35: Do you consider that publication of extracts rather than the whole recommendation by news disseminators is a substantial alteration of the investment recommendation produced by a third party?

<ESMA_QUESTION_MAR_TS_35>
TYPE YOUR TEXT HERE
<ESMA_QUESTION_MAR_TS_35>