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ASSOCIAZIONE
ITALIANA
INTERMEDIARI
MOBILIARI

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CP/MFE

ESMA
CS 60747
103 Rue de Grenelle
75345 Paris Cedex 07
France

RE: Discussion Paper – ESMA's policy orientations on possible implementing measures under the Market Abuse Regulation

ASSOSIM[1] welcomes the opportunity to comment on ESMA's Discussion Paper relating to the matter in subject and is pleased to provide the following observations.

* * *

Buyback programmes and stabilisation (Article 3 of MAR)

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?

We are in accordance with ESMA's view with respect to the procedure set out under the Transparency Directive for shares traded on a RM.

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?

[1] ASSOSIM (*Associazione Italiana Intermediari Mobiliari*) is the Italian Association of Financial Intermediaries, which represents the majority of financial intermediaries acting in the Italian Markets. ASSOSIM has nearly 80 members represented by banks, investment firms, branches of foreign brokerage houses, active in the investment services industry, mostly in primary and secondary markets of equities, bonds and derivatives, for some 82% of the Italian total trading volume.

We are in favor of a public disclosure to investors of the buy-back measures by means of aggregated figures on a daily basis. We agree on the proposal of disclosing the details of every single transaction on the issuers' web site provided that this requirement shall not entail the involvement of intermediaries acting on their behalf.

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

We believe that the current deadline is appropriate.

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

Assosim agrees with ESMA's 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?

We believe that option 2 (home competent authority of the issuer) should apply. In case it is not applicable, option 1 (the competent authority of the most relevant liquid market) should be adopted.

Q6: Do you agree that with multi-listed shares the price should not be higher than the last traded price or last current bid on the most liquid market?

When shares are multi-listed on different trading venues, we deem advisable to consider (i) the price of the market where the issuer intends to purchase or (ii) the price of the most liquid market.

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?

We are in accordance with ESMA's proposal.

Q8: Do you agree with the above mentioned cumulative criteria for extreme low liquidity? If not, please explain and, if possible, provide alternative criteria to consider.

As we consider that there are extremely few shares meeting all the proposed criteria, we suggest to provide that a case of extreme low liquidity occurs even if one only of the criteria listed in paragraph 24 is met.

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?

We are not in favor of ESMA's proposal as we believe that three different thresholds are not necessary.

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?

Assosim agrees with ESMA's proposal.

Q11: Do you agree with the approach suggested to maintain the trading and selling restrictions during the buy-back and the related exemptions? If not, please explain.

We are in accordance with ESMA's proposal.

Stabilisation measures

Q12: Do you agree with the above mentioned specifications of duration and calculation of the stabilisation period?

Assosim agrees with ESMA's proposal.

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

We deem 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?

We agree with ESMA's proposal (the Italian regulation already prescribes the disclosure of the above mentioned details).

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?

We believe that the issuer should be the exclusive responsible to comply with the transparency obligations, as the principal beneficiary of the stabilisation.

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?

We believe that the issuer should be the exclusive responsible to comply with the reporting requirements, as the principal beneficiary of the stabilisation.

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?

We are in accordance with ESMA's proposal. We believe that option 2 (home competent authority of the issuer) should apply. In case it is not applicable, option 1 (the competent authority of the most relevant liquid market) should be adopted.

Market soundings (Article 7c of MAR)

With respect to the "*written record*" requirement mentioned under paragraph 64., we would like to understand whether it refers to the medium already used by disclosing market participants for the fulfillment of record-keeping obligations under applicable law provisions.

Q23: Do you agree with ESMA's proposals for the standards that should apply prior to conducting a market sounding?

Assosim agrees with ESMA's proposals for the aforementioned standards provided that they are only applied when the disclosing market participant communicates information, prior to the announcement of a transaction, to one or more potential investors in order to gauge the interest of them in a possible transaction and the conditions relating to it such as its potential size or pricing. When the professional is trying to conclude a transaction, also contacting different potential investors and negotiating with them price and size of a transaction, it is not conducting a sounding, irrespective of the size. Within the latter case the aforementioned standards do not apply.

Q25: Which of the 3 options described above in paragraph 82 do you think should apply? Should any other options be considered?

We believe that Option 1 should apply.

Q26: Do you agree with these proposals for scripts? Are there any other elements that you think should be included

Firstly, Assosim would like to ask ESMA to provide clarifications regarding the exact meaning of the word "script"; in particular, we would kindly ask ESMA to clarify whether a specific printed form is required or whether electronic evidences or recorded telephone conversations may be used for such purposes.

With respect to the "*information specific to the Transaction*" that "*may also be given provided that it is general enough so that the person questioned is not inadvertently wall-crossed*" (better detailed under point (ii) of subparagraph a. (*Non-wall-crossed sounding scripts*) of paragraph 84.), we would like to understand the exact characteristics of the above mentioned information (e.g. may the disclosing market participant provide information relating to business and/or geographic area of the entity involved in the transaction?).

Finally, we note that point (ii) of the above mentioned subparagraph a. sets out that the standard script must contain "*a statement to warn the buy side that even though the sounding will take place on a non-wall-crossed basis, there is the risk that inside information may be inadvertently disclosed and therefore result in a wall-crossing*".
In such respect we would like to draw the attention on the position of the buy side in such scenario (e.g. the occurrence of the aforementioned wall-crossing). We believe that it should be advisable to provide indications regarding the applicable remedies to be applied in such situation on the assumption that the buy side - who has declared his unwillingness to be wall-crossed - should not bear any consequences deriving from such a wall-crossing.

Q27: Do you agree with these proposals regarding sounding lists?

Assosim fully agrees that certain details relating to both wall-crossed and non-wall-crossed soundings should be recorded by disclosing market participants.
However, we believe that such data should be kept not necessarily in a list and that, consequently, disclosing market participants should be allowed to freely determine their recording methods.

Q28: Do you agree with the requirement for disclosing market participants set out in paragraph 89?

We deem that the provision of a list could be useful although there is the risk that the current high employee turnover essentially prevents its updating. Therefore, it might be worth considering including the business area/s dealing with sounding approaches in the list.

Q30: Are you in favor of an ex post confirmation procedure? If so, do you agree with its proposed form and contents?

Q31: Do you agree with the approach described above in paragraph 96 with regard to confirmation by investors of their prior agreement to be wall-crossed?

We are in favor of the collection of prior or *ex post* confirmation provided that collection methods are freely determined by disclosing market participants.

However, we deem that, in the case of prior confirmation, the *ex post* confirmation should be discretionary.

Q32: Do you agree with these proposals regarding disclosing market participants' internal processes and controls?

We agree with the aforementioned proposals although we would like to point out that the "as much as possible" criterion set out under paragraph 99. should be assessed on a case by case basis. In fact, as ESMA itself recognizes in paragraph 77., there might be certain market factors - beyond the disclosing market participant's control - which may affect, on the one hand, the market sounding starting date and, on the other hand, the time lapse between the market sounding and the effective launch of the relevant transaction.

Q35: Do you think that the buy-side should or should not also inform the disclosing market participant when it thinks it has been given inside information by the disclosing market participant but the disclosing market participant has not indicated that it is inside information?

We believe that it would be advisable to have the buy side informing the disclosing market participant when it believes to have received inside information. This could facilitate mutual acknowledgement and comparison of underlying procedures which have driven to different conclusions; this process might lead to a review of the analysis carried out either by the buy side or by the sell side.

Q39: What are your views on these options?

Under a practical perspective, we deem that it is very unlikely to plan *a priori* and to agree a cleansing strategy basically for the same reasons expressed in the answer to Question No. 35 (e.g. different internal procedures which may lead to different conclusions). In this sense, please consider that in certain cases the disclosing market participant believes to have inside information because he is aware of additional facts and circumstances relating to the issuer.

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

With respect to manipulation of benchmarks, we would like to take this opportunity to point out that in our opinion the definition of "benchmark" provided by MAR is very broad.

We would appreciate if ESMA could provide more details on the matter in order to allow a correct and effective detecting of practices/behaviours of market manipulation.

Please consider that manipulation of benchmarks conducts are generally carried out by benchmark managers or contributors, while it is highly unlikely that such conducts are performed by benchmark users.

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

Firstly, we are in favor for the introduction of AMPs and relating disclosure requirements. However, under a practical standpoint, we have noticed that in most cases the more requirements are provided, the less the practice is applied.

Therefore, we would appreciate if ESMA, when providing requirements for AMPs, could attempt to better strike the balance between the need for transparency and the burdens posed upon the entities that should benefit from such safe harbors.

Insider list (Article 13 of MAR)

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

With respect to the information about the relevant person in the insider list we would like to point out that obtaining details on "Home address", "Home/personal telephone numbers", "Personal e-mail addresses" may entail relevant practical difficulties in particular for external parties/professionals.

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

We agree on having a harmonized format relating to insider list, it being understood that the "one single consolidated list principle" will apply only to issuers and not also to investment firms acting on their behalf or account. In fact, such firms are in most cases involved in a large number of projects each of which requires a single dedicated list.

With respect to the fields proposed in the format in Annex V, we would like to point out the following issues:

i. "*Start date/End date*": considering that there are no relating explanatory notes in the paragraphs providing the standards for insider list format, we would like to

understand the exact meaning of "employment" and whether it refers to the date of hiring/job termination date or to a different date;

ii. "*Obtained/Ceased*": the "time" requirement may entail relevant practical difficulties in determining the moment when a person obtains access to inside information, also considering that is not always possible to determine the exact time in which an information has become "inside". Even if we are aware that this requirement is set out by MAR, we kindly ask ESMA to consider the possibility to provide indications and solutions (i.e. possible adoption of conventional "time").

Managers' transactions (Article 14 of MAR)

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?

We are in accordance with a minimal weight although we believe that its determination *a priori* could be difficult as it depends on the applicable index or basket.

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

We agree with the third alternative as we deem that in such case the aggregation method is based on data which are always available or easily recoverable.

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

In this respect it would be useful to be provided with indications relating to the competent corporate body/function in charge for resolving upon the permission to enter into transactions during a closed window period.

Investment recommendations (Article 15 of MAR)

Q98: Do you think that there should be a threshold for what constitute "large number of persons" for the purpose of determining that an investment recommendation is intended for the public?

We don't think that there should be a threshold because - as set out by ESMA under paragraph 388. - we believe that an investment recommendation is intended for the public irrespective of the fact that it is specifically addressed to a number (even limited) of persons.

Q101: Do you agree with the suggested approach aiming at increasing transparency on the methodologies used to evaluate a financial instrument or issuer compared to the current situation?

Assosim agrees with an approach aimed at increasing transparency on the methodologies; however, we deem that "financial analysts" should be allowed to freely determine the extent of the indications on the underlying methodologies (and, therefore, there should be no obligation in this sense) even considering that under the current legal framework the more a "financial analyst" provides methodologies' details the more he is prized. Therefore, the proposal of requiring more details is, in practice, already implemented by the market pursuant to a "market selection principle".

Q104: Do you agree on the introduction of a disclosure duty for net short positions? If yes, what threshold do you consider would be appropriate and why?

Q105: Do you agree on the introduction of a disclosure duty for positions in debt instruments? If yes, what threshold do you consider would be appropriate and why?

Q106: Do you think that additional specific thresholds should be specified with respect to other 'non-equities' financial instruments?

Q107: Do you think that further disclosure on previous recommendations should be given?

We agree with an approach aimed at increasing the disclosure of interests and conflicts of interest but we would like to point out that the information required for the aforementioned new disclosure duties change continuously in an intermediary and obtaining them may entail relevant technical difficulties. Moreover the disclosure of net short positions or positions in debt instruments may entail the communication of inside information to the financial analysts.

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We remain at your disposal for any further information or clarification.

Yours faithfully,

Gianluigi Gugliotta
Secretary General