



European Securities and
Markets Authority

Questions and Answers

On the Market Abuse Regulation



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1 Background

1. The Market Abuse Regulation (No 596/2014, “MAR”), aims at enhancing market integrity and investor protection. To this end MAR updates and strengthens the existing MAD framework, which will be repealed when MAR applies as of 3 July 2016, by extending its scope to new markets and trading strategies and by introducing new requirements. The implementation of the MAR will result in an EU-wide market abuse regime.

2. The MAR framework is made up of the following EU legislation:
 - Regulation (EU) No 596/2014 of 16 April 2014. It is a ‘framework’ Level 1 Regulation which has been supplemented by technical implementing measures (see the officially published Level 2 legislation below).

 - Commission implementing directive on reporting to competent authorities of actual or potential infringements of MAR¹;

 - Commission delegated regulation on an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers’ transactions²;

 - Implementing technical standards on financial instrument reference data under Article 4 of MAR³;

 - Implementing technical standards on insider lists format⁴;

 - Implementing technical standards on the notification and disclosure of managers’ transactions⁵.

3. The MAR framework should be further supplemented by technical implementing measures adopted by the Commission though not yet officially published in the Official Journal of the European Union:

¹ Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation - OJ L 332, 18.12.2015, p. 126–132

² Commission Delegated Regulation (EU) 2016/522 of 17 December 2015 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards an exemption for certain third countries public bodies and central banks, the indicators of market manipulation, the disclosure thresholds, the competent authority for notifications of delays, the permission for trading during closed periods and types of notifiable managers’ transactions - OJ L 88, 5.4.2016, p. 1–18

³ Commission Implementing Regulation (EU) 2016/378 of 11 March 2016 laying down implementing technical standards with regard to the timing, format and template of the submission of notifications to competent authorities according to Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 72, 17.3.2016, p. 1–12

⁴ Commission Implementing Regulation (EU) 2016/347 of 10 March 2016 laying down implementing technical standards with regard to the precise format of insider lists and for updating insider lists in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 65, 11.3.2016, p. 49–55

⁵ Commission Implementing Regulation (EU) 2016/523 of 10 March 2016 laying down implementing technical standards with regard to the format and template for notification and public disclosure of managers’ transactions in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) - OJ L 88, 5.4.2016, p. 19–22

- Commission delegated regulation supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications⁶;
 - Commission delegated regulation supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the conditions applicable to buy-back programmes and stabilisation measures⁷;
 - Commission delegated regulation with regard to regulatory technical standards for the appropriate arrangements, systems and procedures for disclosing market participants conducting market soundings⁸;
 - Commission delegated regulation supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council laying down regulatory technical standards on the criteria, the procedure and the requirements for establishing an accepted market practice and the requirements for maintaining it, terminating it or modifying the conditions for its acceptance⁹ ;
 - Commission delegated regulation supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the appropriate arrangements, systems and procedures as well as notification templates to be used for preventing, detecting and reporting abusive practices or suspicious orders or transactions¹⁰;
 - Commission delegated regulation supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the technical arrangements for objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest¹¹.
4. ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, the Authority

⁶ Adopted by the Commission on 1 March 2016; <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1224-EN-F1-1.PDF>

⁷ Adopted by the Commission on 8 March 2016; <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1357-EN-F1-1.PDF>

⁸ Adopted by the Commission on 17 May 2016; <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-2859-EN-F1-1.PDF>

⁹ Adopted by the Commission on 26 February 2016; <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1087-EN-F1-1.PDF>

¹⁰ Adopted by the Commission on 9 March 2016; <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1402-EN-F1-1.PDF>

¹¹ Adopted by the Commission on 9 March 2016; <http://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-1403-EN-F1-1.PDF>

develops Q&As as and when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines.

2 Purpose

5. The purpose of this document is to promote common supervisory approaches and practices in the application of MAR and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the MAR framework
6. The content of this document is aimed at competent authorities to ensure that in their supervisory activities and their actions are converging along the lines of the responses adopted by ESMA and at helping issuers, investors and other market participants by providing clarity on the content of the market abuse rules, rather than creating an extra layer of requirements.

3 Status

7. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation¹².
8. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committee's Consultative Working Group or, where specific expertise is needed, with other external parties.
9. ESMA will review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

4 Questions and answers

10. This document may be updated where relevant as and when new questions or issues arise. The date on which each question was last amended is included after each question for ease of reference.
11. Questions on the practical application and the operation of the market abuse regime in Europe may be sent to the following email address at ESMA: info@esma.europa.eu.

¹² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

Section 1 - Prevention and detection of market abuse

*****NEW*** Question [last update 30 May2016]:** Does the obligation to detect and report market abuse under Article 16(2) of MAR apply to investment firms under MiFID only or do UCITS management companies, AIFMD managers or firms professionally engaged in trading on own account also fall within the scope of that obligation?

Answer: The definition of “person professionally arranging or executing transactions” laid down in point (28) of Article 3(1) of MAR is activity based, does not cross refer to definitions under MiFID and is independent from the latter, leading thus to consider that the scope of Article 16(2) of MAR is not only limited to firms or entities providing investment services under MiFID.

In the absence of any reference in the definition that would limit the scope and exclude particular categories of persons regulated by other financial European legislation, ESMA considers that the obligation to detect and identify market abuse or attempted market abuse under Article 16(2) of MAR applies broadly, and “persons professionally arranging or executing transactions” thus includes buy side firms, such as investment management firms (AIFs and UCITS managers), as well as firms professionally engaged in trading on own account (proprietary traders).

ESMA would also like to highlight that detecting and reporting suspicious orders and transactions under Article 16(2) of MAR should be applied by “persons professionally arranging or executing transactions” through the implementation of arrangements, systems and procedures that are appropriate and proportionate to the scale, size and nature of their business activity.