



European Securities and  
Markets Authority

# Questions and Answers

On the Market Abuse Regulation (MAR)



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## 1. Purpose and status

1. The purpose of this document is to promote common, uniform and consistent supervisory approaches and practices in the day-to-day application of Market Abuse Regulation (No 596/2014, “MAR”). It does this by providing responses to questions asked by the public, financial market participants, competent authorities and other stakeholders. The question and answer (Q&A) tool is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation. Further information on ESMA’s Q&A process is available on our website.
2. ESMA intends to update this document on a regular basis and, for ease of reference, ESMA provides the date each question was first published as well as the date/s of amendment beside each question. A table of all questions in this document and dates is provided in Section I.
3. Additional questions on MAR may be submitted to ESMA through the Q&A tool on our website ([here](#)). Please see the guidance available on our website before submitting your question.

## 2. Legislative references and abbreviations

### Legislative references

<i>ESMA Regulation</i>	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 <sup>1</sup>
<i>MAR</i>	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (Text with EEA relevance) <sup>2</sup>
<i>Implementing directive on reporting to competent authorities of actual or potential infringements</i>	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 <sup>3</sup>

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84

<sup>2</sup> OJ L 173, 12.6.2014, p. 1–61

<sup>3</sup> OJ L 332, 18.12.2015, p. 126–132

*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' transactions*

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 (Text with EEA relevance)<sup>4</sup>

*RTS on financial instrument reference data under Article 4 of MAR*

Commission Delegated Regulation (EU) 2016/909 of 1 March 2016 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 notifications (Text with EEA relevance)<sup>5</sup>

*ITS on financial instrument reference data under Article 4 of MAR*

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)<sup>6</sup>

*RTS on disclosing market participants conducting market soundings*

Commission Delegated Regulation (EU) 2016/960 of 17 May 2016 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 for disclosing market participants conducting market soundings (Text with EEA relevance)<sup>7</sup>

*ITS on disclosing market participants conducting market soundings*

Commission Implementing Regulation (EU) 2016/959 of 17 May 2016 laying down implementing technical standards for market soundings with regard to the systems and notification templates to be used by disclosing market participants and

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<sup>4</sup> OJ L 88, 5.4.2016, p. 1–18

<sup>5</sup> OJ L 153, 10.6.2016, p. 13–22

<sup>6</sup> OJ L 72, 17.3.2016, p. 1–12

<sup>7</sup> OJ L 160, 17.6.2016, p. 29–33

<i>(systems, templates and records)</i>	the format of the records in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance) <sup>8</sup>
<i>RTS on accepted market practices</i>	Commission Delegated Regulation (EU) 2016/908 of 26 February 2016 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 acceptance (Text with EEA relevance) <sup>9</sup>
<i>RTS on the prevention, detection and reporting of abusive practices or suspicious orders or transactions</i>	Commission Delegated Regulation (EU) 2016/957 of 9 March 2016 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 transactions (Text with EEA relevance) <sup>10</sup>
<i>ITS on insider lists format</i>	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) <sup>11</sup>
<i>ITS on the notification and disclosure of managers' transactions</i>	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) <sup>12</sup> ;
<i>RTS on investment recommendations or other information recommending or</i>	Commission Delegated Regulation (EU) 2016/958 of 9 March 2016 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

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<sup>8</sup> OJ L 160, 17.6.2016, p. 23–28

<sup>9</sup> OJ L 153, 10.6.2016, p. 3–12

<sup>10</sup> OJ L 160, 17.6.2016, p. 1–14

<sup>11</sup> OJ L 65, 11.3.2016, p. 49–55

<sup>12</sup> OJ L 88, 5.4.2016, p. 19–22

*suggesting an investment strategy*

recommendations or other information recommending or suggesting an investment strategy and for disclosure of particular interests or indications of conflicts of interest (Text with EEA relevance)<sup>13</sup>

*RTS on buy-back programmes and stabilisation measures*

Commission Delegated Regulation (EU) 2016/1052 of 8 March 2016 supplementing Regulation (EU) No 596/2014 of the European Parliament and of the Council for the conditions applicable to buy-back programmes and stabilisation measures (Text with EEA relevance)<sup>14</sup>

*ITS on the technical means for public disclosure of inside information and for delaying the public disclosure of inside information*

Commission Implementing Regulation (EU) 2016/1055 of 29 June 2016 laying down implementing technical standards with regard to the technical means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information in accordance with Regulation (EU) No 596/2014 of the European Parliament and of the Council (Text with EEA relevance)<sup>15</sup>

## Abbreviations

<i>EC</i>	European Commission
<i>EEA</i>	European Economic Area
<i>EU</i>	European Union
<i>ESMA</i>	European Securities and Markets Authority
<i>ITS</i>	Implementing technical standards
<i>RTS</i>	Regulatory technical standards

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<sup>13</sup> OJ L 160, 17.6.2016, p. 15–22

<sup>14</sup> OJ L 173, 30.6.2016, p. 34–41

<sup>15</sup> OJ L 173, 30.06.2016, p. 47–51

### 3. Summary table

Subject	Q	Topic of the Question	Level 1 / Level 2 provision	Last updated
General	4.1	Blanket cancellation of orders policy	Article 8 of MAR	30/05/2017
Disclosure of Inside information	5.1	Disclosure of inside information related to Pillar II requirements	Article 17 of MAR	30/05/2017
Prevention and detection of market abuse	6.1	Persons professionally arranging or executing transactions	Article 16(2) of MAR	1/09/2017
Managers' transactions	7.1	Exchange rate	Article 19 of MAR	26/10/2016
Managers' Transactions	7.2	Timing of the closed period	Article 19(11) of MAR	13/07/2016
Managers' transactions	7.3	Threshold calculation	Article 19(1) and(8) of MAR	20/12/2016
Managers' transactions	7.4	Price of gifts, donation and inheritance	Article 10(2)(k) of Regulation 2016/522	20/12/2016
Managers' Transactions	7.5	Notification of shares received as part of remuneration package	Article 19(1) of MAR Article 10(2)(i) of Regulation 2016/522	20/12/2016
Managers' transactions	7.6	Price of options granted for free	Article 10(2)(k) of	20/01/2017
Managers' Transactions	7.7	Person closely associated to a PDMR	Article 3(1)(26)(d) of MAR	06/07/2017
Investment recommendation	8.1	Communications made orally or via electronic means	Article 3(1)(34) and 35 of MAR	26/10/2016
Investment Recommendation	8.2	Communications not referring to one or several issuers	Article 3(1)(34) and 35 of MAR	26/10/2016
Investment recommendation	8.3	Main business is not to produce investment recommendations	Article 3(1)(34) and 35 of MAR	26/10/2016
Investment	8.4	Information implicitly	Article 3(1)(34) and 35	26/10/2016

Recommendation		recommending or suggesting an investment strategy	of MAR	
Investment recommendation	8.5	Communications containing purely factual information	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment Recommendation	8.6	Communications on previously disseminated investment recommendations	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment recommendation	8.7	Recommendation on derivatives traded solely outside a trading venue	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment Recommendation	8.8	Identification of derivatives in investment recommendations	Article 3(1)(34) and 35 of MAR	20/12/2016
Investment recommendation	8.9	Recommendations on multiple issuers	Article 20 of MAR	27/01/2017
Investment Recommendation	8.10	Recommendations relating to several financial instruments independently	Article 20 of MAR	27/01/2017
Investment recommendation	8.11	Recommendations on derivatives referencing an index	Article 20 of MAR	27/01/2017
Market soundings	9.1	Financial instruments in scope	Article 11(1) of MAR	1/09/2017
Insider lists	10.1	Subject of the insider list requirements	Article 18(1) of MAR	1/09/2017
Insider lists	10.2	Issuer's responsibility In case of delegation	Article 18(2) of MAR	1/09/2017



## 4. General Questions and Answers

### Blanket cancellation of orders policy

Updated: 30 May 2017

**Q4.1** Is a policy pursuant to which, after becoming in possession of inside information, the person should immediately and without the exercise of discretion cancel all orders relating to that information (“blanket order cancellation policy”) compliant with the insider dealing prohibition under MAR?

**A4.1** Article 8(1) of MAR states that “*the use of inside information by cancelling or amending an order placed before the person concerned possessed inside information*” constitutes insider dealing. This presumption is rebuttable under Recital 25 of MAR if the person establishes that they “*did not use the inside information when carrying out the transaction*”.

For those reasons, it cannot be concluded that a blanket order cancellation policy per se constitutes insider dealing.

It follows that where a firm decides to adopt a blanket cancellation policy for its proprietary trading, the fact that the cancellation may or may not constitute insider dealing will have to be assessed on case-by-case basis, by determining whether or not the cancellation was indeed performed without using the inside information.

## 5. Questions and Answers on the disclosure of inside information

### Disclosure of inside information related to Pillar II requirements

Updated: 30 May 2017

**Q5.1** Are credit institutions required under MAR to publish systematically the results of the Pillar II assessment?

**A5.1** A main objective of the Market Abuse Regulation (MAR) is to enhance market integrity. This is notably achieved through a prompt and fair disclosure of information to the public.

For issuers of financial instruments, this objective has been translated into the requirement under Article 17 of MAR. Issuers who have requested or approved admission of their financial instruments to trading on a Regulated Market, or in the case of instruments only traded on an MTF or on an OTF issuers who have approved trading of their financial instruments on an MTF or an OTF or have requested their admission to trading on an MTF, must inform the public as soon as possible of any

inside information relating directly to them. According to Article 7 of MAR, inside information is such information that is:

- non-public,
- precise, and
- if it were made public would be likely to have a significant effect on the price of the issuer's financial instrument or related financial instruments.

MAR offers, by way of exception to the immediate disclosure of inside information, the possibility on a case-by-case basis to delay such disclosure under certain conditions. In accordance with Article 17(4) of MAR, any issuer may thus delay, under its own responsibility, the public disclosure of inside information such as not to prejudice its legitimate interests provided that such omission is not likely to mislead the public<sup>16</sup> and the issuer is able to ensure the confidentiality of the information. Where the issuer is also a credit or financial institution, Article 17(5) of MAR allows for another possibility to delay the public disclosure of inside information, under the issuer's responsibility, in order to preserve the stability of the financial system. Where such an issuer intends to delay under Article 17(5) of MAR, it needs the prior consent of the competent authority on the basis that the following conditions are fulfilled: i) the disclosure of the inside information entails a risk of undermining the financial stability of the issuer and of the financial system, ii) it is in the public interest to delay disclosure and iii) the confidentiality of the information can be ensured.

However it is not feasible to define ex-ante, in a general manner, how the relevant conditions should be met and therefore the concerned issuer needs to assess, on a case-by-case basis, the particular circumstances before deciding to delay the disclosure of inside information under Article 17(4) of MAR or notifying to the competent authority its intention to delay under Article 17(5) of MAR.

Under MAR, an issuer can also be liable for market manipulation in case of dissemination of false and misleading information, including failure to properly disclose inside information to the public.

Many credit institutions across the European Union are issuers of financial instruments and thus subject to the regime established under MAR, when at the same time they are also subject to the prudential supervision of the banking regulators. Consequently, in the context of the Supervisory Review and Evaluation Process (SREP) to be conducted in accordance with Article 97 of Directive 2013/36/EU (CRD IV), whenever a credit institution subject to the market abuse regime is made aware of information, notably the results of the exercise, it is expected to evaluate whether that information meets the criteria of inside information. If these criteria are met, the MAR provisions apply with respect to the relevant disclosure requirements. Such a credit institution would have then to publicly disclose the inside information as soon as possible unless it has delayed such a disclosure after having assessed that all the conditions for delaying apply.

ESMA recalls that, if and when a publication (e.g. an article published in the press or internet postings) which is not resulting from the issuer's initiative in relation to its

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<sup>16</sup> ESMA issued MAR Guidelines on delay in the disclosure of inside information ( ESMA/2016/1478; 20 October 2016).

disclosure obligations or a rumour in the market relates explicitly to (a piece of) information that is inside information within the issuer, according to Article 17(7) of MAR that issuer is expected to react and respond to the relevant publication or rumour if that (piece of) information is sufficiently accurate to indicate that the confidentiality of this inside information is no longer ensured. In such circumstances, which should be the exception rather than the rule and should be examined by the issuer on a case-by-case basis, a policy of staying silent or of “no comment” by the issuer would not be acceptable. The issuer’s reaction or response should be made publicly available in the same conditions and using the same mechanisms as those used for the communication of inside information, so that an ad hoc announcement has to be published without undue delay.

Finally, it is noted that the disclosure of inside information is a matter of national supervision and enforcement of MAR, solely under the competence of the national competent authorities designated to that effect in accordance with Article 22 of MAR and whose heads are members of the Board of Supervisors of ESMA.

## 6. Questions and Answers on the Prevention and detection of market abuse

### Persons professionally arranging or executing transactions

Updated: 1 September 2017

**Q6.1 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?**

**A6.1** 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).

**Non-financial firms that, in addition to the production of goods and/or services, trade on own account in financial instruments as part of their business activities (e.g. industrial companies for hedging purposes) can be considered firms professionally arranging or executing transactions in financial instruments under Article 16(2) of MAR. The fact that they have staff or a structure dedicated to systematically deal on**

own account, such as a trading desk, or that they execute their own orders directly on a trading venue as defined under MiFID II, are indicators to consider a non-financial firm as a person professionally arranging or executing transactions.

It is reminded 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

## 7. Questions and Answers on Managers’ transactions

### Exchange rate

Updated: 26 October 2016

**Q7.1** For transactions carried out under Article 19(1) of Regulation (EU) No 596/2014 of the European Parliament and of the council (MAR) in a currency which is not Euro (EUR), which exchange rate should be used to determine if the threshold set forth in Article 19(8) MAR of EUR 5 000 has been crossed?

**A7.1** If transactions are carried out in a currency which is not the EUR, the exchange rate to be used to determine if the threshold is reached is the official daily spot foreign exchange rate which is applicable at the end of the business day when the transaction is conducted. Where available, the daily euro foreign exchange reference rate published by the European Central Bank on its website should be used.

### Timing of the closed period

Updated: 13 July 2016

**Q7.2** Does the «announcement» of the interim or year-end financial results determines the timing of the closed period referred to in Article 19(11) of Regulation (EU) No 596/2014 (MAR)?

**A7.2** According to MAR, there should be only one closed period relating to the announcement of every interim financial report and another relating to the year-end report.

The term «*announcement*» of an interim or a year–end financial report used in Article 19(11) of MAR is the public statement whereby the issuer announces the information included in an interim or a year-end financial report that the issuer is obliged to make public according to the rules of the trading venue where the issuer’s shares are admitted to trading or national law. The date when the «*announcement*» is made is the end date for the thirty-day closed period.

With particular reference to the year-end financial report, the «*announcement*» is the public statement whereby the issuer announces, in advance to the publication of the

final year-end report, the preliminary financial results agreed by the management body of the issuer and that will be included in that report. This can apply only if the disclosed preliminary financial results contain all the key information relating to the financial figures expected to be included in the year-end report. In the event the information announced in such way changes after its publication, this will not trigger another closed period but should be addressed in accordance with Article 17 of MAR.

In any case, persons discharging managerial responsibilities remain subject at all times to Articles 14 and 15 of MAR prohibiting insider dealing and attempted insider dealing, unlawful disclosure of inside information, as well as market manipulation and attempted market manipulation.

### Threshold calculation

Updated: 20 December 2016

**Q7.3** When calculating whether the threshold triggering the notification obligation under Article 19(1) of MAR is reached (5.000 EUR or 20.000 EUR), should the transactions carried out by a person discharging managerial responsibilities (PDMR) and by closely associated persons to that PDMR be aggregated?

**A7.3** No, the transactions carried out by a PDMR and by closely associated persons to that PDMR should not be aggregated.

This involves that where the overall transactions singularly carried out by either a PDMR or any closely associated person to that PDMR do not reach the threshold, those persons should not notify those transactions even where the threshold is reached aggregating all the transactions carried out by the PDMR and all the closely associated persons to them.

A practical example is a CEO buying 4.000 EUR of equity and her spouse buying another 2.000 EUR. In such a case, none of them has reached the 5.000 EUR threshold and thus a notification is not required.

### Price of gifts, donation and inheritance

Updated: 20 December 2016

**Q7.4** Which are the rules to calculate the price of gifts, donations and inheritance for the purpose of the notifications and disclosure of managers' transactions under Article 19 of MAR?

**A7.4** According to Article 10(2)(k) of Commission Delegated Regulation (EU) 2016/522, donations and gifts made or received or inheritance received are transactions to be notified under Article 19(1) of MAR.

The value of these transactions need to be taken into consideration for the purpose of calculating the cumulated amount of the transactions of a PDMR or a person closely associated to a PDMR, to assess whether the threshold (EUR 5 000 or EUR 20 000) referred to in Article 19(8) and (9) of MAR has been crossed, hence triggering the duty to notify and disclose all subsequent transactions.

The field 4(c) on “Price(s) and volume(s)” of the template in the annex to Commission Implementing Regulation (EU) 2016/523 (Implementing technical standards on the notification and public disclosure of managers’ transactions) specifies the data standards to be used for expressing the price, depending on the type of financial instruments concerned. In that respect, such template makes reference to data standards defined for the purpose of the transaction reporting under Regulation (EU) 600/2014 (MiFIR) and related technical standards. However, it does not explain the rules about the price to take into account to calculate the value of a donation, a gift or inheritance.

For the purpose of the threshold calculation, the price to consider for donations, gifts and inheritance is the last published price for the financial instrument concerned in accordance with the post trade transparency requirements under MiFIR (Articles 6, 10, 20 and 21) on the date of acceptance of the donation, gift or inheritance (i.e. the date of the transaction), or where such price is not available that day, the last published price.

In the period before MiFIR becomes applicable, the price to use will be:

- for shares admitted to trading on regulated markets (RM), the last published price in accordance with the post trade transparency requirements under Articles 30 and 45 of Directive 2004/39/EC (MiFID I) on the date of acceptance of the donation, gift or inheritance or where such price is not available that day, the last published price;
- for shares admitted to trading or traded on MTFs only, bonds and derivatives or financial instrument linked thereto, the last traded price on the trading venue where the concerned financial instruments are traded, on the date of acceptance of the donation, gift or inheritance, or where such price is not available that day, the last traded price before the date of acceptance.

During the interim, in the case of shares being traded on several venues (RMs and/or MTFs), then the concept of “most relevant markets in terms of liquidity” under MiFID I and specified in the Commission Regulation (EC) 1287/2006 implementing MiFID I should be used to determine the trading venue to consider when looking at the last traded price. For other instruments, the concept of trading venue of first admission should be used.

Furthermore, where debt instruments admitted to trading or traded on a RM or a MTF are only traded OTC (i.e. there is no trading on RM nor MTF), then the price to consider should be the last publicly available price for that debt instrument (whatever is the source).

However, when a notification has to be made in accordance with Article 19(1) of MAR and Article 2 of the Implementing technical standards on the notification and public disclosure of managers’ transactions, the price field for a gift, donation or inheritance is expected to be populated with 0 (zero).

## Notification of shares received as part of remuneration package

Updated: 20 December 2016

**Q7.5 Do shares received by a PDMR as part of a remuneration package have to be notified pursuant to Article 19(1) MAR and Article 10(2)(i) Commission Regulation 2016/522 only upon the occurrence of certain conditions?**

**A7.5** The rationale of Article 19(1) of MAR is mainly to prevent insider dealing and to provide investors with a highly valuable source of information. A notification of entering into a remuneration package contract, according to which a PDMR is entitled to receive shares only upon the occurrence of certain conditions, is not covered by that rationale. Therefore, pursuant to Article 19(1) of MAR and Article 10(2)(i) of Commission Delegated Regulation (EU) 2016/522, the PDMR has to notify only upon the occurrence of the conditions and the actual execution of the transaction.

## Price of options granted for free

Updated: 20 January 2017

**Q7.6 Which are the rules to calculate the price of options granted for free to managers or employees for the purpose of the notifications and disclosure of managers' transactions under Article 19 of MAR?**

**A7.6** According to Article 10(2)(b) of Commission Delegated Regulation (EU) 2016/522, such transactions have to be notified under Article 19(1) of MAR.

The value of these transactions needs to be taken into consideration for the purpose of calculating the cumulated amount of the transactions of a person discharging managerial responsibility (PDMR) or a person closely associated to a PDMR, to assess whether the threshold (EUR 5 000 or EUR 20 000) referred to in Article 19(8) and (9) of MAR has been crossed, hence triggering the duty to notify and disclose all subsequent transactions.

The field 4(c) on "Price(s) and volume(s)" of the template in annex to Commission Implementing Regulation (EU) 2016/523 (Implementing technical standards on the notification and public disclosure of managers' transactions) specifies the data standard to be used for expressing the price, depending on the type of financial instruments concerned. In that respect, such template makes reference to data standards defined for the purpose of the transaction reporting under Regulation (EU) 600/2014 (MiFIR) and related technical standards. However, it does not explain the rules about the price to take into account to calculate the value of the received options.

For the purpose of the threshold calculation, the price to consider for the received options should be based on the economic value assigned to the options by the issuer when granting them. If such an economic value is not known, the price to consider should be based on an option pricing model that is generally accepted in the reasonable opinion of the PDMR. This model determines the price of the granted option based on variables such as the current share price of the issuer, exercise price of the option and time until expiry of the option. Other variables that can be used in the option pricing model are (risk free) interest rates, future dividends and implied

volatility. The variables used for the price determination of the granted option depends on which general accepted option pricing model is used.

However, when a notification has to be made in accordance with Article 19(1) of MAR and Article 2 of the Implementing technical standards on the notification and public disclosure of managers' transactions, the price field for options granted for free to managers or employees is expected to be populated with 0 (zero).

## Closely associated persons under Article 3(1)(26)(d) of MAR

Updated: 6 July 2017

**Q7.7** According to Article 3(1)(26)(d) of Regulation (EU) No 596/2014 of the European Parliament and of the Council (MAR) a closely associated person is, inter alia, «*a legal person, trust or partnership, the managerial responsibilities of which are discharged*» by a person discharging managerial responsibilities (PDMR) or by a closely associated natural person. Is the reference to «*the managerial responsibilities of which are discharged*» contained in Article 3(1)(26)(d) of MAR to be read in the same way as the definition of PDMR within an issuer contained in Article 3(1)(25) of MAR?

**A7.7** No, the reference to «*the managerial responsibilities of which are discharged*» in Article 3(1)(26)(d) of MAR should be read to cover those cases where a PDMR within an issuer (or a closely associated natural person) takes part in or influences the decisions of another legal person, trust or partnership (hereinafter "legal entity") to carry out transactions in financial instruments of the issuer.

For example, in the case of mere cross board membership, where a person sits in the administrative, management or supervisory body of an issuer and also in the board of another legal entity where they exercise executive or non-executive functions, without however taking part nor influencing the decisions of that legal entity to carry out transactions in financial instruments of the issuer, then that person should not be considered discharging managerial responsibilities within that legal entity for the purposes of Article 3(1)(26)(d) of MAR. Therefore, that legal entity should not be subject to the notification obligations under Article 19(1) of MAR, unless it is directly or indirectly controlled by, is set up for the benefit of, or its economic interests are substantially equivalent to those of that person.



## 8. Questions and Answers on investment recommendation and information recommending or suggesting an investment strategy

For the purpose of this section, it is recalled that:

Article 3(1)(35) of MAR sets out that "*investment recommendation*" means "any information recommending or suggesting an investment strategy, explicitly or implicitly, concerning one or several financial instruments or the issuers, including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public";

Article 3(1)(34) of MAR sets out that "*information recommending or suggesting an investment strategy means information:*

*(i) produced by an independent analyst, an investment firm, a credit institution, any other person whose main business is to produce investment recommendations or a natural person working for them under a contract of employment or otherwise, which, directly or indirectly, expresses a particular investment proposal in respect of a financial instrument or an issuer; or*

*(ii) produced by persons other than those referred to in point (i), which directly proposes a particular investment decision in respect of a financial instrument."*

### Communications made orally or via electronic means

Updated: 26 October 2016

**Q8.1** Do communications made orally or via electronic means such as telephone calls and "chat" functions, or communications labelled e.g. "morning notes" or "sales notes", constitute an "*investment recommendation*" under MAR?

**A8.1** Any communication that meets the criteria of the definition of investment recommendation within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR will be deemed to fall within the scope of the investment recommendation regime. When determining whether a communication is an "investment recommendation", an assessment should be made based on the substance of the communication, irrespective of its name or label and the format, form, or the medium through which it is delivered (whether electronically, orally or otherwise). As such, whether a specific oral or electronic communication, or a communication labelled as "morning notes" or "sales notes", may be considered an investment recommendation within the meaning of MAR, it should be established on a case-by-case basis.

Where a standardised communication, including oral or electronic communication, is structured and pre-planned for distribution channels and it implicitly or explicitly suggests an investment strategy in relation to a financial instrument or issuer, it should be regarded as "investment recommendation".

## Communications not referring to one or several issuers

Updated: 26 October 2016

### **Q8.2 Can communications that do not refer to either one or several financial instruments or issuers be considered investment recommendations under MAR?**

**A8.2** Communications that meet the criteria of the definition of "investment recommendation" within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR will be deemed to fall within the scope of the investment recommendation regime.

In particular, Article 3(1)(35) of MAR sets out that "*investment recommendation*" means "*information recommending or suggesting an investment strategy, explicitly or implicitly, **concerning one or several financial instruments or the issuers** [emphasis added], including any opinion as to the present or future value or price of such instruments, intended for distribution channels or for the public*".

Therefore, a communication that does not refer to either a financial instrument or an issuer, should generally not be considered an investment recommendation. However, the producer's assessment as to whether the above communication may be investment recommendation should be conducted on a case-by-case basis.

Communication relating solely to spot currency rates, sectors, interest rates, loans, commodities, macroeconomic variables or industry sectors and not referring to a financial instrument or an issuer would be considered as investment recommendation where it contains information assessed as allowing a reasonable investor to deduce that the communication is implicitly recommending specific financial instruments or issuers and provided that the other criteria of the definition of "*investment recommendation*" within the meaning of Article 3(1)(35) of MAR in conjunction with Article 3(1)(34) of MAR are met. For example, an opinion on a specific sector that is composed of a very limited number of issuers may be considered an investment recommendation regarding those issuers.

## Main business is not to produce investment recommendations

Updated: 26 Octobre 2016

### **Q8.3 Would an investment firm which produces an investment recommendation be considered to fall within the scope of Article 3(1)(34)(i) of MAR, even though the production of such recommendation is not its main business?**

**A8.3** With regard to an investment firm, any information that comprises direct or indirect investment proposals in respect of a financial instrument or an issuer will be

considered as information recommending or suggesting an investment strategy as defined under point (i) of Article 3(1)(34) of MAR. This is regardless of whether or not the production of investment recommendations is the main business of the investment firm, noting that the condition “*whose main business is to produce investment recommendations*” contained in point (i) of Article 3(1)(34) of MAR concerns any other person than independent analysts, investment firms and credit institutions.

## Information implicitly recommending or suggesting an investment strategy

Updated: 26 October 2016

**Q8.4 Does material intended for distribution channels or for the public concerning one or several financial instruments that contains statements indicating that the concerned financial instruments are “undervalued”, “fairly valued” or “overvalued” fall within the definition of “investment recommendation” under MAR?**

**A8.4** Such material which concerns one or several financial instruments admitted to trading on a regulated market or a multilateral trading facility or for which a request for admission to trading on such a market has been made, or, traded on a multilateral trading facility or an organised trading facility, is considered as information implicitly recommending or suggesting an investment strategy pursuant to Article 3(1)(34) of MAR, insofar as it contains a valuation statement as to the price of the concerned financial instruments.

Furthermore, material containing an estimated value such as a “quantitative fair value estimate” that is providing a projected price level or “price target”, or any other elements of opinion on the value of the financial instruments, is also considered to be information implicitly recommending or suggesting an investment strategy pursuant to Article 3(1)(34) of MAR.

As the material referred to above is an investment recommendation under MAR, it needs to comply with the relevant obligations and standards set out in MAR and Commission Delegated Regulation (EU) 2016/958 of the European Parliament and of the Council concerning the objective presentation of investment recommendations or other information recommending or suggesting an investment strategy and the disclosure of particular interests and conflicts of interest by producers of such recommendations. In addition, a third party that disseminates such material is considered as a disseminator of investment recommendations and therefore needs to comply with the relevant obligations and standards set out in MAR and Commission Delegated Regulation (EU) 2016/958 of the European Parliament and of the Council.

## Communications containing purely factual information

Updated: 20 December 2016

**Q8.5 Do communications to clients containing purely factual information on one or several financial instrument or issuers constitute an ‘investment recommendation’ under MAR?**

- A8.5** In consideration of the definition of an investment recommendation within the meaning of Article 3(1)(35) of MAR, in conjunction with Article 3(1)(34) of MAR, any communication containing purely factual information on one or several financial instruments or issuers would not constitute an investment recommendation under MAR provided that it does not explicitly or implicitly recommend or suggest an investment strategy.

In this context, factual information might, among other things, include recent events or news relating to one or several financial instruments or issuers.

### Communications on previously disseminated investment recommendations

Updated: 20 December 2016

- Q8.6** Do communications intended for distribution channels or for the public which only report or refer to previously disseminated investment recommendation and do not include any new elements of opinion or valuation or confirmation of a previous opinion or valuation constitute an investment recommendation under MAR?

- A8.6** No, such a communication will not amount to a new investment recommendation, but would still be subject to Article 7 of Commission Delegated Regulation (EU) 2016/958, if it is disseminated by the producer of the investment recommendation, and therefore such a communication shall include, the date and time of first issuance of the investment recommendation.

If a communication reports or refers to a former investment recommendation but contains either confirmation of the previous opinion or valuation or new elements of opinion or valuation, which may be based on new facts or events concerning the issuer which are considered in the valuation, it will be viewed as a new investment recommendation and all aspects of Commission Delegated Regulation (EU) 2016/958 would need to be considered.

In case a person disseminates recommendations produced by third parties, articles 8 to 10 of Commission Delegated Regulation (EU) 2016/958 need to be considered.

### Recommendation on derivatives traded solely outside a trading venue

Updated: 20 December 2016

- Q8.7** Are recommendations relating to derivatives traded solely outside a trading venue in scope of Article 20 of MAR?

- A8.7** In line with Articles 2(1)(d) and 2 (3) of MAR, a derivative traded outside a trading venue is in scope of MAR insofar as its price or value depends on, or has an effect on the price or value of a financial instrument referred to in Article 2(1)(a), (b) or (c) of MAR.

If the price or value of a derivative traded outside a trading venue does not depend on or have an effect on the price or value of a financial instrument referred to in Article 2(1)(a), (b) or (c) of MAR, the derivative would not be in scope of MAR and therefore

any recommendation relating to the financial instrument would not be in scope of Article 20 of MAR.

Therefore, firms are responsible for conducting their own assessment on a case by case basis as to whether a recommendation on a given derivative traded solely outside a trading venue is in scope of Article 20 of MAR and subject to the requirements of Commission Delegated Regulation (EU) 2016/958.

## Identification of derivatives in investment recommendations

Updated: 20 December 2016

**Q8.8** Where a recommendation relates to a derivative, how should it be determined whether a recommendation has been given on the same financial instrument, for the purposes of complying with Article 4(1)(h) of Commission Delegated Regulation (EU) 2016/958?

**A8.8** Where a unique identifier exists for the concerned derivative, such identifier has to be used to determine whether there has been a change in a previous recommendation given by the producer on the same financial instrument.

For as long as a unique identifier does not exist for a derivative instrument, all reasonable efforts should be made to identify such a financial instrument by other means, so as to comply with Article 4(1)(h) of Commission Delegated Regulation (EU) 2016/958. For example, these efforts may include establishing a proprietary taxonomy. In determining recommendations on the same financial instrument (for the purposes of Article 4(1)(h) of Commission Delegated Regulation (EU) 2016/958), common features of a given derivative contract, including but not limited to strike, underlying or maturity could be identified. Such an approach should allow producers of recommendations to provide meaningful disclosures to recipients and still comply with the requirements.

## Recommendations on multiple issuers

Updated: 27 January 2017

**Q8.9** How does Commission Delegated Regulation (EU) 2016/958 apply when the subject of the recommendation relates to multiple issuers independently?

**A8.9** When a recommendation refers to several issuers independently, for example as part of sectorial research, the requirements would apply independently to every issuer that is the subject of the recommendation.

## Recommendations relating to several financial instruments independently

Updated: 27 January 2017

**Q8.10** How does Commission Delegated Regulation (EU) 2016/958 apply when the subject of the recommendation relates to several financial instruments independently?

**A8.10** Where a recommendation refers to several financial instruments independently, such as part of sectorial research, the requirements would apply to each financial instrument that is the subject of the recommendation.

### Recommendations on a derivative referencing an index

Updated: 27 January 2017

**Q8.11** How does Commission Delegated Regulation (EU) 2016/958 apply when the subject of the recommendation is a derivative referencing an index?

**A8.11** If a recommendation relates to a derivative referencing an index of financial instruments, the derivative itself should be treated as a financial instrument subject to the requirements of the Commission Delegated Regulation (EU) 2016/958, and not the individual instruments that comprise the index.

## 9. Questions and Answers on Market soundings

### Financial instruments in scope of the market sounding regime

Updated: 1 September 2017

**Q9.1** Does the scope of Article 11 of MAR cover all communications of information to one or more potential investors prior to the announcement of a transaction, in order to gauge their interest in a possible transaction and the conditions relating to it?

**A9.1** Under the market sounding regime outlined in Article 11 of MAR, the communication of information by an issuer, a secondary offeror, an emission allowances market participant or third party acting on their behalf or account (the Disclosing Market Participant – DMP) should be deemed to be made in the normal course of the employment, duties or profession of such a person where all the conditions contained in Article 11 of MAR are met, and therefore not constitute unlawful disclosure of inside information.

Article 11(1) of MAR concerns market soundings that gauge the interest of potential investors in a possible transaction in a financial instrument and the conditions relating to it such as its potential size or pricing. Those financial instruments have to be financial instruments covered by the MAR scope as specified in Article 2(1) of MAR:

- a) financial instruments admitted to trading on a regulated market or for which a request for admission to trading on a regulated market has been made;
- b) financial instruments traded on an MTF, admitted to trading on an MTF or for which a request for admission to trading on an MTF has been made;
- c) financial instruments traded on an OTF;

- d) financial instruments not covered by point (a), (b) or (c), the price or value of which depends on or has an effect on the price or value of a financial instrument referred to in those points, including, but not limited to, credit default swaps and contracts for difference.

Where the financial instrument subject to the possible transaction is already admitted to trading (or a request for admission to trading has been made) or is traded on a trading venue, as for example when the new transaction relates to an increase of an existing issuance, then that transaction will fall within scope of Article 11.

Where the financial instrument subject to the possible transaction is not admitted to trading (nor a request for admission to trading has been made) nor traded on a trading venue, that financial instrument would not fall under Article 2(1)(a)-(c) of MAR. That financial instrument would fall under Article 2(1)(d) of MAR if its price or value depends on or has an effect on the price or value of another existing financial instrument in scope of MAR.

In such a case, to determine if Article 2(1)(d) applies, the DMP must assess on a case by case basis whether there is any relationship between the price or value of the financial instrument that is the subject of the sounding and any other existing financial instrument falling under Article 2(1)(a)-(c) of MAR such as, for instance, other financial instruments of the issuer in question or of a parent company. DMPs are expected to be able to document their assessment.

Where the DMP assessed that such relationship exists, then the financial instrument will be in scope of MAR and the related possible transaction will be in scope of the MAR market sounding regime.

If there is uncertainty as to whether there is a price or value relationship, such as where there are no data available regarding a new financial instrument, in order to receive the protection under Article 11, should it be subsequently shown that there was a relationship, an appropriate approach would be for the DMP to apply the provisions of Article 11 of MAR and the relevant delegated and implementing regulations.

## 10. Questions and Answers on Insider lists

### Subject of the insider list requirements

Updated: 1 September 2017

**Q10.1** Are persons acting on behalf or account of the issuer (e.g. advisors and consultants) subject to the obligation to draw up, update and provide to the NCA upon request their own insider list under Article 18(1) of MAR?

**A10.1** Yes, the legislative aim of the insider list regime under MAR is to cover any person that, by virtue of its action on behalf or account of the issuer, has access to inside information.

Therefore, not only the issuer but also all the persons acting on behalf or account of the issuer that have access to inside information relating to the issuer (e.g. advisors and consultants) are subject to the obligation to draw up, update and provide to the NCA upon request their respective insider list under Article 18 of MAR.

### Issuer's responsibility in case of delegation

Updated: 1 September 2017

**Q10.2** When does the issuer remain fully responsible under the second subparagraph of Article 18(2) of MAR for the compliance with the insider list requirements by persons acting on behalf or account of the issuer?

**A10.2** The issuer remains fully responsible under the second subparagraph of Article 18(2) of MAR only where a service provider "*assumes the task of drawing up and updating the insider list*" of the issuer, on the basis of a specific delegation to that purpose.

The issuer is not responsible for the fulfilment of the insider list requirements of the persons acting on its behalf or account mentioned in Article 18(1) of MAR and first subparagraph of Article 18(2) (e.g. advisors and consultants) who are personally responsible for the obligation to draw up, update and provide to the NCA upon request their own insider list.

Where the person that "*assumes the task of drawing up and updating the insider list*" of the issuer under the second subparagraph of Article 18(2) of MAR is also a person acting on behalf or account of the issuer under Article 18(1) of MAR (e.g. advisors and consultants), that person will be responsible for the obligation to draw up, update and provide to the NCA upon request its own insider list. The issuer will remain responsible for complying with the insider list requirements in relation to its own insider list, the drawing up and updating of which has been delegated to the same person as part of a separate agreement.