Comments

of the German Insurance Association

ID Number 6437280268-55

on the Discussion Paper on

ESMA's policy orientations on possible implementing measures under the Market Abuse Regulation
(ESMA/2013/1649)

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The Berlin-based German Insurance Association (GDV) is the federation of private insurers in Germany. Its 464 member companies, with about 216,000 employees and trainees, offer comprehensive coverage and provisions to private households, trade, industry and public institutions, through about 460 million insurance contracts. As a risk taker and major investor (with an investment portfolio of about 1.4 trillion EUR), the insurance industry has outstanding significance in connection with investments, growth and employment in our economy.

Executive summary

The German insurance industry appreciates the opportunity to contribute to ESMA's Discussion Paper on possible implementing measures under the Market Abuse Regulation (MAR). With total assets of about 1.4 trillion euros the German insurance industry is a major institutional investor at international capital markets. We therefore welcome the MAR aims of enhancing market integrity and investor protection.

Before addressing selected questions on the pages to follow, we would like to highlight the following **key recommendations**:

- No main category of situations should be defined in section VI as a delay is likely to mislead the public. Usually it depends largely on the individual situation and an objective and appropriate judgement is always required.

- All new requirements should consider the balance between costs and additional benefits for the market surveillance. E. g. there should be no continuous obligation for updating insider lists, once the inside information becomes public.

- The characteristics of managers' transactions should be clarified in such a way, that only a transaction that was executed upon the instruction of the respective manager (PDMR – person discharging managerial responsibilities) should be subject to disclosure. Otherwise the scope of disclosure would be unduly broadened to transactions which are not relevant in the scope of market surveillance.

Introduction

The German insurance industry welcomes the approach of the MAR to extend its scope and to introduce new requirements to enhance market integrity and investor protection. As regards the Discussion Paper at hand, we comment on the following three sections:

- VI. Public disclosure of inside information and delays (Article 12 of MAR);
- VII. Insider list (Article 13 of MAR);
- VIII. Managers' transactions (Article 14 of MAR).

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

Q72. Do you agree to include the requirement to disclose soon as soon as possible significant changes in already published inside information? If not, please explain.

Answer

We disagree. There should not be a general requirement to disclose significant changes in already published inside information. Any such significant change should only be subject to the – already existing – disclosure requirement if, in itself, it constitutes inside information. Otherwise, there could be a requirement to update ancillary information that was part of the initial disclosure, but does not constitute inside information.

Q74. What are your views on the options for determining the competent authority for the purpose of notifying delays in disclosure of inside information by issuers of financial instruments?

Answer

We prefer the transaction reporting regime as foreseen in MiFID 2.

Q76. Do you agree with the approach to the ex post notification of general delays and the ways to transmit the required information? If not, please explain.

Answer

Yes.

Q77. Do you agree with the approach to require issuers to have minimum procedures and arrangement in place to ensure a sound and proper management of delays in disclosure of inside information? If not, please explain.

Answer
Yes.

Q78. Do you agree with the proposed content of the notification that will be sent to the competent authority to inform and explain delay in disclosure of inside information? If not, please explain.

Answer
Yes.

Q79. Would you consider additional content for these notifications? Please explain.

Answer
No.

Q80. Do you consider necessary that common template for notifications of delays be signed?

Answer
No. A common template does not seem to be necessary.

Q83. Do you agree with the main categories of situations identified? Should there be other to consider?

Answer
ESMA should not indicate main categories of situations where the delay is likely to mislead the public as this situation is largely dependent on the individual case and always requires a judgment. This judgment should not be substituted by pre-defined categories.

Furthermore, we see the risk that ESMA substantially narrows the possibility of delaying disclosure as it is foreseen in the proposed Market Abuse Regulation. E. g. even in situations where the inside information contradicts the market's current expectations, there might be a legitimate interest of the issuer to delay the disclosure which outweighs the market's interest in the immediate disclose. In some situations, the delay may even be in the shareholders' best interest. Likewise, we think that the situation mentioned in no. 308 describes a classic case of inside information where a delay should be possible.

Insider list (Article 13 of MAR)

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

Answer
In our view, the following items mentioned in no. 318 should **not** be included in the insider list:

- National identification number;
- Home and private mobile phone number;
- Personal e-mail address.

This private information is typically not collected (nor stored) by the employer. There is no legal obligation to collect and store such kind of information. It is therefore not necessarily available to the compliance department. Collecting such information in the individual case would be unduly burdensome, since only limited value derives from it.

Q85. Do you agree on the proposed harmonized format in Annex V?

Answer
Yes, except that the following information should not be included (see also response to question 84):

- National identification number;
- Home and private mobile phone number;
- Personal e-mail address.

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

Answer
Yes.

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

Answer
Yes. Submission in an excel file should be sufficient.

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…)?

Answer
This is not necessary from an issuer's point of view. At the same time, it may be necessary for the competent authorities in order to improve market surveillance.

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

Answer
Once the inside information becomes public, there should be no continuous obligation to update the information contained in the insider list. Such information should only have to be updated once, if and when the competent authority requests the inside list.

Managers' transactions (Article 14 of MAR)

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

Answer
In our view, the characteristics should be clarified as follows: If the transaction is undertaken by a third party on behalf or for the account of the PDMR, i. e. either in the context of a life insurance policy or asset man-

agement contract, the transaction should only be subject to disclosure if it was executed upon the instruction of the PDMR.

Otherwise, the scope of disclosure would be unduly broadened to transactions which are not relevant in the context of market surveillance and of which the PDMR might even not be aware. The disclosure obligation would impose upon the PDMR an obligation to obtain dealings information from his life insurance or asset manager which he otherwise would not obtain within the same timeframes. This is, however, not within the objective of the Market Abuse Regulation.

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?

Answer

The minimum weight should be high enough to avoid that the PDMR enters inadvertently into a transaction which might trigger a disclosure obligation. Otherwise, PDMRs would be required to obtain for any transaction in an index or basket instrument the current weight of the issuer's share or debt instrument in the relevant index or basket, which might in general be quite expensive and time consuming. Therefore, the weight of the relevant financial instrument in an index or basket should be at least 30 %.

Q93. For the avoidance of doubt, do you see additional types of transactions that should be mentioned to the non-exhaustive of examples of transactions that should be notified?

Answer

We recommend to reconsider the list contained in no. 353 with respect to the following transactions:

- Acceptance and exercise of stock options: Does the disclosure obligation apply to stock options that are not in the form of a derivative or financial instrument (as foreseen in MiFID 2)? Also, if stock options are granted by the issuer as part of the remuneration, why should such grant have to be disclosed? The (automatic) exercise of the stock option upon its maturity - and thus not within the discretion of the PDMR - should also be excluded from disclosure.

- Conversion of a financial instrument: This information should only have to be disclosed if the conversion is the result of a transaction triggered by the PDMR. No disclosure should be necessary if there is an automatic conversion or a conversion triggered by the issuer of the financial instrument.

Q94. What are your views on the possibility to aggregate transaction data for public disclosure and the possible alternatives for the aggregation of data?

Answer

The third option as presented in the discussion paper seems to be the easiest way to aggregate transaction data: “All the transactions on a financial instrument carried out on the same day could be aggregated but not netted, indicating the timeframe of the executions and the price range (lowest and highest prices of executed transactions) and/or the weighted average price.”

Q95. What are your views on the suggested approach in relation to exceptional circumstances under which an issuer may allow a PDMR to trade during a trading window?

Answer

First of all, we think that further clarification is necessary regarding the general rule:

- Thus, we would like to ask for clarification that the “announcement” of an interim financial report or a year-end report should refer to the date of publication of such report. The date of publication is usually announced in the issuer’s financial calendar. The announcement of such date should not be relevant.
- Please specify how the closed-window period should be determined if the (debt) issuer does not publish any financial reports.
- Where the issuer publishes the (key) results for the financial year prior to the year-end report, the closed-window period should apply to the publication of the results for the financial year, and not to the publication of the annual financial report, since the only former document may contain market-relevant information.

With respect to exception circumstance, we recommend to provide for criteria that allow a broader exemption. E.g. we do not see why it matters that the cause for an emergency is external to the PDMR.

Q96. What are your views on the suggested criteria and conditions for allowing particular dealings and on the examples provided? Please explain.

Answer

Please consider also exemptions where a transaction is initiated by a third party on behalf and for the account of the PDMR, but without the knowledge of (and in the absence of any instruction by) the PDMR, e. g. in the case of asset management or unit linked life insurance products.

Berlin, 27 January 2014