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RESPONSE TO THE DISCUSSION PAPER ON ESMA'S POLICY ORIENTATIONS ON POSSIBLE IMPLEMENTING MEASURES UNDER THE MARKET ABUSE REGULATION

1. Euronext

Euronext is a leading global operator of financial markets and a provider of innovative trading technologies. Euronext's exchanges in Europe (Amsterdam, Brussels, Lisbon, London and Paris) provide for the trading of cash equities, bonds, derivatives and other Exchange-traded products.

2. General Comments

This document contains the views of Euronext with regard to ESMA's discussion paper on policy orientations on possible implementing measures under the market abuse regulation.

Euronext welcomes the opportunity to comment on these initial proposals for MAR implementing measures considering the importance that such measures will have in achieving the objectives pursued by MAD, namely, enhance the integrity of financial markets taking into consideration the deep evolutions they have faced lately.

Euronext believes that it is crucial to enhance market integrity and investor protection by modernising the present legislative framework. With MIFID, increased fragmentation and opacity of European cash markets prevailed causing difficult application of the Market Abuse Directive ("MAD"). More trading volumes are executed across trading venues where different levels of control and regulation are applied. This has resulted in market abuse cases, including: manipulating the lit market when trading in a dark pool, or trading continuing in a financial instrument on an Multilateral Trading Facilities ("MTF"), when that instrument has been suspended on the Regulated Market following an injunction by a national regulator. Euronext therefore agreed that there was a need to harmonise rules at a pan-European level and that this requires a revision of MAD.

Euronext believes that the modernisation of the market abuse rules in a coordinated and harmonised way is key for the development of sound European financial markets. Euronext overall agrees with the proposals included in the discussion paper but considers that for the implementing measures to be effective, they should apply to all marketplaces (regulated trading venues and OTC) equally. Otherwise, the

risk is to create an unlevel playing field, whereby a significant proportion of trading remains uncovered or covered by weaker market integrity rules, with potential incentives, for those seeking to circumvent MAR's provisions, to direct their activities towards these less regulated areas.

3. Response to the Consultation

I. Buyback programmes and stabilisation (Article 3 of MAR)

I.1 Buyback programmes

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. Euronext considers it important to minimize the costs for companies (and other market parties) associated with the introduction of the disclosure and reporting obligations regarding share buy-back programmes. As most listed companies will have implemented appropriate procedures to comply with the requirements of the Transparency Directive or comparable mechanism the same mechanism for the disclosure and reporting regarding buy-back programmes should be used.

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?

Yes. Euronext considers that aggregated figures on a daily basis would be sufficient for the public disclosure of buy-back measures and also – in particular in case of a high number of transactions – more comprehensible for investors and other market parties. In our view there is no need to disclose further details on the transaction on the issuer's website.

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

Yes. Euronext considers the deadline of 7 market sessions for public disclosure appropriate.

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

Yes, using the same deadline is the most practical proposal.

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?

Yes. Having a variety of competent authorities may create unnecessary costs and overlapping of responsibilities without providing any additional benefit. Euronext proposes that the single competent authority for the purpose of buy-back transactions ties in with the competent authority for purposes of the Transparency directive and other European directives, *e.g.* the competent authority of the trading venue where the share was first admitted to trading or traded provided that if the shares are admitted to trading simultaneously on multiple markets at the same time the issuer must designate a competent authority.

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. Euronext considers the proposal to adequately address the concern regarding the formation process during the end of auctions.

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?

No. Introducing a variety of limitations may create unnecessary costs for issuers.

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?

No. Euronext considers it is too burdensome- and in some cases even impossible- to oblige the issuer to check each and every trading venue for the trading volume. Given that adding the volumes is ultimately at the advantage of the issuer, as it increases the amount of shares that issuer can buy the issuer should be authorized to optionally add the volumes.

I.2 Stabilisation measures

Q13: Do you believe that the disclosure provided for under the Prospectus Directive is sufficient or should there be additional communication to the market?

Yes. Euronext believes that the disclosure provided for under the Prospectus Directive is sufficient.

Q14: Do you agree with these above mentioned details which have to be disclosed?

Yes on the basis of our answer on Question 13.

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. Having an exclusive responsibility with regard to transparency requirements is preferable .The entity undertaking the stabilisation is in the best position to provide the transparency details.

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. Having an exclusive responsibility with regard to transparency requirements is preferable. The entity undertaking the stabilisation is in the best position to provide the transparency details.

Q17 Do you think that in the case of bi- or multinational stabilisation measures a centralised reporting regime should be established to exclusively one competent authority? If so, what are your views on the proposed options?

Yes. Having a variety of competent authorities may create unnecessary costs and overlapping of responsibilities without providing any additional benefit. Euronext proposes that the single competent authority for the purpose of stabilization measures ties in with the competent authority for purposes of the Transparency Directive and other applicable European directives.

Q20: Do you agree with these conditions for ancillary stabilisation?

Euronext considers it most important that appropriate disclosures have been made in relation to the ancillary stabilisation and that such stabilisation is undertaken in accordance with the relevant disclosure and reporting conditions.

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

Yes. Block trades should not be subject to the exemption provided by Article 3(1) of MAR.

III. Specification of the indicators of market manipulation laid down in Annex I of MAR (Article 8(5) of MAR)

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

High Ratio of cancelled order should be adapted according the financial instruments types and market participants profile. Orders on Financial Instruments linked to a benchmark have to be continuously

updated according the reference price movements. Market makers/liquidity providers have to regularly updates their quotes.

We suggest to have a control on the duration between the initial order and its cancellation (*i.e.* percentage of orders cancelled before the acknowledgment by the trading venue engine).

Q43: What indicators are the most pertinent to detect cross-venue or cross-product manipulation and which would cover the greatest number of situations?

A prerequisite necessary to have an efficient cross product and cross venue surveillance is the clock synchronization between all EU trading venues.

In an increasingly fragmented trading environment, Euronext believes it is crucial to address the risk of cross-market or cross-asset abuse, in order to protect the integrity of financial markets and provide investors with the highest level of protection. Considering that each trading venue is only responsible for the prevention and detection of potential market abuse cases on its own platform, when only the regulator has the ability to monitor and detect potential cross-platform abuses in one jurisdiction. It is important that the coordination be well monitored to insure that the cross-market system is efficient and does not create any unlevel playing field.

Cross-market surveillance should be performed by the regulator of the market where the instrument was first admitted to trading Euronext believes that the most efficient mechanism would be to allocate the responsibility for cross-market surveillance to the regulator supervising the market where an instrument was first admitted to trading. Adopting a cross-market / cross-asset surveillance mechanism based on the regulator of the market where an instrument was first listed would ensure the effectiveness and stability of the cross-market surveillance process.

Moreover, cross-market surveillance should cover all execution venues as well as pre- and post-trade data. Considering that cross-market and cross-asset abuse can be conducted on any type of execution venue, it would be ineffective to limit the scope of cross-market surveillance only to certain trading facilities (Regulated Markets and MTFs).

In addition, both pre-trade and post-trade data need to be monitored in order to detect abuse or attempts at committing abuse. The sole monitoring of post-trade data would not be sufficient to ensure that both abuse and attempts are detected. Therefore, cross-market / cross-asset surveillance should cover both post-trade data and pre-trade data (where applicable, that is to say data from pre-trade transparent venues).

Q45: Which of the indicators of manipulative behaviour manipulation in an automated environment listed in Annex IV would you consider to be the most difficult to detect? Are there other indicators/signals of market that should be added to the list? Please explain.

Phishing is particularly difficult to detect, yet all trading platforms should monitor their market to detect the potential performance of such practice. Phishing is an attempt to capture information on where the prices are set before all other participants by taking advantage of the latency's discrepancy between private and public data flows. In that case, the firm conducting this manipulation technically posts orders

with a limited financial impact for the firm itself (accepted loss) at sensible levels only to get an acknowledgement of a trade before the information is received by all market participants through market data. Then subsequently the firm sends a real order with a sizeable amount to take position and advantage of the information. Therefore, trading platforms should pay a particular attention to small orders sent by a firm diverging from the usual trading pattern of the firm, which may be asignal of a phishing attempt.

Q46: From what moment does an inflow of orders become difficult to analyse and thus potentially constitute an indicator of quote stuffing?

The moment when an inflow of orders potentially constitute an indicator of quote stuffing intrinsically depends on market conditions as well as on the characteristics of the instrument, the value of orders sent to the market and on the presence of on impact (notably on the value of the instrument) of such inflow of orders. For instance, in times of market stress, where it is normal to observe an increased inflow of orders that does not necessarily signal an attempt at quote stuffing. Therefore, assessing whether an inflow of orders potentially constitute quote stuffing requires, from the operators of any execution venues, to have an accurate understanding of the characteristics of the instrument, of the market and of the particular market conditions that may trigger certain unusual behaviors, yet not fraudulent behaviors, in addition to the right level surveillance capabilities and capacities that are needed to be able to analyses large inflows of orders.

Q47: What tools should be used or developed in order to allow for a better detection of the indicators of manipulative behaviour in an automated trading environment?

Real-time monitoring should not only aim at better detecting indicators of manipulative behaviours but also at preventing such behaviours. In addition, in order to enhance the integrity of financial markets in an automated environment, real-time market surveillance should not only be focused on intentional manipulative behaviours but also on unintentional events that may have a negative impact on the market.

Typically, prevention comprises two aspects:

(i) Real-time monitoring of the markets in order to prevent any market manipulation (intentional market event): automated systems screen order books and pre-trade data (examples include wash trades, improper matching orders, marking the close); and

(ii) Mechanisms embedded in the market structure (such as static collars) in order to prevent abnormal situations (unintentional market event).

Detection, in turn corresponds to real-time surveillance of the market, to detect events that cannot be detected in advance, through the screening of pre-and post-trade data. Events can be either:

(i) Intentional (such as manipulation and market abuse), or

(ii) Unintentional such as unusual situations (for example aberrant orders or loss of control of a high frequency trading engine) and technical issues.

IV. Accepted Market Practices (Article 8a(5) of MAR)

Q48: Do you agree with the approach suggested in relation to OTC trading?

Due to of the lack of reliable data on OTC trading, Euronext deems that AMPs should only take place on regulated and transparent trading venues, such as RMs & MTFs. However, if AMPs were to neextended to OTC trading, Euronext believes that considering the overall lack of transparency that characterises OTC trading, in order for a practice to be considered as an accepted market practice in the OTC space, it should be covered by the same transparency requirements as the ones that would apply to it should it have been performed on a regulated trading venue. Otherwise, the risk is to exempt from the Market Abuse Regulation some practices that yet, because of a lack of trans parency, regulators and the market as a whole will have difficulties to monitor, and therefore for which the legitimacy of their exemption from the afore-mentioned framework may be questioned.

Q49: Do you agree with ESMA's approach in relation to entities which can perform or execute an AMP?

Yes, Euronext agrees.

Q51: Do you consider there is specific additional information that should be disclosed when executing an AMP?

No. Euronext considers the information to be disclosed appropriate.

Q52: Do you agree that the factors listed seek to ensure a high degree of safeguards and proper interplay of forces of supply and demand?

Yes. The factors mentioned seem adequate.

Q53: Do you agree with the fact that AMPs may in some instances protect specific market participants (retail clients)?

Yes, it is crucial that market participants, and particularly retail clients, must be protected.

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

No, in some instances competent authorities may accept AMPs where the actions of the firms executing the AMP may be influenced or informed by the issuer or other interested parties. Competent authorities

should be in a position to explain why those situations can be accepted. Persons performing an AMP should avoid any conflict of interest.

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

The necessary liquidity provided through AMPs should not only come from the members of the trading venues, as such this options would seem too limitative. Any market participants willing to provide liquidity on an instrument through AMPs should be able to do so even if it is not member of a trading venue.

Q56: Should an ex ante list of situations when the AMP should be temporarily suspended or restricted be established (e.g. takeover bids)?

Yes. Euronext considers that an ex ante list of situations when the AMP is temporarily suspended or restricted should be established and disclosed by the competent authorities.

Q57: Do you agree with the above mentioned principles that seek to ensure that AMPs do not create risks for the integrity of related markets and would you consider adding others?

Yes. Euronext considers the list of principles exhaustive.

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

Euronext considers that in order to have the means to monitor the conduct of accepted market practices and ensure that they do serve the purpose for which they were exempted from the Market Abuse Regulation, any person performing an AMP should abide by high requirements in respect, notably, to order and transaction records.

The person should be covered by the exact same requirements as those applied to investment firms under MiFID, and should therefore keep the record of all their orders and transactions (including information on price, size, time, venue where the order was sent, and where the transaction was executed) during a minimum 5 year period, in a durable format.

In addition, and notably in the case where the accepted market practice enables an issuer to contract with a participant in order to enhance the liquidity of its stock, all contractual provisions and exchanges between the issuer and the participant should also be recorded and stored for a minimum period of year in a durable format.

Q59: Do you agree with the above mentioned principles that take into account the retail investors' participation in the relevant market? Would you consider adding others?

Yes. It is important that when determining and reviewing AMPs the competent authorities take into account the - adverse or positive- effects on retail participation in the relevant instrument and market. The protection of retail investors is absolutely key and should therefore be taken into consideration when designing AMPs'rules.

V. Suspicious Transaction and Order Reports (Article 11 of MAR)

Q60: Do you agree with this analysis? Do you have any additional views on reporting suspicious orders which have not been executed?

Euronext agrees with this analysis.

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

Euronext agrees that the above approach to timing of STR reporting strikes the right balance in practice.

Q62: Do you agree that institutions should generally base their decision on what they see and not make unreasonable presumption unless there is good reason to do so?

Euronext agrees that institutions should generally base their decision on what they see and not make unreasonable presumption unless there is good reason to do so. Nonetheless, Euronext would suggest clarifying in paragraph 201 of the Discussion paper that entities should take into consideration all information available to them to make an informed presumption but may not be liable for a failure to take into consideration all information available to them. As its stands the current wording of the paragraph raises some uncertainties over whether entities may be liable for this or not, yet, for instance in the case of a trading venue, the venue may only made liable for a failure to adequately monitor the information that falls within its sphere of responsibility (*i.e.* orders sent to its system and transactions executed on its systems) and not for a failure to adequately monitor the orders and transactions sent and executed on other venues as it would be almost impossible for a venue to monitor with the same degree of granularity the information sent to other venues.

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?

In order to enhance overall market integrity and reduce the risks of occurrence of market abuse or of any manipulative behaviours, Euronext considers it crucial to apply to all participants and venues high standards in terms of surveillance systems. An effective surveillance system should establish a continuum

between surveillance at the member/ participant level, at the level of execution venues (including OTC) and at the level of regulators, in order not only to detect and investigate potential manipulative behaviours but also to prevent and dis-incentivise them from being performed. If one part of this chain is not subject to the same standards as the other, then there is potentially a scope for manipulative behaviours to be performed without being prevented nor detected, hence potentially incentivising some participants to engage in those types of fraudulent behaviours.

Therefore, all entities subject to the reporting obligation of Article 11 be subject to a requirement to establish automated surveillance systems as well as all market participants and members registered as investment firms or as credit institutions.

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.

Euronext agrees that trading venues should be required to have an IT system allowing ex post reading and analysis of the order book.

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?

Euronext considers that two forms of training should be encouraged:

(i) Internal training: staff should be trained in order to understand in-house products, clients, rules, processes and surveillance systems and effectively use the latter. Internal training should therefore consist of (i) technical training, (ii) market / business environment training and (iii) compliance training.

(ii) External certification: external certification, such as the one promoted by the AMF, ensures that all people working in the same industry and at the same function share a common understanding and have been deemed qualified, by a neutral party, to carry out their functions effectively and in accordance with the same integrity rules. It should therefore be, when available, required.

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

Currently, trading venue operators do not have all the information required in the templates provided under section 215 of the Discussion Paper. Notably, information on the identity of the person suspected of breach may not be known as most of the time market operators have only access to the identity of the overall entity and not of the individual person who may be responsible for the breach.

Therefore, Euronext suggests maintaining the proposed template but allowing reporting entities not to fill the parts on which they do not have access to any information.

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?

Euronext considers that harmonisation should be privileged as it allows for a more efficient comparison of information across marketplaces and member states. As such, a common electronic template should be developed by revising existing STR templates, with a transitional period (e.g. 6 months) allocated for reporting entities to adapt to the new template.

Q69: Do you agree with ESMA's view for a five year record-keeping requirement, and that this should also apply to decisions regarding "near misses"?

Euronext agree with ESMA's view for a five year record-keeping requirement, and that this should also apply to decisions regarding "near misses". Yet, we would suggest allocating reporting entities a transitional period for them to adapt to this new requirement.

VI. Public disclosure of inside information and delays (Article 12 of MAR)

Q84: Do you agree with the information about the relevant person in the insider list?

According to Euronext, there should be a clear link between the information required and the purpose of establishing insider lists. This amount of details seems perhaps excessive and too burdensome. Euronext suggests to delete certain elements such as home address, phone and personal email.

Q85: Do you agree on the proposed harmonised format in Annex V?

Yes but the unnecessary information described in our response to question 84 should be taken off. In addition, ESMA should consider differentiating between permanent insiders and occasional insiders.

Q86: Do you agree on the proposal on the language of the insider list?

Yes the choice between the official language of the relevant competent authority or in the language which is customary in the sphere of international finance provides sufficient flexibility for issuers and persons acting on their account. For permanent insiders, some information such as the date and time at which this person obtained inside information and the date and time at which such person ceased to have access to inside information do need by essence seem necessary.

Q87: Do you agree on the standards for submission? What kind of acceptable electronic formats should be incorporated?

Yes. Euronext considers that ESMA should determine uniform standards for submission. This contributes to a uniform application of market abuse provisions EU-wide, increases acceptance by market parties and increases efficiency (and hence lower costs).

Q88: Should ESMA provide a technical format for the insider list including the necessary technical details about the information to be provided (e.g. standards to use, length of the information fields…)?

Yes. Euronext considers that ESMA should determine uniform conditions on the content appreciating effort versus benefits of content to be provided. This contributes to a uniform application of market abuse provisions EU-wide, increases acceptance by market parties and increases efficiency (and hence lower costs).

Q89: Do you agree on the procedure for updating insider lists?

Yes. Euronext agrees that the contemporaneous updating of the insiders list provides competent authorities with a reliable picture as to the disbursement of information within, and indeed without the issuer. Thus crucially, providing a clear indication of the chronology of possession of inside information.

Q90: Do you agree on the proposal to put in place an internal system/process whereby the relevant information is recorded and available to facilitate the effective fulfilment of the requirement, or do you see other possibilities to fulfil the obligation?

Euronext agrees with ESMA that SME Growth Markets should benefit from the exemption of drawing up an insider list and that issuers should be able to put in place the process to record and make available the relevant information to facilitate requirements from the competent authority.

VII. Managers' transactions (Article 14 of MAR)

Q91: Are these characteristics sufficiently clear? Or are there other characteristics which must be shared by all transactions?

Yes. Euronext considers the characteristics sufficiently clear.

Q92: What are your views on the minimal weight that the issuer's financial instrument should have for the notification requirement to be applicable? What could be such a minimal weight?

Minimal weight seems very difficult to calculate as well as burdensome.

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 third option, aggregating all the transactions on a financial instrument carried out on the same day, indicating the timeframe of the executions and the price range - lowest and highest prices of executed transactions- and/or the weighted average price, seems to make a right balance between making the information readable and understandable and the least burdensome for PDMRs.

4. Contacts

If ESMA would like to discuss any of the points made in this response it should contact:

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